**Osapil v Kaddu**

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

**Date of judgment:** 5 October 2000

**Case Number:** 51/99

**Before:** Okello, Berko and Twinomujuni JJA

**Sourced by:** B Tusasirwe

**Summarised by:** H K Mutai

*[1] Practice – Costs – Counterclaim dismissed at trial – Failure to award costs to Plaintiff – Principles*

*governing award of costs – Section 27 – Civil Procedure Act (Chapter 65).*

*[2] Sale of Goods – Lien – Seller parting with possession of goods to buyer – Whether unpaid seller*

*retained a lien on the goods – Sections 39(1), 40(1) and 43 – Sale of Goods Act.*

*[3] Sale of goods – Passing of title to property – Motor vehicle – Title to motor vehicle – Vehicle*

*registered in Appellant’s name – Registration card* prima facie *evidence of ownership – Whether*

*property in vehicle had passed from Appellant to First Respondent – Sections 19 and 20 – Sale of Goods*

*Act, Chapter 31 – Section 31 – Traffic and Road Safety Act Chapter 403 of 1988 – Section 49 – Traffic*

*and Road Act of 1970.*

**Editor’s Summary**

By a written sale agreement dated 20 December 1995, the Appellant sold his motor vehicle to the First Respondent for UShs 12 500 000. The agreement provided that the First Respondent was to pay UShs 7 200 000 immediately and the balance on or before 20 February 1996. The Appellant then handed over possession of the vehicle to the First Respondent together with a photocopy of its logbook. That same day the First Respondent sold the motor vehicle to the Second Respondent for UShs 12 800 000. Following the First Respondent’s failure to pay the balance due to him, in September 1996 the Appellant caused the motor vehicle to be impounded by the police but, apparently after the Second Respondent established her ownership of it, the vehicle was released to her. The Appellant then sued the Respondents seeking, *inter alia*, payment of the balance of the purchase price from the First Respondent and damages for conversion and detinue from the Second Respondent. The Second Respondent counterclaimed seeking to recover loss of earnings from the Appellant arising from his failure to hand over the logbook thus depriving her of the opportunity to put the vehicle to commercial use. The trial Judge found in the Appellant’s favour as regards the First Respondent but dismissed the suit against the Second Respondent on the ground that she had acquired good title from the First Respondent. The Second Respondent’s counterclaim was dismissed on the ground that there was no privity of contract between her and the Appellant. The Appellant appealed against the dismissal of his claim against the Second Respondent primarily on the ground that the trial court had erred in holding that the First Respondent could pass good title to the Second Respondent. He also appealed against the trial court’s failure to award him costs on the counterclaim. The Second Respondent cross-appealed against the dismissal of her counterclaim.

**Held** – A registration card or logbook was *prima facie* evidence of title to a motor vehicle and the person in whose name the vehicle was registered was presumed to be the owner thereof unless proved otherwise; *Kamanda v UCB* followed, *Matayo Musoke v Alibhai Garage* [1960] EA 31 distinguished and disapproved, *Central Newbury Car Auctioneers Ltd v Unity Finance Ltd* [1956] 3 All ER 905 disapproved. Section 20 of the Sale of Goods Act provided, *inter alia*, that where there was a contract for the sale of specific goods in a deliverable state, the property in them passed to the buyer when the contract was made irrespective of whether the time for payment or delivery or both were postponed, unless a different intention appeared. In this instance, the property in the vehicle passed from the Appellant to the First Respondent when the sale agreement was executed and the Appellant’s *prima facie* title to the vehicle was thereby rebutted. Accordingly, the First Respondent could legally pass title to the Second Respondent and the trial Judge’s holding in this regard could not be faulted. Although an unpaid seller who was in possession of goods was entitled to a lien over the goods until he was paid, that lien was lost the moment the buyer lawfully obtained possession of the goods. The Appellant therefore had no right of lien over the vehicle. Section 27 of the Civil Procedure Act (Chapter 65) was to the effect that the award of costs was to be at the court’s discretion provided that costs were to follow the event unless the court gave good reason for ordering otherwise. An appellate court would not interfere with a trial court’s exercise of discretion unless the court proceeded on some wrong principle. Where the court gave no reasons for its decision, the appellate court would interfere where it was satisfied that the order was wrong but where reasons were given, the appellate court would only interfere if it considered that the reasons given did not constitute good reasons; *Donald v Pollak* [1927] AC 732 and *Dhirani v Ganji* applied. In this instance, the trial court gave no reason for depriving the Appellant of costs. The Second Respondent’s claim should have been directed at the First Respondent and, as there was no good reason for depriving the Appellant of his costs, costs would be awarded to the Appellant on the counterclaim. The mere fact that a plaintiff obtained judgment for breach of contract did not preclude her from having judgment entered in her favour in tort, assuming a breach of the common law duty of care was established. In this instance, it had not been established that the Appellant owed the Second Respondent any duty of care and therefore the counterclaim was rightly dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Fazal Dhirani and Mohamed Ibrahim v Abdul Mohamed Ismail Ganji* civil appeal number 25 of 1946 *–*

**AP**

*Fred Kamanda v Uganda Commercial Bank* civil appeal number 17 of 1995 – **F**

*Matayo Musoke v Alibhai Garage Ltd* [1960] EA 31 *–* **D** and **DA**

***United Kingdom***

*Batty and another v Metropolitan Property Realisation Ltd and others* [1978] 2 All ER 445

*Central Newbury Car Auctioneers Ltd v Unity Finance Ltd and another (Mercury Motors Third Parties)*

[1956] 3 All ER 905 – **DA**

*Donald Campbell v Pollak* [1927] AC 732 – **AP**

*Donoghue v Stevenson* [1932] AC 562

*Esso Petroleum Co Ltd v Mardon* [1976] 2 All ER 5