



African Banking Corporation Ltd v Ahmed t/a Vanga Express & 4 others (Commercial Civil Suit E053 of 2020) [2023] KEHC 24208 (KLR) (Commercial and Tax) (27 October 2023) (Judgment)

Neutral citation: [2023] KEHC 24208 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CIVIL SUIT E053 OF 2020**

**FG MUGAMBI, J
OCTOBER 27, 2023**

BETWEEN

AFRICAN BANKING CORPORATION LTD PLAINTIFF

AND

ALUIYA OMAR AHMED T/A VANGA EXPRESS 1ST DEFENDANT

MOHAMMED ATHMAN MJAHD 2ND DEFENDANT

MOHAMED ATHMAN 3RD DEFENDANT

TIMA ALI MOHAMED 4TH DEFENDANT

JOSRICK MERCHANTS AUCTIONEERS 5TH DEFENDANT

JUDGMENT

1. The suit herein was instituted *vide* a plaint dated and filed on 19th February 2020. It sought reliefs against the defendants jointly and severally. Judgment in default of appearance was entered against the 1st to 4th defendants and the suit was only opposed by the 5th defendant through its statement of defence filed on 17th March 2021.
2. The background to the dispute was a loan agreement whereby the plaintiff advanced various facilities in the aggregate of Kshs.136,930,543/= to the 1st defendant. The facilities were to be secured by among others, registration in the joint names of the plaintiff and the 1st defendant. The registration was to be undertaken by the 5th defendant.
3. Subsequently the 1st defendant defaulted and was indebted to the plaintiff to the tune of Kshs.197,701,898.65 as at the date of filing the suit. When the plaintiff commenced realization of the collateral it discovered that some of the vehicles that the 5th defendant had purportedly registered in the



joint names of the plaintiff and 1st defendant were in fact registered in the names of complete strangers. The said motor vehicles were ZE 3346; KBT 883G; KBT 884G; KBT 885G; KBT886G and KBT 887G).

4. The plaintiff's claim against the 5th defendant with respect to the five (5) vehicles is based on aiding the 1st to 4th defendant in the fraudulent registration of the vehicles. The plaintiff sought the following reliefs jointly and severally against the defendants:
 - i. Judgement for Kshs. 197,701,898.65;
 - ii. Interest on above at 14% per annum from 18th November 2016 until payment in full;
 - iii. General damages for fraud;
 - iv. Costs of the suit;
 - v. Interest on (iii) and (iv) above;
 - vi. Any other order that the Court shall deem fit to grant
5. In its Statement of Defence filed in court on 23rd March 2021, the 5th defendant disputes any wrongdoing and contends that it was appointed by the plaintiff to only collect logbooks and other necessary documents on the plaintiff's behalf. The 5th defendant avers that it was not meant to carry out joint registration of the vehicles as this is a function of the Registrar of Motor Vehicles. The 5th defendant avers that pursuant to the directions of the plaintiff, it collected the logbooks and delivered them to the plaintiff.
6. Regarding the motor vehicles where the discrepancies were noted, the 5th defendant denies being involved in the registration of the vehicles and instead states that in January 2013 the plaintiff submitted documents for the joint registration of the vehicles. The 5th defendant also avers that it did not present any fee note with respect to these vehicles as it was not involved in the process of registration.
7. Each of the parties called one witness during trial. PW1 was Deborah Muthoka and DW1 was Felista Mugure. I see no need to regurgitate their evidence although I shall refer to their evidence as necessary.
8. There are two issues that arise for determination and that is whether the 5th defendant is liable to the plaintiff and if so, what remedies the plaintiff is entitled to from the 5th defendant.
9. On the first issue, PW1 testified that there had been a business relationship with the 5th defendant, pursuant to which the plaintiff engaged the 5th defendant to carry out joint registration of the vehicles. The witness testified that whereas the 5th defendant was not the borrower, it had colluded with the borrower to stage fake registration of the motor vehicles in the joint names of the plaintiff and the 1st defendant when in fact the vehicles belonged to third parties.
10. PW1 also acknowledged that while the initial instructions to the 5th defendant was for collection of log books the scope of instruction was expanded in the letter of 17th May 2013 to allow the 5th defendant to undertake joint registration of the vehicles. It was the testimony of PW1 that the 5th defendant in fact billed and was paid for the services.
11. DW1 denied having been given instructions to register the vehicles but acknowledged that it was an agent of the plaintiff for purposes of collecting log books. The witness stated that the obligation to register motor vehicles was a function that was within the authority of the Registrar of Motor vehicles and that it was the plaintiff who would submit documents to the registrar for purposes of joint



registration and that the log books would then be sent to the plaintiff's postal address. As a result of delays and loss, the plaintiff introduced the 5th defendant for purposes of collecting the log books.

Analysis

12. It is clear that the relationship between the plaintiff and the 5th defendant was that of principle-agent. The *Halsbury's Laws of England* at Vo. 1 (2008) 5th ed at para 1 defines this relationship as one where a person 'the agent' has the authority to act on behalf of another, 'the principal' and consents so to act. An agent is bound to exercise his authority according to all lawful instructions given to him by his principal from time to time.
13. Agency relationships may be created by the express or implied agreement between parties or from the conduct or situation of the parties. See *Halsburys (supra)* paragraph 14.
14. From the record before the court and the testimony of PW1 and DW1, it is also clear that the 5th defendant was expressly appointed as an agent of the plaintiff. The letters dated October 23, 2012 and October 31, 2012 from the plaintiff to the Registrar of Motor Vehicles were clear that the agency was for purposes of collecting logbooks and other documents on the plaintiff's behalf.
15. The fee notes presented for payment by the 5th defendant do however tell a different story. Some of the fee notes appear to relate to payment for full transfer and joint registration of various vehicles while others simply relate to joint registered logbooks. The fee notes of July 23, 2013, August 20, 2013 and February 10, 2014 also include a charge for transfer and joint fee.
16. The import of this to my understanding is that there may have been instances where the agent was given other powers to facilitate the joint registration of the vehicles. From the testimony given by the witnesses, this may have included making payments for the registration service to the Registrar of Motor Vehicles. This would then explain the reason why money was refunded by the plaintiff with commission for the work done.
17. With respect to the 5 vehicles with discrepancies, DW1 categorically denied that the joint registration had been done by the 5th defendant. The witness stated that her only role in the 5 vehicles was to carry out searches as she was not asked to jointly register or collect their logbooks save for the trailer ZE 3346 where she collected the logbook on behalf of the plaintiff. The defendant was paid Kes 21,890/= for the trailer including transfer and joint registration fee, advance fee and commission. With respect to the 4 other vehicles in this category, the 5th defendant raises no fee note save for the searches of the vehicle logbooks.
18. The question therefore, is who was responsible for the registration of these vehicles and how much control did the 5th defendant have over the process? Was it sufficient to make the 5th defendant liable for fraud as alleged by the plaintiff? Of interest is the letter of May 17th 2013 from the plaintiff to the Registrar of Motor Vehicles. The subject of the letter is Uncollected Logbooks. The letter goes on to confirm that the documents relating to the joint registration of the vehicles had been forwarded for registration in January 2013.
19. There is no mention of the documents having been forwarded to the Registrar by the 5th defendant. Clearly by the time this letter was being written to enable the 5th defendant to do anything else, the relevant papers had already been presented to the Registrar according to the plaintiff. What is however evident is that while the fee notes for the other vehicles are on record, for joint registration or collection of logbooks, there are fee notes relating to these 4 save for the one on the searches.



20. The evidence on record would seem to corroborate the testimony of DW1 that the 5th defendant did not handle the documentation relating to the transfer of the vehicles. The plaintiff addressed the Registrar directly on the matter and there is therefore no indication that there were instructions on the joint registration for these vehicles given to the 5th defendant that would have made the 5th defendant liable for fraud.
21. The plaintiff has not demonstrated that the agent fell short of his duties and responsibilities by presenting forged logbooks to the plaintiff purporting to have registered the subject vehicles in the joint names of the plaintiff and the 5th defendant. There is no evidence linking the 5th defendant with any forgery as the letter was clear that the documents for the registration of the vehicles had already been presented to the Registrar.
22. Moreover, even in relation to the trailer, the fact that it appears that payment for the transfer was made by the 5th defendant does not in any way make the 5th defendant liable for fraud.
23. The *Black's Law Dictionary*, 9th Edition at page 131 defines fraud as "A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment." There is no evidence to show that the 5th defendant knew about the fraud and chose to misrepresent or withhold from the plaintiff the information about the vehicles.

Determination

24. The upshot of this is that the plaintiff has failed to prove its case against the 5th defendant to the required threshold. As such, the suit against the 5th defendant is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 27TH DAY OF OCTOBER 2023.

F. MUGAMBI

JUDGE

