



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 592 OF 2016

CENTAURUS COMPANY LIMITED.....APPELLANT

-VERSUS-

ALOONA INDUSTRIES KENYA LTD.....RESPONDENT

(Being an appeal from the judgment of Senior Resident Magistrate's court at Nairobi

Miss. E. Wanjala delivered on 16th August, 2016 in Nairobi CMCC no. 5773 of 2012)

JUDGMENT

1) Aloona Industries Kenya Ltd, the respondent filed a suit before the Chief Magistrate's court seeking to recover a sum of ksh.246,760/= from Centaurus Company Ltd, the appellant herein being due and owing to the respondent for tyre retreading services rendered to the appellant. The appellant filed a defence to deny the respondent's claim. Hon. E. Wanjala, learned Senior Resident magistrate heard the case and entered judgment in favour of the respondent.

2) Being aggrieved, the appellant filed this appeal and put forward the following grounds:

i. That the learned magistrate erred in both law and fact in allowing the plaintiff's case against the defendant with costs contrary to the weight of the evidence adduced during trial.

ii. That the learned magistrate erred in law and in fact in failing to appreciate that the burden of proof lay with the plaintiff and thus the plaintiff ought to have proved that indeed the defendant owed it the amount claimed.

iii. That the learned magistrate erred in law and in fact in

failing to find that the plaintiff had not strictly proved the debt owed to it by the defendant and as a consequence failed to substantiate/strictly prove its claim.

iv. That the learned magistrate erred in law and in fact in failing to find that some of the retreading series offered by the plaintiff were of poor quality, not up to standard and not commensurate with the amount charged and thus the defendant was not entitled to pay.

v. That the learned magistrate erred in law and in fact in failing to find that the defendant had paid the plaintiff the amount due from it in full.

vi. That the learned magistrate erred in law and in fact in failing to address her mind to the fact that some of the invoices were stamped but not signed meaning they were not validated.

vii. That the learned magistrate erred in law and in fact in finding that the plaintiff had proved its case on a balance of probability and awarding it the claimed amount plus costs and interest.

viii. That the learned magistrate erred in law and in fact in failing to appreciate that totality of evidence adduced before her which clearly supported entering of judgment against the plaintiff.

ix. That the learned magistrate erred in law and in fact in arriving at the decision she did against the weight of the evidence and

law.

3) This court issued orders directing the appeal to be disposed of by written submissions.

4) I have re-evaluated the evidence presented before the trial court.

I have also considered the rival written submissions plus the authorities cited by learned counsel.

5) Though the appellant put forward a total of 9 grounds of appeal, the same can be resolved by one main ground which is whether the respondent proved its claim on a balance of probabilities. It is the submission of the appellant that the appellant filed to establish its claim on a balance of probabilities. The appellant faulted the trial magistrate for entering judgment in favour of the respondent yet it had tendered evidence in form of invoices which had no stamp nor signatures hence unreliable.

6) The appellant further pointed out that the invoices relied as evidence were disputed hence they were invalid. The appellant also argued that the trial magistrate erred for entering judgment in favour of the respondent on the basis of invoices which were not signed nor stamped. It is pointed out that the respondents had failed to ensure that the invoices were properly received as that was their basis for payment.

7) The appellant further argued that the trial magistrate erred by failing to appreciate the appellant's assertion that some of the retreading services offered by the respondent were of poor quality and not commensurate with the amount charged thus justifying the appellant's refusal to pay the invoices the respondent has relied in the suit.

8) The appellant also faulted the trial magistrate for holding that the appellant ought to have proven that they paid the full and final amount to the respondent. On its part, the respondent argued that it proved that the services rendered by the respondent to the appellant was to the tune of ksh.441,960/= and that the appellant had made part of ksh.195,200/= thus leaving a balance of ksh.246,760/=.

9) It is the submission of the respondent that it discharged the evidentiary burden of proof while the appellant failed to adduce evidence in support of its defence and thus did not discharge its burden of proof.

10) Having re-evaluated the evidence presented before the trial court and having considered the rival submissions, it is clear that the central issue to be determined is whether the respondent tendered credible evidence in support of this case. The trial magistrate addressed her mind to the aforesaid issue as in part as follows;

“The plaintiff produced invoices as plaintiff exhibit 1-25 and a statement of account for the balance of ksh.246,760/= as plaintiff exhibit 26. The defendant on the other hand claimed to have paid the plaintiff in full even though he admitted on cross examination to not having evidence to that effect, he also claimed in his defence that the unpaid amount was double claim and/or invoices or fictitious invoice which he did not provide any proof of the same before court. The defendant further stated that most of the invoices produces as plaintiffs exhibits only had stamps with no signature signifying that the defendant was not satisfied with the service, I am not connived with this version of the defence, if that was the position it would not have been difficult for him to write to the plaintiff expressing his dissatisfaction as the reason for nonpayment. Further the plaintiff clearly stated through PW 1 that, in the invoice it was provided that if the defendant was dissatisfied then the tyres were to be returned within two months, but due to customer relations even complaints lodged after two months would still be considered, there is no evidence from the defendant that he explored this mechanism I thus find on a balance of probability that the plaintiff has proved that the defendant is indebted to the plaintiff for the tyre retreading services rendered.”

11) It is apparent from the pleadings and the evidence that the appellant had set up a defence claiming that the respondent had been paid in full and that the respondent had supplied it retreads of poor quality. The learned trial Senior Resident magistrate came to the conclusion that the appellant had failed to tender credible evidence to establish the assertion that it paid the respondent in full and that the tyres supplied as retreads were of poor quality.

12) I have re-evaluated the recorded evidence and I am satisfied that the trial magistrate came to the correct decisions, hence she cannot be faulted. The appellant did not discharge the burden of proof to prove its defence.

13) The other important issue is whether the invoices relied upon by the respondent should have stamped and signed? I have re-evaluated the invoices tendered in evidence and it is clear that the parties have always carried out their business activities using invoices whether signed, stamped or not. Some of the invoices produced in evidence by the respondent were signed and stamped while others had no stamp nor signature.

14) It cannot therefore lie in the mouth of the appellant to challenge the veracity of the invoices on those grounds. In the end I am satisfied that the trial magistrate came to the correct decision in finding the case in favour of the respondent.

15) This appeal is found to be without merit. The same is hereby ordered dismissed with costs to the respondent.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 1st day of April, 2022.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Applicant

..... for the Respondent