

Rights and duties of parties involved in sale, purchase of goods

People need various goods and items for personal use or trade. Therefore, sale and purchase of goods is an inevitable activity all over the world.

Goods or raw materials for human consumption and industrial production are usually obtained from different areas either locally or abroad. That is why laws and regulations are enacted to guide their transactions to avoid disputes between parties involved.

Laws and regulations are categorized into two: laws which regulate local transaction and those that deal with international or cross-border transactions.

For local transactions, there are several laws governing purchase of goods including Law of Contract Act Cap 345 R.E 2019 as the main act which regulates commercial transactions. Also, there are specialized laws such as Sale of Goods Act Cap 214 R.E 2019 and Hire Purchase Act, Cap 14 R.E 2019 and other many. In this article, we shall take our readers to understand rights and duties in purchase of goods, as required by the law. In doing so, we shall provide the highlights of the Sale of goods Act which is the prevailing law in dealing with sale of goods.

The most common law which regulates international sale of goods is the UN Convention of Contracts for the International Sale of Goods (CISG). This law sets out rules for contract formation and their respective rights and obligations of the seller and buyer of goods for cross-border transactions.

Back to the Sale of goods Act, this is a specialized branch of the general law of contract, enacted due to increase of mercantile transactions during industrialization period, following inadequacy of the provisions in the law of contract in regulating buyer and seller. It was enacted to curb some of the loopholes which were not covered in the law of contract. It should be noted that provisions of our act are more similar to the English Sale of Goods Act of 1893.

As to what constitute sale of goods, it is the transfer of ownership of an asset from one person to another under agreeable monetary consideration. The emphasis here is that consideration must be monetary and not otherwise.



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If it is not monetary, then it is not regarded as sale within the meaning of the law. Rather, it is an exchange of goods or barter trade. Further, it is important also to note that section 3 of the Sale of Goods Act provides the difference between sale of goods and contract of sale in which sale of good is an agreement whereby the seller transfers or agrees to undertake to transfer assets to the purchaser while sale of goods is an agreement to undertake transfer of assets or property to the purchaser or buyer upon fulfillment of certain agreeable terms and conditions.

Therefore, a buyer is required to be very careful with the nature of the agreement entered regarding sale of goods. We shall demonstrate specifically rights and duties of the purchaser or buyer in accordance with legal position in our jurisdiction.

First and foremost, rights available to the buyer are to receive goods or delivery of goods after making payment of the agreeable consideration as per section 30 of the Act. Receipts of the goods are a question left to the buyer and seller to agree on after payment of the purchasing price.

However, receipts or delivered can be either actual receipts or constructively. It is actual when the same is physically delivered to the buyer and it is constructive when the buyer acknowledges to have received even without being in physical possession of the goods.

Second, right to be given reasonable opportunity to examine or inspect goods sold before accepting the same. Section 36 of the Act provides the above right for the buyer to inspect or examine goods sold to them.

However, such right must be requested to be given by the buyer. It is important for any buyer to be aware of this right. Failure to have an agreement with the seller, then later on, it becomes difficult for the buyer to claim or reject goods once delivered.

In the case of Tanzania Cigarette Company Ltd vs Mafia General Establishment (2020), the

cigarette company, (the buyer) entered into an agreement to be supplied with clearing materials as specified in the orders issued to Mafia Company (the seller).

Materials supplied were properly received by the buyer in accordance with agreeable procedure. However, later on, the sale price was not paid by the buyer on the ground that delivered materials did not match the order given to the seller.

The Court of Appeal rejected the buyer's arguments on the ground that the buyer had reasonable opportunity to examine or inspect the goods sold upon request, the right which the buyer did not apply before receipt of goods.

Therefore, failure by the buyer to exercise the above right cannot exonerate the buyer from discharge of obligation to pay purchasing price unless they had reasonably applied for the right to examine goods.

Third, right to reject or cancel agreement and retention of goods sold. During given opportunity to examine or inspect goods sold, the buyer may opt to reject goods and not to proceed to make the payment in the event quality or quantity of goods do not match what was agreed on or requested as per section 13 of the Act.

Further, retention of goods should be within reasonable time and not long time without returning the same to the seller. It is a matter of law that long retention of goods is not acceptable.

Therefore, retention should be within reasonable time. However, any subsequent conducts related to goods which were rejected or cancelled, courts of law always look at the said act and do careful examination of the same and see whether the same amounted to acceptance of goods or not.

There is no hard and fast rule to determine under which period for retention of goods. Rather, this depends on case to case basis. In the case of Civil Appeal No 185 of 2020 between Heritage Insurance Company Tanzania Limited vs First Assurance Company Ltd, defect of purchased

services was noticed for more than two years back.

However, services were not official rejected by the buyer instantly. Rather, subsequent conduct of the buyer was to retain the services without cancellation or repudiation of the contract but continued to receive premium.

The Court of Appeal clearly did not accept repudiation of the agreement due to long retention of the services and subsequent conduct which clearly indicated acceptance hence the buyer was ordered to pay for services agreed to be paid.

Fourth is the right to sue for specific performance and claim interest. Section 53 of the Act mandates the court to compel the seller to perform what was agreed with the buyer. The only paramount condition for the buyer is to provide proof of agreement in sale of goods hence an order to compel the seller.

It is important to be careful when you ask for an order of specific performance because it is one of the specialized remedies in which the buyer should be satisfied first that it is the right remedy and the seller cannot easily temper with the quality or quantity of goods. Otherwise, the buyer may get an order because later on the goods supplied can be of no use.

Further, the buyer may opt to recover interest or specific damage due to nonperformance of the contract of sale of goods by the seller but this always depends on circumstances. However, the only thing required by the buyer is to plead

specific particulars of loss which shall be proved during the hearing of the dispute.

In Hire-Purchase Agreement as governed by the Hire Purchase Act, Cap 14, the nature of this agreement cannot be construed as contract of sale of goods. It is a matter of law that once the buyer is subjected to certain condition, upon fulfillment, that is where a person can purchase goods.

When there is no buyer, hire contract prevails and parties can repudiate agreement before accepting an offer to purchase as concluded in the English landmark case of *Helby vs Mathews* (1895) AC 471.

The hirer was required to pay 36 installments after which a piano would belong to him. The court did not accept that there was no binding contract for the buyer to fulfill his obligation as he could not be compelled to purchase the piano. Emphasis here is that legal expertise is required when parties enter into contracts of sale of goods.

Lastly, let's look briefly at duties of the buyer on sale of goods. There are so many duties which the buyer is legally bound to comply with in sale of goods. However, we shall take a look at the most important as covered in various provisions of the act.

The Buyer is duty-bound to accept goods upon delivery and to pay purchasing price in accordance with what the parties agreed. Further, the buyer is duty-bound to pay damage along with interest in the event of failure to discharge obligation.