**Osapil v Kaddu**

[2000] 1 EA 193 (CAU)

**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.*

Page 194 of [2000] 1 EA 193 (CAU)

*[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

Page 195 of [2000] 1 EA 193 (CAU)

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

**Judgment**

**BERKO JA:** This appeal arises from the judgment of the High Court (Musoke-Kibuuka J) dated 16

December 1998 whereby he dismissed with costs the Plaintiff/Appellant’s suit against the Second

Defendant/Respondent and his failure to award costs in favour of the Appellant when he dismissed the

Second Respondent’s counterclaim.

Page 196 of [2000] 1 EA 193 (CAU)

The facts of the case are not in dispute. The Appellant sold his motor vehicle to the First Defendant,

Emmanuel Kaddu, on 20 December 1995 for Ushs 12 500 000. A written sale agreement, P1, was

executed between the Appellant and Emmanuel Kaddu. On the same day Emmanuel Kaddu sold the

vehicle to the Second Respondent who had seen the motor vehicle at the former’s parking yard in the

“container village” in Kampala for Ushs 12 800 000. Emmanuel Kaddu made part payment amounting to

Ushs 7 200 000. That left a balance of UShs 5 300 000 which Kaddu promised to pay on or before 20

February 1996. The Appellant handed the vehicle to Kaddu together with a photocopy of the log book.

The Appellant retained the original log book, the road licence and the Insurance certificate. On the same

day Kaddu handed over the vehicle to the Second Respondent.

When Kaddu failed to pay the balance of the purchase price to the Appellant, he, the Appellant caused

the vehicle to be impounded by the police on September 1996 and kept it at the CPS. The vehicle was

released to the Second Respondent by the police apparently when she established her ownership to it. As

a result the Appellant brought a suit against Kaddu and the Second Respondent. As against Kaddu, he

claimed specific performance of the contract of sale, payment of the balance of the purchase price, or the

return of the vehicle, damages for breach of contract and costs of the suit. As against the Second

Respondent, he claimed special and general damages for conversion, detinue, loss of profit, loss of

earnings and costs.

In a joint statement of defence filed on behalf of Kaddu and the Second Respondent, Kaddu

contended that the property in the vehicle passed to him on the execution of the sale agreement. The

Second Respondent contended that she was the owner of the vehicle by purchase from Kaddu. By way of

counterclaim, the Second Respondent claimed against the Appellant loss of earnings at the rate of UShs

60 000 per day arising from the failure by the Appellant to release to her the log book of the vehicle, the

absence of which prevented her from renewing the road licence which prevented her from putting the

vehicle to commercial use.

The Learned trial Judge gave judgment against Kaddu in favour of the Appellant for the sum of UShs

5 300 000 being the balance of the purchase price plus interest thereon at the rate of 25% per annum,

UShs 1 000 000 general damages with interest at the court’s rate and costs of the suit. Kaddu has not

appealed. The Learned trial Judge dismissed the Appellant’s suit against the Second Respondent on the

ground that she acquired good title from Kaddu. He dismissed the Second Respondent’s counterclaim

against the Appellant on the ground that there was no privity of contract between her and the Appellant,

but did not award costs in favour of the Appellant when he dismissed the Second Respondent’s said

counterclaim. The Second Respondent has cross-appealed against the dismissal of her counter – claim.

Even though there are nine grounds of appeal, in my view, the determination of the appeal depends

entirely upon what construction is placed on the sale agreement, exhibit Pl. The Learned trial Judge held

that the title to the suit motor vehicle passed to the First Defendant when he and the Appellant executed

exhibit P1 and consequently the First Defendant could legally sell and pass title to the Second

Respondent. Mr *Emesu* has attacked the above holding on a number of grounds. According to him the

sale between the Appellant and the First Defendant had not been completed when the First Defendant

sold the vehicle to the Second Respondent.

Page 197 of [2000] 1 EA 193 (CAU)

The first reason for saying so was that the Appellant retained vital documents on the vehicle that is

the original log book, the insurance policy, and the road licence. The Appellant gave the Kaddu only a

photocopy of the log book. At the time the Appellant sold the vehicle to the First Defendant the vehicle

was registered in the names of the Appellant. It was contended therefore that he was presumed to be the

owner. In my view there is no dispute about that. This is clear from section 49 of the Traffic and Road

Act of 1970 as amended. Section 49 provides: “The person in whose name a motor vehicle, trailer or

engineering plant is registered shall, unless the contrary be proved, be presumed to be the owner of the

vehicle, trailer or engineering plant”.

The Supreme Court held in *Fred Kamanda v Uganda Commercial Bank* civil appeal number 17 of

1995 that a registration card is therefore evidence of ownership as the person whose name the vehicle is

registered is presumed to be the owner of the vehicle unless proved otherwise. A registration card is

*prima facie* evidence of title and it is therefore a document of title. And it was because the Appellant had

title to the vehicle, that was why he was able to sell it to Kaddu. The sale agreement, exhibit P1, states:

“I John Nathan Osopil has sold my motor vehicle Registration number UBN 108 Engine Number

3Y-0600028 Chassis Number YH61V-0060028 to Mr Kaddu Emmanuel at the costs of UShs 12 500 000

(Twelve million five hundred thousand shillings He has paid UShs 7 200 000 (seven million two hundred

thousand Shillings only). The balance UShs 5 300 000 (Five million three hundred thousand shillings) will be

paid on or before 20 February 1996.

He (Kaddu Emmanuel) is resident of Najjanakumbi Stella Zone working at Container Village”.

This was signed by the Appellant and Kaddu.

When property in such goods passes from the seller to the buyer is regulated by the provisions of the

Sale of Goods Act, Chapter 79, section 19 provides:

“19(1) Where there is a contract for the sale of a specific or ascertained goods the property in them is

transferred to the buyer at such time as the parties to thecontract intend it be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the

contract, the conduct of the parties and the circumstances of the case”.

Section 20 provides:

“Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to

the time at which the property in the goods is to pass to the buyer:

(1) where there is an unconditional contract for the sale of specific goods in a deliverable state, the

property in the good passes to the buyer when the contract is made, and it is immaterial whether the

time for payment or the time for delivery or both be postponed”.

This was a contract for the sale of a specific motor vehicle. It was not subject to condition as to when the

property in the vehicle was to pass. The seller gave possession of the vehicle to the buyer from the time

of the execution of the contract of sale. The property in the vehicle therefore passed from the Appellant

to Kaddu when exhibit Pl was executed. The fact that the whole purchase price had not been paid is

immaterial. Consequently the *prima facie* title of the Appellant in the vehicle by being its registered

owner is rebutted by the

Page 198 of [2000] 1 EA 193 (CAU)

contract of sale between himself and Kaddu. Accordingly Kaddu could legally sell and pass title in the

vehicle to the Second Respondent. The Learned Judge was therefore right in so finding.

I do not see in what way the issue of pledge comes in. Kaddu did not obtain loan from the Appellant.

The evidence of the Appellant clearly shows that he retained the log book until the First Defendant paid

the balance. He also said that he wanted the police to keep the vehicle until the balance was paid. It is

therefore clear that his only interest was in the balance of the purchase price.

The second reason why Mr *Emesu* contended that the contract between the Appellant and Kaddu had

not been completed was because there was balance yet to be paid and as a result the Appellant had a lien

over the vehicle. I have already referred to section 20(1) of the Sales of Goods and held that the property

in the vehicle passed when exhibit P1 was executed. The fact that there was balance to be paid at a later

stage had not effect.

With regard to the lien, I agree that an unpaid seller who is in possession of the goods is entitled to

retain possession until he is paid. But he loses his lien the moment the buyer or his agent lawfully obtains

possession of the goods. Section 43 of the Sale of Goods Act. In the instant case the Appellant lawfully

gave possession of the vehicle to Kaddu. Consequently the Appellant lost his right of lien over the

vehicle. But the unpaid seller’s lien does not prevent the property in the goods from passing to the buyer.

See section 40(1) of the Sale of Goods Act. It also does not prevent the contract of sale from being

complete. He cannot be an “unpaid seller” if the contract of sale between him and the buyer is not

complete. This is implied from the definition of “unpaid seller” within the provision of section 39(1) of

the Sale of Goods Act. I therefore do not find any merit in that argument.

The third reason why Mr *Emesu* said that the contract between the Appellant and Kaddu was not

complete was that the Appellant only gave to the First Respondent mere possession of the vehicle and not

the title to it as the Appellant retained the original log book or registration book. This is because the

person in whose name the vehicle is registered is presumed to be the owner until the contrary is proved.

This contention can be shortly disposed of by saying that I am satisfied that Kaddu is and as the owner of

the vehicle from the date on which he acquired it from the Appellant. The presumption created by section

31 of the Traffic and Road Safety Act of 1998 is therefore rebutted.

I wish, however, to distinguish the facts in this case from the fact in the case of *Matayo Musoke v*

*Alibhai Garage Ltd* [1960] EA 31. The defendant in that case had hired a motor car under a hire purchase

agreement to one S, and had given him possession of the car and the registration book. S after having the

car registered in his name defaulted in the payment of installments under the hire purchase agreement and

sold the car to the plaintiff who registered it in his name. The defendant later seized the car in terms of

the agreement with S and the plaintiff sued them for the return of the car or its value. At the trial it was

contended that the defendant was not the owner of the car, that section 26(2) of the Sale of Goods

Ordinance was applicable and that the defendant having handed over the registration book to S was

estopped by its conduct from denying S’s authority to sell the car. It was held that:

Page 199 of [2000] 1 EA 193 (CAU)

“(1) As S had not paid a single installment under the hire purchase agreement, he had never exercised his

option to purchase the car and therefore section 26(2) of the Sale of Goods Ordinance was not

applicable.

(2) A motor car registration book is not a document of title and delivery thereof does not give a person to

whom it is delivered the means of appearing to be the owner or of having apparent authority to sell the

car. The Plaintiff’s suit was therefore dismissed”.

In *Matayo Musoke* (*supra*) the agreement between the owner of the vehicle (the defendant therein) and S

who purchased it under the hire purchase agreement, contained a provision which empowered the owner

to retake possession of the car in the event of default in payment of any installment. The agreement in the

instant case did not contain a provision giving the Appellant right to retake possession of the vehicle in

the event of default in the payment of the balance of the purchase price. His only remedy, when Kaddu

defaulted in the payment of the balance of the purchase price, was to sue him for the recovery of the

purchase price. He was not entitled under exhibit P1 to impound the vehicle.

I wish also to mention that the decision in *Matayo Musoke* is no longer good law insofar as it decided

that motor vehicle registration book is not a document of title in view of the decision of Supreme Court

in *Fred Kamanda v Uganda Commercial Bank* (*supra*). Similarily the House of Lords decision in *Central*

*Newbury Car Auctioneers Ltd v Unity Finance Ltd and another (Mercury Motors Third Parties)* [1956] 3

All ER 905 which was relied upon in *Matayo Musoke* (*supra*) is also not good law in Uganda. In Uganda

a purchaser who has been given the car as well as the car registration book can sell the car since the car

registration book is a document of title to the car. For the above reasons I do not find merit in grounds 2,

3, 4, 5 and 6. Ground 7 was abandoned.

The argument in ground eight was that the Learned trial Judge was wrong to have dismissed the

Appellant’s suit against the Second Respondent. The Appellant had sued the Second Respondent for

trespass, detinue and conversion for removing the vehicle from CPS without authority. It was said that

the Appellant had a balance of the purchase which was yet to be paid. He also had the car registration

book in his possession. There was no privity of contract between her and the Appellant as the Appellant

had not sold any car to her. In those circumstances, it was contended that the Judge should have found

that the Second Respondent committed acts of trespass and conversion when she removed the car from

CPS and should have been mulcted in damages.

This contention can be shortly disposed of by repeating what I have said earlier that I am satisfied that

Kaddu became the owner of the car from 2 May 1995 when he purchased the car from the Appellant.

Kaddu could therefore sell and give property in the vehicle to the Second Respondent. She consequently

became the owner of the vehicle when she purchased it from Kaddu on 20 May 1995. Consequently she

committed no trespass or conversion when she removed the car from CPS. The trial Judge was, as a

result, right to dismiss the Appellant’s claim against her. Ground 8 must therefore fail.

The argument in ground 9 was that the Judge was wrong not to have awarded costs in favour of the

Appellant when he dismissed the Second Respondent’s counterclaim. On behalf of the Second

Respondent Mr *Tibesigwa* had submitted that the Appellant was not entitled to costs on the counterclaim

as it was the conduct of the Appellant that led the Second Respondent to file the counterclaim. She filed

the counterclaim for the loss she suffered when the

Page 200 of [2000] 1 EA 193 (CAU)

Appellant failed to give her the log book to enable her renew the road licence and put the vehicle to

commercial use.

By section 27 of the Civil Procedure Act costs are in the discretion of the court provided that costs

shall follow the event unless the court shall for good reason otherwise order.

In the present case the Judge found that it was not lawful for the Appellant to retain the log book after

executing the contract of sale exhibit P1. He, however, held that the only person who could legitimately

claim special damages from the Appellant for the loss the person has suffered as result of the retention of

the log book was Kaddu who had a sale agreement with the Appellant in respect of the vehicle and not

the Second Respondent who was not a party to the sale agreement. He accordingly dismissed the

counterclaim, but in exercising his discretion, as he was entitled to do, he did not give any reason for

depriving the Appellant of his costs.

It is well established that an appellate court will not interfere with a discretion so exercised unless the

trial Judge proceeded on some wrong principle. Where the trial court gives no reason for its decision the

appellate court will interfere if it is satisfied that the order was wrong. The appellate court will also

interfere where reasons are given if it considers that those reasons do not constitute “good reasons”

within the meaning of the Rule. *Donald Campbell v Pollak* [1927] AC 732 and *Dhirani and another v*

*Ganji* civil appeal number 25 of 1946.

Here the Learned trial Judge did not give any reason for depriving the appellant of costs. I admit that

it was the conduct of the Appellant for retaining the log book that led the Second Respondent to claim

special damages she suffered arising from the misuse of the vehicle, her claim ought to have been

directed to Kaddu who sold the vehicle to her. As the Judge rightly found, the Second Respondent sued a

wrong party. Accordingly there was no good reason for depriving the Appellant of costs of the

counterclaim that was dismissed. I would award the Appellant his costs on the counterclaim.

I now turn to the cross-appeal. The complaint of the Second Respondent in the cross-appeal is that the

Judge having held that the Second Respondent’s counterclaim could not succeed in contract, should have

considered whether it could succeed in tort. The cross-appeal is, in essence, asking this Court to enter

judgment against the Appellant based in tort, the Learned Judge having refused to enter judgment for her

on the basis of breach of contract.

Following the English Court of Appeal decision in *Esso Petroleum Co Ltd v Mardon* [1976] 2 All ER

5, it is now beyond dispute that the mere fact that a plaintiff has obtained judgment for breach of contract

does not preclude him to have judgment entered in his favour also in tort, assuming that the plaintiff had

established a breach by the defendant of his common law duty of care owed to the plaintiff. Therefore in

order for the Second Respondent to have judgment entered against the Appellant in tort for intentionally

causing economic loss to her by unlawful means, the Second Respondent had to establish that the

Appellant breached his common law duty of care owed to her.

On the facts, I must confess, that the Second Respondent has not been able to establish that the

Appellant owed her any duty of care which had been breached. As the Appellant did not sell the vehicle

to her, he could not contemplate that the retention of the log book would cause the Second

Page 201 of [2000] 1 EA 193 (CAU)

Respondent loss. I have not been able to find “any sufficient relationship of proximity or neighbourhood

such that, in the reasonable contemplation of the Appellant, the carelessness on his part may likely to

cause damage to the Second Respondent”. See *Donoghue v Stevenson* [1932] AC 562, *Batty and another*

*v Metropolitan Property Realisation Ltd and others* [1978] 2 All ER 445. The cross-appeal therefore

fails.

In the result, apart from ground 9 which succeeds, I would dismiss the appeal with costs in favour of

the Respondent here and below. The Appellant is awarded costs on the counterclaim here and below and

also costs in the cross-appeal.

(Okello JA and Twinomujuni JA concurred in the judgment of Berko JA.)

For the Appellant:

*Information not available*

For the Respondent:

*Information not available*