THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV-CA-101-2010
(ARISING OUT OF MBALE CIVIL SUIT NO. 78 OF 1996)

JAMES WAFEDA.....APPELLANT
VERSUS
MARIAM RASHID.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

This is an appeal from the decision of Her Worship Atingu Stella of civil suit No. 78 of 1996 Mbale. Appellant raised 5 grounds of appeal namely that:

1. Learned Magistrate exercised her jurisdiction irregularly.
2. Learned Magistrate erred in law and fact by misconstruing the evidence.
3. Learned Magistrate erred when she failed to construe the issues.
4. Learned Magistrate misconstrued the admitted pleadings.
5. Learned Magistrate's decision occasioned a miscarriage of justice.

Appellant prayed that the appeal be allowed, decision and orders be set aside and an order for retrial be granted.

As a first appellate, court, this court has the duty to re-evaluate the evidence and make my own conclusions thereon. This re-evaluation is subject to the fact that I did not have chance to listen to and observe the witnesses. (See ***Pandya v. R [1957] EA 336***).

This case revolves around the fact that the Respondent brought a suit against the appellant in the lower court for recovery of the sum of shs. 1,100,000/= arising out of a friendly loan advance. The loan was advanced against a security of a motor vehicle. It was a term of the agreement that the respondent would take possession of the motor vehicle and use it as a counter taxi on Mbale, Malaba route. Before expiry of the contractual date the road license and insurance expired. Respondent notified the appellant, by letter, which appellant ignored. At expiry of 78 days, appellant sought the return of his vehicle while respondent's money remained unpaid. She therefore sought its recovery by civil suit 78/1996- which terminated in her favour, hence this appeal by appellant.

The appellant in his submissions faults the trial Magistrate under all grounds for failing to correctly assess the evidence and for reaching an erroneous finding, thereby occasioning a miscarriage of justice. The arguments raised under all the grounds are all premised on the ground that it was wrong for the trial Magistrate to hold that the appellant bore the responsibility to renew the road licence and insurance during the contractual period.

A review of the evidence on record shows that in court the respondent (plaintiff) testified that the terms included a condition that defendant was to surrender the logbook, road licence and permit to her though defendant never did so.

During cross-examination she (plaintiff) further alleged that she did not use the motor vehicle as agreed because the defendant refused to surrender the card and road license. She further clarified that on 10.04.1996. She wrote to defendant requesting him to bring the card road license and insurance policy but he refused.

She further clarified that the appellant went to her home in breach of the agreement and drove away the vehicle.

The appellant in his testimony claimed that the plaintiff hired the motor vehicle for 78 days from him, with a valid licence and 3 party licence. Upon cross examination he insisted that the license and 3rd party were on the car.

I have noticed on record a memorandum of understanding showing that parties had a contractual relationship as alluded to in the plaint. The fact that the vehicle was to be used on the road to repay for the loan. The term "to be used as a commuter taxi....and proceeds thereof..." presupposed that this vehicle was fit for the purpose in that the one pledging it gave it impliedly aware that the licences must be valid.

The fact that the licence and insurance expired before 78 days expired meant that their contract was frustrated and therefore breached by the appellant's failure to handover a vehicle fit for the purpose of a commuter taxi for the 78 days. The trial court was therefore not at fault in holding that the default was in breach of the contract.

Having found as above, I will now address the grounds and answer them as follows:

Grounds 1, 3, 5

I do not agree with appellant on those grounds. The trial Magistrate properly evaluated the evidence and was right in her findings. She exercised the right test of proof of the case on the balance of probabilities. Grounds 1, 3, and 5 all do hereby fail.

Grounds 2 and 4:

For similar reasons already pointed out in this court's assessment of the evidence on record. Ground 2 and 4 are not proved by the appellant. The trial court, exercised the right tests and reached the right conclusions as regards the contractual obligations of the parties. The plaintiff (Respondent) could not have renewed the licence and insurance when defendant (appellant) allegedly remained with the vehicle card, and other documents.

Furthermore evidence from appellant (defendant) was that the vehicle had the licences, but he denied the fact that the car had been pledged for a loan but instead claimed it was hired out. The plaintiff to prove the contrary had referred to the memorandum which they signed, yet defendant had no proof of his allegations. This type of shifting of positions could not have played in favour of appellant, and there was no failure by court to note any admissions in the evidence. There was nothing misconstrued by the Magistrate in her analysis of the evidence. Both grounds 2 and 4 therefore have failed.

In conclusion therefore I do not find any merit in this appeal. It has failed on all grounds and is dismissed with costs to the Respondent. I so order.

Henry I. Kawesa

JUDGE

17.09.2014