

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**PC. CIVIL APPEAL NO 37 OF 2020**

**(C/F Civil Appeal No. 44 of 2019 in the District Court of Arusha at Arusha, Originating from,  
Civil Case No. 205 of 2019 Arusha Urban Primary Court)**

**POWERGEN RENEWABLE ENERGY LTD.....APPELLANT**

**VERSUS**

**ELIREHEMA JONAS SEVERE.....1<sup>ST</sup> RESPONDENT**

**JIMEX CO. LTD.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**28/04/2021 & 30/07/2021**

**GWAE, J**

This is the second appeal preferred by the appellant who has been all the way claiming to be a “bonafide purchaser”. Before the Arusha Urban Primary Court (trial Court) the 1<sup>st</sup> respondent filed a suit against the 2<sup>nd</sup> respondent together with the appellant for a claim of the recovery of his motor vehicle make Toyota Hilux T. 984 AAU worthy Tshs. 27,000,000/=. I find it instructive to preface this judgment with a brief historical background giving rise to the matter as herein under;

Initially, the 1<sup>st</sup> respondent, the owner of the above-mentioned car and which is the subject matter of this dispute, entered into an agreement with the 2<sup>nd</sup> respondent, a company dealing with sales of cars, that there was an agreement

(KM1) dated 27<sup>th</sup> April 2017 that was entered between the 1<sup>st</sup> and 2<sup>nd</sup> respondent to the effect that the 2<sup>nd</sup> respondent was to sell the 1<sup>st</sup> respondent's car at the price of Tshs. 27, 000,000/= on his behalf however the original documents were to remain in the possession of the 1<sup>st</sup> respondent. The 1<sup>st</sup> defendant's motor vehicle was then handed to the 2<sup>nd</sup> respondent.

That, the 2<sup>nd</sup> respondent displayed the 1<sup>st</sup> respondent's car into his yard and subsequently the appellant bought the said car from the 2<sup>nd</sup> respondent at the price of Tshs. 30,000,000/=

The transaction was followed by execution of a sale agreement which was between one Philomena Thomas Lema / Jimmex Company Ltd (2<sup>nd</sup> Respondent) and the appellant. (exhibit "A"). It was further evident that, the appellant was not given the original registration card of the said car on the date of the execution of the sale agreement, and after three weeks of follow ups the 2<sup>nd</sup> respondent made transfer of the registration card to the appellant's name and subsequently handed it to the appellant. The appellant's car registration card (exhibit "C").

The records further reveal that, after the 2<sup>nd</sup> respondent had sold the car to the appellant and without disclosing it to the 1<sup>st</sup> respondent, he went to the 1<sup>st</sup> respondent and informed him that he intended to buy the said car. They thus entered into a second agreement entitled "Mkataba wa Malipo ya pesa" (exhibit KM2) however the contents of the said agreements are such that, the payments

were as a result of the sale of the car by the 2<sup>nd</sup> respondent and the 1<sup>st</sup> respondent was acknowledging receipt of Tshs. 8,000,000/= as part payment of the agreed sum of Tshs. 27,000,000/=. However, this agreement was not honored by the 2<sup>nd</sup> respondent as he did not remit the remaining outstanding balance of Tshs. 19,000,000/=. The 1<sup>st</sup> respondent, after various follow ups, discovered that the 2<sup>nd</sup> respondent had disappeared and was nowhere to be found and even his office was closed. With the help from the Police Officials, the 1<sup>st</sup> respondent was able to trace his motor vehicle. It was found in the possession of the appellant. And it was at this juncture the dispute between the parties arouse.

At the trial, the case proceeded in the absence of the 2<sup>nd</sup> respondent, the 1<sup>st</sup> respondent, in proving his case summoned one witness Philomena Thobias who testified to have sold the said car to 1<sup>st</sup> respondent in the year 2016 and a number of exhibits were tendered to substantiate that assertion.

On the other hand, the appellant whose representative was one Godfrey Mwakipesile Edward (Manager of Finance and Administration) who appeared as DW1 and Sekunda Steven Lyamuya (Procurement and Transportation Manager) appeared as DW2. After deliberation of the evidence of both parties the trial court's findings were that the appellant failed to conduct due diligence before purchasing the said car and thus could not benefit as a bonafide purchaser. Consequently, the

appellant was ordered to return the said car to the 1<sup>st</sup> respondent worthy Tshs. 27,000,000/= and costs of the suit.

Aggrieved by the decision of the trial court, the appellant filed her appeal to the Arusha District Court claiming that he is a bona fide purchaser and that he had done all due diligence before purchasing the said car. He further complained that the trial magistrate failed to evaluate the evidence properly. Again, just like in the trial court the first appellate court was of the view that the appellant's conducts before and after purchasing the said car are tainted with negligence as the appellant did not conduct due diligence and he cannot benefit from the principle of bona fide purchaser. The first appellate magistrate therefore upheld the decision of the trial court and the appeal was dismissed with costs.

Still aggrieved, the appellant has come to this Court as second bite, hence the present appeal. His Petition of Appeal raises three (3) grounds of appeal, namely: -

1. That the first appellate court erred in law and in fact by holding that the appellant is not a bona fide purchaser.
2. That, the first appellate court erred in law and in fact by holding that the appellant did not conduct due diligence before purchasing the vehicle from the second respondent.

3. That, the first appellate court erred in law and in fact by failing to properly evaluate evidence on record.

On hearing of this appeal, the appellant was represented by the learned counsel **Ms. Anna Ngothy** from D'Souza and Company Advocates while the 1<sup>st</sup> respondent was represented by the learned counsel, **Mr. Lobulu Osujaki** from Law Guide Attorneys, the 2<sup>nd</sup> respondent did not enter appearance, thus the appeal proceeded in his absence. With leave of the court the appeal was argued by way of written submissions which were duly filed by the learned counsel for the appellant and 1<sup>st</sup> respondent. The parties' written submissions, shall be accordingly considered as I dispose this appeal hereinafter.

Having read the appeal records, together with the submissions by the parties as well as the above quoted grounds of appeal, it is therefore apparent that, the main issue for determination by this court is only one; whether the first appellate court properly evaluated the trial court's evidence to justify it in holding that, the appellant did not conduct due diligence before purchasing the disputed motor vehicle and thus, he is not a bona fide purchaser.

From the outset, I find all reasons to depart from the decisions of both the trial court and that of the first appellate court for the reasons to be demonstrated herein under. A carefully reading of the judgments from both the trial court and

first appellate court show that the appellant is condemned not to have made due diligence before the purchase of the said car and even after the purchase.

In his submission the appellant maintains that he is the bonafide purchaser citing the decision of the Court of Appeal of Tanzania in the case of **Suzana S. Waryoba vs. Shija Dalawa**, Civil Appeal No. 44 of 2017 (Unreported) which defined a bonafide purchaser to be a person who purchases something in good faith believing that he/she has clear rights of ownership and after purchase he has no reason to think otherwise. The appellant went further stating that he bought the disputed motor vehicle from the 2<sup>nd</sup> respondent who acted as an agent of the 1<sup>st</sup> respondent who had a legal and valid agreement in doing so.

Perhaps this court should start the point of determining of this appeal, from the records of this appeal, the 1<sup>st</sup> respondent when testifying before the trial court admitted that he personally entered into an agreement with the 2<sup>nd</sup> respondent who was to sell his car on his behalf. Part of the testimony is hereunder quoted;

“Mnamo tarehe 27/04/2017 tuliingia mkataba na kampuni iitwayo JIMMEX CO.LTD kwamba nimkabidhi gari aina ya TOYOTA HILUX lenye namba za usajili T.984 AAU ili auze kwenye yard yake, kwa masharti kwamba, hati halali (halisi) zibaki kwangu, mpaka pale atakapopata mteja na kuafikiana kiasi cha fedha ya kuliuza gari hilo. Nilimkabidhi mdaiwa namba 1 gari, na tukaandikiana mkataba.”

From the above quoted part of the 1<sup>st</sup> respondent's testimony, it is clear that the 1<sup>st</sup> respondent had on his own inclination allowed the 2<sup>nd</sup> respondent to act as his agent in selling the car on his behalf. This piece of testimony is cemented by exhibit KM1 which is the agreement between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent. Nevertheless the 1<sup>st</sup> respondent informed the trial court that after he had entered into the 1<sup>st</sup> agreement with the 2<sup>nd</sup> respondent, the 2<sup>nd</sup> respondent went back to the 1<sup>st</sup> respondent and informed him that the 2<sup>nd</sup> respondent was willingly to buy the said car at the agreed purchase price of Tshs. 27,000,000/= and they subsequently entered into another agreement where on the date of the execution of the said agreement the 2<sup>nd</sup> respondent paid Tshs. 8,000,000/= in favour of the 1<sup>st</sup> respondent as part payment of the agreed sum which he was to settle within a period of three weeks after the execution of the agreement. The said agreement was received by the trial court and marked as KM2, which appears to have been executed on the 6<sup>th</sup> October 2017. Reading of exhibit KM2 denotes that the contents are such that the agreement is on the payment of the sale price as it reads; "Mkataba wa Malipo" contrary to what the 1<sup>st</sup> respondent testimony that it was an agreement for sale of the car to the 2<sup>nd</sup> respondent.

Thus, with the above contract, it is clearly shown that, the 1<sup>st</sup> respondent was acknowledging part payment of the purchase price of his car from his agent in honoring the 1<sup>st</sup> agreement, they previously entered. It should be noted that at

the time the 1<sup>st</sup> respondent was acknowledging the part payment through exhibit KM2, the 2<sup>nd</sup> respondent had already entered into an agreement for sale on the 16<sup>th</sup> June 2017 with the appellant. In that agreement which was received as "A" mdaiwa 2, shows that the appellant had bought the said car from one Philomena Thomas Lema / Jimmex Company Ltd and the appellant had paid the full agreed purchase price of Tshs. 30,000,000/= to the 2<sup>nd</sup> respondent. According to SU2 (appellant's side) testified that they bought the car from the 2<sup>nd</sup> respondent and had a belief that the 2<sup>nd</sup> respondent was selling the car on behalf of the 1<sup>st</sup> respondent.

With the sequential series of events, it is with no doubt that any prudent person would hold that the 2<sup>nd</sup> respondent who was acting as an agent of the 1<sup>st</sup> respondent was not a faithful agent, why? One would wonder if the 2<sup>nd</sup> respondent had entered into a sale agreement with the appellant and the appellant had have paid the full purchase price; why did he enter into another agreement with the 1<sup>st</sup> respondent where instead of remitting to the 1<sup>st</sup> respondent the full amount he only remitted part of it which is Tshs. 8,000,000/= and stating that the remaining Tshs. 19,000,000/= would be remitted in three weeks' time. This means the 2<sup>nd</sup> respondent had his own tricky ways of deceiving both the appellant and the 1<sup>st</sup> respondent.



The question that follows, is who is to bear the liability? As already intimated above the 2<sup>nd</sup> respondent act of selling the motor vehicle in dispute was authorized by the 1<sup>st</sup> respondent through exhibit KM1. Part X of the Law of Contract Act Cap 345 R.E. 2019 speaks of principal-agency relationship. Section 134 of the Act defines an agent to be a person employed to do any act for another or to represent another in dealings with third persons and the person for whom such act is done, or who is so represented, is called the principal.

Similarly, section 178 of the Act is to the effect that Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person. Direct interpretation of this section entails that since the 2<sup>nd</sup> respondent was an agent of the 1<sup>st</sup> respondent, thus, the 1<sup>st</sup> respondent cannot escape from liabilities of his agent (2<sup>nd</sup> respondent) which includes the contract of sale of the car entered between the 2<sup>nd</sup> respondent and the appellant.

In any way the appellant herein is found to be a bonafide purchaser as was rightly found by the Court of Appeal of Tanzania in the case of **Suzana S. Waryoba vs. Shija Dalawa** (supra) where a person is termed to be a bonafide purchaser when he buys something in good faith and without knowledge of any fraud. More so, in **Stanley Kalama Masiki v. Chihiyo Kuisia w/o Nderingo**

**Ngomuo** [1981] TLR 143. In that case, it was held that the bonafide purchaser for value was entitled to a declaration that he was the lawful owner of the suit plot, it was further held that;

"Where an innocent purchaser for value has gone into occupation and effected substantial development on land the courts should be slow to disturb such a purchaser and would desist from reviving stale claims. "

For the interest of justice, the appellant who bought the motor vehicle in good faith with no knowledge of any fraud from the 2<sup>nd</sup> respondent cannot be held liable for the acts of the 2<sup>nd</sup> respondent on the account that he did not conduct due diligence before purchasing the said car. The fact that the 2<sup>nd</sup> respondent exhibited to the appellant, the principal-agency agreement between himself and the former owner of the car (Philomera Thomas Lema). In my increasingly view, is very sufficient evidence that the appellant was satisfied that, the 2<sup>nd</sup> respondent was legally empowered to sell the 1<sup>st</sup> respondent's car and in real sense, that is why the contract of sale between the appellant and the 2<sup>nd</sup> respondent includes the name of the former owner of the motor vehicle (the name appearing in the vehicle registration card) to enable the appellant to conveniently make the transfer of ownership to himself.

In the premises, the appellant herein being a bonafide purchaser has all rights to enjoy the property which he has bought in good faith and without


negligence, the 1<sup>st</sup> respondent having entered into a principal-agency agreement with the 2<sup>nd</sup> respondent should be held responsible for all the acts done by his agent as if he is the one who has done the same, be it good doings or wrong doings. Thus, the 1<sup>st</sup> respondent who seems to have been deceived by his agent (2<sup>nd</sup> respondent) cannot shift the wrong doings of his agent to the bonafide purchaser now appellant.

The 1<sup>st</sup> respondent cannot not benefit from wrong doings of agent who had already paid him (1<sup>st</sup> respondent) Tshs. 8,000,000/= and he evidently received the same. The 1<sup>st</sup> respondent may bring an action for recovery of remaining money (Tshs. 19,000,000/=) and not to remain with the car which had already sold as per his instruction (See English Law of Contract and Agency in relation to the Contract by Sir William Anson, 22<sup>nd</sup> Edition

That being told, this appeal is accordingly allowed. The decisions of the courts below are quashed and set aside. The appellant is hereby declared a rightful owner of the motor vehicle with Registration Card No. 7507860 with Registration number T. 984 AAU MakeToyota Hilux. The respondents are condemned costs of this appeal and those at the lower courts.

It is so order



  
**M.R. GWAE**  
**JUDGE**  
**30/07/2021**