

**IN THE HIGH COURT OF JUSTICE OF THE F.C.T.**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT ZUBA, ABUJA**

**ON FRIDAY THE 5<sup>TH</sup> DAY OF JULY, 2024**

**BEFORE HIS LORDSHIP: HON. JUSTICE K. N. OGBONNAYA**  
**JUDGE**

**SUIT NO.: FCT/HC/CV/917/2022**

**BETWEEN:**

**MALLAM SHEHU AHMAD ISAH        ----        CLAIMANT**  
**AND**

**KEFAS WUNGAK ROPSHIK        -----        DEFENDANT**  
**(KEFIANO AUTOS)**

## **JUDGMENT**

On the 21<sup>st</sup> of December, 2022 the Claimant filed this Suit – Originating Summons against the Defendant – Kefas Wungak Ropshik (Kefiano Autos) asking this Court to determine the 3 questions raised therein which is premised on **SS. 1(1); 38(1); 39(1) and 49(1) of the Sale of Goods Act, 1893.**

The issue is on alleged sale of a used Truck Ford Platinum F150 which the Defendant purportedly sold to the Claimant for the sum of **₦33, 000,000.00 (Thirty Three**

**Million Naira)** and in which the Claimant alleged to had paid about **₦25, 000,000.00 (Twenty Five Million Naira)** installment and is willing to pay the remaining balance to the Defendant or into the Court for the Defendant. He also asked Court to grant the Consequential Orders as listed in the Originating Process.

The said 3 questions and the Consequential Orders are:

### **QUESTIONS FOR DETERMINATION**

1. Whether by the combined interpretation of the provisions of Sections 1(1), 38(1), 39(1) and 49(1) of the Sale of Goods Act, 1893, the Defendant can lawfully repudiate a contract of sale of a used truck Ford Platinum F150, that was consummated by the Claimant and the Defendant on the ground of installment payment, at the sum of **₦33, 000,000.00 (Thirty Three Million Naira only)** and having paid substantially the sum of **₦20, 000,000.00 (Twenty Million Naira only)** for the vehicle.
2. Whether the Defendant can lawfully interfere with the quiet enjoyment of ownership and possessory Rights of the Claimant in respect of the vehicle as cited above, for which consideration have been substantially furnished.

3. Upon the payment of the additional sum of ₦5,000,000.00 (Five Million Naira only) by the Claimant into the Defendant's Bank Account dated 15<sup>th</sup> December, 2022 whether the Defendant who is now saying he is no longer interested in the contract of sale, can terminate the sale of the vehicle at this point of the contract between the parties.

### **CONSEQUENTIAL ORDERS**

1. A Declaration that the Defendant cannot lawfully alter or repudiate a contract of sale of a used truck Ford Platinum F150, that was consummated orally by the Claimant and the Defendant, parties having agreed on the payment and pattern of payment.
2. A Declaration that the Defendant cannot lawfully interfere with the quiet enjoyment and ownership and possessory Rights of the Claimant in respect of the vehicle as cited above, for which consideration have been substantially furnished.
3. An Order compelling the Defendant to prepare a Sale Agreement with respect to the vehicle and evidencing the agreed terms of both parties and for them to sign.

4. An Order directing the Defendant to release all the original documents of the vehicle to the Honourable Court having furnished substantial amount for the vehicle and the Claimant is still willing to pay more money to the Defendant if he will acknowledge same or pay into the Honourable Court if granted by the Court.
5. An Order directing the Defendant to issue receipt of payment, evidencing the total payments made so far by the Claimant.
6. Such further or other Orders as the Honourable Court may deem fit to make in the circumstance of the Suit.

The Claimant supported the Originating Summons with Affidavit of 19 paragraphs. He also attached 4 documents which are marked as **EXH A – D**. The documents are evidence of payment of money made to the Defendant as seen in the Receipt issued by the Defendant and evidence of transfer of money made by the Claimant to the Defendant, from Access Bank and Cheques of various payments made to the Defendant in Zenith Bank and Access Bank too.

Also attached are WhatsApp messages – chats between the Claimant and Defendant. The third document is a letter dated 16<sup>th</sup> December, 2022 from the Claimant to James

Ugbeda & Co. instructing the firm to act as his Counsel in Court in respect of this dispute surrounding the sale of the vehicle between the Claimant and Defendant, and to represent the Claimant in Court as his Counsel and for payment of **₦2, 000,000.00 (Two Million Naira)** only as professional fee. That letter is marked **EXH C**. The forth document is another letter from the said James Ugbeda & Co. accepting the brief. It is dated 19<sup>th</sup> December, 2022. It is marked as **EXH D**. Attached to it is Receipt from the law firm to the Claimant acknowledging the part payment of **₦500, 000.00 (Five Hundred Thousand Naira)** only, paid by the Claimant to the Counsel/law firm.

In the Affidavit the Claimant narrated how the Defendant approached him to buy the said Ford F150 and he made payment in 3 trenches of **₦5, 000,000.00 (Five Million Naira)** from April 24<sup>th</sup> to 28<sup>th</sup>, 2022 and he made another payment on 15<sup>th</sup> December, 2022. That parties agreed that payment should be made on installments until the price is fully paid.

That after a time the Defendant wanted the vehicle back, threatening the Claimant and telling him that he should return the vehicle to him and that he, the Defendant, still has the vehicle particulars with him.

He had told Court that he is willing to continue to pay the remaining **₦13, 000,000.00 (Thirteen Million Naira)** and want Court to Order the Defendant to issue Receipt for the payments he had made. He urged Court to intervene in the issue and that as law abiding person, h decided to file this

Suit for Court to intervene instead of taking the law into his hands.

In the Written Address the Claimant raised three Issues for determination which are:

- (1) Whether the Defendant is bound by the oral Agreement between the parties as regards the Sale of the truck Ford F150 and if so, whether the Defendant can lawfully say that he is no longer interested in the sale transaction after substantial payment has been made by the Claimant.**
- (2) Whether having regard to the oral Agreement between the parties the Defendant is not liable to an Order of specific performance to execute the Sale Agreement and issue Receipt of payment in Claimant's favour.**
- (3) Whether the Defendant and his agents are not liable to an Order of Injunction restraining them from interfering with the legal rights in and the quiet enjoyment of the vehicle purchased by the Claimant.**

**On Issue No. 1**, the Claimant submitted in full the provision of **S. 1(1), 38(1), 39(1) and 49(1) of the Sale of Goods Act, 1893**. He submitted that there is a valid contract of sale between the parties as there was Offer and Acceptance and consideration of money paid to the Defendant to which he acknowledged receipt and issued

Receipt. That the parties were ad idem in the said contract of sale of the truck which was made orally and price of **₦33, 000,000.00 (Thirty Three Million Naira only)** agreed and payment made in trenches as agreed by the parties. That the contract is binding and enforceable between the parties and the Defendant cannot therefore unilaterally without any reason say that he is no longer interested in the contract to warrant the request for the return of the vehicle to him.

That the Claimant is entitled to the Order of the Court nullifying the unilateral request by the Defendant to take the vehicle from the Claimant. He urged Court to so hold. The Claimant relied on the following cases:

**Azubuike V. Gov. Enugu State**  
**(2014) 5 NWLR (PT. 1400) 364 @ 370**

**Obaibe V. BCC PLC**  
**(1997) 10 NWLR (PT. 525) 435**

**Dahiru V. Kamale**  
**(2005) 9 NWLR (PT. 929) 8**

**Landmark Reality V. Fidelity Bank**  
**(2015) 1 NWLR (PT. 1441) 411**

**Hankel Chemicals V. Ag Ferrero & Co. Ltd**  
**(2003) 4 NWLR (PT. 810) 321**

**On Issue No. 2**, the Claimant submitted that the Defendant is liable for Order of specific performance to execute the Sale Agreement and issue Receipt of Payment

in favour of the Claimant. That there is a valid contract between the parties which is sought to be protected in this Suit. That there is a legal binding, subsisting contract between the parties in this Suit that entitles the Claimant to specific performance.

That the Defendant is under legal duty to execute the Sale Agreement transferring title in the vehicle in favour of the Claimant since the Claimant has furnished substantial consideration for the vehicle to the Defendant. That decree of specific performance will not inflict any injury or hardship on the Defendant in this Suit. That the Claimant collected the vehicle after the offer, acceptance and consideration. That he has also shown in both Affidavit and the documents attached that he furnished substantial consideration. That he is entitled to the remedy of specific performance of the contract in his favour by the Order directing the Defendant to execute the Sales Agreement. He referred to the following cases:

**Universal Vulcanizing Ltd V. Ijesha United Trading & Transport & Ors**  
**(1992) LPELR – 3415 (SC)**

**Anaeze V. Anyaso**  
**(1993) LPELR – 480 (SC)**

He urged Court to so hold.

**On Issue No. 3**, he submitted that the Defendant and his agents are liable for an Order of Injunction restraining them from interfering with the equity/legal rights of the



Claimant in the Res and quiet enjoyment of the Res – ford F150, purchased by him. That he has shown that he has equitable/legal right which is recognizable and which is threatened and ought to be protected. That he has furnished sufficient facts in the Affidavit and the Exhibits to show that he has equitable/legal interest which ought to be protected otherwise it will be violated by the Defendant. He urged Court to so hold. He referred to the following cases:

**Akapo V. Hakeem Habeeb**  
**(1992) 7 SCNJ 119**

**Azu V. UBN**  
**(2014) 60 NSCQR 458 @498**

**Shuaibu V. PDP**  
**(2017) 71 NSCQR 946 @ 997**

**FHA V. Varo**  
**(1991) 1 NWLR (PT. 168) 405**

He submitted that balance of convenience is in his favour. That he will suffer more inconveniences if the Injunction is not granted. That he is not enjoying the ownership and possessory over the vehicle. Again, that unless Court grants the Order, the Police and the Defendant will continue to harass him and deny him the peaceful and quiet enjoyment of the vehicle even after he had furnished considerable consideration. That the Defendant is holding all the money he had paid for the vehicle as well as holding onto the vehicle particulars and has refused to do the

Agreement of Sale. That he has nothing to lose if the Injunction is not granted. He urged Court to hold that he (Claimant) has satisfied all the ingredients for the grant of the Reliefs sought. That he undertook to pay damages if the application is frivolous. That he has fulfilled his own side of the obligation under the Contract of Sale. And that he is not tainted with any reprehensible behavior or conduct. He referred to the cases of:

**Adejumo V. Ayantegbe**

**(1989) 3 NWLR (PT. 110) 417 @ 452**

**Okeke-Oba V. Okoye**

**(1994) 8 NWLR (PT. 364) 605 @ 620**

He urged Court to grant the Reliefs and answer the questions in his favour.

The Defendant was served on the 21<sup>st</sup> of December, 2022 the same day that this Suit was filed. On the 22<sup>nd</sup> day of November, 2023, exactly 11 months after, the Defendant filed a Counter Affidavit of 13 paragraphs. He attached 2 documents marked as **EXH K1** and **EXH K2** which is a statement in a Police letter-headed paper written by the Claimant on the 22<sup>nd</sup> of December, 2022 a day after the Suit was filed and the Defendant was served. The other Exhibit – **EXH K2** is a WhatsApp chat between the parties where the Claimant was apologizing to the Defendant for not sending money to the Defendant earlier as promised, promising to send some money by Thursday. The other is which he, same Claimant told the Defendant that he was

very sick and had surgery. The Defendant strangely did not attach any of his responses to the 2 chats.

In the Written Address the Defendant raised an Issue for determination which is:

**“Whether the Claimant has made out a good case and having regards to the facts and circumstances of this case this Suit can properly be determined by Originating Summons.”**

The Defendant submitted that the case is highly contentious and should not be settled via Originating Summons. That in paragraphs 7 & 9 of his Counter Affidavit he had stated the amount that the Claimant is indebted to him. That the Claimant did not tell Court how he arrived at **₦13, 000,000.00 (Thirteen Million Naira only)** which he claims he is owing the Defendant.

That granting the Claimant the Reliefs will jeopardize the Defendant’s interest. He relied on the following cases:

**Jev V. Iyortyom**  
**(2014) 14 NWLR (PT. 1428) 575**

**Etim V. Obot**  
**(2010) 10 NWLR (PT. 108) 156**

He urged Court not to determine the case based on Originating Summons and Order the parties to file their pleadings.

**COURT**

This Court has considered the submission of both parties especially as per the question raised which borders on the sale of the vehicle which the Claimant claimed that he bought from the Defendant to which the Claimant claims he had paid the sum of **₦20, 000,000.00 (Twenty Million Naira)** and had paid another **₦5, 000,000.00 (Five Million Naira)** but the Defendant refused to accept same and refused to release the vehicle particulars to him. He had stated that the outstanding balance is **₦13, 000,000.00 (Thirteen Million Naira)** and that he is ready to pay same once the Defendant has given him the vehicle particulars and the Sale Agreement. He had urged Court to interpret the provisions of **S. 1(1), 38(1), 39(1) & 49(1) of the Sale of Goods Acts, 1893.**

By the provision of **S. 1(1) of the Sale of Goods Act, 1893**, once a person – sellers transfers or agrees to transfer the property in goods to another person, the buyer for a consideration called price, it is held that there is a contract of sale; there is offer, acceptance and the consideration. Such a contract of sale need not be in writing. By the exchange of the goods and money consideration there is a contract of sale. Again, the payment may not be made fully at once. The parties may agree that payment may be made in trenches. But the pay – amount for the goods may be certain as the parties may agree.

So where the parties agree by the exchange of goods and monetary consideration, it is said that there is contract of sale.

In this case it is not in doubt that there is a valid contract of sale between the Claimant and the Defendant as it pertains to the vehicle in issue – the Ford Platinum F150. There was an agreement as for the price which is **₦33, 000,000.00 (Thirty-Three Million Naira)**. There is also evidence of payment of **₦20, 000,000.00 (Twenty Million Naira)** by the Claimant to the Defendant as evidenced in the documents tendered – Receipt issued and evidence of transfer made by the Claimant to the Defendant and evidence of Receipt issued to the Claimant by the same Defendant. See **EXH A** as attached by the Claimant. The description in the Receipt confirmed that the payments are for Ford Platinum F150. Again, the payments, transfers were all made into and to the Defendant – **Kefiano Autos**. The Receipts shows that the money was received from the Claimant too. The Receipts were all stamped with the stamp of the Defendant and signed too. The various amounts were stated. The Defendant did not deny issuing the Receipts and/or receiving the various amounts paid by the Claimant. Also the Bank transfers made specified that the transferred funds were paid into the Account of the Defendant too. So also is the Cheque. The Defendant did not deny that fact. Going by the above, there is a valid sale transaction between the parties going by the provision of **S. 1(1) of the Sale of Goods Act**.

This is so notwithstanding that there was no written Agreement. By the actions of the parties it is very clear that there was a valid and subsisting contract of sale between the Claimant and the Defendant. So this Court holds. The

transaction/contract was consummated between the parties on ground of installment payments made by the Claimant and accepted by the Defendant. The good – vehicle was also handed over to the Claimant which is given the Claimant possession of the vehicle and the Claimant put it into use for some time and enjoyed the same. As it were, the Claimant is still in possession and is making effective use of the vehicle until the Defendant started the threat with the Police. Though the Defendant was still holding unto the vehicle particulars.

By **S. 39(1) of the Sale of Goods Act, 1893**, means that even where there is contract of sale and the goods has passed to the buyer and it is not paid for, that the seller still has a right of lien over the goods. In that case, notwithstanding that the buyer has the goods, as far as it is not yet paid for, the seller has right of lien over the said goods. This means that where the buyer has paid for the goods either fully or partially and the goods is already in his possession, the seller has no lien any longer so far the buyer had made monetary consideration called price. In that case the seller has no lien on the goods any longer because property in the goods has passed to the buyer.

In this case the Defendant by given the vehicle to the Claimant, he has passed the property in the goods to the Claimant. Since the Claimant had paid for the Ford, though not fully, the Defendant has no right of lien over the vehicle again. That means that the Defendant cannot lay claim on it and cannot seize same again since the Claimant has paid a substantial amount of money for the vehicle.

That means that the Defendant does not have any right to retain the possession of the goods/vehicle.

In this case, going by the written Agreement of the parties and as can be deciphered from their respective actions over time in this contract which is implied in terms, it is very clear that the Defendant upon passing the property in the goods/vehicle to the Claimant, the Claimant had taken possession which the Defendant passed to him by allowing him to take and use the vehicle while there is still outstanding balance to be paid on installment. There was no issue of the lien over the vehicle in this contract between the parties. Hence, the Defendant cannot rise now to create one. There was no agreement to that effect. Besides, the buyer was not given any notice of the lien at the time the contract of sale was entered into. Hence, the Claimant is not bound by any such lien as it was not made known to the Claimant as at the time the parties entered into the contract. The Defendant cannot therefore interfere with the possessory right of the Claimant at this stage.

Also, the Defendant has no right to repudiate the contract after the Claimant had paid the substantial amount of the contract consideration which is the price. The Defendant cannot also repudiate the contract at this stage. He cannot interfere with the enjoyment of the vehicle now by the Claimant.

Also, by **S. 49(1) of the Sale of Goods Act, 1893**, where in a contract of sale the property has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the



goods according to the terms of the contract, the seller may maintain an action against the buyer for the price of the goods. This means that where the buyer fails to pay, the Defendant cannot seek to repossess the goods/vehicle as in this case. He can only seek for the recovery of the money and for the recovery of the goods. The only thing open for the seller in that case is to maintain an action for the recovery of the price against the buyer. That means that once the property in the goods has passed to the buyer the seller cannot recover it back. Again, where the issue of lien was not defined ab initio the seller cannot raise it later and the buyer is therefore not bound.

In this case, going by the fact in the Affidavit and Counter Affidavit, it is very clear that the property in the goods – vehicle had been passed to the Claimant long before now. Therefore the Defendant cannot recover the vehicle. He cannot place lien over same. Again, the Claimant/buyer made some substantial payment for the vehicle remaining **₦13, 000,000.00 (Thirteen Million Naira)**, having paid a total of **₦20, 000,000.00 (Twenty Million Naira)** as evidenced in **EXH A**.

Again, in this case, the Claimant/buyer did not refuse to pay. He actually paid and is ready to complete the payment of the vehicle. But it is the Defendant that refused to accept further payment and refused to deliver to the Claimant the vehicle particulars. The Defendant, demanding the return of the vehicle, is wrong as the Claimant had taken possession and property in the vehicle transferred to the Claimant. The Defendant therefore has no right under the



law to interfere with the Claimant's enjoyment of the ownership and possessory right in respect to the vehicle to which substantial consideration has been furnished.

Given all the monetary consideration paid by the Claimant in form of price of the vehicle up to the 15<sup>th</sup> of December, 2022 the Claimant cannot therefore renege and state that he is no longer interested in the contract of sale. He cannot unilaterally terminate the contract of sale of the vehicle when the Claimant had paid substantially for and is willing to complete the remaining amount of **₦13, 000,000.00 (Thirteen Million Naira)**.

It is imperative to state that in this case the Claimant has shown that there is a valid contract of sale of the vehicle. The transaction has all the 5 elements/principles that make a valid legally binding and enforceable contract of sale agreement. There was the offer of the vehicle. That offer was accepted. The Claimant paid consideration. The parties had intention and actually created a legal relationship. They also have capacity to contract. On this see the cases of:

**Shell Petrol Dev. Co. Ltd V. Frontline Television  
(2011) LPELR – 4953**

**Azubuike V. Gov. Enugu State**

**Obaike V. BCC PLC  
(1997) 10 NWLR (PT. 525) 435**

Again, it is imperative also to state that the issue raised by the Defendant that this Suit, going by the nature of Reliefs,

is to be by Writ. This Court refuses to buy that view because the issue placed before this Court is on interpretation of the said **S. 1(1), 38(1), 39(1) and 49(1) of the Sale of Goods Act, 1893.**

Also, going by the WhatsApp chats attached by both parties it is clear that there is the issue of vehicle – Ford Platinum F150. There is clear evidence that there was agreement by the parties. Goods transferred. So also money was paid. Parties are ad idem on these fact.

Contrary to the submission of the Defendant, the Claimant was able to show what he paid for and how much he paid and what is outstanding, which he is willing to pay to the Defendant directly or through the Court.

The Defendant did not tell the Court how it came up with the alleged unpaid balance of **₦26, 500.00 (Twenty-Six Thousand, Five Hundred Naira)**. He did not equally disclose the so-called buses or vehicles which he claimed that the Claimant took from him. He neither brought nor presented the vehicle name or neither anything nor the prices agreed for the sale. The only thing this Court can decipherer is that there is only one vehicle in issue which is the Ford F150 Platinum to which payments were made and Receipts issued. A fact which the parties do not deny.

It is the view of this Court that Originating Summons is the right method through the issue in this Suit will be rightly decided. This is because the issue is on interpretation of the extant provisions of the Sale of Goods Act as the issue in dispute is on sale of the vehicle. The parties are ad idem

on the terms. The Claimant has not breached any term. The Defendant cannot therefore threaten to terminate same and the Defendant has no right of lien over the vehicle either.

The Defendant had not raised any cogent reason why this matter should not be decided under Originating Summons. He had not put a reason why and how he got to the amount he said is outstanding. Originating Summons is one of the ways to prosecute dispute in this jurisdictional clime. The determination of this Suit by Originating Summons will not in any way adversely affect the justice of the case as the issue is on interpretation of the provisions of the Sale of Goods Act. By using the Originating Summons, the Court has ably determined the issue in dispute. Therefore, no need as it is not necessary for parties to file and exchange pleadings. The issue is not on Undefended List in which the Court will Order that the matter goes into General Cause List because of disparity in the amount of money claimed as outstanding.

All in all, the Court holds that there is merit in this Suit as the Claimant had established in this case with his Affidavit and document exhibited.

The Defendant has no right to repudiate the contract of the sale of the Ford Platinum F150. The Defendant has no right to interfere with the enjoyment of ownership and possessory rights of the Claimant in respect to the said vehicle to which the Claimant had paid substantial consideration. And the Defendant cannot terminate the

said contract of sale of the vehicle as this point and he has no right of lien over the vehicle as that was not made known to the Claimant at time of the Agreement and such right of lien over the vehicle has extincted and lost as parties never agreed to that.

This matter is meritorious, the Court therefore grants the Reliefs to wit:

All the Reliefs are granted as prayed.

The Claimant should pay the outstanding balance of the money to the Defendant upon release of the vehicle documents and the Agreement of Sale without delay.

**This is the Judgment of this Court.**

**Delivered today the \_\_\_\_ day of \_\_\_\_\_ 2024 by me.**

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**K.N. OGBONNAYA**  
HON. JUDGE

**APPEARANCE:**

CLAIMANT COUNSEL: N ESQ.

DEFENDANTS' COUNSEL: N ESQ.