



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 488 OF 2014

CAROSA INVESTMENTS LIMITED.....APPELLANT

- V E R S U S -

KOBIL PETROLEUM LIMITED.....RESPONDENT

(Being an appeal from the judgement of Hon. M. Chesang (Mrs)

A.G Senior Resident Magistrate delivered on 1st October, 2014

in Nairobi CMCC No. 1177 of 2006)

JUDGEMENT

1. Carosa Investments Ltd, the appellant herein, filed an action before the Chief Magistrate's Court, Milimani Commercial Court, Nairobi against Kobil Petroleum Ltd, the respondent herein. In the aforesaid suit the appellant sought for judgment against the respondent in the sum of ksh.1,270,024/15. The aforesaid amount is alleged to have arisen from a deposit of ksh.2,000,000/= pursuant to an agreement dated 25.10.2004. The respondent filed a defence to defend the claim. The suit was heard by Hon. M. Chesang, learned Senior Resident Magistrate, who eventually dismissed the suit on the basis that Robric Ltd had no locus standi in the dispute nor any relevance to the suit. The learned Senior Resident Magistrate was of the view that Robric Ltd was a separate legal entity from Carosa Investments Ltd. Being aggrieved by the aforesaid decisions, the appellant preferred this appeal.

2. On appeal, the appellant put forward the following grounds of appeal in its memorandum:

- 1. THAT the learned trial magistrate erred in both fact and law in failing to consider the admissions made by the defendant in its pleadings particularly the amended defence.**
- 2. THAT the learned trial magistrate erred in law and fact in failing to consider and evaluate the evidence tendered before her at the suit's hearing.**
- 3. THAT the learned trial magistrate erred in law and fact by failing to appreciate that duties and obligations of Robric Limited were transferred to the plaintiff.**
- 4. THAT the learned trial magistrate erred in law and fact by holding that Robric Limited had no relevance to the plaintiff's suit.**
- 5. THAT the learned trial magistrate erred in law and fact in failing to consider the parties' written submissions; in particular the plaintiffs.**
- 6. THAT the learned magistrate erred in law and fact in failing to consider all the facts presented before her judiciously.**

3. When the appeal came up for hearing, learned counsels recorded a consent order to have the appeal disposed of by written submissions. I have re-evaluated the case that was before the trial court. I have also considered the rival written submissions. It would appear from the pleadings and the evidence tendered before the trial court that Robric Ltd entered into a Dealer's Licence agreement with the respondent to inter alia operate a petrol station in the name of the respondent. On the request of the respondent, Robric Ltd deposited ksh.4,000,000/= to be utilised as security deposit and working capital. After the agreement was executed, the appellant took over the operations of the petrol station and proceeded to execute a Dealer Licence with the respondent dated 25.10.2004 with a clause requiring the appellant to deposit with

the respondent a sum of ksh.4,000,000/= to be utilized as security deposit and working capital for product purchase. The appellant proceeded to credit the amount paid by Robric Ltd in favour of the appellant as security deposit and working capital for product purchase. The appellant avers that it was forced to file the suit before the trial court against the respondent when the respondent refused or neglected to refund the security deposit. Hon. Chesang heard the suit and eventually dismissed the same on the basis that Robric Ltd has locus standi or any relevance in the dispute since it was a separate legal entity. The learned Senior Resident Magistrate further stated that there was no justification for the payment of interest at the rate of 24% as opposed to 1.2% provided for in the agreement binding the parties.

4. The appellant put forward a total of six grounds of appeal which are interrelated, therefore I will determine them together. The main question to be determined on appeal is whether or not the learned trial magistrate rightly dismissed the appellant's suit. I have already set out in brief the grounds the trial magistrate relied in dismissing the suit. The main reason is that Robric Ltd had no relevance in the suit and that there was no justification for payment of interest at the rate of 24% instead of 1.2% as provided for in the agreement.

5. It is the submission of the appellant that the trial magistrate erred when she failed to appreciate that the respondent had admitted in its amended defence that it received a sum of ksh. 4 million from Robric Ltd and that it had expressed its intention to operate the petrol station in the appellant's name. The respondent is of the view that the trial magistrate arrived at its decision judiciously, having taken into account the relevant issues and evidence. It is pointed out that the trial court considered the fact that the agreement relied upon by the plaintiff was that between the plaintiff and the defendant and that there is no evidence tendered to show that the rights and obligations were assigned to the plaintiff by Robric Ltd. The respondent further pointed out that the applicable interest was 1.2% pa and not 24% pa as the agreement provided for the former interest rate of 1.2% pa. The respondent further pointed out that the evidence offered by the defence was to the effect that the amount of kshs.4,000,000/= was not assigned to the plaintiff by the defendant. It is also the submission of the respondent that the plaintiff accepted that there was no agreed interest rate of 24% pa and further that the dealership licence provided for 1.2% pa as the interest rate.

6. I have carefully re-evaluated the evidence presented before the trial court. It is on record that the trial court found that Robric Ltd and the plaintiff are separate legal entities and that Robric Ltd has no locus standi or relevance in this matter. The appellant stated that it took over the obligations and duties of Robric Ltd. After a careful analysis of the evidence and after taking into account the submissions of the appellant and those of the respondent, it is clear that the duties and obligations of Robric Ltd were not assigned to the appellant under the agreement. There is no doubt that Robric Ltd and Carosa Investments Ltd are separate and distinct entities despite the fact that they share the same directors. I have come to the conclusion that the learned Senior Resident Magistrate arrived at the correct decision, therefore this appeal lacks merit. The same is dismissed with costs to the respondent.

Dated, Signed and Delivered in open court this 16th day of February, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondent