

FORMALITIES OF A HIRE PURCHASE AGREEMENT

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Formalities Under the Common Law

Under the common law, there was no particular form for a contract of hire purchase. It could be oral or written, with or without seal. However, in practice most hire purchase contracts are in writing in order to adequately spell out all the necessary terms of the agreement.

Formalities Under the Hire Purchase Act of 1965

The Hire Purchase Act of 1965 granted a lot of protection to hirers in a contract for hire purchase. It has ensured that the terms of each transaction are clear and concise to the hirer before he enters the contract for hire purchase.

For the drawing up of a contract of hire purchase, certain formalities have been prescribed. In addition, there are consequences for the flouting of these formalities.

These formalities are expressly covered by the provisions of S. 2 of the Hire Purchase Act.

Firstly, according to the provisions of S. 2 (1) of the Hire Purchase Act the owner of the goods has to state in writing, to the hirer, the cash price of the goods in question. However, the need for a written notice of cash price would be dispensed with in the following circumstances:

1. If at the time of the hirer inspecting the goods, tickets or labels were attached to the goods and the tickets or labels stated the cash price of the goods in question^[1].
2. If the hirer selected the goods by reference to a price list, catalogue or advertisement which stated the cash price of the goods^[2].

According to the provision of S. 2 (2) (a) of the Hire Purchase Act, there has to be a note or memorandum of agreement made and signed by the hirer and other parties. Although the hirer must sign the agreement by himself, he could sign for the other parties or they could send representatives.

According to the provision of S. 2 (2) (b), the memorandum must contain:

- A statement of the hire purchase price and cash price of the goods.
- The amount of each instalment and the date, or mode for determining the date upon which each instalment is to be paid.
- A statement of the deposit paid.
- A statement of the true rate of interest as calculated by the Minister and published in the Federal Gazette.
- A list of the goods to which the agreement is related.

According to the provision of S. 2 (2) (c) the memorandum should also contain a notice which has terms as provided by the Schedule to the Hire Purchase Act.

After this, a copy of this memorandum must be sent to the hirer within a period of fourteen days after the making of the agreement^[3].

Effect of Non-Compliance With the Formalities in the Hire Purchase Act

Going by the provision of S.2 (2) of the Hire Purchase Act, failure to comply with the formalities that have been stated above disentitles the owner from enforcing the hire purchase agreement or any contract of guarantee in relation to the agreement. He is also not allowed to recover the goods from the hirer.

Also securities given by the hirer or a guarantor to the owner cannot be enforceable if there is a breach of any of the above formalities.

It should also be noted that this consequence for non-compliance would only affect transactions that were made during the subsistence of the Hire Purchase Act 1965. In the case of *Adelabari vs. Nigeria Motors Ltd*^[4] the agreement of hire purchase didn't completely follow the provisions of S. 2 of the Hire Purchase Act. The court held that due to the fact that the agreement was concluded before the existence of the Hire Purchase Act 1965, the consequence provided for in

S. 2 (2) could not apply.

Exercise of Court's Discretion in Dispensing with the Formalities

The effect of non-compliance with the formalities brings the agreement to an end unless the power of the court to exercise its discretion as provided for under the proviso to S. 2 (2) is applicable.

A court can exercise its discretion in the disposing of formalities if it is satisfied that:

- The non-compliance with the formality has not prejudiced the right of the hirer.
- It would be just and equitable to do so.
- The court has the power to impose any condition as it sees fit.

In the case of *Yusuf & Anor vs. Oyetunde & anor*^[6] the owners didn't state the cash price of the vehicles and the interest rate before entering into the contract. Subsequently, the hirer defaulted in instalmental payment, prompting the owners to seize the goods and sell them. When the case got to court, the owners contended that mere non-compliance with the statutory provisions did not constitute any prejudice to the hirer. The court was of the opposite view and thus, the actions of the owner was reverted.

It should be noted that the discretionary power of the court is only available in relation to the provisions of S.2 (1) and (2).

Illiterate Hirers

In the case of *SCOA Zaria vs. Okon*^[7], the court defined an illiterate as someone that doesn't understand the meaning and effect of the document that he is signing. The court also defined an illiterate as someone who, though literate in another language, is not literate in the language of the written document.

By the provision of S.2 of the Illiterate Protection Ordinance Act, adequate protection has been given to an illiterate hirer. Also, according to the provision of S.3 of the Illiterate Protection Ordinance, anyone who writes a document for an illiterate must append his name and address in order to be identified as the writer of the document. If the writer fails to comply with this provision, he would be guilty of a criminal offence^[8].

In the case of *Igbajume vs. Bentworth Finance Ltd*^[9], the court held that the writer of a document must always explain the purport of the document to the illiterate before the illiterate signs the document.

References

^[1] S. 2 (1) (a)

^[2] S. 2 (1) (b)

^[3] S. 2 (2) (d)

^[4] (1974) 5 SC

^[5] (1970) 1 All LR

^[6] 1975 NNLR 116

^[7] (1960) NNLR

^[8] S.4 Illiterate Protection Ordinance

^[9] (1965/66) MWNLR p. 132