

CCT/18/2012

IN THE HIGH COURT OF LESOTHO

(Commercial Division)

In the Matter Between:

NEDBANK LESOTHO LIMITED

PLAINTIFF

AND

TSELISO MATELA

1ST DEFENDANT

MALEHLOHONOLO SINXO MATELA

2ND DEFENDANT

JUDGMENT

Coram : **Hon. Molete J**
Date of hearing : **15th February, 2013**
Date of judgment : **15th February, 2013**

SUMMARY

Claim for payment of balance on Hire-Purchase agreement – Defendants failing to attend trial – Matter proceeds after postponement refused – Plaintiff's evidence sufficient to prove case on a balance of probabilities – Judgment granted in plaintiff's favour.

ANNOTATIONS

CITED CASES

Miller v Minister of Pensions 1947 (2) All ER at 374

Ocean Accident and Guarantee Corporation Ltd v Koch 1963 (4) SA 147

Scheepers v Video and Telecommunications Services 1981 (2) SA 490

STATUTES

High Court Rules 1980 – Rule 41 (1)

BOOKS

- [1] Plaintiff's claim against the defendants is for payment of the amount of M57,745-68 plus interest and costs on the attorney and client scale in terms of an agreement between the parties. Defendants are husband and wife. Summons was issued in February, 2012.
- [2] The parties were in agreement that in terms of a hire-purchase agreement between them the plaintiff supplied to the defendant, a motor vehicle, being 2010 Polo vivo for an amount M206 307-60 inclusive of vat and finance charges.
- [3] The Defendant was apparently unable to service the debt and after about four months, and he opted to voluntarily surrender the car back to Plaintiff for resale and credit to his account of the purchase price realised.

- [4] The vehicle was sold for an amount of M100,000-00 and his account was credited accordingly. It however still remained with a balance of M57, 745-68. This is the subject of this claim. Defendant pleaded that he had agreed with some bank official that the amount paid would be accepted in full and final settlement.
- [5] In the pre-trial conference the parties agreed that these facts were common cause; that is, the hire purchase agreement; the voluntary surrender and subsequent sale for M100,000-00; and that the outstanding amount is the sum claimed.
- [6] Its therefore left only two issues for detemination by the court:
1. Whether the sale price of M100,000-00 was commercially viable.
 2. Whether there was agreement that upon surrender of the vehicle the outstanding balance on the hire purchase agreement would be extinguished.
- [7] On the date of the hearing, the defendants did not come to court. Counsel was allowed an opportunity to contact his client, 1st Defendant. At first the impression he gave was that he would be on his way to court, but later it transpired that he had not actually left whereever he was and claimed to be having problems with his car. This was well into the afternoon.
- [8] Counsel for Defendants sought to have the matter postponed. The application was opposed by the Plaintiff's Counsel. No sufficient cause

was shown; regard being had to the fact that the matter had been postponed for hearing in October, 2012. The Court refused the application to have the matter postponed.

- [9] Plaintiff's only witness, one Mr Neo Augustinus Letsapo, a Risk Manager at plaintiff bank said he was the one who dealt with defendant directly in this transaction. He agreed the vehicle was surrendered, and that a valuation was done before the sale in line with the Bank's normal procedures. He said the plaintiff was also given the opportunity to secure a buyer, but he could not. The Bank's valuation estimated the vehicle could be resold for an amount between M90,000-00 and M109,000-00.
- [10] The witness, Mr Neo Letsapo, further testified that the Defendant had always accepted the liability for the shortfall and promised to pay as soon as he had found a job. In fact he Letsapo was present when the Defendant signed the consent letter in which he undertook to settle the balance.
- [11] The consent letter contains the following clause; "I further acknowledge that I remain liable for the outstanding balance due in terms of the agreement as well as any further costs and charges which may be incurred by Nedbank in recovering this amount".
- [12] In his cross-examination of the witness, Mr Ketsi for the Defendant sought to deny the signature of his client on the consent. He stated that his client instructed him that he signed another document which reflected that payment would be accepted in full and final settlement. Unfortunately due

to the absence of the Defendant no such evidence could be obtained. Indeed this aspect should have been raised at pre-trial conference or through inspection and production of documents at discovery stage or belatedly at trial. It only was suggested to the witness in cross-examination at the trial because Defendants absented themselves.

[13] The Court therefore accepted the evidence of plaintiff's witness that the denial was unfounded and an afterthought on the part of defendant. The signed consent was clear; and the evidence was that such consent was signed in the presence of plaintiff's witness. The allegation that the payment was in full and final settlement was therefore unsupported and had to be rejected by the court.

[14] The other issue for determination was whether the price was commercially viable. Defendant argued that it was not. The court understood the parties by this to mean that the price was so unrealistic and low as to make no commercial sense. Indeed the Defendant asserted that the vehicle was sold below its value, and he suspected foul play because it had been sold to an employee of the Plaintiff or one of their acquaintances.

[15] This argument also had to be rejected. The Defendant tendered no evidence at all as to what would be a reasonable price. He failed to show any unreasonableness in the valuation of Plaintiff's valuator's report. Indeed the witness who testified said that the actual or total cash price the vehicle was bought for was M129,579-69. It was therefore not unreasonable or

unrealistic for it to be sold for M100,000-00 about 4 months later, if it was, defendant did not adduce any evidence to that effect.

[16] The Plaintiff therefore succeeded in proving his claim on a balance of probabilities. It is the required standard and needs no further support than to refer to the following cases;

1) **Miller v Minister of Pensions**¹.

2) **Ocean Accident and Guarantee Corporation Ltd v Koch**².

[17] The rule is that if the defendant fails to discharge the burden of proof or the duty to adduce evidence the Court will order that judgment be entered for the plaintiff. It is the same where defendant does not appear on the trial date. See **rule 41(1)**³ and the case of;

Sheepers v Video and telecommunications services⁴.

[18] In the result judgment is entered in favour of the Plaintiff; with interest and costs as claimed.

L.A. MOLETE
JUDGE

For Plaintiff : Advocate T. Mpaka

For Defendants : Advocate L. Ketsi

¹ 1947 (2) All ER at 374

² 1963 (4) SA 147

³ High Court Rules 1980

⁴ 1981 (2) SA 490