



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
MILIMANI COMMERCIAL & TAX DIVISION
CIVIL SUIT NO. 124 OF 2006

PETER NDAMBIRI NDEGWAPLAINTIFF

VERSUS

HYPER CARS LIMITEDDEFENDANT

JUDGMENT

1. The Plaintiff filed this suit vide a plaint dated 8th March 2006 and amended on 18th February 2008 seeking for Judgment against the Defendant for:-

(a) *An order for specific performance of the agreement entered into in January 2005 to wit delivery by the Defendant to the Plaintiff of a Toyota "Lexus" 4x4 manufactured in the year 2003 with customs duty and all other relevant Government taxes fully paid up;*

(b) *In the alternative to (a) above, a declaration that the Plaintiff is not obligated to pay any sum to the Defendant over and above the sum already paid; and*

(c) *A permanent injunction restraining the Defendant from attaching, repossessing, alienating or in any manner whatsoever from interfering with the Plaintiff's possession of the motor vehicle registration number KAU 068C; and*

(d) *An order compelling the Defendant to pay all Government taxes due and owing to the Government of Kenya on motor vehicle registration number KAU 068C;*

(e) *In the alternative to (a), (b), (c) and (d) above, an order for rescission of the contract of sale entered into in January 2005; and*

(f) *Specific damages for breach of contract as follows:-*

(i) *Kenya shillings one million five hundred thousand (Kshs. 1,500,000) being the value of motor vehicle registration number KAR 493H traded in by the Plaintiff to the Defendant;*

(ii) *Kenya shillings three million, four hundred and seventy thousand shillings (Kshs. 3,470,000) borrowed by the Plaintiff from NIC Bank Limited and paid to the Defendant;*

(iii) *The total sum of Kenya shillings one million, two hundred and fifty thousand, five hundred and eighty eight (Kshs. 1,250,588) being the Hire Purchase charges payable by the Plaintiff to NIC Bank Limited at a monthly rate of Kenya shillings twenty six thousand and fifty five (Kshs. 26,055) from September 2005 until payment in full;*

(iv) *The sum of Kenya shillings seventy thousand (Kshs. 70,000) being the account service fee paid by the Plaintiff to the NIC Bank;*

(v) *Interest on (f)(ii) and (iii) above at 30% per annum until payment in full*

2. The brief facts of the case are that, the Plaintiff and the Defendant entered into a verbal agreement in; January 2005, whereby the Plaintiff

agreed to trade in his Prado Motor Vehicle (herein "the vehicle") registration number KAR 493H Toyota Land Cruiser, for Kenya Shillings One Million Five Hundred Thousand Only (Kshs. 1,500,000), in exchange for a Toyota "Lexus" 4x4, manufactured in the year 2003. That the vehicle was to be sourced by the Defendant, whose core business was and still is trading in new and used motor vehicles. The trade in price of the vehicle was to be used as a down payment towards the purchase of the said Toyota "Lexus" 4x4.

3. That, on or before 30th May 2005, the Defendant showed the Plaintiff one motor vehicle which externally fitted the description and appearance of a Toyota "Lexus" 4x4 as per the agreement entered into by both parties. He was also showed him a copy of a United Arab Emirates log book written in Arabic with an English version on the margin, interpreted by the Kadhi and stating the following particulars; Make: Toyota Land Cruiser VX "Lexus"; Colour: Gold; Year of Manufacture: 2003; Engine No. IHD-0188678 and Chasis No. HDJ-101-001730Z.

5. The Plaintiff avers, following receipt of that information he agreed to buy the motor vehicle and was shown the log book. He agreed at a price of; Kenya shillings six million three hundred thousand (Kshs. 6,300,000) to be paid to the Defendant in the following manner:-

(i) Kenya shillings one million five hundred thousand (Kshs. 1,500,000) to be deducted from the proceeds of the sale of motor vehicle registration number KAR 493H;

(ii) Kenya shillings three million four hundred and seventy thousand (Kshs. 3,470,000) to be financed by NIC Bank Limited upon the Defendant furnishing the bank with documentation that the car had duly been registered in Kenya;

(iii) The balance of Kenya shillings one million three hundred and thirty thousand (Kshs. 1,330,000) to be paid by the Plaintiff at a later stage at a rate to be agreed per month.

6. It is averred that, on 4th July 2005 the Defendant caused the motor vehicle to be registered by the Registrar of Motor vehicles, as motor vehicle registration number; KAU 068C, in the name of Said Ahmed Hamdun of P.O Box 87140, Mombasa stated to be the importer of the said motor vehicle.

7. The Defendant then gave NIC Bank Limited all documents required by NIC Bank to finance the sum of; Kenya shillings three million four hundred and seventy thousand (Kshs. 3,470,000). The motor vehicle was then transferred to the Plaintiff on 3rd October 2005. On or about 30th August 2005, the Plaintiff and the Defendant signed all the necessary documents for finance to be effected by NIC Bank Limited.

8. The Bank released the said sum of; Kenya shillings three million four hundred and seventy thousand (Kshs. 3,470,000) to the Defendant who on or about 20th September 2005, released the motor vehicle KAU 068C to the Plaintiff.

4. In the meantime, the Plaintiff and NIC Bank Limited entered into a Hire Purchase Agreement dated 30th August 2005, for the hire purchase of the motor vehicle at a hire purchase price of Kenya Shillings Four Million Seven Hundred and Twenty Thousand, Five Hundred and Eighty-Eight (Kshs. 4,720,588) which included hire purchase charges of, Kenya Shillings One Million, Two Hundred and Fifty Thousand, Five Hundred and Eighty-Eight (Kshs. 1,250,588).

5. That, it was agreed that, the Plaintiff would repay the hire purchase price in forty-eight (48) monthly installments each of Kenya Shillings Ninety-Eight Thousand Three Hundred and Forty-Six (Kshs. 98,346). The Plaintiff was also obligated to pay NIC Bank Limited the sum of; Kenya Shillings Seventy Thousand (Kshs. 70,000), being the account service fee which was fully paid.

6. The Plaintiff avers that after driving the motor vehicle for two (2) weeks, he realized the motor vehicle had mechanical problems and took it to the dealers Toyota (K) Limited, for a checkup. He was then informed that;

(a) The motor vehicle registration number KAU 068C was not manufactured in the year 2003 but rather in January 2000;

(b) The malfunctioning that he noticed while driving the vehicle was as a result of wrong and modified parts that had been fitted in the vehicle and which were not working in unison with other parts;

(c) The motor vehicle registration number KAU 068C was not a Toyota "Lexus" 4x4 but a motor vehicle made up of different parts of different models of Toyotas.

7. As a result, thereof, Toyota (K) Limited was unable to repair the vehicle. The Plaintiff then demanded that, the Defendant honour the terms of the agreement and give him the appropriate vehicle. The Parties also requested Toyota Kenya Limited to value and establish the market value of the vehicle. It was valued at Kshs. 4,840,000, which according to the Plaintiff, was lower than the inflated figure of Kshs. 6,940,000 agreed on by NIC Bank Limited.

8. The Plaintiff avers that had it not been for the Defendant's misrepresentations to him that the motor vehicle being sold was a Toyota "Lexus" 4x4 manufactured in 2003, he would not have entered into the Hire Purchase Agreement with NIC Bank for the purchase of the same. Therefore there is no reason or justification why the Defendant should be paid any further payment over and above Kshs. 4,970,000, already paid as the same would amount to unjust enrichment of the Defendant.

9. That despite demand that the Defendant honour is its part of the verbal agreement entered into in January 2005, and deliver to him a specific model of a Toyota "Lexus" 4x4 manufactured in the year 2003, and despite a notice of intention to sue, the Defendant has failed, neglected and/or refused to comply.

10. Therefore, it is clear that the Defendant does not wish to remedy the breach of warranty contract and instead has chosen to revert to using unethical and illegal ways of repossessing the vehicle by instructing two different auctioneers to obtain court orders on diverse days, by swearing false affidavits purporting to state that the Plaintiff is holding the vehicle under a hire purchase contract with the Defendant and he owes the Defendant money thereto.
11. Further, one of the documents given to NIC Bank Limited by the Defendant for purposes of approval of the Hire Purchase application were importation documents which showed that customs duty on the subject motor vehicle had been paid to the Government of Kenya.
12. On or about 30th March 2006, he made an enquiry at the Customs Department and National Bank of Kenya was informed that import duty on the vehicle was never paid and that the payment slip from the Customs and Excise Department presented to the NIC Bank Limited by the Defendant was forged. Therefore, the motor vehicle is liable to be impounded by the Government of Kenya on account of failure by the Defendant to pay import duty on the same.
13. The Plaintiff avers that had it not been for the Defendant's misrepresentations that, import duty on the suit property had been paid, he would not have entered into the agreement for hire purchase as aforesaid.
14. The Defendant filed its defence dated 13th April 2006, amended on 2nd May 2008 and further amended on 21st February 2013 and averred that, it would raise a preliminary objection that the amended plaint does not comply with the express provision of Order VIA Rule 7 of the Civil Procedure Rules and it therefore defective and should be struck out with costs.
15. Further, the Plaintiff is non-suited and/or incompetent in law to file these proceedings in that the Plaintiff is merely a hirer of Motor Vehicle registration number; KAU 068U through NIC Bank Limited and not the owner of the vehicle under the provisions of the Hire Purchase Act Cap 507 of the Laws of Kenya. Therefore, Plaintiff cannot sustain this action in the absence of the NIC Bank Ltd, who is the legal owner of the subject motor vehicle and/or without obtaining an appropriate consent from the said owner to lodge proceedings on its behalf and/or for its benefit.
16. It was argued that, the Plaintiff continues to benefit and/or to honour the terms of the Hire Purchase Agreement signed with NIC Bank Ltd, on 29th August 2005 and to enjoy the possession and use of the subject motor vehicle to-date. To this extent his suit and the prayers sought thereunder are frivolous, vexatious and abuse of the process of the court and the same should be struck out and/or dismissed with costs.
17. However in the alternative and on without prejudice to the aforesaid, if the Plaintiff and the Defendant entered into a verbal agreement (which is denied) then, the same was only limited to an agreement to sell and not a sale agreement "per se" of which the Defendant clarifies that; the Plaintiff visited the Defendant's showroom for the first time in January 2005 and indicated that he specifically wanted to buy a used Toyota Land Cruiser, Model 2003, Lexus class propelled by diesel.
18. That the Lexus Class is only available and manufactured with a petrol Engine and not a Diesel engine and therefore the plaintiff settled for a Land Cruiser, diesel engine. Further, he was given an opportunity of inspecting the subject vehicle and the importation documents, upon which he confirmed that they complied with all the specifications he required in accordance with the oral and mutual understanding with the Defendant and he offered to buy the same.
19. Thus he had ample opportunity to drive the motor vehicle on several occasions and fully satisfied himself that the same was fit for his purposes and that it was sound both physically, mechanically and in all other respects, after which he bargained and finally offered and/or agreed to buy the subject vehicle at an agreed price of Kshs. 6,300,000. He is estopped from questioning its suitability or roadworthiness after purchasing and using the vehicle for several months.
20. Further, the Plaintiff took possession and used of the vehicle sometimes in August 2005, prior to executing the Hire Purchase Agreement with NIC Bank Limited and not on 20th September 2005 as alleged or at all.
21. In the alternative but without prejudice to the foregoing, the vehicle was being sold on as-is-where-is basis as a used vehicle and the Defendant cannot be held liable for mechanical, physical or manufacturer's defect, it any, in the absence of a written warranty or guarantee to that effect.
22. That the alleged valuation report by Toyota Kenya is worthless and cannot be used by the Plaintiff as valid excuse to depart from the agreement for sale. The Defendant was not privy to the alleged valuation report conducted by Toyota Kenya. It is strictly a private affair and/or arrangement between the Plaintiff the approximate re-sale value of his motor vehicle.
23. The vehicle was earlier subjected to a comprehensive inspection and valuation by the Automobile Association of Kenya on or before 14th June 2005, on specific instructions and request of the Plaintiff and was given a market value of Kshs. 6,940,000. which value was duly accepted by the Plaintiff and declared by the Plaintiff to his financiers for purposes of lending. Thus the Plaintiff is stopped from denying and/or questioning the value and/or agreed sale price of the vehicle at this juncture.
24. The Plaintiff should have elected at the earliest opportunity to either reject the motor vehicle, return the same to the Defendant immediately and sue for breach of contract or to retain the motor vehicle and pay for the balance of the purchase price amounting to Kshs. 1,345,000 but he cannot have it both ways as purported.
25. In particular, the Plaintiff cannot institute and/or maintain this action while he continues to use the vehicle and to benefit from hire purchase agreement signed with NIC Bank Limited. Furthermore, and/or in the alternative, the Plaintiff's action in continuing to use the vehicle and honour the hire purchase agreement is an overt act confirming and/or approving the sale agreement and the Plaintiff is estopped

from rescinding the contract of sale by virtue of his contract. Further the alleged damages have not been sufficiently pleaded or specified as required by the law and the claim for damages is thereof unsustainable.

26. The Defendant reiterated the averments in the defence to support the amended counter claim, that at all material times in this counter-claim, the Defendant was a motor vehicle sales agent/dealer with express instructions and authority to sell motor vehicle registration number KAU 068C Toyota Land Cruiser/Lexus and to sign all documents pertaining to the sale of the said vehicle and to collect the payments on behalf of the owner.

27. Between January and May 2005, the Plaintiff severally visited its showroom along Langata road Nairobi, while shopping for a Toyota Land Cruiser motor land cruiser motor vehicle which he intended to buy. The Plaintiff thereafter identified and inspected motor vehicle registration number KAU 068C Toyota Land Cruiser VX and confirmed that it was fit and suitable for his purposes. He was further allowed by the Defendant to test drive the said vehicle within and outside Nairobi on various occasions and he fully satisfied himself that the vehicle sound physically, mechanically and in all other respects.

28. That after confirming that the vehicle was sound and fit for his purposes, he bargained the price and finally offered to buy and the Defendant, on the owner's instructions, agreed to sell to the Plaintiff the subject vehicle at an agreed price of Kshs. 6,300,000.

29. The Plaintiff thereafter informed the Defendant that part of the agreed purchase price of Kshs. 6,300,000 would be financed and paid to the Defendant by NIC Bank Limited, therefore it was necessary that, the said vehicle be valued by a competent valuer to enable NIC Bank Limited to finance him. Subsequent thereto and on the specific instructions of the Plaintiff, motor vehicle registration number KAU 068C was delivered to the automobile Association of Kenya on 14th June 2005, where it was inspected both physically and mechanically and finally given a market value of Kshs. 6,940,000.

30. The Defendant avers that, the Plaintiff thereafter successfully applied for finance facilities from NIC Bank Limited, on or about 29th August 2005 and the Bank agreed to finance and hire the vehicle to the Plaintiff at the cost of Kshs. 6,940,000 as per the valuation report. The Plaintiff duly signed the Hire purchase agreement and took possession and use of the vehicle as a hirer upon, which NIC Bank paid to the Defendant the sum of Kshs. 3,470,000 being 50% of the declared cost and/or market value of the vehicle.

31. The Defendant avers that the balance of the purchase price agreed between the Plaintiff and the Defendant was payable by the Plaintiff directly. Thus the Defendant's claim against the Plaintiff as per the agreement is for the total sum of Kshs. 1,345,000; being the outstanding balance of the agreed purchase price of the said vehicle and made out as follows:-

Agreed purchase price - Kshs. 6,300,000

Less paid by NIC Bank - Kshs. 3,470,000

Less trade in sum - Kshs. 1,500,000

Kshs. 1,330,000

Add cost of alarm - Kshs. 15,000

Total Kshs. 1,345,000

32. The Defendant avers that, the Plaintiff continues to have the possession and use of the subject vehicle to-date and to honour and/or benefit from the hire purchase agreement signed between himself and NIC Bank Limited but he has wrongfully failed and/or refused to pay the said balance of the purchase price.

33. Alternatively, the Defendant shall aver that the Plaintiff failed to rescind the contract of sale at the earliest opportunity and instead continued to use and depreciate the subject motor vehicle and to honour the hire purchase agreement and as a consequence thereof he is estopped in law from rescinding the contract of sale as purported or at all.

34. At the conclusion of the case I have considered the evidence adduced and I find that the following issues have arisen for consideration: -

a) Whether there is a competent suit in view of the fact that the Plaintiff has not joined NIC Bank and one Said Ahmed Hamdun on whose behalf the Defendant sold the vehicle;

b) What is the nature of the relationship between the Plaintiff and the Defendant, Is it seller and buyer or principal cum agent?

c) Whether the Defendant breached the contract entered into with the Plaintiff;

d) Whether the plaintiff has proved the case to warrant the orders sought; and

e) Who should pay the costs of the suit?

35. As regards the first issue, I find that the evidence reveal the Motor Vehicle was financed by NIC Bank and registered in joint names of

the Plaintiff's and the Bank's. Obviously the Bank has an interest therein and its presence in this matter became indispensable. Secondly it is clear from the final prayers that; some of them are directed at the Bank. The Plaintiff seeks for refund of Kshs. 70,000, paid to NIC Bank on account of service fee; the purchase price instalments of; Kshs. 1,392,204, and the legal expenses in both HCCC No.637 of 2007 and this case. It is not possible to make any orders against or in favour of the Bank when it is not a party to the suit.

36. Similarly, the Plaintiff testified that the motor vehicle sold to him was registered in the name of; Said Ahmed Hamdun, and indeed the log book transferred to him was in the name of the said Hamdun. Mr Hamdun is also not a party to the suit and no orders can be granted against him. The only issues to be dealt with herein shall therefore relate to the parties to the suit.

37. The Plaintiff testified in support of its own case. He relied on the statement dated 18th July 2012 filed in court on 19th July 2012. The 75 paragraph statement covering 12 pages literally reiterate the content of the averments in the pleadings. In cross examination, he conceded that he had previous business transaction with the Defendant. He had bought other vehicles inter alia, a Mercedes Benz E26 Registration number KAT 068R, and a Suzuki, Subaru Forester and Nissan Sunny, KAU 010 G from the Defendant.

38. He further testified that when he was given the subject vehicle he did not take it for inspection. He commissioned the Defendant to source the vehicle for him and thus they sold him the car as an agent. Further when he got the vehicle it was not registered in the Defendant's name.

39. However, he was sold a diesel Toyota Land Cruiser VX instead of petrol Lexus. He blamed NIC Bank for failure to go to KRA to check on the registration of the motor vehicle. He conceded he has not paid the balance of Kshs. 1.3 million.

40. However in re-examination he maintained that the parties entered into an oral agreement. He argued that he did not pay the balance of Kshs. 1.3 million as he was sold the wrong vehicle, and that he had no chance to inspect the vehicle.

41. The Plaintiff further called one Swaleh Chirla a Service supervisor from Toyota Kenya who testified that, on 28th March, 2006 the Plaintiff took the motor vehicle KAU 083C for service and repair. It was serviced but not repaired as it had been modified, with a HDJ 101K diesel engine and yet a Lexus has R2J petrol engine, and manufactured in the year 2000 and not 2003. He produced the report of the detailed findings dated 4th October, 2005. In cross examination he stated that the vehicle was valued in October 2005 at Kshs. 4,840,000.

42. The Plaintiff also called Sylvester Okello a Senior Assistance Commissioner of Investigation and Enforcement at KRA, who testified that, the motor vehicle KAU 068C is under investigation as import duty was not properly paid. That Kshs. 1.00 was paid instead of Kshs. 1,574,550. However, he conceded that a payment was made at the National Bank of Kenya, but was not received by KRA, as the blue copy of the payment is missing. That investigation revealed that the importer was deceased and his ID card was used to conceal the identity of the importer.

43. In cross examination the witness stated that he did not have a copy of the log book, however, the records held indicated that the motor vehicle is a Toyota Landcruiser manufactured in the year 2003. It is not indicated as a Lexus. The receipt used to pay duty did not indicate which motor vehicle it related to.

44. The Defendants case was supported by the evidence of its director, Mr George Gachuhi Chege. He relied on the statement dated 25th February, 2013. He also reiterated the averments in the defence and the counter claim. He maintained that the Plaintiff was sold the right vehicle and had ample opportunity to inspect it. He drove it all the way to Kerugoya.

45. That the Defendant was selling the vehicle on behalf of someone else and that all through the Plaintiff knew the motor vehicle was a diesel vehicle. He averred that the Plaintiff gave a cheque of Kshs.1 million that was dishonoured hence the counter claim. However it is not worthy that the Defendant cross examination did not conclude due the absence of the witness for the same.

46. Be that as it were it is clear from the evidence adduced and documents produced that, there is no dispute that the Plaintiff traded in his motor vehicle Prado registration no. KAR 493H for a Lexus. It is also not in dispute that the vehicle he eventually acquired was not a Toyota Lexus. However, it is clear that the vehicle was not physically present, when he negotiated the purchase price thereof at Kshs. 6.3 million. Why he took that risk is best known to him.

47. The question that arises next is whether the Defendant was acting as the seller of the motor vehicle or agents of both the seller and purchaser. It is clear from the plaintiff's statement at paragraph 3, that he requested the Managing director of the defendant; George Chege, to source for him a Toyota Lexus, OF year 2003. That he was informed that the motor vehicle was not physically present and was to be imported from Dubai. Indeed, the log book that the Plaintiff eventually received, was not in reveal the Defendants as a registered owner of the vehicle any given time.

48. If the vehicle was not physically present, can it be argued that, the Defendant misrepresented the description of the vehicle to the Plaintiff and/or breached the implied condition to its merchantable condition? First and foremost, as aforesaid the evidence indicate that the parties entered into a oral cum verbal and/or mutual agreement.

49. The purported agreement dated 30th July 2005 produced by the Defendant has been refuted by the Plaintiff and termed as a forgery and a fabrication of an agreement executed between Cargo Partners (K) International Limited and the Defendant. The Defendant did not defend this allegation. I therefore conclude that the agreement between the parties was oral.

50. Further evidence as adduced by the Plaintiff's witnesses clearly reveal that the vehicle the Plaintiff was given was not the vehicle he alleges he ordered for. However, in view of the fact that the contract was oral cannot be ascertained with certainty. But even then he took possession of the motor vehicle and has been using it. In my opinion, the contract between the parties is frustrated and more so by virtue of the fact the KRA, has seized the motor vehicle due to none payment of import duty. The Plaintiff cannot therefore have recourse to it.

51. The next question is whether the Plaintiff is entitled to the prayers sought. I have considered the prayers in the plaint and note that, the first prayer seeks for an order for specific performance of agreement entered into in January that the Defendant do delivered Toyota Lexus 4x4 manufactured in the year 2003. In the circumstances of this case I allow that prayer.

52. In that regard, it is noteworthy that a party who has acted in breach may be ordered by the court to specifically perform the contract and do exactly what he contracted to do. The order will be granted where damages would not be a sufficient remedy. The question remains: Is the Defendant bound to source for another motor vehicle for the Plaintiff and/or are damages an adequate remedy. The Defendant should be given an opportunity to avail the vehicle ordered for by the Plaintiff.

53. The alternative prayer (2) seeks for an order that, the Plaintiff not obliged to pay any more money above what is already paid. The parties are free to provide in their contracts that it will terminate on its becoming impossible or on the happening of a specified event. If the parties have not made any specific provision against contingency in their contract, the doctrine of frustration might be brought in as a defence by a party proving a supervening event has occurred beyond the contemplation of the parties destroying the very foundation of the contract. The supervening impossibility include, Government interference, for example; change in law, destruction of subject matter.

54. The effect of frustration under common law is that the contract is discharged and loss, lie where it falls. Further, money not due at the time of frustration would not be claimed but all money paid is recoverable. Thus taking into account the fact that, the subject matter of the contract is not capable of performance it is deemed to have been frustrated, unless another vehicle is provided the Plaintiff is not bound to pay any more money.

55. Prayer (3) on injunction has been overtaken by events and the motor is under investigation and possession of KRA. Prayer (4) seeks for an order to compel the Defendant to pay taxes. It is not viable, as the Defendant is not the importer or registered owner of the motor vehicle. The Plaintiff squandered opportunity when he failed to join the seller in the suit.

56. The alternate prayer (5) seeks for an order of rescission of the contract. A party who suffers by breach of a contract is entitled to treat the contract as rescinded or ended and may refuse any further performance of his own part. He can thus rescind the contract. Once rescission is granted, the aggrieved party is released from all the obligation under the contract and becomes entitled to compensation for any damage which he has sustained through non-fulfillment of the contract. The Plaintiff is at liberty to rescind the contract.

57. Prayer (6) seeks for special damages in the sum of; Kshs, 1, 500,000, as an equivalent of the value of the traded in motor vehicle. It is not clear from the evidence who has the money whether the Defendant or the seller. The sum of; Kshs. 3,470,000 is a subject of another suit. The Kshs. 1,250,588 and Kshs. 70,000 was not paid to the Defendant and is a subject of another suit. No order is made for a liquidated sum therefore; the issue of interest does not arise.

58. In conclusion I order that, the defendant shall within 30 days of date of this order deliver to the Plaintiff a motor that fits the description of Toyota Land Cruiser Lexus, if the Defendant fails to do so, the Plaintiff shall be at liberty to follow and recover the Motor Vehicle traded in. He should also recover all sums paid including, the amount of loan and money expended on perfection of the security, and shall not be liable to pay any outstanding amount. Any money recovered shall attract interest fat court rates from date of filing suit to payment in full I also award the Plaintiff costs.

59. Those then are the orders of the court.

Dated, delivered and signed on this 6th day of February, 2020

GRACE L NZIOKA

JUDGE

In the presence of:

MS. Kiramani for Mrs Kariuki for the Plaintiff

No appearance for the Defendant

Dennis----- Court Assistant