

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

COMMERCIAL APPEAL NO. E006 OF 2024

VICTOR BRIAN OWINO KOJO.....APPELLANT

VERSUS

T.A MOTORS COMPANY LIMITED.....RESPONDENT

*(Being an appeal against the Judgment of Hon. J. W. Mwangi (Adjudicator)
delivered on 21st May 2024 in Mombasa SCCC No. E137 of 2024)*

JUDGMENT

1. The Claimant/ Respondent filed a Statement of Claim dated 12/05/2024 seeking the payment of Kshs. 1,050,000/= being outstanding balance of the purchase price of motor vehicle KCF 992Z, Toyota Hiace, Matatu (herein after referred to as the suit vehicle) and of chassis no. KDH 201-0019028, the Appellant being the purchaser and the Respondent the seller.
2. It was pleaded that the parties herein entered into a credit sale agreement dated 29/12/2015 where the Appellant was to purchase the suit vehicle for Kshs. 3,150,000/=. He paid a deposit of Kshs. 1,730,000/= at the time of

execution of the agreement and took possession of the vehicle. The Appellant made a further 2 instalments of Kshs. 150,000/= and Kshs. 120,000/= with the balance being payable in 8 equal monthly instalments of Kshs. 115,000/= commencing from 10/04/2026 until payment in full. The last payment was made on 10/12/2016 leaving a balance of Kshs. 1,050,000/=.

3. Despite several demands to make good the payment, the Appellant failed and/ or neglected to settle the amount necessitating the filing of the claim. It was prayed that judgment of Kshs. 1,000,000/= be entered in favour of the claimant, having forfeited the amount above.
4. The Respondent/Appellant in his Response to Statement of Claim dated 15/04/2024 admitted entering into a car sale agreement with the Respondent. He however stated that the Respondent knowingly sold him a vehicle which had a faulty engine and could not be used commercially as intended. The agreement was also said to have been unilaterally drawn and the Appellant had no say in it.
5. The Appellant filed a counterclaim for Kshs. 1,000,000/= being the costs of purchasing a new engine and for loss of income. The engine is said to have been bought on 07/09/2018. The Appellant further wrote to the Respondent on 24/08/2021 demanding for an apology and admission of liability for the said loss. He prayed that the claim be dismissed with costs and the

counterclaim be allowed with costs, in the alternative, the claimant be directed to repossess the suit vehicle.

6. Hearing of the suit proceeded by way of documents under section 30 of the Small Claims Court Act. Both parties filed their rival submissions and judgment was entered in favour of the claimant for Ksh. 1,000,000/= with interest from date of filing suit until payment in full, plus costs of the suit.
7. Being dissatisfied with the Judgment, the Appellant filed the Memorandum of Appeal dated 22/05/2024 on grounds that the trial court erred in law by;
 - i. *Allowing a claim based on hire purchase agreement which was not registered contrary to section 5 (2) as read together with section 5 (4) of the Hire Purchase Act.*
 - ii. *Failing to find that the claimant did not produce a certificate of registration as required under section 5 (3) of the Hire Purchase Act; and*
 - iii. *Allowing the claim on the basis of a hire purchase agreement contrary to section 19 as read together with section 31 of the Stamp Duty Act.*
8. The Appellant prayed for orders that the appeal be allowed by setting aside the judgment delivered on 21/05/2024 and costs of the appeal be awarded to the Appellant.

Submissions

9. The appeal was canvassed by way of written submissions. The Appellant in his submissions dated 26/05/2025 submitted that the hire purchase agreement dated

29/12/2015 was not enforceable as it contravened the provisions of the law as stated in the Memorandum of Appeal. He prayed that the appeal be allowed with costs.

10. The Respondent in its submissions dated 12/07/2025 submitted that the agreement in issue was a credit sale agreement and the document was titled “Motor Vehicle Sale Agreement’ and not a Hire Purchase Agreement as alleged by the Appellant, which position is misleading. Further, the issue is being raised at the appeal stage and it was not raised during trial. It was prayed that the appeal be dismissed with costs.
11. The Appellant filed Supplementary Submissions dated 23/07/2025v reiterating the contents of his submissions and further adding that the issue of the agreement being a Hire Purchase Agreement was raised at the submissions stage before the trial court. Further, the issue raised being a point of law, the court did not need to be moved to make a determination on the same.

Analysis

12. I have considered the Record of Appeal and submissions by the parties. The issues for determination are: -

(a) Whether the agreement dated 29/12/2015 was a Hire Purchase Agreement

(b) Whether the court made a proper finding in its judgment

(c) Who should bear costs

13. The role of the first appellate court to reexamine and to reevaluate evidence to come up with its own findings was set out in ***Selle v Associated Motor Boat Co. (1968) E.A 123*** as follows: -

“... Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect ...”

14. This being an appeal from Small Claims Court, the jurisdiction of this court is limited to **section 38** of the ***Small Claims Court Act*** which provides as follows;

(1). A person aggrieved by the decision or an order of the court may appeal against that decision or order to the High Court on matters of law.

(2). An appeal from any decision or order referred to in subsection (1) shall be final.

15. An appeal on points of law only is similar to second appeals at the Court of Appeal. In the case of ***Otieno, Ragot & Company Advocates v National Bank of Kenya Limited [2020] eKLR***, the duty of a second appellate court was set out as follows;

“This is a second appeal. I am alive to my duty as a second appellate court to determine matters of law only unless it is shown that the courts below-considered matters they should not have considered or failed to consider

matters they should have considered or looking at the entire decision, it is perverse”.

16. The Claimant claimed the outstanding balance in a sale of motor vehicle agreement. **Section 12 (1), of the Small Claims Court Act** which is the jurisdiction clause provides as follows;

(1) Subject to this Act, the rules and any other law, the court has jurisdiction to determine any civil claim relating to-

- a. contract for sale and supply of goods or services;*
- b. a contract relating to money held and received;*
- c. liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property;*
- d. compensation for personal injuries; and*
- e. set-off and counterclaim under any contract.*

17. The Appellant stated that the trial court erred in law by failing to consider that the agreement at hand was a Hire Purchase Agreement hence unenforceable due to non-compliance of the provisions under the Hire Purchase Act and Stamp Duty Act as stated herein above.

18. I have perused through the agreement in issue. It is titled “Motor Vehicle Sale Agreement”. This is an agreement which shows the deposit paid, the balance payable and a structure on how to pay the balance, where in this case is on

monthly basis. **Section 2 of the Hire Purchase Act defines the term "hire-purchase agreement"** to mean as here under;

“an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee; and, where by virtue of two or more agreements none of which by itself constitutes a hire-purchase agreement there is a bailment of goods and either the bailee may buy the goods or the property therein will or may pass to the bailee, the agreement shall be treated for the purposes of this Act as a single agreement made at the time when the last of those agreements was made”

19. From the pleadings, the agreement was a credit sale agreement. The document is titled ‘Motor Vehicle Sale Agreement’. This was a contract between the parties herein for the sale and purchase of the vehicle in issue, with a definite repayment period. It is not a hire purchase agreement as alleged by the Appellant. The parties are therefore bound by the said contract. In *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] KECA 362 (KLR)*, the Court of Appeal affirmed that: -

“The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved.”

20. Even though this court was to find that the agreement was a hire purchase agreement, the Court of Appeal in the case of *Taawawa Supermarket Limited v*

Fina Bank Limited [2010] eKLR, concerning the failure to register the hire purchase agreement stated as hereunder;

“We may add that failure to register did not tender the agreement void or the result that the company would be refunded all the money it paid under the agreement it retained its validity as a contract intersect and was enforceable as such”

21. I do concur with the finding of the trial court that the Respondent had proved its claim to the requisite threshold, that the Appellant did owe the money as claimed. I find no reason to interfere with the discretion of the court in making the finding.
22. In regard to the counterclaim, the appeal was on the validity of the agreement only. The Appellant did not appeal on the finding on his counterclaim. I shall therefore refrain from making a determination on the same. I hereby decline to interfere with the judgment of the court.
29. On costs, the same follows the event. The appeal having failed, I find no reason to deny the Respondent the costs of this appeal.

Determination

29. Following the foregone discourse, the upshot is that the following orders do hereby issue: -

(a) That the appeal lacks merits and is hereby dismissed and the judgment of the court below is hereby upheld.

(b) Costs awarded to the Respondent.

Dated, signed and delivered at Mombasa this 19th day of March, 2026

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HON. F. WANGARI

JUDGE OF THE HIG COURT

In the presence of;

Mr. Konjo Advocate for the Appellant

Ms. Otuya Advocate for the Respondent

Ms. Getrude, Court Assistant