



**Mathenge v RMA Motors (K) Ltd (Civil Case 62 of 2016)
[2025] KEHC 2033 (KLR) (Civ) (18 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2033 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 62 OF 2016

JM NANG'EA, J

FEBRUARY 18, 2025

BETWEEN

JOHN MWAI MATHENGE PLAINTIFF

AND

RMA MOTORS (K) LTD DEFENDANT

JUDGMENT

1. By Plaintiff dated 2nd March, 2016 the plaintiff sues the Defendant claiming to have entered into an agreement with it by which he placed an order for a high-end vehicle , a custom-built Range Rover Vogue SE Supercharged, for an agreed price of Kshs. 24,935,112. Soon after delivery, the vehicle allegedly developed mechanical and other problems necessitating its return to the defendant on various occasions for repairs. The plaintiff laments that the constant repairs denied him enjoyment of the vehicle, thereby occasioning him loss and damage for which he holds the Defendant liable.
2. The Plaintiff seeks the following reliefs.-
 - a. Specific performance of the said agreement and/or delivery of a replacement motor vehicle complete with all the features agreed upon;
 - b. In the alternative, a refund of the purchase price in the sum of Kshs. 24,935,112;
 - c. Damages for breach of contract and misrepresentation;
 - d. Any other relief the Court deems fit;
 - e. Costs and interests on the above.
3. The defendant filed defence dated 14th May, 2016 acknowledging execution of the agreement but denying the allegations of breach thereof, and therefore liability for this claim. It is the defendant's



contention that it successfully delivered the vehicle to the plaintiff and thereafter performed its obligations under the contract by routinely servicing the motor vehicle. The court is therefore urged to dismiss the suit with costs.

4. The suit was set down for hearing with the Plaintiff calling two witnesses in support of his case while the Defendant called one witness .

The Plaintiff's case

5. PW1 (John Mwai Mathenge) adopted his Witness Statement dated 2nd March, 2016 filed herein as his evidence. Reiterating the averments in the suit, he testified that the subject vehicle was to be custom-built and designed as per the agreement. According to the plaintiff the vehicle as per its design was supposed to be fitted with a functional Television set ("TV") as one of its features, unlike the older model which didn't have a Television as a standard feature. The extra function was said to have been duly fitted, thereby pushing the vehicle's cost to KshS. 24, 935,112 instead of KshS. 22,900,000 which was the price of its older model without a TV.
6. The plaintiff further testified that during inspection of the vehicle at the pre-delivery stage, however, he noticed that the TV as well as some other features were not functional . The defendant did fix the defects after which it was agreed that the TV would be checked again after the vehicle had driven for 1,500 kilometers. When he took back the vehicle for inspection after attaining 7,500 kilometers the faulty TV could not be rectified. Technicians from South Africa the defendant consulted are said to have opined that the TV fitted to the vehicle was the wrong one and could not function in Kenya. Frustrated, the plaintiff says he asked the defendant to take back its vehicle but it declined and also refused to make refund of the paid purchase price.
7. Under cross examination, the plaintiff told the court inter alia that the defect in the TV was detected on the date of its delivery. The defendant continued to service the vehicle, the last time of service being December 2019. During the last service the plaintiff conceded that he didn't complain about the TV's functioning.
8. In support of his evidence the plaintiff tendered his bundle of documents filed herein which include the agreement executed by the parties.
9. PW2 (Albert Gitonga) was the defendant's former Sales Executive at the material time who quit the job in February 2015. His duties included sales and marketing of new Land Rover Motor vehicles as well as receiving orders from customers and communicating their specifications to the vehicle manufacturers. The witness confirmed the plaintiff's evidence on the specifications of the vehicle he was buying from the defendant particularly as regards the TV component which he says was the technical part of the agreement with the plaintiff. Their supplier had confirmed readiness to supply a functioning TV as per the agreement with their client, the plaintiff. PW2 agrees with the plaintiff that the TV failed to function contrary to expectation and the information was given to the "Technical Team". According to the witness, the TV supplied was analogue and could not be changed to the digital setting because that could have affected the entire vehicle setting. Despite the TV defect, the defendant delivered the vehicle as the problem was not safety related.
10. The motor vehicle was also said to have had a radio voice control defect although the documentary exhibits tendered do not specify the defect. PW2 confirmed signing the hand-over form notwithstanding the complaint that vehicle was not in proper condition. The defendant took note of the defects, though.



The Defendant's case

11. The sole defendant's witness (Chandralal Sathasivam) told the court that he is the defendant's Technical Manager and exhibited their Bundle of documents herein which include the vehicle's hand-over record. He stated that the hand-over record was duly executed and ticked boxes indicated proper functioning condition while mark "X" showed non- functioning parts.
12. The witness told the court that there was no complaint of any defects with the vehicle in question and that the plaintiff and the defendant endorsed the condition of the motor vehicle. Further, the court is told that the vehicle was fitted with a signal called "DVB-T", and when it was shipped to Kenya, the signal was upgraded to "DVT-2". The change was at the discretion of the Kenyan government because of change of circumstances in terms of policy.
13. In cross examination the defence witness explained that the "DVT-2" signal was newly in use in the Kenya and not compatible with Land Rover motor vehicles such as the subject vehicle. He was not aware of a government announcement of the TV signal shift to "DVT-2" signal. The court was further told that the subject motor vehicle's inbuilt TV is not indicated on the handover form. The Defendant undertook to fix specified defects as per the warranty given.
14. The defendant therefore denies liability for the claim.

The Plaintiff's Submissions

15. The Plaintiff through Counsel referred to Section 16 of the *Sale of Goods Act* and the case of Wilfred Irungu Ndirangu vs CMC Motors Group Ltd [2012] eKLR to submit that the Plaintiff entered into an agreement relying on the defendant's skills and with an assurance to deliver. The court is told that there was reasonable expectation that the product would be of merchantable quality fit for the intended purpose.
16. It was argued that prior to making the order, there were extensive discussions on the type of TV receiver the plaintiff wanted and the latter was assured that the TV receiver would be specifically for the Kenyan market. According to Counsel, the defendant was aware that Kenya had migrated from the analogue to the digital Television system.
17. The Plaintiff also relied on the case of *Rodgers & Another v Parish (Scarborough)LTD & Others* [1987] 2 ALL ER 232 where the Court held inter alia that:-

"in considering whether a car was of merchantable quality, the Court had to consider , not merely the buyer's purpose of driving the car from one place to another, but of his doing so with the appropriate degree of comfort, ease of handling and pride in the vehicle's outward appearance".
18. Further reference was made to Section 12 of the *Consumer Protection Act*, the plaintiff alleging that the defendant failed to inform him of its inability to provide a TV functioning signal for the Kenyan Market contrary to this statutory provision.
19. Regarding the alleged breach of the terms of the Agreement, reliance was placed on Section 5 of the *Consumer Protection Act* which requires the seller to ensure that the quality of the product agreed upon is met. It is contended that the quality of the vehicle supplied was not of the expected standard and was not worth the purchase price.



The Defendant's submissions

20. It is reiterated that the Plaintiff ordered for and accepted delivery of the vehicle from the defendant by executing a hand- over record. The defence Counsel point out that according to Section 2 (1) of the [Sale of Goods Act](#), delivery is voluntary transfer of possession and the Plaintiff has not shown that he was coerced or forced to accept delivery.
21. Reliance was placed on case law in Dickson Maina Kibiria v David Ngari Mukunya [2015] eKLR to the effect that by assuming possession and driving away with the vehicle from the defendant's Showroom, the Plaintiff legally accepted the same as it was. Further, that pursuant to Section 36 of the [Sale of Goods Act](#), retention of the possession of the vehicle for over one year is evidence that the Plaintiff accepted delivery of the vehicle as it was.
22. The defendant also contends that parties are bound by their pleadings as was held in Independent Electoral and Boundaries Commission & Another v Stephe Mutinda Mule & 3 Others [2014] eKLR.
23. The court was also referred to Section 16 (b) of the [Sale of Goods Act](#) which provides that;

“ if the buyer has examined the goods, there shall be no implied condition as regards defects the examination ought to have revealed.”

The defence Counsel therefore submit that it is not plausible that the Plaintiff would have accepted delivery without confirming that the TV was functional.
24. It is further submitted that the Plaintiff is not entitled to the reliefs he craves, the defendant arguing that an order for specific performance cannot issue since the vehicle was delivered with all features agreed upon in line with specifications ordered (see the case of QPKA Limited vs Kenyatta Hospital Association (KHA) t/a Nairobi Hospital [2021] KEHC (KLR) cited by Counsel.
25. As regard refund of the purchase price, it was submitted that the defendant cannot be held to have breached an implied condition requiring refund of the purchase price, having fulfilled its part of the bargain by supplying the vehicle that was of merchantable quality.
26. In respect to the claim for general damages for breach of contract, reliance was placed on Kenya Tourist Developments Corporation vs Sundowner Lodge Limited [2018] eKLR for the proposition that general damages are not recoverable in cases of alleged breach of contract.
27. Concerning the costs of the suit, Counsel urge the court to be guided by the principle that costs follow the event as appreciated in the case of Haraf Traders Limited vs Narok County Government [2022] eKLR.

Analysis and Determination

28. I have considered the pleadings, the evidence presented and the arguments by the parties' Counsel in their respective submissions. There is no dispute regarding existence of the contract between the parties. The issues for consideration and determination are whether the Plaintiff has proven on a balance of probability that the defendant breached the agreement, and if so, whether the reliefs sought should be granted. The main bone of contention is the TV in respect of which the plaintiff laments that it was not properly fitted to the vehicle contrary to the terms of the contract.
29. The plaintiff was mostly satisfied with the vehicle delivered to him, hence his voluntary decision to take delivery and enjoy it for a long period while taking it for regular servicing by the defendant. His complaint only appears to be the quality of the vehicle TV supplied. The defendant concedes that the



TV was indeed faulty at the time of delivery of the vehicle. The defect amounts to part breach of the contract and therefore the first issue as framed is determined in the affirmative.

30. Is the relief of specific performance of the contract warranted in the circumstances? Chief Justice D. K. Maraga (Rtd) in *Reliable Electrical Engineers (K) Ltd v Mantrac Kenya Limited* [2006] KEHC 2855 (KLR) held that:

“Specific performance, like any other equitable remedy, is discretionary and the court will only grant it on the well settled principles.

The jurisdiction of specific performance is based on the existence of a valid, enforceable contract. It will not be ordered if the contract suffers from some defect, such as failure to comply with the formal requirements or mistake or illegality, which makes the contract invalid or unenforceable. Even where a contract is valid and enforceable specific performance will, however, not be ordered where there is an adequate alternative remedy. In this respect damages are considered to be an adequate alternative remedy where the claimant can readily get the equivalent of what he contracted for from another source. Even where damages are not an adequate remedy specific performance may still be refused on the ground of undue influence or where it will cause severe hardship to the defendant.”

31. Further in, *QPKA Limited v Kenyatta Hospital Association (KHA) t/a Nairobi Hospital* [2021] KEHC 282 the Court stated that:-

“An order for specific performance is an equitable remedy which, like all equitable remedies, is available at the court’s discretion. It is an order that is however rarely granted unless the plaintiff is able to show that damages would not be an adequate remedy.”

32. I find that in the particular circumstances of this case damages are an adequate remedy for the plaintiff. The loss he suffered as a result of the faulty TV is quantifiable as indeed the defendant has produced documentary exhibits including invoices showing the value of the vehicle’s TV system as Kshs. 176,000 which it expressed willingness to refund by its response dated 25th January 2016. The plaintiff has not controverted the stated TV value. Although the plaintiff does not expressly plead for such refund, this is implied in the substance of his grievance in the matter.

33. I would therefore order the defendant to make refund of the sum of Kshs. 176, 000 to the plaintiff in lieu of specific performance.

34. Turning to the prayer for general damages for breach of contract, the defendant’s advocates submit that as a general rule general damages are not awarded in breach of contract cases. This is indeed the settled legal position.

35. In *Sundowner Lodge Limited vs Kenya Tourist Development Corporation* [2023] KECA 1131 (KLR) the Court of Appeal was of the opinion that:-

“We are not satisfied that there is any cardinal issue of law or an issue of great jurisprudential moment at stake. On the contrary, we find that there is no confusion in the legal practice as this Court did not misinterpret previous decisions of the court which is that as a general rule, general damages are not awardable for breach of contract except in exceptional circumstances, which have to be justified. (emphasis) This is an issue that is well settled and beyond contestation. It does not need to be interpreted by the Supreme Court. ”



36. Further in the case of Total (Kenya) Limited Formally Caltex Oil (Kenya) Limited v Janevams Limited [2015] KECA 822 (KLR) the Court of Appeal once again pronounced itself thus in part;

“The next issue raised by the appellant is the propriety of the award of general damages for breach of contract. As a general rule, there can be no damages for breach of contract. This was the holding of this Court in Provincial Insurance Co East Africa Ltd v Nandwa LLR No. 867 (CAK). In Habib Zurich Finance (K) limited vs. Muthoga & Another. [2002] 1 EA 81 at page 88 cited with approval in the decision of the Court of Appeal for Eastern Africa in the Case of Dharamshi v Karan (supra) where that court held as follows:

“This case has been accepted by this court as an authority for the proposition that general damages cannot be awarded for breach of contract and that proposition makes sense because damages arising from a breach of a contract are usually quantifiable and are not at large. Where damages can be quantified they cease to be general...” (see also Securicor Courier (K) Ltd vs Benson David Onyango [2008] eKLR).

However, where there has been some loss arising from such breach, then damages may be awarded so as to put the claimant in a good position as if there had been no such loss. This was the holding of the Court in *Visoi Saw Mills Ltd v The Attorney-General [1997] eKLR (Civil Appeal No. 78 Of 1996)*:

“But whether the claim is in contract or tort the only damages to which the appellant is entitled is a pecuniary loss: it is to put the appellant into as good position as if there had been no such breach or interference. Normally this would entitle the appellant to recover damages for the expenses caused by and gains foregone because of the breach or interference.”

It appears that the trial judge granted general damages on the basis that the respondent must have suffered some loss. The termination letter, in the opinion of the judge was not justifiable and was illegal. He considered that since the respondent may have had to relocate its business, then “there must have been some elements of suffering by the [respondent] as a result of what happened.” The respondent was therefore awarded Kshs 50,000.00. As stated above, the award of damages is an exercise of judicial discretion that should seldom be interfered with by an appellate court. In our opinion this award of damages is reasonable, and we shall not interfere with it.”

37. The above Court of Appeal decisions are binding on this court by dint of the important principle of stare decisis. I don't find any exceptional circumstances for award of general damages to the plaintiff as his loss arising from the defective vehicle TV can be compensated by damages which the court has awarded him.
38. In the result, the claim for general damages for breach of contract is rejected.
39. The upshot is that the Plaintiff's claim partially succeeds and I enter judgement in favour of the Plaintiff in the following terms:
- i. The defendant is ordered to refund the sum of Kenya shillings 176,000/= to the plaintiff with interest at court rates to be computed from 22nd August 2014 when the latter took delivery until payment in full.
 - ii. The Plaintiff shall have costs of the suit together with interest thereon, also at court rates.

Judgement accordingly.



JUDGEMENT DELIVERED VIRTUALLY THIS 18TH DAY OF FEBRUARY 2025 IN THE PRESENCE OF:

J.M NANG'EA, JUDGE.

The plaintiff's Advocate, Mr Kinyanjui

The defendant's advocate, Ms Wangila

