



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-CA-0056-2019
(ARISING FROM NTU-00-CV-CS-NO.70-2016)

NILE BREWERIES LIMITED ----- APPELLANT

VERSUS

EMMANUEL BINYERERE ----- RESPONDENT

Before: Hon. Justice Nshimye Allan Paul M.

JUDGMENT

BACKGROUND

The Appellant sued the Respondent in the Chief Magistrates court of Mbarara at Mbarara for a declaration that the coolers in the Defendant's possession belong to the Appellant, an order releasing the Appellant's coolers, general damages for wrongful detention and costs of the suit.

The Appellant claimed that it gave and or stored two coolers, namely; a Castle lite branded cooler of serial number – SDM0658150400177, and a Club branded cooler of serial number – SDM0658150400218; to its distributor in Ntungamo called Muhwezi Mugisha trading as Rugoma Traders. The said distributor was a tenant of the Defendant.

That the Defendant held onto the Appellant's coolers as the said distributor was shifting premises. It was the Appellant's case that the coolers belonged to it and not the distributor. The Defendant contended that the coolers belong to his tenant called Tumwine Wilson and could not allow any person to take them without the authority of his tenant.

In a judgment delivered on 4th October 2019, the learned Trial Magistrate Grade 1 held that the Appellant failed to prove its case on a balance of probabilities and that there was lack of a proper cause of action given the obscure

relationship between the Appellant and the Respondent. The suit was dismissed with costs to the Respondent. Being dissatisfied with that holding, the Appellant lodged this appeal.

5 **GROUND**

The grounds of appeal as stated in the memorandum of appeal are;

1. The learned trial Magistrate erred in law and in fact when he failed to evaluate the evidence of the Plaintiff's witnesses as a whole hence occasioning a miscarriage of justice.
- 10 2. The learned trial Magistrate erred in law and in fact by relying on hearsay evidence of the Defendant regarding the person to whom the coolers were delivered to hence occasioning a miscarriage of justice.
3. The learned trial Magistrate erred in law and in fact when he held that the Plaintiff departed from their pleadings regarding the names of the person to
15 whom the coolers were delivered, when in fact from the course adopted at trial, the un-pleaded issue became an issue when Court allowed Muhwezi Mugisha to give evidence.
4. The learned trial Magistrate erred in law and in fact when he assumed the role of a witness for the Defendant by making assumptions and including
20 facts in his judgment which never came up during trial.
5. The learned trial Magistrate erred in law and in fact when he held that the Plaintiff lacked a proper cause of action against the Defendant merely because there was no relationship between them which is irrelevant.
6. The learned trial Magistrate erred in law and in fact in holding that the
25 Plaintiff was not entitled to recover the coolers which he never claimed to be his hence occasioning a miscarriage of justice.

The Appellant prayed;

1. That the appeal is allowed.
- 30 2. The judgment of the lower Court be set aside.
3. The Appellant is awarded costs of this appeal and the trial Court.

SUBMISSIONS

The Appellant filed written submissions filed on 11th May, 2023, but No
35 submissions were filed for the respondent because he had passed on.

DETERMINATION

When this appeal came up on 06th June 2023 for hearing, Counsel for the appellants was in court, the parties were all absent and counsel for the respondent was also absent.

Counsel for the appellant informed court that they had served the respondent with the hearing notice, thereafter, prayed that the matter proceed ex-parte. The Court ordered the appellant to serve the respondents lawyers, and it also issued a schedule of filing written submissions.

Counsel for the appellants then informed court that the respondent passed away, but his estate got Letters of Administration. The lawyers for the respondent also wrote a letter filed on court record with attached death certificate of the respondent. Court then ordered the appellant to serve the administrator of the estate of the late respondent.

The case then kept on being adjourned to different dates.

It is trite that when a sole party to a case in court dies, the case abates, unless the cause of action survives and, in that case, the case can proceed with the legal representative of the deceased party as a party. This is because a person cannot proceed against a dead person, the deceased cannot be heard so as to form a basis for court to determine the matter before it after hearing both sides.

The law in Order 24 Rule 4 of the Civil Procedure Rules provides that;

"4. Procedure in case of death of one of several defendants or of sole defendant.

(1) Where one of two or more defendants dies and the cause of action does not survive or continue against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the cause of action survives or continues, **the court, on an application made for that purpose, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.**

(2) Any person so made a party may make any defence appropriate to his or her character as legal representative of the deceased defendant.

(3) **Where within the time limited by law no application is made under subrule (1) of this rule, the suit shall abate as against the deceased defendant."**

The respondent in this matter died on 24th December 2022 as per Death Certificate no 31065 issued by NIRA on 11 January 2023. this fact is not challenged, in fact counsel for the appellant also informed court on record about the death and added that the estate of the deceased got letters of administration.

I note that the appellant court have made an application under Order 24 Rule 4 (1) of the Civil procedure rules to cause the legal representative of the deceased respondent to be added as a party, but they did not.

I therefore find that the appeal abates under Order 24 Rule 4 (3) of the Civil Procedure Rules.



NSHIMYE ALLAN PAUL M.

JUDGE

29.01.2024