



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. 361 OF 2008

BETWEEN

MAKAVE INVESTMENT COMPANY LIMITED.....PLAINTIFF

AND

NIC BANK LIMITED.....1ST DEFENDANT

URGENT CARGO HANDLING LIMITED.....2ND DEFENDANT

RULING

1. This matter was commenced by a plaint dated 20th June 2008. The plaintiff's case is that it entered into a Hire Purchase Agreement ("the Agreement") with the 1st defendant ("the Bank") to purchase a two motor vehicles on certain terms as to repayment. The gravamen of the plaintiff's case was that Bank without notice proceeded to repossess motor vehicle registration number KAV 501F in contravention of the Agreement and that it refused to transfer motor vehicle registration number KAT 615S to it despite having paid the full hire purchase price. The plaintiff sought the following reliefs in the plaint;

- a. A permanent injunction restraining the defendants by themselves, their agents or servants from repossessing, advertising for sale, selling, hiring out and or dealing with motor vehicle registration numbers KAV 501F and KAT 615S.*
- b. General damages for loss of user against the 1st Defendant.*
- c. A declaration that the 1st Defendant's act of repossessing the Plaintiff's aforesaid motor vehicle registration numbers KAT 615S to the plaintiff.*
- d. Costs of the suit and interest hereto at Court rates.*

2. Before the 1st defendant filed its defence, the parties recorded a consent order entered by this court on 22nd July 2008 on the following terms;

- 1) That the 1st defendant do release within 7 days the logbook together with an executed transfer of Motor Vehicle KAT 615S to the hirer, the hirer having paid the hire purchase debt under Agreement Number HP2-5-200-002195 in full.*
- 2) That the plaintiff do pay to the 1st defendant Kshs. 300,000 on or before 22nd July 2008 and a further Kshs. 700,000 on or before 31st August 2008 towards payment of the hire purchase debt now standing at Kshs. 2,436,060.00 as at 22 July 2008 under Hire Purchase Agreement Number HP2-5-300-002713 with respect to Motor Vehicle KAV 501F.*
- 3) That upon payment of Kshs. 300,000 above on 22nd July 2008, the 1st defendant do release motor vehicle KAV 501F to the hirer subject to the payment storage charges.*
- 4) That the plaintiff do liquidate the balance of the Hire Purchase debt under Agreement Number HP2-5-200-002713 in equal monthly installments of Kshs. 150,000 the first such installment to be paid on or before 30th September 2008 and on each subsequent*

30th day of each succeeding month till full payment.

5) That in default of any one installment on its due date, the 1st defendant be at liberty to repossess and sell Motor vehicle KAV 501F and to execute for the entire balance then due.

6) That the matter be mentioned on 29th September 2007 for any further orders.

3. A further consent was recorded on 28th July 2008 on the following terms.

1) That the plaintiff shall in addition to the payment of installments of Kshs. 1,509,000 pay to the Defendant accruing interest as per the hire purchase agreement and any other bank charges as provided therein.

4. The matter came up for directions as to hearing and I asked the parties to show cause why the matter should not be dismissed in light of the earlier consents in view of the admitted facts that one vehicle had been discharged from any liability and the other had been repossessed and sold. In my view, the suit had been compromised in terms of **Order 25 rule 5(1)** of the **Civil Procedure Rules** and there was nothing further for the court to determine.

5. Since the suit was filed in the 2008, I rejected the plaintiff's application for adjournment. Counsel for the plaintiff admitted that the subject motor vehicles had been sold. Counsel for the Bank also confirmed that the motor vehicle subject of the Agreement had been sold and that the Bank had not filed any counterclaim to recover any amount owed by the plaintiff.

6. Considering the aforesaid, I find that the suit has already been compromised by the aforesaid consent orders which allowed the Bank to transfer one motor vehicle to the plaintiff and to repossess and sell the other motor vehicle if the plaintiff defaulted in its obligation under the Agreement or the consent. In the circumstances, prayers (a) and (c) could not be granted and there being no claim for special damages pleaded in the plaint, prayer (b) was a non-starter. The consent recorded on 22nd July 2008 put the parties on a contractual footing and the suit having thus been compromised, there was no other claim for determination. I have no option but to dismiss the suit.

7. The general rule is that costs follow the event. However, this suit was compromised and it is only this court that has brought it to an end. In the spirit of that compromise, I direct that each party to bear its own costs.

8. This suit is now dismissed but with no order as to costs.

DATED and DELIVERED at NAIROBI this 16th day of JANUARY, 2020.

DAVID S. MAJANJA

JUDGE

Court Assistant: Mr. E. Tupet

Ms Macheru instructed by Alphonse Mutinda and Company Advocates for the plaintiff.

Ms Mungai instructed by Kimondo Gachoka and Company Advocates for the defendant.