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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
[COMMERCIAL DIVISION]
CIVIL APPEAL No. 34 OF 2013

[Arising Out Of Mengo Chief Magistrate's Court Civil Suit No. 2688 Of 2011]

10 **JOSEPH YIGA MAGANDAZI ::: APPELLANT**

VERSUS

MAVIRI ANDREW ::: RESPONDENT

BEFORE: HON. MR. JUSTICE B. KAINAMURA

JUDGEMENT

15 This is an appeal by Joseph Magandazi, the appellant, against the decision of the Chief Magistrate of Mengo dated 4th November, 2011, which was in favour of the respondent and awarded him special damages of UGX 40,000,000/= general damages of UGX 8,000,000/= and interest at 20 percent on both the special damages and general damages from the date of filling the suit and date of judgment respectively.

20 The brief facts admitted by the trial court are as follows:-

On the 7th day of June 2009, the respondent who is a real estate dealer/ agent entered into an agreement with the appellant, a Director of Jomayi Property Consultants where the appellant made an undertaking to pay the respondent UGX 40,000,000/- as commission within 3 months from 7/06/2009.

25 Jomayi Property Consultants later bought the land and developed it into an estate but the promised commission remained unpaid. The respondent then initiated a suit against Jomayi Property Consultants and later signed an out of court settlement where the respondent agreed to withdraw the suit. The respondent later sued the appellant in his personal capacity claiming the UGX 40,000,000/= commission.

30 The Trial Magistrate upon trial entered judgment for the respondent against the appellant. The appellant being dissatisfied with the judgment appealed basing on six grounds which are:

1. The Trial Magistrate erred in law and fact when he held that the plaintiff/respondent was entitled to benefit from an agreement not supported by any consideration from the parties.
- 5 2. The Trial Magistrate erred in law and fact when he disregarded the plaintiff's/respondents admission that the suit claim was embodied in the sum of UGX 209,000,000= which the plaintiff abandoned in the Memorandum of Understanding of 26/06/2010.
- 10 3. The Trial Magistrate erred in law and fact when he held that the appellant could not enforce the Memorandum of Understanding of 26th January, 2010 against the respondent.
4. The Trial Magistrate erred in law and fact when he failed to properly evaluate the evidence thereby coming to an erroneous conclusion.
5. The Trial Magistrate erred in law and fact when he awarded UGX 8,000,000/= as general damages which is too high and without jurisdiction.
- 15 6. The Trial Magistrate erred in law when he failed to appreciate and deal with the illegality of lack of consideration in plaintiff's agreement thereby coming to an erroneous decision.

The parties argued ground 1 and 6 concurrently,

20 Counsel for the appellant submitted that the Trial Magistrate misdirected himself by concluding that the appellant had made an undertaking to pay a commission over land that was never purchased by him. Counsel argued that the 7th June 2009 agreement was not backed by any consideration.

Counsel for the respondent replied and submitted that Counsel for the appellant raised new issues on appeal and they should not stand.

25 In his judgment, the Trail Magistrate as well refused this submission on want of consideration stating that it was not part of the pleading in the WSD but evidence from the bar and thus barred by O.6 r.7 CPR and accordingly not available for the defense.

In the case of **Christine Bitarabeho Vs Edward Kakonge Supreme Court Civil Appeal No. 4 of 2000** the Supreme Court quoted with approval Lord Buckmaster in the case of **North Staffordshire Railway Company Vs Edge (1920) AC 259 at 270** where he stated;

5 “Upon the question as to whether appellants should be permitted to raise here a contention not raised in the court of first instance i find myself most closely in accordance with the views just stated by Lord Atkiuson. Such a matter is not to be determined by mere consideration of the convenience of this House, but by considering whether it is possible to be assured that full justice can be done to the parties by permitting new points of controversy to be addressed. If there be
10 further matters of fact that could possibly and properly influence the judgment to be formed, and one party has omitted to take steps to place such matters before the court because the defined issues did not render it material, leave to raise a new issue defendant on such facts at a later stage ought to be refused and this is settled practice”.

15 A close scrutiny of the appellant’s pleading and submissions in the lower court all point to the fact that the appellant was not the party to be sued, it was their defense that the appellant signed the memorandum as an agent of the company and not in his personal capacity, the issue of want of consideration is a new issue that arose at submission level at the trial in the lower court but was not argued in the pleadings. I am therefore of the opinion that the Trial
20 Magistrate was not in error to disallow the submission as it was barred by O.6r.7 CPR and accordingly, the appellant cannot raise it on appeal.

I so hold.

Ground four

Counsel for the appellant submitted that the Trial Magistrate failed to evaluate the evidence as
25 a whole and invited this court to re evaluate the evidence. Counsel provided the following areas as those where that the Trail Magistrate failed to evaluate the evidence;

1. *He failed to realize that there was no commission agreement between the respondent and the appellant for the Kisamula land;*

2. *He failed to realize that no evidence was led by the respondent to show that the land mentioned was purchased by the appellant.*
3. *He failed to realize that the appellant's evidence that the land in issue was purchased by a known entity Jomayi Property Consultants Ltd, in which the appellant is the Managing Director.*
4. *He failed to appreciate that the undertaking by the appellant to pay commission to the respondent was made by the appellant for and on behalf of Jomayi Property Consultants, Ltd that purchased the land.*
5. *He failed to equally observe that the respondent led no evidence to prove that there was a commission agreement between him and the said purchaser, Jomayi Property Consultants Ltd.*

At the trial, the appellant contended that he signed the Memorandum of 7th June as a Director of Jomayi Property Consultant and not in his personal capacity. The translated Memorandum read;

We: Andrew Maviri

Patrick Kato

And Mr. Yiga Joseph Magandazi of Jomayi Property Consultants have agreed.

DW1 testified that he is the Managing Director since 1997. He further stated that he runs the company and if he is not there, the company does not run.

The Trial Magistrate in his judgment held that the appellant bound himself to pay the plaintiff and other person within 3 months and the mention of Jomayi clearly shows that he was giving his address.

The appellant rightly argued that the liability of the directors are imposed on the corporation and relied on *Lennard's Carrying Co Ltd Vs Asiatic Petroleum Co Ltd* [1915] AC 705 where the House of Lords held that;

...a corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will most consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really the

directing mind and will of the corporation, the very ego and centre of the personality of the corporation.

In the case of ***Stanbic Bank Uganda Ltd Vs Ducat Lubricants (U) Ltd And 3 Others, Miscellaneous Application No 845 Of 2013*** court with approval quoted Lord Denning In ***HL Bolton Co Vs TJ Graham And Sons [1956] 3 All ER 624***, At Page 630:

10 *“A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such....”*

15 Evidence adduced by the appellant showed that the land was bought by the company, Jomayi Property Consultant and not the appellant. This clearly shows that the appellant was not the one buying the land but he was thinking for the company and acting as its agent. It cannot be held that a managing director dealing with an agent on a land that a company bought was acting in his personal capacity.

20 Under Section 52 (i) of the Companies Act 2012 powers of directors to bind the company are provided for, it states;-

“The power of the board of directors to bind the company or authorize others to do so in favour of a person dealing with the company in good faith shall not be limited by the company’s memorandum”.

25 Court in the case of ***Goldstar Insurance Company Ltd Vs Attorney General & 2 Ors (Civil Suit No 132 of 2010) [2014]*** held that:

“Generally a principal is bound by the acts of the agent executed on its behalf. The case law even establishes that a principal may be liable for the fraud of the agent in a suit brought by third parties. The extent of this principle is debatable”.

5 From the evidence on record in the trial court I am of the view that the appellant was acting on behalf of the company Jomayi Property Consultants.

The Trial Magistrate ought to have found that the appellant was clearly acting in the capacity of his directorship, and was acting for the company and not for himself, and hence not be held liable for paying of the commission. It was the company that was liable not the respondent.

10 I accordingly agree with the appellant that the Trial Magistrate failed to properly evaluate the evidence and misdirected himself.

I so hold.

Ground 2 and 3

15 Counsel for the appellant submitted that from the record at page 5 the respondent conceded that the UGX 209,000,000/= that was dropped included the sum of UGX 60,000,000/= claimed in the Luganda agreement of 7th June 2009 and that it was not proper for the respondent to turn around and claim the same. Further that since the respondent had abandoned his claim in the MOU of 26th January 2010 then there was no claim outstanding. That the Trail Magistrate failed to consider the defence evidence and arrived at an erroneous decision.

20 In reply Counsel for the respondent argued that the Trial Magistrate held that the MOU was signed neither by a Director, Secretary or an authorized person of Jomayi Property consultants since the signatory Mr. Mukibi was now of those. Further that the appellant was not a party to the MOU of 26th January 2010 and as such cannot run away from his obligation created under the MOU of 7th June 2009.

25 In his judgment of 4th November 2013 the learned Trail Magistrate stated;-

“It’s the advocate who signed on behalf of the company. Under cross examination the Learned Counsel admitted that he had no Powers of Attorney to sign or execute documents on behalf of Jomayi Property Consultants and neither was he a Director or Secretary of the Company so as to bind it in any way”

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The Trial Magistrate went ahead to hold that Mr. Mukibi the Advocate for the company had no legal authority to execute any document on behalf of Jomayi Property Consultant.

With due respect to the Learned Magistrate it appears he did not consider the MOU in its proper perspective. In my view from the evidence on record the MOU of 26th January 2010 was executed with the sole purpose of compromising the suit that was in court. As was held in the case of **Betuco (U) Ltd & Anor Vs Barclays Bank (U) Ltd & Anor HMA No 507 of 2009;-**

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“It is settled law that so long as Counsel is acting for a party in a case and his instructions have not been terminated he has full control over the conduct of the trial and apparent authority to compromise all matters connected with the action”

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It is therefore my finding that the holding by the Trial Magistrate that the MOU of 26th January was unenforceable against the Company was erroneous and I accordingly hold so.

Ground 5

In view of my holding on the grounds above, the respondent is not entitled to any damages.

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In the result the appeal succeeds, the judgment of the Trial Court is set aside. The appellant is awarded costs of the appeal and the lower court.

I so order.

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B. Kainamura
Judge
04.10.2017