

IN THE COURT OF APPEAL OF TANZANIA  
AT MBEYA

CORAM: MUSTAFA, AG. C.J.; MAKAME, J.A. AND OMAR, J.A.

CIVIL APPEAL NO. 20 OF 1986

HARITH SAID BROTHERS ..... APPELLANTS

And

MARTIN NGAO ..... RESPONDENT

(Appeal from the Decision of the High  
Court of Tanzania at Mbeya) (B.A.  
Samatta, J.) dated 11th May, 1983

in

Civil Case No. 29 of 1980

JUDGMENT OF THE COURT

MUSTAFA, AG. C.J.

The appellant Company (hereafter called the Company) had purchased a bus TZ 38992 from Kampuni ya Usafiri Sumbawanga (hereafter called Kausu) for Shs.305,000/= during August/September 1980.

It appeared that the respondent Martin (hereafter called Martin) had earlier on, in May 1980 purchased the same bus from Kausu for Shs.200,000/= and had paid for the said purchase by four cheques, three of them post-dated, dated 3rd May 1980, 31st May 1980, 30th June 1980 and 30th July 1980 respectively.

The first cheque for Shs.100,000/= dated 3rd May 1980, when presented for payment at the bank was returned unpaid with the remarks endorsed thereon "Refer to drawer". Obviously Martin had no money in the bank to meet the said cheque. Although the said cheque was presented for payment later than 3rd May (it was in fact presented for payment on June 2, 1980) that did not alter the situation that the cheque was dishonoured.

However Kausu managed to arrange for the seizure of the bus with the help of the Police, and the bus was out of the possession of Martin after Martin's failure to pay. It also appeared that Kausu was in possession of the registration card of the said bus, and Kausu still remained registered as the owner of the bus,

On or about 6th August 1980, Kausu, by advertisement in the Daily News and the Uhuru newspapers, invited public tender for the purchase of the said bus. The Company tendered for the purchase of the bus and on 9th September 1980 its tender was approved by Kausu. The Company paid the price of Shs.305,000/= for the bus, and Kausu handed over possession of the bus and the registration card to the Company on 20th September 1980. The Company used that bus from 20th September 1980 to 10th October 1980 when it was seized by the Police, in an action apparently initiated by Martin, who had claimed the bus as his property.

The Company filed a plaint in the High Court seeking a declaration that it was the rightful owner of motor vehicle No. TZ 38992, and for the said vehicle to be returned to it. It also claimed damages for loss of business due to the seizure of the vehicle.

The trial judge (Samatta, J) held that Kausu had sold the bus to Martin when Kausu accepted the cheques drawn by Martin as payment. He held that on the sale, the property in the bus had passed to Martin, and Kausu's only remedy for the cheque or cheques being dishonoured was to sue and claim for the purchase price from Martin.

With respect we think that the trial judge was correct in his conclusion concerning the transaction between Kausu and Martin.

In its claim before the High Court, the Company inter alia relied on the provisions of section 27(I) of the Sale of Goods Ordinance. Section 27(I) reads:

"When a person having sold goods continues or is in possession of the goods, or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale pledge or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same".

The trial judge found in effect that the Company had purchased the vehicle from Kausu in good faith, and without notice of a previous sale. However the judge held that Sec. 27(I) was entirely irrelevant to the case before him. He was of the view that at the time the bus was sold to Martin Kausu had divested itself of possession of the vehicle and delivered possession of it to Martin. He held that the registration card of the vehicle was not a document of title to the goods.

The judge was correct in holding that a motor registration card is not a document of title to the motor vehicle. However, as pointed out by Mr. Bateyunga for the Company, one who is registered as owner in the card is presumed to be the vehicle owner until the contrary is proved. And as stated by Denning L.J. (as he then was) in Bishopgate Motor Finance Corp. v Transport Brakes Ltd. - Winsor Garage, third party (1949) 1 KB 322 at 338

"The registration book of a car or the log book as it is called, may not itself be a document of title, but it is the best evidence of title ....."

Be that as it may, we think that the trial judge erred in not finding that the time of the sale by Kausu to the Company, Kausu was in possession of the vehicle. The vehicle might have been in the possession of Martin at the time he purchased it, but <sup>was</sup> it clear that Kausu had recovered possession of it when it sold it to the Company.

At the trial PWI, the manager of the appellant Company testified. He stated inter alia

"Mr. Sadala (the general manager of Kausu) physically handed over the motor vehicle TZ 38992 to me at Sumbawanga Police Station, on 20/9/80 ... My driver drove the vehicle to Ipanda. A month later we received the registration card in respect of the vehicle."

Mr. Sadala also gave evidence. He said

"This Company (i.e. appellant) paid Shs.305,000/= for the purchase of the motor vehicle. This was on 20/9/80. I received the money on behalf of the Company. I physically handed over the motor vehicle to Harith Saidi &

Brothers Company".

This testimony regarding the handing over of the vehicle by Kausu to the Company was not challenged and it was clear that Kausu had possession of the vehicle when it sold it to the Company.

The trial judge appeared to have held that the motor vehicle was out of the possession of Kausu and in the possession of Martin at the time of the sale transaction of the vehicle by Kausu to the Company. In this he was clearly in error.

As Kausu was in possession of the motor vehicle at the time of the sale, we are satisfied that the provisions of Sec. 27(I) of the Sale of Goods Ordinance were applicable, as all the other conditions had been complied with.

We may also mention that here the sale was certainly open and advertised to the public. It was in effect by public tender. There was evidence which strongly suggested that Martin knew of the advertisements for the sale of the motor vehicle which were published in the newspapers, but took no action. Kausu had the registration card of the vehicle in its possession, as well as the physical possession of the vehicle. This was as near a sale in market over conditions as it is possible in certain parts of Tanzania.

Mr. Bateyunga also submitted that Martin should be estopped from challenging the sale by Kausu to the Company. We do not think it is necessary to deal with that issue as we are satisfied that the Company must succeed under the provisions of Sec. 27(I) of the Sale of Goods Ordinance.

The trial judge dealt with the claim for special damages by the Company but came to the conclusion that no special damages had been satisfactorily proved. We concur with that view.

We allow the appeal of the Company and set aside the order and decree of the High Court. We substitute therefor an order declaring that the appellant company is the rightful owner of motor vehicle TZ 38992.

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We also order that if the said vehicle is with the respondent Martin, he must forthwith return it to the appellant Company in the condition in which the respondent took it.

We award costs to the appellant Company both here and below.

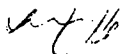
DATED at MBEYA this 7th day of May, 1987.

A. MUSTAFA  
AG. CHIEF JUSTICE

L.M. MAKAME  
JUSTICE OF APPEAL

A.M.A. OMAR  
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

  
(J.H. Msoffe)  
DEPUTY REGISTRAR

