

IN THE DISTRICT COURT (1), MADINA, CORAM HER WORSHIP ROSEMARY
ABENA GYIMAH HELD ON TUESDAY THE 23RD DAY OF JULY 2024.

SUIT NO: A9/05/22

JAMAL ISSAKA CHAKURU ... PLAINTIFF

Suing per his lawful Attorney

Chakuru Hamza Issaka of

Ashaley Botwe, Accra.

V

DOMINIC OSEI **DEFENDANT**

Botwe Warehouse, Accra.

JUDGMENT

By a writ of summons dated 7 October 2022, the Plaintiff brought this present action for;

1. A declaration that the loss of Plaintiff's Toyota Belta vehicle with registration no. GR 5093-22 is due to the negligence of Defendant.
2. An order compelling Defendant to pay the outstanding balance per the hire purchase (work and pay) agreement between the parties.
3. Interest and cost

By the summary of subject matter of claim, the Plaintiff avers that he sold his Toyota Belta with registration no. GR 5093-22 to the Defendant on 29 May 2022 at a total cost

of **Seventy-Three Thousand Five Hundred Ghana Cedis (GHS73,500.00)** on Hire Purchase (Work and Pay) basis for Forty-Six (46) months at **Four Hundred Ghana Cedis (GHS 400.00)** per week.

Plaintiff says Defendant paid for ten (10) weeks amounting to **Four Thousand Ghana Cedis (GHS4,000.00)** leaving an outstanding balance of **Sixty-Nine Thousand Five Hundred Ghana Cedis (GHS 69,500.00)** and he stopped payment for about two (2) weeks and later informed the Plaintiff that the vehicle got stolen.

Plaintiff states that together with the Defendant, they reported the issue to the police and upon investigation, it came to light that Defendant was negligent. Plaintiff avers that according to the Defendant, he parked the vehicle with the ignition on and the door opened and left behind same and he went into the bush to urinate with passengers on board. Plaintiff further avers that according to the Defendant he returned from the bush to see that the vehicle and the passenger on board was nowhere to be found. Plaintiff says the Defendant has refused to assist the police to conduct further investigations into the matter and his behaviour is very suspicious hence this action.

APPLICABLE LAWS AND ANALYSIS

There is no doubt that by the evidence both parties agree that the transaction between them was a Hire Purchase Agreement. This case bordering on a Hire Purchase transaction, the rules pertaining to such transactions under the **Hire Purchase Act, 1974 (NRCD 292)** are not lost on me. **Sections 1, 2, 3 and 4 of NRCD 292** are as below;

Part I – REQUIREMENTS OF AGREEMENT

1. Enforcement Conditional.

(1) Where goods are let under a hire-purchase agreement, or are sold under a conditional sale agreement, the owner or seller shall not be entitled to enforce the agreement unless—

(a) the agreement is in writing and signed by the hirer or buyer and by or on behalf of all other parties to the agreement; and

(b) the requirements of sections 2 to 4 are complied with.

(2) Where the owner or seller is not entitled to enforce an agreement—

(a) he shall not be entitled to enforce any contract of guarantee relating to that agreement;

(b) no security given by the hirer or buyer in respect of money payable under the agreement, or given by a guarantor in respect of money payable under a contract of guarantee relating to the agreement, shall be enforceable against the hirer or buyer, or against the guarantor, as the case may be, by the holder of such a security; and

(c) the owner or seller shall not be entitled to enforce any right to recover the goods from the hirer or buyer.

2. Requirements before Agreement.

Before any agreement is made the seller or owner shall state orally and in writing to the prospective buyer or hirer (otherwise than in the agreement referred to in section 1) the price at which the goods may be purchased by him for cash (in this Decree referred to as the "cash price") and the hire-purchase price or total purchase price, as the case may be.

3. Requirements of Agreement.

(1) Every agreement shall contain—

(a) a statement of the cash price and the hire-purchase price or total purchase price, as the case may be, of the goods;

- (b) the amount of each instalment by which the price is to be paid and the date or the mode of determining the date upon which each instalment is payable;*
- (c) a description or list of the goods to which the agreement relates sufficient to identify them;*
- (d) a notice, which is at least as prominent as the rest of the contents of the agreement, in the terms set out in the First or Second Schedule to this Decree.*

(2) A copy of the agreement shall be delivered or sent to the hirer or buyer within 14 days after the making of the agreement.

(3) If the court is satisfied in any action that a failure to comply with any of the requirements specified in paragraphs (b) and (c) of subsection (1) and subsection (2) has not prejudiced the buyer or hirer and that it would be just and equitable to dispense with the requirement, the court may, subject to any conditions that it thinks fit to impose, dispense with that requirement for the purpose of the action.

4. Avoidance of Certain Provisions.

Any provision in a hire-purchase or conditional sale agreement shall be void to the extent that it provides that—

- (a) an owner or seller or any person acting on his behalf is authorized to enter upon any private land or premises for the purpose of taking possession of goods which have been let under a hire-purchase agreement or sold under a conditional sale agreement or is relieved from liability for such an entry; or*
- (b) the right conferred on a hirer by section 5 to terminate the hire-purchase agreement is excluded or restricted, or any liability beyond that*

imposed by section 6 is imposed on a hirer by reason of the termination of the hire-purchase agreement by him or under that section; or

(c) a hirer, after the termination of the hire-purchase agreement or the bailment in any manner whatsoever, is subject to a liability which exceeds the liability to which he would have been subject if the agreement had been terminated by him under this Decree; or

(d) any person acting on behalf of an owner or seller in connection with a hire-purchase or conditional sale agreement is treated as or deemed to be the agent of the hirer or buyer; or

(e) an owner or seller is relieved from liability for the acts or defaults of any person acting on his behalf in connection with a hire-purchase or conditional sale agreement.

From the foregoing it is important to note that for a Hire Purchase transaction to be enforceable by the owner or seller, the mandatory requirements of **Sections 1 to 4 of NRCD 292** must be complied with. Even though the Plaintiff's second witness; Zakariah Faisal testified that the Hire Purchase Agreement was put into writing, the said Hire Purchase Agreement was not tendered in evidence. Should the Plaintiff's case fail on the ground that he did not tender the Hire Purchase Agreement in evidence?

In **P - Fastgro Enterprise Ltd v. Ghana Ports and Harbours (2013) JELR 68692 (CA)** (Court of Appeal, Civil Appeal No. H1/48/2012, 28 MAR 2013), the Court of Appeal stated as follows;

"By Section 3 (3) of NRCD 292, if in any action, the Court is satisfied that a failure to comply with any of the requirements "specified in paragraphs (b) and (c) of subsection (1) and subsection (2) has not prejudiced the buyer or hirer and that it would be just and equitable to dispense with the requirement, the court may, subject to any conditions that it thinks fit to impose, dispense with that

requirement for the purpose of the action". Also, by Subsection (4) of Section 66 of Act 137, the Court may dispense with the requirements specified in subsection (1) or any requirement specified in paragraph (b), (c) or (d) of subsection (3) where the Court considers that their noncompliance has not prejudiced the buyer and that it would be just and equitable to dispense with them. Now, taking note of the above provisions and considering that the Plaintiff failed to file a written submission in this appeal, I think it will be fair for this Court to consider on its own, for the purpose of the Plaintiff's action, whether circumstances exist for the exercise of the Court's discretion to dispense with the Plaintiff's non-compliance."

On 2 February 2023, during the cross examination of Plaintiff by the Defendant, the following ensued;

Q. I have no money to give, it was work and pay and thieves stole the car.

A. I need my car, just return it. The story about how the car is missing does not even add up.

Q. I will not pay the money because when the accident occurred you did not come to see me you got me locked up and you did not even take me to the hospital

A. You will have to pay my money because you got the car missing and your story on the theft of the car is not true.

Also on 11 June 2024, the Defendant on record in his evidence in chief stated that the Plaintiff is his car owner and that the Plaintiff gave him the car on work and pay basis. As a result, it is evident on record that both parties agree that the transaction between them was a Hire Purchase Agreement. Again, the Defendant does not dispute the fact that the outstanding balance owed to the Plaintiff is **Sixty-Nine Thousand Five**

Hundred Ghana Cedis (GHS 69,500.00). The Defendant's issue is that he will not pay because the Plaintiff locked him up and did not take him to the hospital.

I have examined the evidence of both parties on record and I find that there is nothing on record establishing that the non compliance of the mandatory requirements of **Sections 1-4 of NRCD 292** has prejudiced or may prejudice the Defendant. In the premise and also in the interest of justice and equity, I will exercise my discretion as stated in the **P - Fastgro Enterprise Ltd case** supra, to dispense with the mandatory enforcement requirements in this present case.

I shall now turn my head to determine whether or not the Plaintiff is entitled to the recovery of the outstanding balance of **Sixty-Nine Thousand Five Hundred Ghana Cedis (GHS 69,500.00)** per the Hire Purchase (Work and Pay) Agreement having regard to the fact that the said vehicle has been allegedly stolen and nowhere to be found.

The Court of Appeal in analysing the Sales Act and the Hire Purchase Act in the case of **Fiadzoe v. Kuadzi [1979] GLR 469** stated as follows;

"By section 34 (1) (a) of the Act a seller of goods is an unpaid seller, for the purposes of section 44 "when the whole of the price has not been paid or tendered." It is clear that by virtue of section 1 (2) of the Act the expression seller was statutorily made applicable to a bailor of goods in the type of contract of bailment that is generally known as a hire-purchase transaction. Putting these three sections together it is my view that in 1971 the right to recover possession in terms of section 44 was applicable to a hire-purchase transaction, since the owner of the chattel in such a transaction is always an unpaid seller the whole of the hire-purchase price being, by the nature of the agreement, payable by instalments so that in the usual course of things the

whole of the purchase price is not paid or payable until the contractual period has elapsed. Again the transaction calls for delivery of the chattel to the buyer and the retention of ownership in the seller. Upon failure of the buyer to pay the price "in accordance with the terms of the contract" a statutory right to recover possession would become exercisable by the seller "but not otherwise." The statutory right seemed to have been limited, in the case of hire-purchase contracts, to non-payment of instalments as and when they fell due in terms of the agreement."

Two (2) principles are discernible from the case referred to above;

- a. The Hirer under a Hire Purchase Agreement retains possession whilst ownership remains in the seller of the property
- b. That in appropriate cases, (non-payment of instalments as and when they fall due in terms of the agreement) the seller can recover possession.

So what happens when the goods subject matter of the Hire Purchase is lost as in this case? The **Hire Purchase Act, 1974 (NRCD 292)** does not provide for such a situation. The closest provisions are **Sections 19 (1) and 19 (2)** which are as below;

19. Removal of Goods from Ghana.

- (1) The hirer or buyer of goods under a hire-purchase or conditional sale agreement shall not remove the goods from Ghana without the written consent of the owner or seller.*
- (2) If the hirer or buyer contravenes subsection (1) he shall, unless he satisfies the court that he did not intend to deprive the owner or seller of his ownership or to defeat the rights of the owner or seller to obtain any payment due to him, be guilty of an offence and liable on conviction*

to a fine not exceeding ₵2,000.00 or to imprisonment for a term not exceeding one year or to both.

(3) If the owner or seller believes that the goods have been removed or are being removed or are about to be removed from Ghana without his written consent, and with intent to deprive him of his ownership or to defeat his rights to obtain any payment due to him under the agreement, he may institute an action for the return of the goods.

From the evidence, I do not find the Defendant a credible witness and his narration of the events leading to the loss of the vehicle is unbelievable. In one breadth, in relation to how the vehicle, subject matter of the Hire Purchase got missing, the 1st Plaintiff's witness; Hamza Chakura as part of his evidence-in-chief on 2 March 2023 stated as follows;

On the 16th of August I was called that the car was stolen. I came out to meet Defendant, he was drunk. I asked what happened and he said he picked someone to Ashaley Botwe Warehouse where he met another man and he picked him. The man he picked on the way said he wanted to urinate and he stopped. The guy went to urinate and Defendant also decided to urinate. When the guy finished Defendant was still urinating so the guy went to sit in the car at the driver's side where the Defendant left the ignition. The guy drove the car away and Defendant switched off the car and held the door but the guy pushed Defendant causing injury to Defendant on his hand and his face from there he decided to go and drink. After Defendant told me this I asked did he have to drink.

The only cross examination of the 1st Plaintiff's witness done by the Defendant is as follows;

Q. The investigation was not concluded and you went behind him to bring the case to Court.

A. Because your story was incoherent

That is to say the Defendant did not challenge the 1st Plaintiff's witness's evidence on record about his narration of how the said vehicle got stolen, especially when the said witness stated on oath that it was the Defendant that actually informed him of same. However in another breadth, the Defendant during his evidence in chief before this Court stated as below;

Q. How do you know him?

A. He is my car owner. He gave me the car on work and pay basis. Thieves attacked me and forcibly took the car from me. After they have taken the car, I suffered severe injuries. I was not myself and could not see anything. It happened that I had to go to inform the vehicle owner; the Plaintiff. It happened that we had to go to the police station to lodge a complaint.....

Again, the Defendant in his evidence in chief stated that he suffered severe injuries after the thieves had taken the car. However, the Defendant's witness in his evidence before this Court stated that he purchased gentian violet (GV) paint to treat the Defendant's injuries. It baffles me how a simple medical dye such as GV paint was able to treat the supposed "**severe injuries**" the Defendant sustained.

From the demeanour of the Defendant and his story on how the vehicle got missing, I find that the Defendant's actions are to deprive the Plaintiff of his ownership of the said vehicle or to defeat the Plaintiff's right to obtain any payment due to him under the Agreement. Also, the Plaintiff has lost his right to institute an action for the return or repossession of the vehicle. As a Court of justice, I cannot allow the Defendant to

benefit from his wrong. One of the cardinal principles of law is that one will not suffer a wrong without a remedy.

CONCLUSION

On the strength of the authorities supra, I find that the Plaintiff is entitled to recover the sum of **Sixty-Nine Thousand Five Hundred Ghana Cedis (GHS 69,500.00)** from the Defendant.

I will not award interest as the Hire Purchase Agreement was supposed to run for Forty-Six (46) months.

In the premise the Plaintiff is entitled to recover from the Defendant the sum of **Sixty-Nine Thousand Ghana Cedis (GHS 69,500.00)**. Cost of **Two Thousand Ghana Cedis (GHS 2,000.00)** awarded in favour of Plaintiff.

SGD

H/W ROSEMARY ABENA GYIMAH