

UGANDA / JUDGMENT

Kafumbe v Matovu (CIVIL APPEAL No. 015 OF 2016) [2017] UGHCCD 203 (14 November 2017)

[2017] UGHCCD 203

COURT

HC: Civil Division (Uganda)

BEFORE

Musota, J

CASE / FILE NUMBER

CIVIL APPEAL No. 015 OF 2016

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL APPEAL No. 015 OF 2016

(Arising from LDC Magistrates Court Civil Suit No. 011 of 2015)

KAFUMBE RONALD ::::::::::::::::::::::::::::::::::: APPELLANT

Versus

CHRISTOPHER MATOVU SSALONGO ::::::::::: RESPONDENT

BEFORE HON: JUSTICE STEPHEN MUSOTA

JUDGMENT:

The background to this Appeal is that the respondent sued the appellant claiming UGX.9,500,000/= (Nine Million five Hundred Thousand Shillings) being a refund arising out of a motor vehicle sale transaction between the parties and costs of the suit. The appellant in his written statement of defence denied the respondent's claim and contended that the respondent was at all material times trading as a money lender from whom he obtained a loan of UGX.2,000,000/=. The matter was mediated and the appellant agreed to pay UGX.4,800,000/= as the principal and interest on the loan and a consent was filed on court record. The respondent later decided to pursue the suit to recover the disputed sum of UGX.4,700,000/= plus costs. Judgment was entered in favour of the respondent/plaintiff. Being dissatisfied with the Judgement the appellant filed this appeal premised on the following grounds:

1. ***The trial Magistrate erred in law and in fact when he failed to evaluate evidence as a whole thus arriving at an erroneous decision.***
2. ***The trial Magistrate erred in law and fact in holding that there was a purchase agreement of a motor vehicle UAR 110Z Toyota Noah between the parties.***

Before resolving the grounds of this appeal, I must state that I am aware of the duty of my court as the first appellate court. As such a court, I must re-evaluate and re-appraise all the evidence and make my own independent findings and conclusions without being bound by findings and evaluations of the trial court. In so doing, the court has to bear in mind that it has neither seen nor heard the witnesses and should therefore make due allowance in that respect. See the case of ***Pandya Vs R (1957)336 EA, Williamson Diamond Ltd Vs Brown 1970 EA 1 & F. K. Zaabwe Vs Orient bank & Ors.***

In the case of ***Banco Arabe Espanol Vs Bank of Uganda Civil Appeal No.8 of 1998*** it was held that;

“we agree that on first appeal the appellant is entitled to have the appellant’s court’s own considerations and views of the evidence as a whole and its decision thereon, the appellate court must then make up its own mind notwithstanding the judgement appealed from but carefully weighing and considering it”*

This court will be mindful of that duty while disposing of this appeal.

In his submissions, counsel for the appellant stated that the appellant’s evidence was that he approached the respondent who was a money lender at the time for a loan of UGX.2,000,000/=. That the respondent demanded that a sale agreement be executed as security for the loan and this evidence was corroborated by evidence of three other witnesses.

It is asserted that the respondent in cross examination stated that at the time of the transaction the vehicle was not registered in the names of the appellant. Counsel wonders how he could part with such a substantial amount of money to buy a vehicle from the appellant who did not own it at the material time.

Counsel submitted that the appellant maintained that the sale agreement was intended as mere security for the loan of UGX.2,000,000/= and when the matter was mediated the parties agreed that the appellant pays UGX.4,800,000/= to cater for the principal and interest. Further that the appellant’s evidence was not rebutted or tested in cross examination which meant that the evidence was accepted as a whole.

On the other hand, counsel for the respondent submitted that the documents must be proved by documents and not by evidence outside the document. That the sale agreement tendered and admitted by the trial court was very clear and therefore there was no reason for giving effect to the evidence of the appellant’s witness at the expense of the agreement itself.

Counsel also stated that the appellant was in company of many other people when he was going to sign the agreement which shows that there was no coercion as he signed on a document whose contents he understood very well what was going on.

It was counsel's contention that a note written and signed by the appellant requesting for more time within which to refund the respondent's part payment of UGX.9,500,000/= was tendered and admitted in court without any objection but the appellant states that he does not remember writing such a note but on the same page admitted he wrote the same note.

I have read the lower court's record and submissions of both counsel and I will go ahead to resolve this issue.

According to PW1 Christopher Matovu Salongo who is the respondent, he testified that the defendant sold to him Motor vehicle Reg. No. UAR 1102 Toyota Noah at a consideration of UGX.12,000,000/=. That an agreement of sale was executed on 4th June 2013 and he paid a sum of UGX.9,500,000/=(Nine million Five Hundred Thousand) and the balance of UGX.2,500,000/= was supposed to be paid after the defendant had transferred the said Motor vehicle from the importers into his names.

It was also stated that the defendant now the appellant was supposed to hand over the vehicle to him and the logbook after registering it into his names within one week from the execution of the agreement but the appellant ignored him and disappeared with the vehicle.

According to the appellant's testimony it is stated that on 27th July 2012 he purchased Motor vehicle Reg. No. UAR 1102 Toyota Noah from car importer Captain Investments at a cost of UGX.17,000,000 as per the copy of memorandum of sale. That he paid in instalments until when the outstanding balance was UGX.2,000,000/= That in the company of Viola Ntambi he approached the plaintiff for a loan of UGX.2,000,000 to pay off the car importer. That on the 4th June 2013 the plaintiff agreed to give him the said loan on condition that he refunds UGX.4,800,000/= being the principle sum and interest.

That the plaintiff demanded that he signs an agreement selling his said vehicle to him and that the said agreement would serve as security for the loan. That the plaintiff further requested for a certificate of title for land comprised in freehold Block 488 plot 144 land at Nakawuka as further security.

That since he was in urgent need of the money he signed the agreement for sale of the vehicle and also deposited the certificate of title. The appellant further testified that he kept on paying off the loan by Mobile Money while maintaining custody of his vehicle and its log book until when it was impounded on court order.

The appellant further led different witnesses to support his case that he just borrowed money from the respondent. In the testimony of Viola Ntambi, she stated that she knows the plaintiff as a money lender and the defendant as a business partner. That she accompanied him when he was approaching the plaintiff whom she knew as a money lender for a loan of UGX.2,000,000/= and that the defendant signed the agreement of sale because he was in urgent need of money.

According to the testimony of Kiyimba Emmanuel, he states that he knows the plaintiff as a person trading as a money lender whereas the defendant as a borrower of money from the plaintiff.

That he is aware that the defendant obtained a loan of UGX.2,000,000/= from the plaintiff and that the plaintiff/respondent had taken the defendant/appellant to court for recovery of money. That the two parties invited him to mediate the dispute out of court and upon negotiations the parties agreed that the defendant would refund UGX.4,800,000/= being the principle and interest.

As stated by counsel for the respondent the law is to the effect that contents of the documents must be proved by the documents and not evidence outside the document. Section 91 of the Evidence Act states that when the terms of a contract or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence of its contents in cases in which secondary evidence is admissible under provisions herein before contained is allowed.

Section 92 further provides that when the terms of any such contract, grant or disposition of property have been proved in accordance with Section 91, no evidence of any oral agreement or statement shall be admitted as between the parties for the purpose of varying, contradicting, adding to or subtracting from its terms.

The above two provisions in effect prohibit one from adducing oral evidence to the effect that the terms of a contract, grant or disposition of property. The rationale of this is that it is based on the agreement that parties have made contract of their own free will and the court's only duty is to enforce the said contract and it is based on the sanctity of the contract.

In this case the appellant himself acknowledges that since he was in urgent need of the money he signed the agreement for sale of the vehicle and also deposited the certificate of title. This court upholds that sale agreement with utmost good faith because he was neither coerced nor tricked into signing the said agreement but rather did it from his free will.

The witnesses that accompanied the appellant also acknowledged that the appellant signed the sale agreement that was made between him and the respondent. It is further noted in the record of proceedings Page 27 that a note written and signed by the appellant requesting for more time within which to refund the respondents part payment of UGX.9,500,000/= was tendered and admitted in court without any objection. This clearly shows that the sale agreement was in relation to the sale of the car and not the money the appellant got as a loan.

It has also been shown that a consent settlement was entered between the appellant and the respondent where the appellant acknowledged indebtedness to a tune of UGX.4,800,000/= and counsel for the plaintiff/appellant prayed for Judgement in admission. This court also observes that had this money been advanced for a loan, the appellant ought to have mentioned the percentage figure at which the loan was advanced to accumulate it to a tune of UGX.4,800,000/=.

All these inconsistencies point to the fact that the sale agreement was in relation to the sale of the car and not a loan advancement to the appellant. The learned trial Magistrate therefore properly and clearly evaluated the available evidence and concluded that there was a purchase agreement of Motor vehicle between the parties.

In conclusion, because of the above reasons, this court therefore dismisses this appeal with costs to the respondent.

Stephen Musota

J U D G E

14.11.2017

14.11.2017:-

Mr. Stuart Kamya for the Appellant is in Court.

Appellant in Court.

Respondent is in court.

Counsel for the respondent is not in court.

Ms. Jolly Kauma Court Clerk in Court.

Court:-

Judgment delivered in open Court in presence of:

Mr. Stuart Kamya.

Appellant.

Respondent.

Ms. Jolly Kauma Court Clerk.

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Joy Bahinguza Kabagye

ASSISTANT REGISTRAR

14.11.2017

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