

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 302 of 2013**

**BETWEEN : MOHAMMED NIZAR AND SHEREEN SHAINAZ JANG** both of 16  
Niudamu Road, Nakasi, Nasinu, Merchant and Sales Assistances respectively.

*Plaintiff*

**AND : MERCHANT BANK OF FIJI** a duly liability company situated at Central  
Building, Suva.

*1<sup>st</sup> Defendant*

**SALIM BURKSHI** of Nakasi, Nasinu, Businessman.

*2<sup>nd</sup> Defendant*

**JOSEFA BAU** of Dawasamu, Tailevu, Businessman.

*3<sup>rd</sup> Defendant*

**Counsel : The Plaintiff in Person**  
**Mr Pal A. for the 1<sup>st</sup> Defendant**

**Date of Judgment: 1<sup>st</sup> November, 2013**

**INTERLOCUTORY JUDGMENT**

1. The Plaintiff filed Writ of Summons and Ex-parte Motion supported by the Affidavit dated 22<sup>nd</sup> October 2013 and sought the following Orders:

*“.....**FOR AN ORDER** that 1<sup>st</sup> Defendant be restrained from selling of  
Motor Vehicle Nos. EP671 and DW158.....”*

2. On perusal of the document, this court made direction to the Registry to mention the case inter-parte on 30<sup>th</sup> October 2013 at 9.00am.
3. The Affidavits of Service were filed by the Plaintiff on 30<sup>th</sup> October 2013 stating the motion was served on all the Defendants.
4. This matter was taken up for hearing on 30<sup>th</sup> October 2013 and the Plaintiff appeared in person. Mr Pal A. counsel appeared for the 1<sup>st</sup> Defendant, Merchant Bank of Fiji. Other two Defendants were not present in the court.
5. 1<sup>st</sup> named Plaintiff had deposed Affidavit in Support dated 22<sup>nd</sup> October 2013 and pleaded inter-alia.
  - 5.1 First named Plaintiff entered into a verbal agreement to purchase vehicle registration No. EP 671 and Chasis No. JTFDE6261001 33610.
  - 5.2 The first named Plaintiff joined his wife the 2<sup>nd</sup> named Plaintiff to obtain a loan from Merchant Bank of Fiji (*1<sup>st</sup> Defendant*) since he did not qualify for the loan.
  - 5.3 The arrangement was to make monthly payment of \$975.69 for a term of 3 years.
  - 5.4 The financing of the vehicle was arranged by the 3<sup>rd</sup> Defendant with the First Defendant.
  - 5.5 The loan was approved with his vehicle registration No. DW158 which was valued at \$5000.00, which was deducted from the total payable amount of \$35,124.84 as a deposit and the said vehicle too presently under guarantee to the 1<sup>st</sup> Defendant.
  - 5.6 The 2<sup>nd</sup> Defendant was joined in this action for the reason who being the seller of the vehicle No. EP671 since he had sold the vehicle by misrepresentation with regard to the condition and before lapse of 6 months vehicle body was falling apart and the 2<sup>nd</sup> Defendant is liable for the wrong doing.
  - 5.7 The Merchant Bank seized vehicle No. EP671 when installments fell into arrears of \$4,956.75. The responsibility for the payment to the 1<sup>st</sup> Defendant was undertaken by the 3<sup>rd</sup> Defendant since the vehicle was given to him to make regular payments.
  - 5.8 The Plaintiffs alleged that the 3<sup>rd</sup> Defendant connived with the 1<sup>st</sup> Defendant to arrange the finance to take advantage of the 1<sup>st</sup> named Plaintiff.
  - 5.9 The 1<sup>st</sup> named Plaintiff is willing to settle the arrears on condition the vehicle is being returned.

6. When the matter was taken up for hearing, the 1<sup>st</sup> named Plaintiff stated:
  - 6.1 Vehicle was seized over 21 days ago.
  - 6.2 The agreement was entered with the 1<sup>st</sup> Defendant about 5 months ago.
  - 6.3 The agreement was not explained to him by the 1<sup>st</sup> Defendant. No solicitor was present at the time of signing.
  - 6.4 He is a mechanic dealing with body parts and does not possess any experience with regard to engines.
  - 6.5 Purchasing of the vehicle was his choice and not influenced by the 1<sup>st</sup> Defendant. Admitted 1<sup>st</sup> Defendant was acting on the agreement.
7. The Defendant's counsel stated:
  - 7.1 Bill of Sale Rights was exercised by the 1<sup>st</sup> Defendant.
  - 7.2 Loan account was in arrears and only one payment was made i.e. \$850.00 which was less than the rental due \$975.69.
8. Considering the above, I make the following conclusion:
  - 8.1 No evidence was adduced to the Affidavit in Support to establish the contents of the Affidavit.
  - 8.2 Plaintiff had defaulted the payments and the 1<sup>st</sup> Defendant exercised its right to repossess the vehicle and taken steps to dispose the vehicle to recover its dues from the Plaintiff.
  - 8.3 No evidence to establish that the 3<sup>rd</sup> Defendant connived with the 1<sup>st</sup> Defendant to obtain a loan by the Plaintiff. As such he could not prove there was connivance between 1<sup>st</sup> and 3<sup>rd</sup> Defendants.
  - 8.4 The Plaintiff in his submission admitted that the 1<sup>st</sup> Defendant had taken steps in terms of the Bill of Sale. The Plaintiff's allegation that he was persuaded to purchase the vehicle by the 2<sup>nd</sup> Defendant cannot be accepted. The Plaintiff is a mechanic and it is unbelievable that he could not assess the vehicle which he purchased. In any event, the Plaintiffs cannot blame or confer the responsibility on the 1<sup>st</sup> Defendant for his own mistake.
  - 8.5 It is also my finding that the Plaintiffs had all the opportunity to pay the outstanding and take over the vehicle since the sale was fixed after 21 days of the seizure.

Assuming that the 1<sup>st</sup> Defendant (*it is not so*) repossessed and sale of the vehicle was done wrongfully, the Plaintiff has a right to claim damages.

Considering the above, I conclude the Plaintiff failed to establish a case for a restraining Order.

8.6 Accordingly, I make the following **Orders**:

- (a) **Order to restrain the 1<sup>st</sup> Defendant from selling the motor vehicle No. EP671 and DW158 is refused and Ex-parte Notice of Motion (subsequently converted to Inter-parte Notice of Motion) dismissed;**
- (b) **No Order for as to costs;**
- (c) **Writ of Summons filed to take its own course.**

**Delivered at Suva this 1<sup>st</sup> Day of November, 2013.**



.....  
**C. Kotigalage**  
**JUDGE**