

IN THE HIGH COURT OF TANZANIA

AT SONGEA

MISC. PC. CIVIL APPEAL NO. 18 OF 2005

SONGEA DISTRICT COURT CIVIL APPEAL

NO. 5 OF 2005

(ORIGINAL SONGEA URBAN PRIMARY COURT

CIVIL CASE NO. 28 OF 2004)

JOHNSON JOHN KASEMBE...APPELLANT ..

VERSUS:

LIBARO MAHYONORESPONDENT

23/11/2006 HEARING CONCLUDED

14/12/2006 JUDGMENT DELIVERED

J U D G M E N T:

KAGANDA, J.

The appellant was sued by the Respondent before the Urban Court at Songea for the breach of Contract. The Respondent had sold a vehicle to the appellant at shillings seven hundred thousand. The appellant after testing the vehicle by driving it for some good time, paid advance money four hundred thousand to the Respondent. The testing was done by a driver of his own choice. The Respondent delivered the vehicle to the appellant together with the original Registration Card. The appellant is said to have used the vehicle for sometime before he claimed that it had developed some mechanical defects. He wrote a letter to the Respondent demanding for some spares purported to have been kept by him. The Respondent released those spares to the person sent by the appellant one Benedictor Mtutuma. According to his

testimony before the trial Court, Benedicto SU 2 stated as follows:-

"Mimi nilienda kwa Libalo alinikabidhi
drum na tanki za breki vitu vingine
alisema atatoo baadaye. Na katika
makubaliano yao anampunguzia Shs.
100,000/=..."

On cross examination SU 2 claimed to have gone to the
Respondent for collecting "rear wheel slider, brake pipe,
brake shoe, spare wheel and a jack".

It is obvious by the appellants testimony before the trial
Court, that he knew at the time of entering into the sale
contract that the vehicle was defective. According to his
own statement he admitted as follows:-

"...Lile gari lilikuwa linatembea na
linawaka, nililichukua nilitengeneze
ili linisaidie. Nilimchukua fundi
aitwae Benedicto Mtutuma ili atenge-
neze lile gari baada ya uchunguzi
tulikuta kule nyuma kumefunguliwa,
hatukukuta brakeline zilifunguliwa
na akasaidi kwamba atanipa taili na
jeki kwa bahati mbaya vile vitu aliweka..."

The trial court having evaluated the whole evidence
held for the Respondent/Plaintiff. The District Court upheld
that decession on following reasons. That is, the appellant
had an opportunity of testing the vehicle which he knew was
a used vehicle. He satisfied himself of the Machenical
condition and paid advance money and title was passed
to him by the respondent as he had handed over the original
copy of the Registration Card.

The appellant failed to pay the remaining balance of three hundred thousand since the date of contract up to this date I am writing this judgment.

He has advanced six grounds of appeal mainly claiming that he was ignorant of the defects to the vehicle at the time of entering in the said contract. He argues that he came to discover of the defects after the conclusion of the contract. I must point out that the appellant's allegation are shameless lies because it was him who testified before the trial Court that he had intended to repair the vehicle and then use it. More over he had tested the vehicle and knew exactly that it had some defects. He is now stepping into Court with dirty hands expecting the Law to support him. I therefore remind him of the cardinal principal on that "Don't go to equity with dirty hands". By buying the vehicle at such a cheap price knowing of its status is tantamount to *volenti non fit Injuria*.

Section 16 of the sale of Goods Act 214 [Cap. 214 Revised Edition 2007] puts clear on issues of sales. It provides as follows:- sect:- 16

"Subject to the provisions of this Act and of any other written Law in that behalf, there is no implied condition as to the quality or fitness for for any particular purpose of goods supplied under a contract of sale, except as follows:-

- (a) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for

which the goods are required,
so as to show that the buyer
relies on the seller's skill of
judgment and the goods are of a
description which it is in the
course of the seller's business
to supply (whether he is the
manufacturer or not) there is an
implied condition that the goods
shall be reasonably fit for such
purpose...

Provided that if the buyer has examined the
goods, there shall be no implied condition
as regards to defects which such examination
ought to have revealed".

In the case at hand the appellant had an opportunity of
examining the vehicle with SU.2 a driver and machenic of
his own choice, as such he can not be heard to complain of
the defects which ought to have been revealed then.

Futher under Section 37 (supra) the appellant is
deemed to have accepted the vehicle as it was when the
Respondent delivered it to him i.e. by passing title
immediately he received the advance money. That Law
States as follows:- Section 37.

"The buyer is deemed to have accepted the
goods when he intimates to the seller
that he has accepted them or when the goods
have been delivered to him, and he does
any act in relation to them which is
inconsistent with the ownership of the

seller, or, when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them".

The appellant has and is still retaining the vehicle and has never rejected it. After some period of its use he opted to take it to a garage for repair as such he has to carry the burden for it is his own property.

He is barred with the principle of caveat emptor, that is a purchaser cannot claim that his purchases were defective while had ample opportunity of examining the goods before purchase. The principle which calls a buyer to be aware binds the appellant without leniency.

In the event the appeal is dismissed and I uphold the two lower courts decision. Costs follow the event.

Right of appeal on point of Law explained.

S.S. KAGANDA

JUDGE

24/11/2006

14/12/2006

Coram: D.E. Mrango, DR.

For the Appellant - Present in person

For the Respondent:- Present in person

C/C: Ndunguru, F.

Court: Judgment delivered today the 14th day
of December 2006 in presence of both
parties in persons.

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


D.E. MRANGO

DISTRICT REGISTRAR

SONGEA.

SSK/PJL.