

THE IMPACT OF CHATTEL MORTGAGES

ON THE DEVELOPMENT OF THE KENYA LAW OF HIRE PURCHASE.

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requirements for the LL.B. Degree, University of Nairobi.

B Y

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INTRODUCTION.

As the title suggests, the central purpose of this research is to ascertain whether chattel mortgages have had any impact on the development of the hire purchase law. The impact may take various forms. They may have the effect of retarding the developmental growth of the use of hire purchase agreements. An illustrative case in point is the Tanzanian experiences with her Hire Purchase Act. In that Country, the resort to the use of chattel mortgages by the sellers including the finance Companies not only evaded compliance with the Act (1), they also retarded the development of the use of hire purchase agreements. Furthermore, the use of chattel mortgages did, to some extent, defeat the policy and the spirit of the Act, that is, that of protecting consumers. A continued and successful use of chattel mortgages may be an indicator that the Act is fast falling into disuse.

It is not impossible for one to tell the factors that influence the sellers to resort to such practices. An understanding of the factors that led to the enactment of the Tanzanian Hire Purchase Act, 1966 and the appreciation of the effects it had on the business are all essential.

In a nutshell, therefore, the main objective of the research is to find out whether the Tanzanian experiences with her Hire purchase Act ^{which} became operative in November, 1966, have been repeated here in Kenya. The research will therefore take following form :

In chapter one, the writer will seek to explain the reasons for state intervention in commercial transactions with special reference to hire purchase business. In this regard, the activities of the sellers and the unsatisfactory remedial role of the Courts to give relief to defaulting hirers will be discussed as being the main reasons for state intervention.

In chapter two, an analysis will be made to find out whether the Tanzanian experiences have been repeated in Kenya. That is whether the sellers have shifted towards using chattel mortgages to evade compliance with the Hire Purchase ACT as well as suspending business below the financial ceiling. In it, it is indicated why the sellers prefer hire purchase to chattel mortgage agreements. In essence, this will centre on comparing the advantages and disadvantages of the hire purchase and chattel mortgage agreements.

In chapter three, the declining use of the hire purchase Registry is examined and considered. In particular, the reasons for such decline as inflation and the credit squeeze are fully discussed.

In chapter four, the importance of both the Hire purchase and chattels mortgage Registeries is considered. Special reference is made to the purposes of registration under the two Acts and into what use the two Registeries are put by the Public. Thereafter, conclusions are given.

Since, this is a very wide field, it is necessary at the outset to delimit the scope of this study. The study is essentially aimed at ascertaining whether the sellers have resorted to the use of chattel

mortgages as a means of evading the provisions of the Hire Purchase Act. For it is not easy to tell all the effects of chattel mortgages on the development of hire purchase law that deserve examination as part of the research.

CHAPTER ONE.

THE BASIS OF STATE INTERVENTION

IN COMMERCIAL TRANSACTIONS WITH SPECIAL
REFERENCE TO HIRE PURCHASE.

The enactment of the Kenya Hire purchase Act, 1968 was not only welcome but also a necessary evil. A necessarily evil in the sense that it offends the once time-honoured common law doctrine of Freedom of contract (2)

However, for a better understanding of the factors that ^{led} to the enactment of the Kenyan statute, it is essential that an examination of the English Common Law of hire purchase be made. The reason is that the English common law of Hire purchase applied to Kenya until 1968.³

Having accepted that state intervention is necessary for the protection of consumers, it becomes essential to consider the factors that necessitated this intervention. The most important factor is the abuse of economic power by the sellers. This abuse is illustrated by the case of Cramer v. Giles.⁴ In that case Giles took a piano on hire purchase terms from a seller. As usual the property in the piano was to remain with the seller and if there was a default in the punctual payment of the instalments, the seller was entitled to repossess the goods. Giles paid all the instalments punctually except the last two. Despite the fact that Giles was able and offered

to pay the balance of the remaining amount, the seller refused this offer and repossessed the plane. It was held that the repossession was lawful.

Consequently, Giles not only lost the plane but also the instalments that had been paid to the seller. And surprisingly enough, the Court did not grant any relief at all to the hirer. The Court thus affirmed the sanctity of their contractual obligations. In so doing, the owner snatched back the goods without giving credit for the sums already ^{paid} and invariably ended up with a good profit.

Not was that all. The owners went further and absolved themselves from any liability for defects in the goods by the use of widely drawn exemption clauses. These clauses had the effect of depriving the consumers of any remedy. It follows therefore that some hirers ended up in getting shoddy goods and were without remedy.

Furthermore, in some cases traders ensnared hirers into signing agreements for goods they could not afford and might not even want. Of course, such hirers were bound by these agreements on the authority of *L'Estrange V. Graucob*.⁵ The reason is that a signatory to a contractual document is bound by its terms whether that party ^{is} aware or unaware of its terms.

This position has been vividly described by one learned author thus:

" A boom in hire-purchase led to the mushrooming of a large number of unscrupulous dealers. At a time when ^{the} "never-never" was not yet respectable, most agreements were entered into by poorer and less well-educated people. Door-to-door salesmen many of them paid by commission inveigled customers often the wife, whilst the husband was at work into agreeing to take goods without explaining how much the instalments totalled, and how much the total

exceeded the cash price of the goods. The unsuspecting customers signed agreements, copies of which were not supplied, which excluded all conditions and warranties and gave owner the right to enter premises, by force if necessary, to recover possession of the goods on default by the hirer. Even reputable companies used agreements with terms of this type..... Moreover, this right to recover the goods was sometimes enforced by certain "Snatch-back firms immediately on the slightest delay in payment, even though most of the price had been paid and the default was unavoidable or the result of unfortunate circumstances such as sickness or unemployment....."6

The above narration and the commercial malpractices therein prompted the English legislature to enact the Hire purchase Act 1938, essentially aimed at protecting the hirers.

The disturbing ^Squestion to be asked is, why did the Courts fail to grant relief to the hirers? It cannot be said that the Courts were unable to protect the consumers, for there are several cases which show that they are capable of affording protection. In this respect, it is interesting to note that the Courts have long protected defaulting mortgagers from foreclosure when they defaulted in their payments. Even tenants have granted relief from immediate forfeiture if they defaulted in rent payments.

This does not mean that judicial protection was limited only to tenants of house or to mortgagers in the case of mortgaged land. It extended to other fields of law, particularly company law. For instance, the Courts have adopted the law of fiduciary relationships

to the liabilities of promoters and directors ⁷. In so doing they have given a measure of protection to the shareholders over and above that provided by statute.

Moreover, even in hire purchase cases and under certain circumstances the Courts were able to grant relief to hirers. This is particularly the case in respect of a penal minimum payment clause in a hire purchase agreement. In Coedon Engineering Co. Ltd V. Stanford,⁸ one of the clauses provided that if the hirer terminated the agreement for non-payment of any instalment, then he would be liable to pay the whole of the balance of the hire purchase price. The Court refused to give legal effect to the clause on the grounds that not only was it a penalty but also a device to force him to carry out the contract. In other words, the clause had the effect of unduly discouraging the hirer from terminating the agreement.

The inference to be drawn from this case is that Courts have power to grant relief in certain cases. Nevertheless, no relief has been granted to a defaulting hirer, say by allowing him to recover part of the portion of the instalments he had paid or being allowed by Court extra time to pay, instead of allowing the owner to repossess the goods even where substantially all the instalments have been paid.

This unsatisfactory remedial role of the courts in failing to protect the consumers raises one interesting question. That is why were they unable to grant relief when they have shown their ability elsewhere to do so? Their inability may be explained on a number of grounds. The most important being the assumption that parties to a contract have an equal bargaining and economic power. Consequently, the agreement of the parties as expressed in the contract should not be interfered with. This view was expressed thus:

"equity mends no man's bargain" 9 This attitude of the Courts towards the sanctity of the contractual terms, overlooked important factors. They disregarded the inequality of bargaining power of the parties to the contract and that in most cases the Consumers were totally unaware of their legal rights. And even in extreme case illiterate as well.

An equally important consideration which may have inhibited the Courts from granting relief to defaulting hirers is the fact that the Courts are not supposed to legislate. So that if they would grant relief, ^{where} there was no existing remedy, they would be thereby be judicially- legislating. This is an anathema in itself, for legislation is the province of the legislature. In the words of one eminent judge:

".....I do not therefore see my way to call in aid equity to mend what may be an unfortunate situation and one which, if it calls for remedy, calls for aid by the legislature rather than by the judiciary." 10

Moreover, by virtue of the doctrine of judicial precedent which is observed by the Courts, their creative and curative use of judicial discretion ^{is greatly frozen. How this works} in practice is exemplified in one case where the Court held that it would have decided otherwise had it not felt bound by legal rules. 11 This position was further worsened by the nature of hire purchase agreements. In most, if not in all hire purchase contracts the agreements were in writing. Consequently, it was difficult for the Court to read into such a transaction any implied condition or warranty, which implied condition or warranty was expressly excluded by the terms of the agreement.

This state of affairs would not necessarily call for reform, if it were not for the fact that the Courts have failed to give the protection.

Thus the activities of the owners, particularly the 'Snatch back and the inability of the Courts to protect the hirers had the effect of influencing the legislature to intervene.

Hence , the necessity of state intervention in hire purchase business.

What effect has the Kenya Hire purchase Act, 1968 on the common law of hire purchase? And has it altered the position of the hirer Vis-a-Vis the owner in respect of a hire purchase agreement? In this respect, it is important to realize that the Act has interfered with the common Law doctrine of freedom of contract' in order to redress the balance in favour of the legislature that the parties do not have equal bargaining power. Thus the main justification for statutory intervention on the hire's behalf is to redress the imbalance of bargaining power.

However, the fact that the hirer is now afforded statutory protection does not necessarily mean that the Act has been successful. For to make provisions for statutory protection and to ensure their compliance are two different things. In this regard, it is necessary to make reference to the Tanzania experience with her Hire Purchase Act which became effective in November, 1966.

An extensive research which was carried out by two learned scholars after the Tanzanian Act had gone into operation shewed very interesting results.¹² They found out as a fact that many finance companies had suspended their hire purchase business under Shs. 60,000/- which is the financial ceiling .Furthermore, many of the remaining companies stopped using the hire purchase agreements and resorted to chattel mortgages.¹³

Consequently, it would be inferred from the Tanzanian experiences that the finance companies did not want their business to be Controlled by the Act. Many reasons have been put forward for this change in this the commercial practices of the companies. But , for the purpose of this study, it will suffice to know only two of them. That is, whether the Companies disliked the statutory restriction on their right to repossess in cases where the hirers had defaulted. In fact , the main reason for the enactment of the Tanzanian Hire Purchase Act , like the Kenyan one was to restrict the owner's right to repossess once two thirds of the hire Purchase price had been paid. Secondly, whether the shift to the use of Chattel mortgage agreements was intended to evade Compliance

with the Act's restriction on repossession.

Thus two factors emerge from the Tanzanian experiences: That the shift to Chattel mortgages was intended to evade the requirements of the Act and that the substantial suspension of business below the financial ceiling, reflected their desire to write their business outside the Act. It is submitted that such Commercial Practices defeated the Policy and spirit of the legislature, to some degree.

Whether or not the Tanzanian experiences have been repeated in Kenya is the subject-matter of discussion in Chapter two, to which we now turn.

CHAPTER TWO.

THE PREFERENCE OF HIRE

PURCHASE TO CHATTEL MORTGAGE

AGREEMENTS..

It is easy from the Tanzanian experiences to conclude that the same practices would be reproduced in Kenya after the enactment of the Hire Purchase Act in 1968. Such general assumptions are based on two grounds: that both Acts were principally designed to curb the 'Sharp Practices' of the owners by restricting their right to repossess in the event of default. And secondly, on the fact that the same Companies that operated in Tanzania were the very ones carrying on business in Kenya. Put in the words of the learned researchers:

" Each Company operates hire Purchase businesses in Kenya and Uganda and particularly in the former Country these businesses have a considerably larger volume." ¹⁴

However, the writers study has shown precisely the opposite of what was found to be obtaining in Tanzania, whose Act became operative in November 1966. For example, in Tanzania in 1968, from the months of January to May, inclusive 392 Chattel mortgage agreements were registered and in 348 or 89 percent of these a motor vehicle was listed as the security. ¹⁵ During the same five-month period in 1968, only 330 hire purchase agreements were registered in respect of motor vehicles.

On the other hand , in the corresponding period in 1966, that is before the Tanzanian Act became operative only 83 agreements were registered and only 37 or 43 per cent of these listed a motor vehicle as a security. This is a clear indication that when the Act became effective in November, 1966, there was a substantial shift to Chattel mortgages.

Unlike in Tanzania, the figures for Kenya immediately before and after the Hire Purchase Act of Kenya became operative in November, 1970 show a very insignificant shift to Chattel mortgages. Thus, in 1971 948 Chattel mortgage agreements were registered and in 675, Or 71 per cent of these a motor vehicle was offered as security. Whereas in 1969- that is , before the Act became effective, only 199 Chattel mortgage agreements were registered and in 109 or 55 per cent of these a motor vehicle, was the Subject- matter of the mortgage agreements. It is therefore indisputably clear that there was a shift to Chattel mortgages. This is clearly discernible from Chart one.

But, the Purpose of the study is not to ascertain whether there was a shift to Chattel mortgages per se. Rather it is aimed at finding out whether the shift to Chattels mortgages was Calculated to avoid complying with the provisions of the Hire Purchase Act. It therefore becomes necessary to compare the number of motor vehicles let on hire Purchase and those bought using the Chattel mortgage agreements.

In this respect, it is important to note that in 1971 the total number of motor vehicles let on hire Purchase and bought using the Chattel mortgage agreements were 7,503 and of these only 675, or 9 per cent, were Chattel mortgage agreements. Thus those let on hire Purchase accounted for 91 Per cent of the total vehicles, that is 6,828. This means that the number of motor vehicles let on hire Purchase exceeded those bought using the Chattel mortgage agreements.

A similar trend prevailed in 1974. In that year a total of 4,600 motor vehicles were bought using the Chattel mortgage agreements plus those let on hire purchase. And of the total number of vehicles 970, or 21 per cent were in respect of Chattel mortgage agreements while those let on hire purchase accounted for 79 per cent of the total number of motor vehicles.

If these figures are anything to go by, they do indicate that there has been a shift to Chattel mortgages for motor vehicles, though a slight one. This greatly contrasts with the Tanzanian.

experience where there was a substantial shift to Chattel mortgage for motor vehicles. In effect this means that many finance companies evaded the Tanzanian Hire purchase Act. Whereas in Kenya the Switch to Chattel mortgage was on a much smaller scale.

That is not the end of the story. Not only was the hire purchase form of agreement more popular than the Chattel mortgage form of agreement, in respect of motor vehicles alone, it also extended to household appliances. Thus in 1971 hire Purchase and Chattel mortgage agreements Concerning household appliances totalled 42,480, and of these 42,458, or 99 per cent were hire Purchase agreements in respect of household goods. The same trend was discernible in 1974. For in that year, the number of hire Purchase and Chattel mortgage agreements registered in respect of household goods totalled 28,474, and of these 28,454 or 99 per cent were hire Purchase agreements.

What is clear is that the number of agreements whether they were in respect of motor vehicles or household goods, those registered in the Hire Purchase Registry substantially out-numbered those ones that were registered in the Chattels mortgage Registry. This is vividly discernable from Charts 1 and 2.

Consequently, this raises the very interesting point: Why do the sellers prefer using the hire purchase to chattel mortgage form of agreements? This is particularly interesting in view of the fact that we would ordinarily expect sellers to prefer a form of agreement that does not restrict their right to repossession.

It is not difficult to understand why the hire Purchase form of agreement is more preferred in Kenya than in Tanzania. The Chief reason has been put thus: ".....the Kenyan statute (that is, the

Kenya Hire Purchase Act, 1968) is significantly more favourable than the Tanzanian statute, to the finance Companies." That this is so cannot be disputed, for the statistics

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of both Chattel mortgage and hire Purchase agreements speak for themselves.

One of the main reasons hire Purchase is more favoured in Kenya is that, it is doubtful whether the sellers are really restricted from repossessing the goods in view of the provisions of section.16(3)(b) which in part states:

"16(3).....where two instalments of the hire purchase price are due and unpaid the owner may remove the whole or any part of the goods to any premises under his control for the purpose of protecting them from damage or depreciation and retain them there pending the hearing of the suit....."

The writer's reading of the above section is that the owner is statutorily enabled to repossess goods during the pendency of the suit.If this is a correct interpretation of the law, then the protection given to the hirer by section 15 of the same Act is taken away.The otherwise unlawful recovery is legalised and is possible before the final determination of the suit.It is arguable, therefore, that the recovery of possession before the final determination of the suit defeats the protection given to the hirer by section 15.It is submitted that the recovery of possession of the goods from the hirer is otherwise than by suit.This is surprising in view of the fact that the seller is allowed to repossess the goods which he otherwise might not have had under section 15.

Apart, from being favourable to the sellers as hereinabove illustrated the Act has a number of advantages over the Chattel mortgage form of agreement.For one of the disadvantages of a chattel mortgage is that the registration fees for goods of little value are higher than for hire purchase.

~~This requirement may be better illustrated by giving the chattel mortgage is that the registration fees for goods of little value are higher than hire purchase.~~

This requirement may be better illustrated by giving the actual registration fees.The registration fees under the hire Purchase Act vary according to the balance of the hire purchase price after paying the deposit. The fees is Shs.5/- for agreements up to Shs.2,000/- Shs.10/- for agreements between Shs.2,000/- and ^{Shs. 20 for agreements involving} Shs.10,000 and ever. ¹⁷ Hence, its suitability and popularity to retailers who sell small items of little value, which dominate the hire purchase business.

On the other hand, the registration fees for a chattel mortgage agreement is Shs.10/- irrespective of the amount of money which is the subject matter of the agreement ¹⁸.Moreover, the registration of a memorandum of satisfaction in respect of a chattel mortgage agreement costs Shs.10/-,whereas the registration of a similar memorandum of satisfaction under the hire Purchase Act is done ~~thereof obvious.~~ The advantage of hire Purchase over the chattel mortgage is

Furthermore, the drawing up and recording of a hire purchase agreement is not only less technical but less expensive as well than a chattel mortgage agreement. For latter agreement to be registered, it must be accompanied by a sworn affidavit of an attesting witness. The latter must have attested the due execution of the agreement.

Whether the attesting witness is sworn before a commissioner for oaths (that is, a public notary), a High Court judge or a magistrate, it involves the expenditure of money.¹⁹ And since the finance Companies are not Charitable Organizations, the legal fees expended for the notarization of the agreement are passed on ^{to} the consumers. It is in this respect that hire purchase agreements are less technical and expensive compared with Chattel mortgage agreements. For the former agreements do not involve the use of legal experts and advice which necessarily means incurring legal costs.

That is not the end of the advantages of hire purchase agreements. It is provided by the Hire purchase Act that an owner who receives possession of the goods from the hirer shall sell the goods as seen as practicable. And that he shall be liable to account for and pay to the hirer any net excess on resale (20). In other words, he holds the excess amount on trust for the hirer.

This provision raises a number of problems as to the effectiveness and usefulness of the provision to the hirer. In the first place, it is silent as to the procedure to be followed for such sales. And secondly, the owner is not placed under any duty to disclose the amount realized on the resale of the repossessed goods.

How then can the hirer know whether the Owner has netted an excess on resale or not? Assuming, without deciding that the owner has realized an excess amount on resale, how can he be able to institute proceedings for the recovery of that amount, when he would

net afford to pay the instalments due and payable: Moreover, an owner who is bent on evading his duty to return an excess will make it difficult for the hirer to discover the resale price. This argument gains force if one realizes that the owner would like to use the amount to balance off the losses he commonly suffers upon repossession of other goods. Perhaps, it is correct to argue that the owners would like to net the maximum of resale, so as to reduce the deficiency, which is often uncollectable.

It is interesting to note that the owner's accountability to the hirer is limited to situations where the owner retakes the goods "otherwise than by Suit." This is a serious limitation which may allow an owner to keep an undeserved amount of money. To put it in the words of one Scholar:

"Without extending it to all situations where the owner receives possession it enables him to make a profit until that moment unthought of." 21

In this regard, it may be argued, though not conclusively that the hire purchase form of agreement is more favourable to the owners than to the Consumers. This should not be taken to mean that all owners have such practices but rather that a few unscrupulous ones do adopt such practices.

While under the Chattels Transfer Act, the mortgagee is obliged to hold the proceeds of sale, after payment of all costs and expenses and of all sums due under the mortgage as a constructive trustee for the mortgagor. Moreover, there is a prescribed procedure for selling mortgaged property which is usually sold by public auction.²²

Before the goods are auctioned the mortgagor is also given the right to bid. This right cannot be taken away by any agreement between the parties.^{23.}

Therefore, in Comparison with the hire Purchase provisions it is apparent that a mortgager is in a better position of knowing the resale price and if there is any excess, may institute proceedings for the recovery thereof. Thus as between the provisions of the Hire Purchase Act and Chattels Transfer Act., in respect of resales, the former is more liberal to the owners than the latter. Hence, its popularity.

Although, it would take pages to list the advantages of the hire purchase over the Chattel mortgage form of agreement, it would be unfair not to mention the unregistered hire Purchase instrument as being an advantage over the Chattel mortgage. In this respect, it is important to note that whether a hire Purchase agreement is registered or not, no third person can qualify as a bona fide Purchaser of the goods comprised in the agreement. The reason is that the Act does not offer any protection to third parties. The relevant Section 5(4) merely Provides a penalty for non-registration, that is the owner cannot enforce it as against the hirer and his guarantor. Moreover, on the authority of Helby V. Matthews (24) a third party cannot acquire a good title because the Owner retains his Security in the goods and does not lose his ownership unless the hirer has paid up all the instalments.

On the other hand a bona fide Purchaser for value and without notice, of the goods comprised in the unregistered Chattel mortgage agreement acquires a good title against the whole world.²⁵

It is therefore submitted that in this regard a hire purchase agreement is superior from a seller's perspective to the Chattel mortgage.

Finally, the minimum payment clause as embedded in section 12(1) of the Hire purchase Act, is another advantage over the Chattel mortgage agreement in the sense that, a hirer who terminates the

the agreement becomes liable to pay the amount necessary to bring his total payment to fifty per cent of the hire purchase price. The section thus provides for compensation for depreciation of the goods, which provision is lacking in a chattel mortgage agreement.

However, the overall preference of the hire purchase form of agreement in Kenya does not mean that the chattel mortgage form of agreement is not without advantages. For not all the finance companies use the hire purchase form of agreement. To state it differently

"One other effect of the Act has been that some sellers have stopped using the hire purchase form of agreement. One motor dealer interviewed stopped selling motor vehicles through hire purchase agreements soon after the Act was introduced, and now uses a chattel 'mortgage' as a form of agreement"²⁶. The main reason for switching to the chattel mortgage is that there is no restriction to repossess the goods once the mortgagee has defaulted. But under the Hire purchase Act, the position is different. For once the hiree has paid two thirds of the hire purchase price, "the owner must keep the goods in safe custody at his own expense and immediately apply to the Court for an order of repossession."²⁷

This necessarily calls for an expenditure of money for filing the application. And if the owner happens to be a company then more money is expended in hiring the services of an advocate to represent it in Court. The reason is that under the common law, it is a rule of law that companies can only appear in Court by their advocates.²⁸ And if the application is contested by the hirer then the procedure will not only be lengthy but also time-consuming as well. The costs of such litigation and the time spent may have adverse effects on the company's business. It is therefore understandable when it is said that:

"Of these advantages (that is, of chattel mortgage) these dealers using chattel mortgage indicated that the lack of restriction on repossession was by far the most important, and was almost the only reason they had switched from hire purchase."²⁹

Furthermore, under the Chattels Transfer Act, the mortgagee can subject to the conditions imposed by the Act, excluded all implied conditions and warranties. An illustration of how this exclusion works and its advantage to unscrupulous sellers is exemplified by the case of Yeoman Credit Ltd v Apperly.³ In that case, Apperly took an old car on hire purchase without examining it. He soon found out that the car was totally unroadworthy and it would have cost him a substantial

NO.OF INSTRUMENTS REGISTERED IN THE CHATTEL MORTGAGE REGISTRY.

TYPES OF	MOTOR VEHICLES	HOUSEHOLD GOODS	LISTER ENGINES & OTHER MACHINERY	AIRCRAFT	OTHERS	TOTAL
1969	109	59	8	-	23	199
1971	675	22	230	2	17	948
1974	970	20	536	2	22	1550

C H A R T 1

Source:Chattels Mertgage Registry

NO.OF HIRE PURCHASE AGREEMENTS REGISTERED IN THE HIRE PURCHASE REGISTRY

TYPES OF GOODS	MOTOR VEHICLES	HOUSEHOLD GOODS	TOTAL
1970	<u>299*</u>	1,569	1,868
1971	6,828	42,458	49,286
1972	3,710	37,867	41,577
1973	1410*	32,023	33,433
1974	3,630	28,454	32,084

C H A R T 2

Source: Hire Purchase Registry.

* For the period 2.11.70 to 31.12.70

* Meter Vehicles registered from 1.1.73 to 30.6.73

* Household goods include radies, television sets, Furniture and watches.

sum of money to put it in good repair. Consequently, he claimed damages from the finance company. The latter sheltered behind an exclusion clause in the agreement:

"No warranty whatsoever is given by the owner as to the age, state or quality of the goods or as to the fitness for any purpose, and any implied warranties and conditions are also hereby expressly excluded."

It was held that Apps was entitled to damages because there was a fundamental breach of the contract. The doctrine of fundamental breach has been described as a judicial creation intended to modify the "harshness" or "draconic" effects of exemption clauses.³¹ Had the Courts not been creative enough, Apps would have likely failed in his claim for damages on the authority of *L'Estrange V. Graucob Ltd.*³² That is, a party is bound by the terms of a contract to which he is a signatory. If this had happened, then the finance company would have been entitled to a sum of money for a car that was unreadworthy. Thanks to the creative role of the Courts in using the doctrine of fundamental breach of contract as a weapon in assaulting exclusion clauses.³³

In recognition of such serious practices of using exclusion in clauses by some companies, it has been specifically enacted that certain conditions and warranties cannot be excluded under the Hire purchase Act.³⁴

Under a chattel mortgage agreement the owner is unrestricted including acceleration clauses. The effect of such clauses is to make the whole debt payable if one instalment is late or if one term of the agreement is breached. Whereas, under the hire purchase form of agreement that is within the Act's financial ceiling, it is not possible to include acceleration clauses. In this respect, it may be said that a chattel mortgage is more advantageous than a hire Purchase agreement.

In addition to the inclusion of acceleration clauses in a chattel mortgage, there is a further advantage. That is, a Court cannot enter a postponed order for the benefit of a mortgagor who has acted in breach of his obligations. These postponed orders have been imposed by the Court to enable the hirer to make late payments. They are particularly important in cases where default in payments may have been occasioned by illness or accident.

The overall preference of hire Purchase to chattel mortgage agreements shows that the finance companies in Kenya were more compliant with the Provisions of the Hire Purchase Act than were their Tanzanian counterparts. For the latter's non-compliance with the Tanzanian Hire Purchase Act was manifested in the shift to Chattel mortgages.³⁵ Whether this Compliance is to be interpreted as indicating the fact that the Hire Purchase Act has achieved its hirer-Oriented Protective Purposes or that the Act is favourable to the owners as the study as shown, is still debatable.

Despite, the overall preference of hire Purchase to chattel mortgages, there has been a general decline of the number of agreements registered in the Hire Purchase Registry. Since there are a multiplicity of factors which account for the decline, it is necessary to discuss the factors in chapter three.

CHAPTER THREE

THE DECLINING USE OF THE

HIRE PURCHASE REGISTRY.

Despite the popularity of ^{the} hire Purchase form of agreement in respect of both household goods and motor vehicles, there has been a general decline in the number of registered hire Purchase agreements. One would have expected a continued increase in the number

of registered hire Purchase agreements. One would have expected a continued increase in the number of registered agreements, due to the ordinary increase in Commercial activities.

But, for the purposes of this research, it will suffice to consider the reasons for the decline of the motor vehicles agreements. This in 1971, 19,535 motor vehicles were registered in the motor vehicle Registry, and of these 6,828 or 35 per cent were these let on hire Purchase. In the following year, that is in 1972, 16,677 vehicles were registered in the same registry, and of these 3,710 or 22 per cent were in respect of hire Purchased motor vehicles. In 1974, it may be said that the number of vehicles Purchased on hire purchase terms remained almost the same as in 1972. For the number of vehicles bought on hire Purchase was only 3,630, or 23 percent out of 16,088 vehicles registered in the motor vehicle Registry.³⁶

However, it should be noted that the above figures are not absolutely accurate. For the number of motor vehicles registered in the motor vehicle Registry are either new or have never been registered before. And that the figures for hire purchase include used vehicles, which are not registrable for the Registrar informed the writer that the practice is that only non-registered vehicles need be registered.

But the figures show more new motor vehicles were acquired through other means other than in accordance with the provisions of the Purchase Act. In other words, the hire Purchase form of agreement under the Act was not used.

A number of explanations have been put forward to account for the decline. They range from inflation, Credit squeeze and the non-registration of registrable hire Purchase agreements. Therefore

a close examination of each factor is necessary;

With this in mind, it is worth noting that the financial Ceiling of Shs.80,000/- was essentially intended to protect hirers of buses, since buses cost less than that amount at that time. For Mr. J.M. Kariuki, the member of parliament who was largely responsible for the enactment of the Act said.

"The reason why I thought fit to leave it at £ 4,000 is because most of our people who are taking goods on hire Purchase are the bus Owners, and most of the buses in this Country costs (Sic) between £ 3,500 and £4,000. These are the type of people who have suffered much on the hire Purchase agreement."³⁷ But due to inflation, devaluation and revaluation, the ceiling has been eroded to the extent that it no longer reflects the prices of buses. That this is true is supported by statistical evidence which showed that the price of a Leyland bus is Shs.146,285/- and not below the statutory financial Ceiling.³⁸ This has accounted for the decline in the number of registered agreements because the Act requires registration of agreements that are within the financial Ceiling. Since, the ^{buses} cost beyond Shs.80,000 there is no duty to register the agreements. Hence the decline.

Apart from inflation, the other equally important factor that has accounted for the decline is the imposition of a credit squeeze on 26th July, 1971. The squeeze had the effect of reducing the lending capacity of the finance companies to potential hirers. Consequently credit facilities to intending hirers were curtailed.

In fact, some firms dealing with motor vehicles were badly affected to the extent that many of them decided to stop dealing with hire Purchase business because it was impossible for them to get financial support from their respective financiers. The serious effects of the credit squeeze on the motor vehicle business had been vividly described.

thus:

" The credit squeeze severely hit most of the motor dealers to such an extent that most of them cut their hire Purchase business to nearly a third while others virtually stopped to operate hire purchase."³⁹

It is clear that the substantial decline in the use of hire Purchase is attributable to the imposition of the credit Squeeze.

Furthermore, some companies do not even take the trouble to register their agreements. Commenting on the loss of revenue the Registrar said that:

".....there is also another attribute which could be added to the loss of revenue in 1973. We have noted with regret that some Companies especially based here in Nairobi have ^{ve}discored a loophole in the Hire Purchase Act. There are very many people who go to these shops to buy goods on hire Purchase but what happens is that the agreement after having been executed does not come here for registration." Hence the declining use of the Hire Registry.

Moreover an owner may refrain from registering the agreement until after trouble has developed and if he wants to enforce it, can successfully register it. Although, the Registrar has discretion to reject registration of a late hire purchase agreement, upto date she informed the writer that no late registration has ever been rejected. The exercise of this discretion always in favour of the owner, is subject to the payment of a penalty of Shs.20/--⁴¹ for not registering within the thirty days as required by section 5 (1). This seems to be an institutionalised practice for one learned writer found out that:

"In practice, however, the Registrar informs me that she never exercises her discretion to reject the application. On payment of the prescribed fee she automatically registers the late agreement."⁴² For example, in 1971, the total number of registered agreements was

49,286, and of these 1345 or 3 per Cent were late registered agreements.⁴³ It may be tentatively argued that some sellers do not register their agreements, but if trouble is anticipated they apply for late registration to secure the validity and enforceability of the agreements.

This is likely to be the case because the companies are unlikely to be unaware of the hire Purchase registration provisions. Some of them have advocate employees who tender the necessary legal advice. This argument gains force if one realizes that companies must appear in Court by their advocate.⁴⁴ Moreover, it is a sign of shrewd businessmanship to know the law that governs his commercial transactions, for the smooth running thereof. If this be acceptable as a correct contention then, it is submitted that the non-registration of registrable agreements accounts partly for the declining use of the registry.

Finally, mention must be made of the insignificant shift to chattel mortgages as a factor explaining the decline in hire Purchase agreements.⁴⁵ It is sufficient to note that since there are chattel mortgage agreements, which agreements are governed by the chattels Transfer Act, they cannot of necessity be registered in the Hire purchase Registry.

Over and above all else is the question relating to the purpose of registration under the two Acts. Does registration protect the interests of the parties to the agreement alone or does it extend to innocent third parties who deal with the property? An answer^{to} this question merits an analytical discussion to which we now turn to.

CHAPTER FOUR

THE IMPORTANCE OF THE HIRE

PURCHASE AND CHATTELS MORTGAGE REGISTERIES.

The Purpose of registration under both the Hire Purchase and chattels Transfer Act and the legal consequences flowing therefrom differ greatly. It is therefore appropriate to examine each separately.

Apart from the ^{sanction} of an unenforceability of an unregistered hire Purchase agreement, the Act is silent as to the rights of the parties to that void agreement. In other words, the agreement cannot be enforced by the owner against the hirer and his guarantor, but the Act is also silent as to what happens to a third person who Purchases the property from the hirer without notice.

It is a rule of interpretation that where the statute is silent or ambiguous then the common law is called in aid, that is it becomes the law applicable⁴⁷ Consequently, as between the owner and the third party, the former is entitled to recover the property from the latter. But this right of recovery is subject to a number of conditions. The owner is entitled to recover the property on the authority of *Sewano Wafuzira Kutubya V. mintry Singh*,⁴⁸ that is, on condition that he does not base his claim on an illegal contract. And as long as the third party has no claim of right over the property. In this regard, the owner may found an action in detinue or Conversion, both of which are tertius actions. And, since the owner will seek recovery by virtue of being the owner, he is bound to succeed because the Act merely declares the contract as being void but not illegal.

Furthermore, it is submitted that the owner may succeed in recovering his goods from the hirer, even if the hire purchase agreement was unregistered. This submission is based on the interpretation of section 5 (4) (a) which states:

"(4) unless a hire Purchase agreement has been registered under subsection (2) of this section-

(a) no person shall be entitled to enforce the agreement against the hirer or to enforce any contract of guarantee relating to the agreement, and the owner shall not be entitled to enforce any right to recover the goods from the hirer....."

The owner cannot succeed if he bases his claim on contract. And if he bases it on a ^{action} ~~tertius~~ of detinue or Conversion, this might amount to "any right," Since a ~~tertius~~ right is embodied in the many common law rights. By applying the ejusdem generis rule of interpretation, the words "any right" will be interpreted as relating to contractual rights, and therefore a right to recover which is based on ~~tert~~ is not a right within the meaning of section 5 (4)(a). Consequently, by relying on the principle established in *Selvane Wofunira Kulubya V. Nistry Singh*,⁴⁹ the owner will recover the goods, despite the non-registration of the agreement, which renders it unenforceable but not illegal.

Thus two factors may be inferred from the registration requirements. 0 third parties who buy the goods in good faith even without notice are not protected at all. Secondly, the owner may be entitled to recover the goods from the hirer by basing claim on ownership and tertius liability. It is essential to note that this interpretation is not conclusive, but it does indicate one possible method through which an owner may recover his goods although the agreement was not registered. This does not rule out the likelihood that the Court would interpret the statute differently.

If the above interpretation is correct in law, what is then the purpose of registration under the Hire Purchase Act? A close reading of section 5 shows that there are at least three purposes of registration. In the first place, it enables the hirer to be possessed of the terms of a hire purchase agreement because the agreement cannot be registered under section 5, unless it embodies the requirements relating to agreements. Such as the price, description of the goods and the hirer's signature as required per section 6 of the Act. Secondly, it provides the state coffers with a source of revenue, for section 5 (2) requires the payment of registration fees. Thus, in 1971 a total of Shs. 433,677/- was collected as registration fees⁵⁰ Finally, the registration of agreements is intended to give publicity which will reduce the likelihood of fraud.

This is the purpose contemplated by section 5 (5) which states,

"(5) Any person may inspect the register of hire Purchase agreements during the prescribed hours, and may obtain from the registrar a certified copy of any entry in the register." If third parties search the register to ascertain the details about the goods they intend to buy, they may not be deceived into thinking that the hirer, who wishes to sell, is the owner of the goods in his possession. It is only in this sense that it may be said to give protection to third parties. Whether this serves a useful is discussed elsewhere.⁵¹ It may be said that the registration of agreements achieves publicity without protecting third parties who buy the goods in good faith without notice.

So much for the purpose and effect of registration and non-registration of hire Purchase agreements. Before a chattel mortgage agreement is registered there are certain statutory requirements to be complied with. Since these requirements have much in common with those of hire Purchase, what is said of a chattel mortgage agreement is also true of hire Purchase

... 26....

The main aim of registration of Chattel mortgage agreement is to protect the interest of the mortgagee and of innocent Purchaser and creditors.⁵²

Consequently, the registration statutory requirements must be complied with in order to give Constructive notice to persons who deal with the borrower. The goods must be described with sufficient certainty so as to put - a purchaser or creditor on inquiry as to the identity of the goods. This presupposes the use of the Chattels Mortgage Registry by intending creditors and Purchasers, a matter that is discussed elsewhere.⁵³

The description of the goods is not sufficient. It must also be accompanied by the names of the transacting parties, and their residential addresses. In short all, all the requirements regarding form, content and notarization must be followed. Failure to do so may render the agreement void as against third parties.

It therefore follows that a duly registered chattel mortgage agreement constitutes notice to the whole world of the mortgagee's interest in the Security, and therefore no one can qualify as a good faith purchaser from the mortgagor.⁵⁴ Whereas, the registration of a hire Purchase agreement does not legally constitute notice to the whole world. It is this notice-giving Provision which largely accounts for the registration of instruments of hypothecation and some agricultural mortgages in the Chattels mortgage Registry.

Unlike, a hire purchase agreement where the non-registration of the agreement renders it unenforceable-against the hirer and his guarantor, the effect of non-registration of a chattel mortgage agreement is only void for certain purposes. It is expressly provided by section 13 that an unregistered instrument is void as against an official receiver, trustee in bankruptcy or any person seizing the Chattels in execution of a Court order. Moreover,

an unregistered instrument does not affect a bona fide Purchaser for value without notice.⁵⁵ In other words, such a purchaser acquires a good title to the goods. Thus, under the chattel mortgage registration affords protection to third parties as well as the interest of the mortgagee. Finally, registration of Chattel Mortgage agreements provides a source of revenue for the state.⁵⁶

Whilst, it is true that the two Acts make provision for searches to be made in the Registeries, the question to be asked is whether third parties inspect the Registeries to ascertain whether the goods are subject to hire Purchase or mortgaged. Like the hirers who are often unaware of their legal rights,⁵⁷ third parties who intend to deal with the property comprised in the registered agreements are likely to be ignorant or even unaware of the existence of the Registeries in Nairobi. Therefore, the question of ascertaining whether the property is mortgaged or subject to hire Purchase does not arise at all.

This is further worsened by the fact that the two Registeries are situated in Nairobi. There are no branch registeries anywhere in Kenya. This has the effect of making intending third party Purchasers very reluctant to travel to Nairobi to make searches. Thus the distance in itself has a discouraging effect for it involves the expenditure of money^{for} travel. Even the finance Companies in Tanzania Objected to the registration requirement of the Hire Purchase Act because the only registry was to be situated in Dar es salaam.⁵⁸

Despite, the two inhibiting factors mentioned above a few people do turn up to check whether some property is subject to a mortgage. The Registrar informed the writer that about five persons inspect the register in a month. In the case of hire Purchase, third parties who intend to Purchase motor vehicles,

Check all particulars from the motor dealer and so they do not inspect the register. While those who buy from private parties may check particulars from the motor Vehicle Registry, if they so want.

However, there are other third parties who have made use of the two Registeries. The leading among them are finance companies. These companies conduct research to ascertain what the other companies sell and at what price and other terms with a view of improving and promoting their commercial sales. They are also interested in knowing the credit-standing of intending customers, who were previously customers of other lenders.

The second most important user is the Central Bureau of statistics. Its main interest is to compile statistics which may be used to measure the national consumption rate in respect of goods like radios, refrigerators and motor vehicles. In so doing they will be able to assess whether the standard of living is rising or falling.

Mention should also be made of the university students who use the Registeries for academic research purposes. The objectives of their research range from finding out the role of hire purchase and chattel mortgages in the national economic development to the practical implementation of the law. For example, the writer's research was to find out whether the finance companies were complying with the provisions of the Hire Purchase Act, or they were evading compliance by resorting to chattel mortgages. In short, the study was carried out to ascertain the impact of the Chattel mortgages on the development of the law of hire purchase.

CONCLUSION.

This study has shown that the Chattel mortgages have had an insignificant effect on the developmental growth of the use of hire purchase agreements. For in 1971, that is after the Hire Purchase Act became effective in November, 1970 the total number of motor vehicles

let on hire Purchase and bought using the Chattel mortgage agreements were 7,503 and of these only 675 or 9 per Cent were Chattel mortgage agreements. Thus, these let on hire Purchase accounted for 91 per cent of the total motor Vehicles agreements, that is 6,828. This means that the number of motor Vehicles let on hire Purchase exceeded those bought using the chattel mortgage agreements. A similar trend obtained in 1974.⁵⁹ It is therefore clear that the shift to chattel mortgages was insignificant in relation to Tanzania's substantial shift.⁶⁰

In other words, the Kenya based finance companies have been compliant with the provisions of the Hire Purchase Act, than their Tanzania counterparts. Whether this compliance is to be interpreted as being a successful operation of the Kenyan statute in its professedly hirer-oriented protective provisions, or as being more favourable to owners than the Tanzanian statute is debatable.

What can be said of these few Kenya-based finance companies who evaded complying with the Act by resorting to Chattel mortgages? This has had the effect of not only defeating the expressed intention and spirit of the Kenyan statute but also of retarding the growth of hire purchase law. What is clear is that such companies by resorting to chattel mortgages, they are seeking favourable terms for their commercial transactions. For certainly....." The chattel favouring Transfer Act was not enacted, with its provisions strongly favouring the lender, to facilitate the secured credit sale but rather to encourage the extension of credit to farmers and small businessmen whose only security may be chattels."⁶¹

For under a chattel mortgage agreement, the position is such that the form of the credit transaction is dictated almost solely by the lender, for he has the superior bargaining position. Consequently he can demand terms most favourable to himself. In some extreme cases, the terms exacted by the lender are unconscionable and oppressive upon the borrower including the unrestricted right to repossess even in cases of slight defaults.⁶²

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It can therefore be said that the Hire Purchase Act has to a lesser extent failed to give the legislative protection afforded the consumers, particularly in those cases where those who sell motor vehicles resort to Chattel mortgages. Obviously such situations call for reform if the Pre-1970 position with its attendant hardships to hirers is to ^{be} avoided.

If then reform be accepted as being necessary, what forms should it take? In this regard, it is important to note the loopholes in the Hire Purchase Act and then legislate accordingly to eliminate them. Consequently, remedial legislation is necessary to protect mortgagors who stand in a similar position to hirers. This may take the form of making Chattel mortgage agreements subject to the provisions of the Hire Purchase Act. This suggestion assumes that the Hire Purchase Act has succeeded in protecting the hirer.

However, such an amendment would not be a panacea in itself, for it is crystal clear that the present financial ceiling has been rendered almost useless by the forces of inflation, devaluation and revaluation. ⁶³ This raises the question whether the ceiling should be raised or be eliminated. In the first place, the question of raising the financial ceiling should be dropped altogether. For in countries like England it has been raised once and yet it has been steadily eroded. ⁶⁴ Moreover, the financial ceiling of Shs. 80,000/- was based on the then prevailing prices of buses, which prices no longer obtain in the market.

What importance does the financial of Shs. 80,000 indicate? does this mean that a hirer spending more than Shs. 8,000/- is able to find out his legal rights and able to protect himself? The factual truth is that a hirer including a body corporate who spends more than Shs. 80,000/- does not necessarily mean that he has an equal bargaining and economic power with a finance company. Nor does it mean that such a hirer is fully aware of his legal rights.

The inference to be drawn from the Shs.80,000/- limit is that those who buy low-cost goods merit protection. And if the goods are expensive, that is beyond the financial limit, the statutory protection is forfeited. The illegality of the financial ceiling is therefore apparent for it is ^{not} easily explicable why the hirer of the cheap bus is entitled to statutory protection, and the other who purchase a more expensive one is not.

It is therefore essential that the financial ceiling be eliminated in the interests of both consumers and sellers. Moreover, this would save time for the legislature from initiating new legislative acts to raise the financial ceiling ^{the existing one} once it is created. Since there is no evidence to show that a hirer who spends more than Shs.80,000/- is able to protect himself, the position should be as in Ghana. For the Ghanaian Hire Purchase, Decree 1974 applies to all hire purchase transactions irrespective of the goods. Section 25 of the Decree states:

"25 (1) This decree.....applies to every hire purchase and conditional sale agreement, regardless of the hire purchase price, cash price, or total purchase price of the goods. (2) This decree applies to agreements entered into or on behalf of the Republic as it applies to other agreements." ⁶⁵

It is clear from these provisions that conditional sales are also regulated. This is important in view of the fact that some sellers may resort to conditional sales as a means of evading compliance with the Hire Purchase Act. Moreover, in essence there is no difference ^{re} between a hire purchase ^v and a conditional sale except that in the latter the buyer is under a binding obligation to purchase, in view of the fact that no statute is without loopholes, the Courts would be empowered to block any loopholes that may be used by the sellers to evade complying with any regulatory provisions.

FOOTNOTES.

1. See S. Picciotto and W.C. Whitford, 'The Impact of the Tanzanian Hire Purchase Act, 1966,' 3(1969)E.A.L.R.11, at P.26.
2. Freedom of Contract assumes that the parties to a contract are equals in respect of bargaining and economic power.
3. S.3, Judicature Act, 1967, Cap 8 Law of Kenya
4. (1883), Cab. & EL. 151
5. (1934) 2 K.B. 394
6. A.L. Diamond, 'Introduction to Hire Purchase law,' at P.91,92
7. Gluckstein V. Arnes (1900) A.C. 240
8. (1962) 2 All E.R. 915
9. Per Harman, L.J. in Campbell V. Discount Co. Ltd V. Bridge (1961) 2 All E.R. 97, at P.103
10. Per Harman, L.J. Supra, note 9, P.103
11. Supra, note 5
12. S. Picciotto and W.C. Whitford, Supra, note 1, at P.25
13. W.C. Whitford, supra, note 1 at P.26
14. W.C. Whitford, supra, Note 1, at P.25
15. W.C. Whitford, supra, note 1, at P.26
16. W.C. Whitford, supra, note 1, at P.25
17. Legal notice No.212 of 1970
18. S.8, Chattels Transfer Act, Cap 28, Laws of Kenya.
19. S.1, Chattel Transfer Act, Cap 28, Laws of Kenya
20. S.25, Hire Purchase Act, cap 507, Laws of Kenya
21. R.W. Hodgkin, 'The Kenya Hire Purchase Act, 1968,' 6(1970) E.A.L.J. 198 at P.207.
22. S. 42, paras. 6 & 7 in the Third Schedule chattels Transfer Act, cap 28, laws of Kenya.

23. Saleh V. Eljefri, (1950) 24 K.L. R. (Pt.1.) 17.

24. (1895) A.C. 471

25. S.14 ,Chattels Transfer Act ,Cap 28, laws of Kenya

26. S.E. Surani, 'Hire Purchase Financing in Kenya' at P.80

27. W.C. Whitford .Supra, note 1, at p.23

28. East African Roofing co.Ltd V.Pandit(1954) 27 K.L. R.86

29. S.E. Surani, Supra, note 26, at P.32

30. (1961) 2 All E.R. 281

31. W.Mutunga, 'The demystification of the Kenya law of Hire Purchase,' at P.

32. Supra, note 5

33. It should be noted that it is no longer clear that the doctrine of fundamental breach would- apply. For in Suisse Atlantique societe d' Armement Maritime S.A.V.N.V. Rotterdamse Kolen Centrale [1966] 2 All E.R.61 the House of Lords was of the opinion that the doctrine was one of construction only, thus rejecting the Substantive doctrine. In effect, the operation of the Substantive doctrine of fundamental breach has to some extent been limited.

34. S.8. Hire Purchase Act, Cap 507, laws of Kenya

35. W.C. Whitford, Supra, note 1 P.26

36. The source of information is the Central Bureau of statistics.

37. W.Mutunga, Supra, at P.24

38. The bus was sold by the Ceoper meters Corporation (K) Ltd to Mawinge Bus service Ltd, on the 6th December, 1975

39. Registrar of Hire Purchase, " Annual report, 1971."

40. Registrar of Hire Purchase, Supra, note 39

41. Legal Notice No. 182 of 1970

42. W.Mutunga, Supra, note 32, at P.22

43. The information was obtained from the Hire Purchase Registry.

44. Supra, note 28

45. Supra. 34.....

46. S.5 (4)(a), Hire Purchase Act, Cap 507, Laws of Kenya.
47. Daws V. Daws 27 K.L.R. 125
48. (1963) E.A. 408 (P.C.)
49. Supra, Note 48
50. Registrar of Hire Purchase, 'Annual Report, 1971.'
51. Infra
52. S.4, Chattels Transfer Act, cap 28, Laws of Kenya
53. Infra
54. Supra, note 52.
55. S.14, Chattels Transfer Act, cap 28, Laws of Kenya.
56. S.8, Chattels Transfer Act, cap 28, Laws of Kenya.
57. W.C., Whitford, Supra, note 1, at P.34
58. W.C., Whitford, Supra, note, at P.23
59. Supra
60. W.C., Whitford, Supra, note 1, at P.26
61. W.C., Whitford, Supra, note 1, at P.38
62. Nurdin Bandali V. Lembak Tanganyika Ltd (1963) E.A.304
63. W. Mutunga, Supra, note 31.
64. G. Berrie and A.L. Dianend, "The consumer, Society and the law.", at P.153.
65. The Ghanaian Hire Purchase Decree is No. 292, of the National Redemption Council Decrees.

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