THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL APPEAL NO. 18 OF 2010

KANGAHO EDWARD :::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

HIRAA TRADERS LTD :::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON JUSTICE ELDAD MWANGUSYA

JUDGMENT

This is an appeal against judgment and orders of Her Worship Nakitende Mary, Grade 1 of Mengo Chief Magistrate's court against the appellant. The background of this appeal is that the respondent filed civil suit No.104 0f 2006 where it was sought to recover general and special damages as a result of an alleged breach of contract executed between the appellant and the respondent on 11/05/2005 for sale of Motor vehicle Mitsubishi RVR model, 1993 chassis No. 1235103810.

The appellant had filed a written statement of defence wherein he denied ever purchasing the motor vehicle from the respondent contending that he had bought it from a one Mazhar Qayyum. He contested the respondent's locus to bring the said suit against him.

The magistrate found in favour of the respondent. The appellant being aggrieved by the judgment brought this appeal on the following grounds;

1. ***The learned trial Magistrate erred in law and fact by holding as she did that there was a contract between the appellant and the respondent which if she had applied the law correctly would have arrived at a different decision***

2. ***The Trial Magistrate erred in law and in fact by holding that the sale agreement (exhibit P1) contained two sellers thereby misdirecting herself by holding that the respondent was the seller in the instant case***

3. ***The Trial Magistrate misdirected herself on the position of the law when she ruled that Mazhar Qayyum was acting as a director of the respondent when there was no evidence to that effect***

4. ***The Trial Magistrate erred in law and fact when she based her findings on cheques to award special damages when they were never tendered in evidence as exhibits and were also never pleaded***

5. ***The Trial Magistrate erred in law and in fact when she awarded general damages to the respondent when she had not suffered any loss or injury through any wrongful act or omission of the appellant***.

The appellant was represented by Mr. Turyakira from M/S Turyakira & Co Advocates while the respondent was represented by Mr. Tumwesigye from M/S Tumwesigye Baingana & Co. Advocates.

Mr. Turyakira sought to argue grounds 1, 2, 3 and 5 and stated that he had instructions to abandon ground 4. In his submissions he stated that when the suit came for hearing the plaintiff/respondent called a one Mazhar Quayyum as the only witness who testified that he got to know the defendant/ appellant when he bought a vehicle from him. That the appellant bought a Mitsubishi RVR Saloon car on 11.05.05 for 14.000.000/= and that he only paid UGX 4.000.000 leaving a balance of UGX 10.000.000.

During cross examination, the witness testified that the seller in the said agreement is Mazhar Quayyum, that the document showed that the defendant bought the vehicle from him. This is the gist of the appeal, namely that by his own evidence and through cross examination of PW 1; he confirmed that he is the seller. The question that would therefore arise for determination is whether Hiraa Traders who sued the appellant was privy to the contract of sale.

The learned trial magistrate on page 2 of her judgment stated that in civil matters, the burden of proof rests on the person or party who alleges the existence of a fact. The standard of proof is on a balance of probabilities. According to Mr. Turyakira it was erroneous for the

trial magistrate to find that the sale agreement contains 2 sellers, when in fact the agreement was executed by only one Seller.

Counsel for the appellant thus relied on section 15 (2) of the Companies Act Cap 110 which is to the effect that when a company is incorporated it becomes a legal entity. He cited **Salmon v Salmon [1897] AC 22** and **Dr. Vincent Karuhanga (trading as Friends Polyclinic) v NIC & URA (HCCS No.617 of 2002)** (unreported) where Bamwine J as he then was stated;

> ***"that it is a fundamental principle of law that only a person who is party to a contract can sue or be sued upon it. A stranger to a contract cannot take advantage of the provision of the contract even where it is clear from the contact that some provision in it was intended to benefit him".***

Mr. Turyakira thus contended that Hiraa was not a party to the agreement of sale. Mazhar did not sign on behalf of Hiraa. He signed on his own.

In the case of **Nsagiranabo Erasmus t/a Nsagira Auctioneers & Court Bailiffs v M/S Associated Properties and 2 ors (H/C Misc. App No.953 of 2007)**, it was held that;

> ***"it is trite law that once a company is incorporated, it becomes a legal person/ entity separate from its directors, shareholders and other***

members. Therefore individual members are not liable for the company's debts".

Mr. Turyakira thus submitted that the respondent/ plaintiff was not privy to the contract and that the learned trial magistrate erred when she found that the respondent was the seller whereas not.

On the fifth ground, counsel for the appellant submitted that if this court finds that the plaintiff/ respondent did not have a locus and invited it to find so, then award of both special and general damages would have been given in error. He thus invited court to find that the trial magistrate erred and her judgment should be quashed.

In reply Mr. Tumwesigye opposed the appeal. He submitted that the learned trial magistrate did not make any error to hold that the sale agreement was between the appellant and the respondent. He relied on a sale agreement annexed to the plaint where the respondent was named as the seller and the appellant as the purchaser. The names appearing on top of the agreement are that the seller is a limited liability company which because of its artificial nature acts through its directors and such officers. Mazhar is a director in the company and all the acts constituting the sale transaction were done by him, he signed the sale agreement in his name, received the payment and took the appellant cheques to the bank for payment, he also caused the suit to be filed and there is no way the respondent company would do this without acting through its director.

He thus submitted that all the authorities cited by Mr.Turyakira merely point out the principle of corporate personality and that it is indeed true that a company is separate from its director, but it acts through its directors and this is exactly what happened, thus the said Mazhar was not selling the vehicle in his own capacity but as a director of the Hiraa Traders Ltd, that is why the company name appears on the sale agreement. The appellant deposited the money with Hiraa traders Ltd and even the cheques that bounced were issued in the names of the company (Hiraa Traders).

Mr. Tumwesigye further stated that there were also correspondences from the appellant's lawyers to Hiraa Traders Ltd about the bounced cheques; he thus concluded that that Hiraa Traders Ltd was privy to the contract and not Mazhar. Additionally, it was his submission that even if the contract was not signed but was wrongly signed, if the parties acted on it, then they are bound by it. That this is the position of the law as held in **Credit Finance Corp Ltd v Ali Mwakasanga [1957] EA 79**. Counsel further stated that the appellant took the vehicle, made part payment therefore he cannot turn around and say that the agreement was not properly signed. He also stated that even if the sale agreement is set aside, there is evidence of offer, acceptance and consideration; elements of a valid contract. He thus prayed that the appeal be dismissed with costs to the respondents.

In reply, Mr. Turyakira, invited court to look at page 6 of the proceedings where the plaintiff/respondent stated that...

'This is an agreement that I executed with the defendant, the seller in this agreement is Mazhar Qayyum ....there is no indication below my name that as having signed for and on behalf of Hiraa traders. No one appended his/ her signature on behalf of Hiraa traders.....'

It was therefore his submission that this changed the crux of the case and that the evidence is very clear that the seller was Mahzar Quayyum and not the company. He stated that the issue before court is not whether there was a contract per se but whether there was a contract between Hiraa Traders and the appellants that could be enforced. It was his contention that there was no contract between the appellant and Hiraa Traders and prayed that the learned trial magistrate's judgment should be set aside.

As a first appellate it is the duty of this court to re- evaluate the evidence on the record before drawing its own conclusion bearing in mind the fact that it neither had the chance to see the witnesses testify nor cross examine them. I have carefully studied the record i.e. the judgment of the learned trial magistrate, the record of proceedings in the trial court and all the documents adduced by both parties and thus arrived at the conclusion as stated below.

I have scrutinised the sale agreement and observed thus noted that the first paragraph thereto shows the parties to the contract as being the appellant and respondent respectively. The fact that Mazhar Qayyum signed at the end of the agreement does not make

him a party to the contract. He was acting as an agent of the appellant although it is not stated so. To me this is merely the form and not the substance of the contract. The testimony of the Mazhar Qayyum that the appellant relies on for proposition that the contract was not executed by the company is to me merely descriptive of the action that was taken by Mazhar Qayyum because it is the only manner that the company could execute the contract.

I am strengthened in this finding by the decision in **Lennard's Carrying Co. LTD v Asiatic Co. Ltd [1915] AC 705,** where it was held that liability could be imposed on a corporation for the acts of the directors by virtue that the directors are the controlling minds of the company. This is based on Viscount Haldane's explanation that;

> ***'...a corporation is an abstract. It has no mind of its own any more than it has a body of its own; its active and directing mind must consequently be sought in the person of somebody who for some purpose may be called an agent, but who is really a directing mind and will of the corporation, the very ego and centre of the personality of the corporation...'***

The fact that the company did not dispute the actions of Mazhar Qayyum is an indication of ostensible authority. This principle is to the effect that;

> ***'where an agent acts without actual authority or outside his actual authority, a 3rd party can enforce the contract against the company where there is a***

representation by persons who possess the actual authority that the agent has the authority to enter into that kind of contract on behalf of the company and the 3rd party is thereby induced to act upon the representation'. **(Coffee Marketing Board v Kigezi Growers Co-OP Union HCCS No. 437/1994)**

It is also clear from the record that the cheques issued by the appellant for payment were made to Hiraa Trader's Ltd and not to Mazhar as in his personal capacity; the appellant is thus estopped from claiming otherwise. The appellant did not lead any evidence to show that Mazhar had misrepresented to him in any way as acting for the company whereas not, had this been so then this court would be inclined to rely on the maxim; '*estoppel against estoppel setteth the matter at large' i.e.*in a case of one estoppel against another, the parties are set free and the court has to see what their original rights were.

In the circumstances this Court finds no merit in this appeal which is dismissed with costs

Eldad Mwangusya

J U D G E

09.03.2012