THE REPUBLIC OF UGANDA.

IN THE HIGH COURT OF UGANDA AT KAMPALA.

(CIVIL DIVISION)

CIVIL APPEAL NO. 08 OF 2019

(ARISING FROM MISC. APPLICATION NO. 787 0F 2018)

(ARISING FROM MISC. CAUSE NO. 173 OF 2018)

STELLAH MOMENTS DECORATIONS :::::::::::::::::::::::::::::::: APPELLANT

VERSUS

MUWANGA JACKSON T/A KITAVUJJA

GENERAL AGENCIES :: RESPONDENT

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Appellant being dissatisfied with the Ruling and Orders of **Her Worship Nuwagaba Stella**, Chief Magistrate, delivered on 23rd January 2019 at Mengo Chief Magistrates Court, brought this appeal seeking orders that the ruling of the trial Magistrate be quashed and set aside and the costs of the appeal and in the trial court be awarded to the Appellant.

Brief Background to the Appeal

[2] The Respondent filed Miscellaneous Cause No. 173 of 2018 in the Chief Magistrates Court of Mengo for a certificate to levy distress for rent on behalf of Kiriri Cotton Company Limited against the Appellant who had defaulted on payment of rent for 11 months. The Appellant was served with the application to which she filed a reply. The Applicant also filed Misc. Application No. 787 of 2018 for leave to appear and defend; which application was dismissed by the learned trial Magistrate. Consequently, the trial court granted to the

Respondent a certificate to levy distress for rent. The Appellant thus filed this appeal against both the dismissal of MA No. 787 of 2018 and the order granting a certificate to levy distress for rent.

Representation and Hearing

[3] At the hearing, the Appellant was represented by **Ms. Stellah Businge** from M/s Stellah Businge & Co. Advocates while the Respondent was represented by **Mr. Semwogerere Emmanuel** from M/s Kinobe, Mutyaba Advocates. It was agreed that the hearing proceeds by way of written submissions. However, only Counsel for the Respondent made and filed their written submissions; which I have considered in the determination of the matter before Court.

The Grounds of Appeal

[4] The Appellant raised three grounds of appeal, namely that;

a) The learned trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record thereby arriving at a wrong decision which occasioned a miscarriage of justice.
b) The learned trial Magistrate erred in law and fact when she found that the Appellant did not raise a reasonable defence for her application and dismissed the same.
c) The learned trial magistrate erred in law and in fact when she granted a certificate to levy distress to the appellant's property?

Duty of the Court on Appeal

[5] The duty of a first appellate court is to scrutinize and re-evaluate the evidence on record and come to its own conclusion and to a fair decision upon the evidence that was adduced in the lower court. See: *Section 80 of the Civil Procedure Act Cap 71*. This position has also been re-stated in a number of decided cases including *Fredrick Zaabwe v Orient Bank Ltd CACA No. 4 of*

2006; *Kifamunte Henry v Uganda SC CR. Appeal No. 10 of 1997*; and *Baguma Fred v Uganda SC Crim. App. No. 7 of 2004*. In the latter case, **Oder, JSC** stated thus:

"First, it is trite law that the duty of a first appellate court is to reconsider all material evidence that was before the trial court, and while making allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on that evidence. Secondly, in so doing it must consider the evidence on any issue in its totality and not any piece in isolation. It is only through such re-evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial court"

Preliminary point of law

[6] In their written submissions, Counsel for the Respondent raised a preliminary point of law to the effect that Misc. Application No. 787 of 2018 for leave to appear and defend Misc. Cause No. 173 of 2018 was barred by law, incompetent and an abuse of court process. Counsel reasoned that Misc. Cause No. 173 of 2018 was not a suit brought under Order 36 of the CPR but, rather, was an application for a certificate to levy distress for rent which was duly served upon the Appellant, who in turn had filed a reply to the same. Counsel prayed to the Court to strike out the appeal on this ground.

[7] In law, the option to a defendant to file an application for leave to appear and defend a suit is provided for under Order 36 rule 3 of the CPR, and that is in the case of a defendant having been served with summons upon a specially endorsed plaint, otherwise called a summary suit. Where no such suit exists, it is not open to a defendant to adopt that procedure at will. In the present case, the suit before the Court was an application for a certificate to levy distress brought under Section 2 of the Distress for Rent (Bailiffs) Act Cap 76 and not a summary suit under Order 36 of the CPR. The application was duly served upon the Appellant (then Respondent) who had filed a reply to the same. It is

not clear as to why the Appellant went ahead to file M.A No. 787 of 2018 which was clearly outside established procedure. That application was not only unnecessary but was as well misplaced. I agree with Counsel for the Respondent that the said application for leave to appear and defend was incompetent. Although the objection was not specifically raised before the trial court as such, the dismissal of the application by the learned trial Magistrate served the same purpose. Nevertheless, and for completeness, I will proceed to consider and determine the grounds of the appeal on their merits. I will deal with grounds 1 and 2 concurrently and ground 3 separately.

Consideration of the Grounds of Appeal

<u>Ground 1</u>: The learned trial Magistrate erred in law and fact when she failed to properly evaluate evidence on record thereby arriving at a wrong decision which occasioned a miscarriage of justice

<u>Ground 2</u>: The learned trial Magistrate erred in law and fact when she found that the Appellant did not raise a reasonable defence for her application and dismissed the same.

Submissions

[8] It was submitted by Counsel for the Respondent that these grounds of appeal offend the provisions of Order 43 rule 1(2) of the CPR. Counsel relied on the decision in *Attorney General v Florence Baliraine CACA No. 12 of 2001* where the Court, while considering rule 86(1) of the Court of Appeal Rules, which is similar to Order 43 rule 1(2) of the CPR, held that grounds of appeal must concisely specify the points which are alleged to have been wrongly decided. The Court went on to hold that general grounds which do not concisely specify the points of objection offend provisions of rule 86(1) of the Court of Appeal Rules. Counsel submitted that the circumstances of the above

cited case are on all fours with the current appeal and prayed that the memorandum of appeal be struck out and the appeal dismissed.

Determination by the Court

[9] Order 43 rule 1(2) of the CPR provides that the *"memorandum [of appeal] shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively"*. It is thus an established position of the law that a ground of appeal must specify in what way and what specific aspect of the decision being appealed against was wrongly decided by the trial court. In *Ronchobhai Shivabhai Patel Ltd v Henry Wambuga & Another, SCCA No. 06 of 2017*, the ground of appeal was worded as "*the learned Justices of the Court of Appeal erred in law and in fact when they failed to evaluate evidence on record and they arrived at a wrong conclusion"*. Mugamba JSC held that "*this ground is too general and does not specify in what way and in which specific areas the learned Justices of Appeal failed to evaluate the evidence. It does not set out the particular wrong decision arrived at by the learned Justices of Appeal*." The Court thus struck out the ground as being offensive to the rule 82(1) of the Judicature (Supreme Court) Rules which is in *pari materia* with rule 1(2) of Order 43 of the CPR.

[10] In this case, ground 1 of appeal bears the same defect. It does not disclose in which way the trial court failed to evaluate evidence; which aspect of evidence was available before the court and was not subjected to evaluation. The ground is, therefore, too general and does not point to a particular wrong in the decision of the trial court. Ground 2 is also inconsequential since it is based on an application that has been found to have been unnecessary and incompetent. There is no way the learned trial Magistrate would have held otherwise in that regard. This ground raises no legitimate complaint in light of the decision of the trial Magistrate. In the circumstances, while ground 1 of the

appeal is struck out for being offensive to the applicable law, ground 2 has failed on account of lack of substance and being based on an incompetent application before the trial court.

Ground 3: The learned trial Magistrate erred in law and in fact when she granted a certificate to levy distress to the Appellant's property.

[11] It was submitted by Counsel for the Respondent that the grant of an application for a certificate to levy distress for rent was proper on account of the fact that the trial Magistrate was alive to the fact that the Appellant in her own evidence had admitted to having defaulted in paying rent.

[12] Distress for rent is a common law remedy that allows a land lord or a court bailiff acting as his/her agent to seize goods that are present at the premises and retain them until either the rent arrears are paid or the seized goods are sold to offset the rent arrears. Before issuance of a certificate for distress for rent, the following conditions must be established by the Applicant;

a) Existence of a land lord tenant relationship.

b) The tenant must be in arrears.

c) The amount claimed must be certain/specified.

[13] In this case, according to the record, the Respondent was acting on behalf of and on instructions of Mr. Mitesh Dige, the Manager of Kiriri Cotton Company Ltd, the registered proprietor of the property and thus the land lord. In her ruling, the learned trial Magistrate found that the landlord-tenant relationship between the parties before her was without dispute. She further found that the tenant (present Appellant) had last paid rent on 7/12/2017 and had accumulated rent arrears for over a period of 11 months to the tune of UGX 9,700,000/=. Since the Appellant had not paid the rent that was due, the trial Magistrate found no reason not to issue distress as prayed for by the Respondent. It is clear to me that the learned trial Magistrate was alive to the

principles of the law concerning distress for rent and properly applied the principles to the facts that were before the court. I do not find any reason or ground to interfere with her finding on the matter. This ground of appeal is without merit and it accordingly fails.

[14] In all, therefore, none of the grounds of appeal raised by the Appellant bear any merit. The appeal accordingly fails and is dismissed with costs to the Respondent, in this Court and in the Court below.

It is so ordered.

Dated, signed and delivered by email this 20th day of February, 2024.

Boniface Wamala
JUDGE