

Wanderi v De-Luxe Motors Limited

High Court, at Nairobi July 4, 1985

Aluoch J

Civil Case No 2929 of 1984

Cases

No cases referred to.

Statutes

order vi rule 13,

July 4, 1985, Aluoch J delivered the following Ruling.

The second defendant herein, Credit Finance Corporation, moved the court by way of chamber summons, grounded on order vi rule 13, asking for an order.

1) That the suit against the second defendant be dismissed as disclosing no reasonable cause of action against it.

The application stated concisely the grounds on which it was made, that the plaintiff having admitted by paragraph 2 of his reply that the plaintiff entered into contract containing the clause set out in paragraph 7 of the defence, the claim cannot stand, the second defendant not having given any warranty on the vehicle.

For the sake of convenience, and for ease of reference, I will outline, the second defendant's defence on para 7. It states,

"The hire purchase agreement dated May 31, 1984 between the plaintiff and the second defendant contains the following clause, the second defendant being therein referred to as "The owners." The clause reads,

"The owners not being manufacturers or experts do not let or hire the vehicle or nay part thereof with or subject to any condition or warranty, express or implied, by statute, description, fitness or otherwise, and it is agreed that under no circumstances shall any claim be made upon the owner for anything in connection with the said vehicle, either to its condition, fitness for any purpose or otherwise."

I will also outline for ease of reference, para 2 of the plaintiff's reply by which the second defendant, states the plaintiff has admitted entering into a contract containing the clause set out in para 7 of defence. Paragraph 2 of the reply states,

"The plaintiff denies that the second defendant is entitled to rely on clause 8 of the Hire Purchase Agreement and will put the second defendant to strict proof thereofÖÖÖ"

I see from the wording of that paragraph 2, that the plaintiff is in effect no denying the existence of clause 8 of the Hire Purchase Agreement between it and the second defendant.

Mrs Khaminwa who appeared for the plaintiff, during the application contended that because of the nature of the Hire Purchase Agreement entered into between the plaintiff and the second defendant, the latter, was a necessary party to this suit, as legally, the second defendant is the owner of the vehicle hired to the plaintiff by the first defendant. That the plaintiff says that the vehicle is defective, and this is a

breach of the agreement.

Mrs Khaminwa was prepared to give an undertaking that no costs would be asked for against the second defendant, though sued.

I have considered the arguments for and against the application before me, particularly arguments pertaining to clause 8, contained in the Hire Purchase Agreement entered into between the plaintiff, and the second defendant. The contents of this clause are not denied by the plaintiff who only denied that the defendant was entitled to rely on that clause. The only comment I would make here is that if clause 8 formed part of the Hire Purchase Agreement which the parties entered into, then both parties would be bound by it.

Anyway, be that as it may, I have considered all relevant matters in this case, and have come to the conclusion that the suit against the second defendant discloses no reasonable cause of action against it, as such, I am left with not alternative but to dismiss it (the suit) with costs to the second defendant.