

IN THE SUPREME COURT OF TONGA  
APPELLATE JURISDICTION  
NUKU'ALOFA REGISTRY

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AM 17 of 2019

BETWEEN : TU'ITAVAKE MOALA  
- *Appellant*

AND : 'ANITELU F. SAMITA  
- *Respondent*

BEFORE JUSTICE NIU

Counsel: Mr. Atalasa Pouvalu for appellant  
Mrs. Fatai Vaihu for respondent

Date of hearing: 24<sup>th</sup> October, 2019

Date of Ruling: 28<sup>th</sup> October, 2019

RULING ON APPEAL

1. The appellant has appealed that the Magistrate has wrongly ruled that there was a case to answer (by the appellant) at the close of the respondent's case, despite the submissions which he made that there was no case to answer.

**Grounds of appeal**

2. There are really only two grounds of appeal of the appellant. He says that –
  - (a) The respondent had, at the relevant time, no title to the car, that the relevant time was the time that the appellant, through his negligence, caused the damage to the car, and that accordingly the respondent cannot bring this claim against him; and alternatively,
  - (b) The respondent was not a party to the agreement which the respondent's wife had made with the appellant to take the car for the purpose of repairing some minor damage which it had, including the replacement of a bumper and light covers (as a result of which the appellant drove the car and caused the substantial damage which is the subject of this present claim by the respondent).

**Title to the car**

3. The evidence given before the Magistrate, as shown in the transcript, shows that the car was purchased from Si'ikaeola, a motor vehicle business, which sells motor vehicles for cash or on hire purchase, for a sum of \$14,200, \$6,000 of which was paid as deposit and the balance was paid in monthly installments.
4. The purchaser was recorded at Si'ikaeola in the name of the wife, but the deposit had been paid by a son of the wife and the respondent. The car was registered in the records of the Ministry of Infrastructure, which is the Ministry responsible for transport, as being owned by Si'ikaeola.
5. Possession of the car was given to the wife upon payment of the deposit and of the registration of the car and of the issuance and affixing thereon the plate no. C19895.
6. The respondent stated that the name of the wife was put down as purchaser in the Si'ikaeola record because she had the licence to drive and because she would be the one who would take the money to make the monthly payments to Si'ikaeola.
7. The monthly payments were paid jointly by the respondent and the wife. The respondent stated in his evidence, and it was not challenged, that they regarded the car as their joint property, that what was the wife's was the respondent's and what was the respondent's was the wife's.
8. The monthly payments were duly and properly made in each month and the final payment was made on 3 January 2019 and all interests of Si'ikaeola in the car ended on that date. That was the evidence of the witness from Si'ikaeola. She said that ownership of a vehicle was transferred from Si'ikaeola to the purchaser upon full payment of the vehicle having been made.

**The law**

9. The ownership of a motor vehicle is provided for in the Traffic Act. Section 2 defines "owner" as follows:

‘“Owner”, in relation to a motor vehicle, means the person lawfully entitled to possession thereof, except where the motor vehicle is subject to a bailment for a period not exceeding 28 days, in which case the “owner” means the person who, but for the bailment, would be lawfully entitled to possession of the motor vehicle, and “ownership” has a corresponding meaning.’

10. A case of bailment intended by that provision is when a person rents a vehicle for a day or a week or so, less than 28 days. That person is not the owner of the vehicle, although he has lawful possession of it, for the purpose of the Act. If he rents it for more than 28 days he is deemed as the owner for the purpose of the provisions of the Act which specifically refer to “owner”. So that in the case of a hire purchase sale of a vehicle, such as was done in the present case, which was for a period of about 2 years, the owner is the person or persons lawfully entitled to possession. In the present case, the persons lawfully entitled to the possession of the car were the respondent and the wife because they were the persons making the monthly payments which was the condition by which they were lawfully entitled to the possession of it.
  
11. It is worthy of note that the Legislature could have enacted, but it did not enact, in the Act that the person in whose name the motor vehicle is registered as owner is the owner of the vehicle. Instead, it simply requires (under section 5(1) that application “for the registration of any motor vehicle shall be made by the owner of that motor vehicle,” that is, the person lawfully entitled to possession of it. In the present case, the application was made by Si’ikaeola because at the time, it could lawfully demand and take lawful possession, but at the same time, the respondent and the wife, so long as they were making the agreed monthly payments, were entitled to demand and take lawful possession of the vehicle from Si’ikaeola, and which they did and to which Si’ikaeola agreed. It is therefore correct to say that until the 3 January 2019, the car was jointly owned by Si’ikaeola and the respondent and the wife, and that after the 3 January 2019, the car was fully owned by the respondent and the wife. And I do not think that it could be argued by the wife that she alone was the owner of the car thereafter because the respondent himself could lawfully demand and have joint possession of it because he had jointly paid for the car too. He was lawfully entitled to possession as well.

12. The appellant caused the damage to the car, which is the subject of the claim of the respondent before the Magistrate, in December 2018. At the time of the damage, the respondent was already a joint owner of the car for the reasons I have stated and upon the facts which have been given in evidence as I stated above. Accordingly I find that this ground of appeal fails.

**The respondent was not a party to the agreement with the appellant.**

13. The second ground of appeal is that the respondent was not a party to the agreement with the appellant. From the transcript, the evidence show that in December 2018, the car was driven by a son of the respondent and the wife and damaged the rear bumper and rear light of the car. The wife then spoke with the appellant and agreed that the appellant would take the car and repair it, and she paid \$550 and \$100 to the appellant and he carried out repairs to the car and was awaiting the arrival of a bumper and light cover to replace the ones on the car. The appellant then, without the permission of the wife or of the respondent drove the car for his own purpose and collided with another vehicle which resulted in substantial damage. The damage was assessed by a proper mechanic, who gave evidence of it, at a total sum of \$8,332.00.
14. The wife passed away on 2 April 2019. No Letters of Administration have been issued in respect of her estate as yet.
15. The respondent has brought this claim himself and stated it as follows (as translated):  
“The plaintiff claims from you \$8,322.00 & C/F \$83.00 & L/F \$2,000.00 because you have damaged the motor vehicle of the plaintiff with his wife who has died register no C19895 which was given to you for you to repair in December 2018 and you agreed with the plaintiff for him to provide the parts and you would repair the vehicle to run properly. You unlawfully used the vehicle whilst it was with you and you drove it negligently in December 2018 and caused it to be damaged as above valued and you abandoned it and ran away to Vava’u and repeated contacts were made to you and you said you would pay in February 2019 but you did not and further contact was make to you but you still did not pay and plaintiff’s lawyer wrote to you on 24/4/2019 but you did not respond.”

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16. The appellant argues that there was no agreement between him and the respondent and that the respondent cannot sue him upon agreement which he made with the wife. He relies upon the principle of privity of contract.
17. However, the claim of the plaintiff, as quoted above, is pleaded that he was and is a co-owner of the car with his wife, and which I have found on the evidence and on the law, as a fact. He was a co-owner of the car at the time of the talk between the appellant and the wife. As a matter of law, when the wife was talking with the appellant about taking the car and having it repaired, she was acting for and on behalf of the owner of the car, who at the time were jointly Silikaeola, the respondent and the wife. She was acting as agent for the other two owners, so that the other two owners were also parties to the verbal agreement reached with the appellant that impliedly required that he was not to drive the car for his own purpose or that he negligently damage it.
18. I asked Mr. Pouvalu if there was anything he would provide that that was not the case and he said no.
19. Accordingly I also find that this second ground of appeal fails.

**Final Orders**

20. I asked Mr. Pouvalu what were the grounds, or other grounds, of defence which the appellant has to the claim of the plaintiff. I asked him that so that I would know whether there was any point in remitting the case to the Magistrate to continue with the hearing of the case for the defendant, if the decision that there was a case to answer was to stand. Mr. Pouvalu said that there was no other ground of defence, other than the grounds raised in this appeal.
21. Section 80(1) of the Magistrate's Court Act authorises the Supreme Court, inter alia, "to affirm reverse or amend the decision of the Magistrate, ..... or may make such other order (including any order as to the payment of costs by either party) as it think just and may by its order exercise any power which the magistrate might have exercised."

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22. I consider that Mrs Vaihu is correct in asking that I exercise those powers and to make the final orders in respect of the claim of the respondent against the appellant in this case. I see no point in remitting this matter to the Magistrate. It would only occur further costs and delay.

**Orders**

23. Accordingly, I make the following orders:

- (a) The appeal of the appellant is dismissed.
- (b) There be judgement for the plaintiff (respondent) against the defendant (appellant) in the sum of \$8,332.00
- (c) The defendant (appellant) shall pay the costs of the plaintiff (respondent) in the Magistrate's Court and in this Court. The plaintiff shall file and serve his bill of costs by Tuesday 29 October 2019 and the defendant shall file his objection to any item therein by Wednesday 30 October 2019 and I shall hear and tax the same in chambers at 9:00am Thursday, 31 October 2019, unless otherwise agreed before then.



A handwritten signature in blue ink, appearing to read "L. M. Niu".

L. M. Niu  
J U D G E

NUKU'AIOFA: 28 OCTOBER 2019