

UGANDA / JUDGMENT

Nagji Textiles Ltd v A.B Popat & 2 Ors

[2010] UGSC 31 (13 October 2010)

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COURT

Supreme Court of Uganda

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THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGO

(CORAM: ODOKI, C. J., TSEKOOKO, KANYEIHAMBA, KATUREEBE, OKELLO. J. J. S. C.)

CIVIL APPEAL NO.5 OF 2008

BETWEEN

NAGJI TEXTILES LTD:..... APPELLANT

AND

1. A. B. POPAT
2. ANIL DAMANI
3. JOSEPH SSEMPEBWA

RESPONDENTS

[Appeal from the judgment and orders of the Court of Appeal (Mukasa - Kikonyogo, D. C. J, Engwau, and Twinomujuni, JJ. A.) dated 14th of March, 2008, in Civil Appeal No.37. of 2003,]

JUDGMENT OF KANYEIHAMBA, J. S. C

The facts and background to this appeal are well set out in both the lead judgment of Court of Appeal and in the judgment of the High Court. They may be briefly stated as follows:

The appellant is a limited company incorporated in Uganda. In Civil Case No. 1212 of 1998 in the High Court (Egonda-Ntende, J.), it sought multiple reliefs including a declaration that it was the lawful owner of the property comprised in Plot No.3, Acacia Avenue, Kampala, hereafter in this judgment referred to as the “suit property”. It also sought an order for cancellation of the 2nd and 3rd respondents, Anil Damani and Joseph Ssempebwa respectively, as subsequent registered

owners of the suit property on the basis that the sales and transfers of the suit property by the 1st respondent, A. B. Popat, to both were illegal and therefore null and void.

The appellant alleged that A. B. Popat illegally and without authority signed documents on behalf of the appellant to transfer the suit property to Anil Damani fraudulently. Similarly, the appellant alleged further that Anil Damani transferred the same suit property to Joseph Ssempebwa also fraudulently and with the knowledge of the latter which rendered him a purchaser with notice.

Respondent No.1 admitted that he performed the sale transactions in dispute but did so legitimately and legally on behalf of the appellant and with the appellant's express authority. Respondents 2 and 3 both asserted in their respective defences that they were bona fide purchasers of the suit property without notice. They denied any acts of illegality or fraud as claimed by the appellant.

In the High Court admitted documents showed that while the appellant operated as a registered limited company, two of its directors, Mr. Kanchanben Bhagwanji Musrani and Jayantilal Kalyanji Musrani; granted a power of attorney to the first respondent, A. B. Popat with authority to repossess the suit property which had been compulsorily acquired under the military government of Idi Amin and placed under the management of the Departed Asians Property Custodian Board. The power of attorney was signed, sealed and executed on the 16th of July 1992. On 5th, December, 1996, the same two directors of the appellant executed an additional power of attorney in favour of the 1st respondent giving him authority to sell and transfer the suit property to buyers. The two respective powers of attorney are contained in two undisputed documents, namely Exhibits No. P12 and No. P.20.

On the 2nd January, 1997, a document signed by one of the directors, Jayantilal Kalyanji Musrani, Exhibit P. 11, purported to cancel the powers of attorney granted to the 1st respondent. The alleged

revocation became crucial in the determination of this case both in the High Court and the Court of Appeal. After analysing and reviewing the evidence, the two courts reached concurrent findings, to the effect that a revocation by one director of a power granted by two directors of the company was ineffective and that in any event the revocation had not been served or received by the respondents before the completion of the sale and transfer transactions of the suit property. Consequently, both courts dismissed the suit and appeal of the appellant respectively and confirmed the successive sales and transfers of the suit property as lawful and effective. Dissatisfied with the decision of the Court of Appeal confirming the findings and orders of the High Court, the appellant has now appealed to this Court.

The Appellant's Memorandum of Appeal contains 4 grounds of appeal framed as follows:

1. Their Lordships of the Court of Appeal (Sic) erred in law and in fact when they held that there was no effective revocation of powers of attorney and that first respondent had acted with authority and without illegality or fault on his part.

2. The court erred in law and in fact when it held that the breach of power of attorney by the 1st respondent was not a breach of law but a breach of agreement between the agent and the principal and that this had no effect on the sale or transfer.
3. Their Lordships erred in fact and in law when they held that the allegation of fraud was not proven and had not been established against any of the respondents.
4. Their Lordships erred in fact and in law when they arrived at a final conclusion that the first respondent properly transferred the title to the 2nd respondent.

The manner in which these grounds of appeal are framed indicate that their draftsman is not familiar with the terminology and style normally used in this court. I can see no difference between grounds 1 and 2 of this appeal. Nor is the purpose of ground 4 clear.

However in my opinion, a proper reading of these grounds and analysis of the record of proceedings show that this appeal hinges on the determination of three issues, namely whether the powers of attorney were validly revoked, whether the sales and transfers of the suit property were lawful and in conformity with the authority derived from the powers of attorney and whether or not there was fraud.

Counsel for the parties chose to file written submissions in support and against the appeal. They supplied a number of authorities to this court in favour of their respective arguments and, many of the same are repetitions of what had been presented in the High Court and the Court of Appeal.

Counsel for the appellant, Mr. Godfrey Lule of Sebalu and Lule and Company Advocates of Kampala filed submissions on four issues, namely, the analysis and meaning of power of attorney, the status of the first respondent as an agent of the appellant and whether fraud had been committed by the respondents or any of them and on remedies. Mr. Lule, commences his submissions by analysing and interpreting the power of attorney generally, and then concludes that both the learned judge of the High Court and the learned Justices of Appeal erred in failing to do the same. In counsel's opinion, the courts should not have dwelt on what he terms periphery matters such as whether the power of attorney was revoked or not or whether or not it was registered or communicated, or whether or not it was a forgery.

Counsel contends further that the directors of the appellant had not signed the power of attorney as directors but as shareholders of the

appellant and in their individual capacity and that consequently, the power of attorney did not exist and could not bind the appellant.

On issue No.3, Mr. Lule contends that the two directors who signed the power of attorney were acting in a personal capacity for their own benefit and not that of the appellant. Counsel argued that in doing so, the two directors were fraudulent and they intended to steal the appellant's property. Counsel submitted that the pertinent documents this case lacked revenue duty stamps. He therefore argued that the avoidance of the use of stamp duty which is against public policy

and is a statutory fraud under Section 50 of the Stamps Act was further evidence that the respondents committed fraud against the appellant.

Lastly, counsel for the appellant contends that the second respondent was not a bona fide purchaser for value without notice. The reason for counsel's remarkable submission is that the transferee of the suit property paid for it the sum of only US\$ 95,000 which was less than the then market value and that therefore where a purchaser pays less than the market value for a property, that purchaser cannot be a bona fide purchaser for value without notice. According to counsel's submissions, another piece of evidence that shows that the 2nd respondent was not a bona fide purchaser is that he was aware of a caveat placed on the suit property on behalf of the appellant before the sale and transfer of the property to him. Mr. Lule cited the Stamps Act, *Makula International Ltd V. His Grace Cardinal Emmanuel Nsubuga and Daxrid Sejjaka Nalima V. Rebecca Musoke*, SC. C. No. 12 of 1998 as authorities in support of some of his arguments.

For the 2nd and 3rd respondents, Messrs Katende, Ssempebwa and Company Advocates opposed the appeal. In their submissions, counsel for the respondents contend that the powers of attorney to repossess, sell and transfer the suit property were validly and legally granted by the appellant through its two directors. The attempt to revoke it by one of

the shareholders failed as both the High Court and Court of Appeal found. Counsel for the two respondents contend that the evidence of PW1 who was the sole witness to testify on behalf of the appellant contradicts the submissions of the appellant's counsel in that that witness testified that he signed the power of attorney, Exhibit P12 as a director and shareholder, and not merely as a shareholder as alleged by the appellant's counsel. Counsel for the two respondents further contend that there was no effective revocation of the powers of attorney as the concurrent findings of both the learned trial Judge and the learned Justices of Appeal show. Counsel support the findings of the two courts that no fraud was committed by or proved against the respondents. Counsel contend further that both sales and transfers of the suit property were validly and legally effected by the grant of the powers of attorney to do so, the evidence of repossession and the minister's consent in accordance with the provisions of the Expropriated Properties Act, Cap 87. Counsel further contend that the requirement that a repossession certificate of the suit property is needed to enable a repossessed property to be sold is only directory and not mandatory. In counsel's opinion, all that is required is a lodgment of the certificate as sufficient authority for a transfer. Counsel for the two respondents cited the cases of *Kifamunte Henry V. Uganda* (S. C.) 10/97 *McConnell V. Kimani* [1967] E. A. 702, *Bryant Powis and Byrant V. La Banque Du Peuple*, (1893) A. C 170 *Kampala Bottlers Ltd Vs Damanico*, (SC) 22/92, *Lloyd V. Grace, Smith and Company* (1912) A. C 716, and *Percy V. Glasgow Corporation* 1992 AC 299. in support of their submissions.

The 1st respondent did not put in a defence, appear nor was he represented.

As pointed out earlier in this judgment, this appeal hinges on the determination of a number of issues namely, whether there was a power of attorney validly and legally executed in favour of the 1st respondent,

whether that power was properly exercised to transfer the suit property without fraud and whether the transferees were bona fide purchasers without notice.

In my view from the beginning, that is from the plaint in the High Court to written submissions filed in this Court, the appellant has laboured but failed to respond effectively to the issues enumerated above. The submissions and arguments of counsel for the appellant in this court do not advance the cause of the appellant any further. Mr. Lule, fell into the trap that should be avoided at all times, being entangled in the explanation and interpretation of the law applicable instead of bringing out clearly the facts and circumstances of the case. Construction and interpretation of the law applicable is largely a judicial activity to be left to the courts. Counsel for the appellant may have missed an opportunity by dwelling at length on the meaning and construction of the legal expression, “power of attorney”. Counsel should assume that judges know the principles of the law on which they are adjudicating unless the contrary is apparently shown or the court itself requests counsel’s opinion on the law.

In my view counsel overlooked or ignored very simple but crucial facts of this case. It was contended at length by Mr. Lule that the two directors who granted the powers of attorney to repossess, sell and transfer the suit property were acting as shareholders and in their capacities for personal benefit. However, that is not what the facts or record of proceedings show. Exhibits P 20 and P 12 indicate clearly that the two directors of the appellant granted the powers of attorney to the 1st respondent, A. B. Popat, as directors of the appellant.

It is a well known and established principle of company law that company affairs are run and administered by majority decisions of directors of a given company and not by decisions of individual shareholders. The only way shareholders can reverse or fault actions and decisions of directors is by passing requisite company resolutions

passed and adopted in general meetings duly notified and held validly for disclosed purposes and in accordance with the memorandum and articles of association of the company in question. Moreover, such resolutions can only affect the interests of third parties dealing with the company if the actions of the directors are halted in time before third party interests have already vested and the third party is notified and the notice is not only communicated, but in some instances registered. In this appeal, it is contended on behalf of the appellant that even if the power of attorney had been validly granted, it was nevertheless revoked before the sale and transfer of the suit property. Again unfortunately for the appellant this claim is factually and legally incorrect. The true facts and circumstances of this matter are well articulated in the judgment of the learned trial judge, Egonda- Ntende, J. (as he then was), as follows:

“ I have considered the evidence on record, and I am satisfied that there is no proof that Exhibit P 14, the revocation of the power of attorney, was brought to the attention of defendant No.1 either by letter or otherwise. There is no evidence to support notification of defendant No.1 personally. Secondly, perusal of Exhibit D 5 and Exhibit P 16 reveals that there was no registration of the revocation of the power of attorney with the Registrars of documents as claimed and initially supported by Exhibit P4. The Registration numbers on the document refer to another document and the revocation of the power of attorney is not available in the Registry. Even if one were to reach the conclusion that the revocation

was proper, it is clear that it was never registered or brought to the notice of defendant No. 1 before the sale and transfer of the suit property to defendant No. 2. ”

The articles of association of the appellant show that decisions of its board had to be conveyed by at least two board members. The power of attorney to repossess, sell and transfer the suit property was properly

authorized and signed by two directors. The alleged revocation was signed by one director or shareholder as admitted by the appellant. It was therefore null and void and ineffective. There was nothing to communicate to the respondents.

The learned trial judge, rightly, in my opinion, held that the power of attorney granted by the appellant to the 1st respondent was never revoked. Consequently, it follows that both the sale and transfer of the suit property were validly and legally effected. The learned Justices of Appeal unanimously agreed and confirmed the findings of the trial judge. In my opinion, both courts exhaustively and properly evaluated and reevaluated the evidence and came to the right conclusions. I am unable to fault their findings and judgments.

I find no merit in all the four grounds of appeal. I would dismiss this appeal with costs to the 2nd and 3rd respondents.

Dated at Mengo this 13th

13th day of.

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JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGGO

(CORAM: ODOKI C. J; TSEKOOKO, KANYEIHAMBA, KATUREEBE AND OKELLO, JJ. SC.)

CIVIL APPEAL NO. 5 OF 2008

BETWEEN

NGAJI TEXTILES LTD

APPELLEANT

AND

1. A. B. POPAT
2. ANIL DAMANI ::::::::::: RESPONDENTS
3. JOSEPH SSEMPEBWA

[Appeal from the decision of the Court of Appeal at Kampala (Mukasa- Kikonyogo, D. C. J., Engwau and Twinomujuni JJ. A) dated 14 March 2008 in Civil Appeal No. 37 of 2003]

JUDGMENT OF ODOKI, CJ

I have had the benefit of reading in draft the judgment prepared by my learned brother, Kanyeihamba, JSC, and I agree with it and the orders he has proposed.

As the other members of the Court also agree, this appeal is dismissed with costs to the 2nd and 3rd respondents in this Court and the Courts below.

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13th day of October

2009.

CHIEF JUSTICE

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENDO

[CORAM: ODOKI, C. J, TSEKOOKO, KANYEIHAMBA, KATUREEBE AND
OKELLO, JJ. S. C].

CIVIL APPEAL NO. 05 OF 2008

BETWEEN

NAGJI TEXTILES LTD:::::::::::::::::::::::::::::::::APPELLANT

AND

1. A. B. POPAT }
2. ANILDAMANI RESPONDENTS
3. JOSEPH SEMPEBWA}

[Appeal from the Judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, DCJ, Engwau and Twinomujuni, JJ. A) dated 14th March, 2008 in Civil Appeal No. 37 of 2003J.

JUDGMENT OF TSEKOOKO, JSC.

I have had the benefit of reading in draft, the judgment of my learned brother, G. W. Kanyeihamba, JSC, which he has just delivered. I agree with his conclusions and with the orders which he has proposed.

Delivered at Mengo this....13 day of . October -2009.

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JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT MENGGO

(CORAM: ODOKI, C. J., TSEKOOKO, KANYEIHAMBA, KA TUREEBE,
AND OKELLO, JJ. SC).

CIVIL APPEAL NO.5 OF 2008

BETWEEN

NGAJI TEXTILES LTD :::::::::::::::::::: APPELLANT

AND

1. A. B. POPAT
2. ANIL DAMANI
3. JOSEPH SSEMPEBWA

RESPONDENTS

[Appeal from the Judgment and orders of the Court of Appeal (Mukasa- Kikonyogo, DCJ., Engwau, and Twinomujuni, JJ. A) dated 14th of March, 2008, in Civil Appeal No. 37. of2003.]

JUDGMENT OF BART M- KATUREEBE, JSC.

I have had the benefit of reading in draft the judgment of my learned brother Kanyeihamba, JSC, and I concur with him that this appeal ought to fail.

I also agree with the orders he has proposed.

Dated at Mengo this..13th ...day of ... October...2009.

Bart M. Katureebe

Justice of the Supreme Court

THE REPUBLIC OF UGANDA IN THE SUPREME COURT OF UGANDA AT MENGGO

(CORAM: ODOKI, CJ, TSEKOOKO, KANYEIHAMBA

KATUREEBE AND OKELLO, JJSC.)

CIVIL APPEAL NO. 05 OF 2008

BETWEEN

NAGIJI TEXTILES LTD:

APPELLANT

AND

1. A. B. POPAT

2. ANILDAMANI

3. JOSEPHSEMPEBWA:

RESPONDENT

[Appeal from the judgment of the Court of Appeal at Kampala (Mukasa-Kikonyogo, DCJ, Engwau and Twinomujuni, JJA) dated 14th March 2008, in Civil Appeal No. 37 of 2003],

JUDGMENT OF OKELLO, JSC:

I have had the privilege to read in draft, the judgment of my learned brother, Kanyeihamba, JSC, and I agree with his conclusions. I also concur with the orders which he has proposed.

Dated at Mengo this: .13th., day of: . October 2009.

G. M. OKELLO

JUSTICE OF THE SUPREME COURT

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