**Mukembe v Republic**

**Division:** High Court of Uganda at Kampala

**Date of judgment:** 27 August 1973

**Case Number:** 25/1973 (37/74)

**Before:** Nyamuchoncho J

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*[1] Hire-Purchase – Agreement – Sale of vehicle with payment by instalments – Not a hire-purchase*

*agreement.*

**JUDGMENT**

**Nyamuchoncho J:** The appellant was charged with three counts of theft contrary to ss. 252 and 255A of the Penal Code and was convicted on three counts and sentenced to two years’, and nine months’ and nine months’ imprisonment respectively concurrent sentence. He appeals against both the conviction and sentence on six grounds set out in his Memorandum of Appeal. It is unnecessary for me to go into the facts; they are well summarised in the judgment of the magistrate. The facts as found by the trial magistrate are: 1. t hat the car was sold to the appellant under a hire-purchase agreement; 2. t hat when the alleged sale took place the appellant had no legal ownership of the car, and 3. t hat by false pretences the appellant induced P.W.2 and P.W.3 to part with the money. The appellant has attacked this finding. In one of his grounds of appeal, he says, “the trial magistrate erred in law and facts to have held that I, the appellant, stole motor vehicle UUH 708 whereas the car in question was sold to me by Sowedi Katerega, (P.W.1) who also accepted in the court of law to have sold the car to me.” It was never disputed at the trial that P.W.1 did not sell the car to the appellant. The dispute was whether or not P.W.1 sold the car to the appellant under hire-purchase terms. The trial magistrate accepted the fact that the agreement is a hire-purchase agreement. If the agreement is construed to be a hire-purchase agreement, the appeal must be dismissed, otherwise the appeal should succeed. The agreement produced in the court of trial reads: Kilyowa Gomb. MTV., Nyenga Kyaggwe County,

14th August, 1972.

I, Sowedi Katurega, have sold my motor car a Peugeot 403 Registration No. UUH 708 to Mr. James

Mukembo at five thousand (5,000/-) shillings out of which he had paid two thousand and two hundred

(2,200/-). The balance of two thousand eight hundred shillings (2,800/-) will be paid at monthly instalments

as under:

on 30/9/72 he will pay Shs. 1,000/-

on 30/10/72 he will pay Shs. 1,000/-

on 30/11/72 he will pay Shs. 800/-

Sowedi Katerega, the seller.

It is this agreement which the court accepted as a hire-purchase agreement. Mr. Lulume, for the State, contends that it is a hire-purchase agreement by virtue of ss. 5 and 19 of the Sale of Goods Act (Cap. 79), and s. 50 of the Traffic and Road Safety Act 1970. That this agreement was intended to be a hire-purchase agreement is confirmed by the evidence of P.W.1 who says in cross-examination at p. 4 of the record “I took the car on the 7/10/72. I warned you that I would seize the car if you did not pay.” I do not see how ss. 5 and 19 of the Sale of Goods Act can help in interpreting the agreement. S. 50 of the Traffic and Road Safety Act 1970 has no relevance either to this case. If anything it confirms that a motor vehicle can be sold without giving the registration card thereof to the buyer as it happened in this case. A hire-purchase agreement is defined in Vol. 19, p. 510, para. 823 of Halsbury’s Laws of England, 3rd Edn. This statement of law was adopted in *Kassam Bogha Parekh v. Fakar Mahomed* (1920 – 1929) 3 U.L.R. 224. The judge said: “A hire-purchase agreement is one by which goods are hired and which contains an option for the hirer by payment of all the instalments of the hire to make himself a purchaser. There must be a free option for him either to purchase or return the goods. If he is bound in all events to pay all the instalments then the agreement will be a sale out and out, not a hire-purchase agreement. The point of distinction is that in a hire-purchase the hirer has only qualified possession as defined in the agreement whereas in the second case the purchaser has unqualified possession and can transfer a good title to a bona fide purchaser even when the ownership of the goods has not passed to him.” In this case the judge was construing an agreement made between the defendant and the objector. That agreement which the objector alleged was a hire-purchase agreement which provided for a sale of the lorry to the defendant for Shs. 2,000/- and: by clause (1) the price was to be paid by six hawalas; by clause (2) the van was to remain in the name of the objector till the hawalas were met; clause (3) allowed the objector to retake the van on default of meeting any of the hawalas; by clause (4) if the van was seized it could be sold to pay the balance due to the objector; Page 102 of [1974] 1 EA 100 (HCU) clause (5) provided that the defendant should not sell or pledge the lorry. So, when the plaintiff got judgment against the defendant, he attached the van; the objector pleaded this agreement as a hire-purchase agreement. This contention was rejected. The court held that: (1) this was a sale out and out and not a hiring; (2) that the lorry was liable to attachment for the debt of the hirer; (3) that the agreement was a bill of sale and void for want of registration. In *Matovu v. R*., Cr. App. 489/60 M.B. 25/61, the court considered a hire-purchase agreement which did not contain a provision giving an option to the buyer to purchase or return the goods after all instalments are paid and said despite this omission the agreement was still a hire-purchase agreement as under it, the property remained in government until the last payment was made. Turning to the case before me, there is no provision in the agreement which purports to hire the motor vehicle to the appellant. The agreement plainly says, “I, Sowedi Katerega, have sold my motor-car etc. . . .”; there is no provision granting an option for the appellant by payment of all the instalments to make himself a purchaser and above all there is no clause whereby the property remains in the seller until all the instalments have been paid. Applying the principles enunciated in *Kassam Bhoga Parekh v. Fakar Mahomed*, I hold that the transaction was a sale out and out. P.W.1 did not at the time he sold his car to the appellant contemplate hire-purchase terms; he was driven to it by the inability of the appellant to keep up with his instalments. The agreement he gave to the appellant is nothing but a sale agreement. The sale transferred the property in the motor vehicle to the appellant, consequently he could not be found guilty of the charges laid against him. Appeal allowed. Conviction and sentence set aside. *Order accordingly.* The appellant was unrepresented.

For the respondent:

*F Lulume* (State Attorney)