

**BAIMBA TURAY v. SOCIETE COMMERCIALE DE L'QUEST AFRICAIN**

[1962] 2 S.L.L.R 5  
[SUPREME COURT]

Freetown  
[C.C. 212/61]

March 28, 1962

Bankole Jones Ag. C.J.

Between

BAIMBA TURAY

Plaintiff

v

SOCIETE COMMERCIALE DE L'QUEST AFRICAIN

Defendants

**RATIO/HOLDING**

*Contract—Sale of goods—Warranty—Implied condition that goods fit for particular purpose—Sale of Goods Ordinance (Cap. 225, Laws of Sierra Leone, 1960), s. 16.*

*Contract—Sale of goods—Vendee illiterate—Vendee's agent signed debit note stating "Second-hand car sold with no guarantee"—Whether contents of note brought to vendee's attention—Illiterates Protection Ordinance (Cap. 104, Laws of Sierra Leone, 1960), s. 2.*

**JUDGMENTS OF BANKOLE JONES AG.C.J.**

The plaintiff is a taxi driver and the defendants are a limited liability company carrying on business as dealers in new and second-hand cars in Freetown. According to the plaintiff he bought a second-hand Peugeot car E 763 from the defendants at the price of £300. The transaction for the sale commenced on May 25, 1961, and was concluded on May 27, 1961, when the last instalment was paid and a debit note made out. The essential portion of this debit note reads as follows: "By sale of one Peugeot 403 Family Car, second-hand in its present condition, well known and tried by the customer, Reg. Number E.763—300 second-hand car sold with no guarantee."

The plaintiff who is an illiterate did not sign this document Exh. "D" but procured someone to do so for him. That person purported to do so in Arable, a language in which the plaintiff is also not literate. When the plaintiff took delivery of the car the following day, that is May 28, he discovered that it had no battery. He had to go and fetch one. On his return the defendants had closed down for the day but the car was outside.

After fitting in the battery, the plaintiff found, as soon as he started driving the car, that something was wrong. He felt the engine heavy and the steering was vibrating. So, on the next day, which was a Sunday, he took the car to a motor mechanic who, on examination, discovered that the chassis was broken in two places, namely, on the right and left side respectively near the suspension. The plaintiff took the car the very next day to the defendants and complained about its condition. The manager examined the car and then suggested that if the plaintiff paid they would get the car repaired.

The plaintiff said he had no more money to spend on the car and suggested that they could either repair it and give it to him or return his money. The manager refused to take the car in for repairs or return the plaintiff's money.

The plaintiff was forced to take the car away and has since kept it in a garage in Freetown. The plaintiff says that he is entitled to repudiate the contract of sale made between himself and the defendants by reason of the breach of a condition on the part of the defendants and claims the purchase-money, namely,

The defence is that the plaintiff not only knew that he was buying a second-hand car, but that he drove the car out on a test with one of the defendants' servants and expressed satisfaction at its performance before he concluded the contract of sale. The defendants say that Exh. "D," the debit note signed on his behalf, was read over to the plaintiff and he was told that he was buying with any guarantee whatever. This note, they say, absolves them from all liability. Now I find that although the plaintiff procured someone to sign Exh. "D" on his behalf, yet there is no evidence that the contents were brought to his notice. The presumption that the plaintiff knew the contents could only be drawn if the provisions of section 2 of Cap. 104, "The Illiterates Protection Act," had been complied with. This has not been the case.

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The manager who prepared and handed Exh. "D" to the plaintiff was not called to be examined on this point.

The law relating to sales of this kind is set out in the Sale of Goods Act, Cap. 225. Section 16 reads as follows:

"16. Subject to the provisions of this Ordinance and of any enactment in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows—

- (1) where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose, provided that in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose;
- (2) where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality; provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed;
- (3) an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade;
- (4) an express warranty or condition does not negative a warranty or condition implied by this Ordinance unless inconsistent therewith."

I do not accept the defence story that the plaintiff examined the car or drove it out on a test. I accept the plaintiff's version which amounts to this, namely, that he was anxious to get a good road-worthy second-hand car to ply for hire as a taxi and he made this quite clear to the defendant before concluding the agreement. In doing so he relied on the defendants' skill and judgment in determining whether the car was reasonably fit for the purpose for which he wanted it.

The fact that in his anxiety to purchase the car, he did not take the trouble to examine it is neither here nor there. Even if the contents of Exh. "D" had been brought to the notice of the plaintiff (which it was not) the defendants may still be bound. See Halsbury's Laws of England (Hailsham ed.) Vol. 29, at p. 66, para. 73, where it is stated as follows:

“The implied conditions as to fitness for a particular purpose may be excluded by express agreement, that the tendency of the courts is against such exclusion, and clauses purporting to exclude the implied warranty are narrowly construed.”

On the fact I find that the car was found not to be road-worthy from the very moment of its receipt by the plaintiff. This, in my view, is a fundamental

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breach, a breach which goes to the very root of the contract and, therefore, entitles the plaintiff to repudiate it and demand restitution of his purchase-price.

In the circumstances, therefore, the plaintiff must succeed and I give judgment for him in the sum of together with interest at the rate of 5 per cent. From May 27, 1961, to the date of payment.

The plaintiff will have the costs of this action.

#### Appearances

Mrs. Ursula D. Khan  
For the plaintiff

Edward J. McCormack  
For the defendants