

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO 2854 OF 1997

FRANCIS KARUMWA GATHEKIA.....PLAINTIFF

VERSUS

NJILUX MOTORS LTD AND ANOTHER.....DEFENDANT

R U L I N G

The subject matter of these proceedings is a motor vehicle registration No KAH 906K make peugeot 505 station wagon.

In his pleadings, the plaintiff states that he bought the said m/v then registered in the name of the second defendant from the first defendant in April, 1997 at a price of Kshs.550,000/-. The purchase price aforesaid was paid in full by a bankers cheque to the first defendant who then released the motor vehicle to the plaintiff who started operating a “matatu” business between Karatina and Nairobi.

The first defendant undertook to hand over to the plaintiff the original logbook, transfer form and a copy of the second defendant’s identity card by 4th July, 1997. This was never done.

It is further pleaded that the plaintiff took a comprehensive insurance cover in respect of the motor vehicle. In May, 1997 the second defendant is said to have attempted to take possession of the subject motor vehicle on the ground that it had not been paid for. The intended repossession was called off after the plaintiff informed the second defendant that he had paid for the motor vehicle.

However, on 12th November, 1997 the said motor vehicle was repossessed at the instance of the second defendant. This suit then followed which claims injunction orders, damages for breach of contract and loss of user.

Only the second defendant has filed a reply to the plaintiff’s application. She opposes the application on the basic grounds that the first defendant did not have the authority to conclude the sale on her behalf. The asking price was Kshs. 650,000/- and the sale at Kshs. 550,000/- did not have her approval. Further, the plaintiff never obtained a sale agreement and/or registration of the transfer or delivery of the car and original log book from her.

There is sufficient evidence on record that the plaintiff paid a sum of Kshs. 550,000/- to the first defendant for the purchase of the said subject motor vehicle. He also took possession of the said motor vehicle. He took out a comprehensive insurance cover for the same.

There is no doubt that the transaction of sale and delivery was concluded by the first defendant. The first defendant must have had possession of the motor vehicle to be able to do so. The first defendant was acting as the agent of the second defendant.

If it is true that the asking price was Kshs. 650,000/- and not the sum of Kshs. 550,000 paid by the plaintiff for the motor vehicle, it is not for the plaintiff to suffer the consequences of that shortfall. However, even that assertion by the second defendant is self defeating because the repossession instructions, which must have come from the second defendant, placed the value of the motor vehicle at Kshs. 500,000.

If there is any dispute or cause of action about the said motor vehicle then the second defendant should direct the same to the first defendant not the plaintiff in this case.

In view of the foregoing, the plaintiff's application succeeds in terms of the orders sought in the chamber summons dated 13th November, 1997.

The plaintiff shall also have the costs of this application.

Orders accordingly

Dated and delivered on 18th June, 1998.

A. MBOGHOLI MSAGHA

JUDGE