

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CASE NO. HCT-00-CV-CS-0147 OF 2001

KASANGO PETER ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

VOICE OF TORO LTD. ::::::::::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. MR. JUSTICE J.B.A. KATUTSI:

JUDGMENT:

This is an appeal from a Judgment and decree of the Chief Magistrate sitting at Mengo dismissing a suit brought by the Appellant. Before this court, both the Appellant and the Respondents have given conflicting facts alleged to have given rise to the Appeal.

For the Appellant it is contended that on 22nd of March 2001, the Appellant sued Respondents by summary procedure for the recovery of a sum of Ushs.5,000,000/= drawn upon a dishonoured cheque issued by the respondents. On the 9th of April 2001, so it is claimed, the Respondents applied for leave to defend the suit, which leave was granted summarily and a written statement of defence was filed on the

23rd of May 2001. It is contended by the Appellant that at the trial only the evidence of the Appellant and that of the Deputy Managing Director of the respondent was recorded. On the 2nd of October, 2002 Judgment was entered for the Respondents.

For the Respondent it is contended that Mr. Chris Katuramu the Deputy Managing Director of the Respondent issued the Appellant with a post dated cheque for 15th October, 2000. Before the cheque could be presented for payment, the respondents stopped payment on 16th of October 2000. When the Appellant presented the cheque for payment it was dishonoured. The Appellant filed a suit before the magistrates court Mengo for the bounced cheque. The suit was dismissed, the court holding that Appellant had not furnished any consideration.

I think for better understanding of what took place in the lower court I need to set down the contents of the plaint as it was filed in the court. The relevant part runs as follows:

KASANGO PETER ::: PLAINTIFF

VS

VOICE OF TORO LIMITED :::::::::::::::::::::::::::::: DEFENDANT

PLAINT

1. The plaintiff is an adult male Uganda citizen of sound mind, and resident of Bweyogerere, whose address of service is C/O Nagemi & Co. Advocates, P.O. Box 7744, KAMPALA.”

There is then an affidavit sworn by PETER KASANGO of c/o Box 12046 Kampala which runs as follows:

1. THAT I am the plaintiff in the above suit and depose the affidavit in the capacity.
2. THAT the defendant is indebted to me, in the liquidated sum of Ushs.5,000,000/= as per particulars in the specially endorsed plaint here to attached.
3. THAT the defendant has no defence to the suit.
4.

5.”.

The so called “specially endorsed plaintiff” is what I have reproduced herein above. I sit not a terrible assault on the law to refer to such a plaintiff, is “specially endorsed”?

The first ground of appeal complains that the Learned Chief Magistrate misdirected himself by allowing the respondents leave to appear and defend a suit. What is alarming is that the Learned Chief Magistrate could treat a plaintiff as appear above as “specially endorsed”.

There is absolutely no merit in this ground of appeal which stands dismissed.

In the second ground of appeal, Appellant complains that the Learned Chief Magistrate misdirected himself in holding that the appellant sued the respondents, as a wrong party to the suit.

I think with respect, that there is merit in this ground of appeal. In his judgment the learned chief magistrate said:

“The plaintiff’s counsel framed two issues, the first of which was whether or not the plaintiff did furnish consideration for issue of the said cheque by the defendant and if so, whether the defendant is liable. The second issue was in respect of the relief available to either party. The defendant’s counsel agreed with the issues framed by the plaintiff’s counsel”.

In his judgment the Learned Chief Magistrate quoted the case of INTERFREIGHT FORWARDERS (U) LTD VS. EAST AFRICA DEVELOPMENT BANK, (1994 – 95) HCB 54 where it was held that.

“A party is expected to prove the case alleged by him and as covered in the issues framed. He will not be allowed at the trial to change his case or set up a case inconsistent with what he alleged in the pleadings”.

Then surprisingly the Learned Chief Magistrate said:

“With the above holding in mind, court wishes to rule on whether the plaintiff sued the correct person in this case”.

Where then did he derive jurisdiction to descend into a matter that did not neither appear in the pleading nor framed as an issue?

In his judgment the Learned trial chief magistrate said:

“At the onset, court wishes to note that although the defendant’s counsel agreed and dealt with the issues as set out by the plaintiff’s view, the latter should have quarried whether the plaintiff actually sued the right party in this case”.

While under O.13 r5 (1) the court is empowered at any time before passing the decree to amend the issues or frame additional issues, it must do so very sparingly and at any rate the parties must be given an opportunity to address court on such issues. Considering an issue to which appellant had not been called upon to give his view gravely injured his and prejudiced his case. This ground must succeed. The same can be said of ground 4 which also succeeds.

I now turn to ground three of the appeal. Here appellant complains that the learned chief magistrate misdirected himself by failure to evaluate properly evidence of

implicit and/or explicit consideration furnished by the appellant for the amount issued against the respondent's dishonoured cheque.

This being the first appeal I am enjoined to evaluate the evidence and come to my own independent decision on the evidence on record.

First the issue of consideration was raised by counsel for the plaintiff. A same reading of the plaint shows that plaintiff was suing on a debt as represented by the dishonoured cheque. One wonders how the issue of consideration came to be raised. Having raised it appellant must succeed or fail by it. The cheque in question was drawn on the Nile Bank by Voice of Toro of P. O. Box Kampala. On 13/9/2000 it was confirmed by Voice of Toro through Chris Katuramu its Deputy Managing Director as being genuine.

A "cheque" is a bill of exchange drawn on a banker and payable on demand. BILLS of exchange Act cap. 68 S. 72 refers. A "bill of exchange" is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a

specified person or to bearer. S.2 of the BILLS of EXCHANGE ACT CAP 68 refers. Valuable consideration for a bill may be constituted by-

- a) any consideration sufficient to support a simple contract.
- b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time. Section 26 of the BILLS OF EXCHANGE ACT. Refers.

The evidence of the appellant is far from being clear. It is colourless to say the least. It is not only colourless but self destructive as well. In examination in chief he said:

“On 13/9/2000 I had a transaction between me and voice of Toro where I was supposed to be paid by Chris Katuramu on behalf of Toro. He gave me a cheque of 5m/= to be drawn on Voice of Toro account with Nile Bank. The cheque was in my name and for 5m/= dated 15/10/2000. I had rendered the services of money lending. I had lent 5m/= to a gentleman called Bonny Matovu and Katuramu came in as a surety/guarantor for the money”.

In cross examination he said:

“I lent money to Bony Matovu on 13/9/2000. I don’t know if Bony Matovu was working with Voice of Toro. Bony Matovu came to my office seeking assistance. I told him I could give so long as I got the guarantee. I told him to get someone to stand and he brought Chris Katuramu. (SLC) Bony came with a cheque and wrote it. Chris Katuramu agreed to guarantee the cheque”.

From the above, it plain that although the cheque was drawn on the account of the respondent with the Nile Bank, there was no consideration for it. This was with the knowledge of the Appellant. Indeed in cross examination he said” “I did not provide any service to Voice of Toro”.

Appellant as payee was not a holder in due course within the meaning of the BILL of exchange act.

The suit ought to have been dismissed under this contention. As this contention alone is sufficient to resolve this appeal the appeal stands dismissed. As the

appellant succeeds on one ground of appeal, respondent will be entitled to $\frac{2}{3}$ of the costs of this appeal. I order accordingly.

J.B.A. Katutsi

JUDGE

15/12/2004

Asa Mugenyi for respondent.

Appellant unrepresented.

Nabatanzi court clerk.

Judgment read.

J.B.A. Katutsi

JUDGE

15/12/2004