



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL APPEAL NO. 62 OF 2010

EKATI LIMITEDAPPLICANT

VERSUS

MUTUKU SIMON KIMANYI.....RESPONDENT

(Being an appeal from the original order in Kilungu Resident Magistrate's Court Civil Suit no. 7 of 2009 by Hon. H. Nyakweba on 7/4/2010)

RULING

1. The background of the appeal is that the Respondent herein instituted a suit in the Lower Court claiming to have bought a motor-cycle YQ 150GY Yochi from the appellant at a consideration of Kshs. 75,000/-which amount he paid in cash. However, the respondent failed to release the motor-cycle to him hence the claim for the sum paid.
2. In its statement of defence the defendant denied having issued any receipt for the sum.
3. At the hearing of the case the trial court admitted the Credit Note No. 299 dated the 2nd August 2008 as evidence. The appellant objected to the document being produced in evidence but the court overruled the objection and allowed its production as intended.
4. Being aggrieved by the ruling of the court the appellant appealed against the order on the ground that the learned magistrate erred in law and fact-
 - a. In permitting a credit note as evidence of receipt of a sum of Kshs. 75,000/=;
 - b. In treating a credit note as a receipt;
 - c. In allowing the respondent to depart from the pleading by introducing matters which were not pleaded.
5. The appeal was canvassed by way of written submissions. The appellant argued that the learned magistrate was wrong in admitting the credit note as a receipt which meant that the respondent's agent had sold the motor-cycle to the appellant.
6. In response thereto the respondent stated that the appeal was intended to pre-empt the outcome of the matter before the same is delivered. There was nothing on record suggesting that the credit note was to be treated as a receipt. Further it was submitted that submissions filed by the appellant were misleading as they did not relate to the actual objection raised. It did not seek to have the maker of the credit note produce it; the credit note was not produced as a receipt and they purported to adduce evidence of extraneous matters and argue the Lower Court case.
7. This court is duty bound to reconsider the findings of the Lower Court and come up with an independent conclusion.
8. The gist of the matter was that the appellant's counsel objected to the production of the document

he referred to as a '**receipt**'. He sought an order that it be produced by the maker. In response thereto Counsel for the respondent stated that the document was issued to the respondent therefore calling the maker was irrelevant.

9. The court having heard the objection ruled thus:-

“The credit note No. 299 dated 2/8/2008 is in the name of Mr. Kimanyi who is the plaintiff. It bears the defendant’s logo... the objections is not upheld in the circumstances”.

10. In this matter per the testimony of the respondent, having offered to purchase the motor-cycle, he was issued with a credit note signifying that some money had been credited to his account. The document bearing the appellant’s logo purported to have been issued by the appellant’s agent. This would have been done in the course of a sale of goods contract within the meaning of the sale of Goods Act. The onus would be on the appellant to cross-examine the respondent on the same in an endeavor to impeach him as to its genuineness. In order for the court to arrive at a just decision it had to interrogate it. And it could only do so by allowing it to be adduced in evidence.
11. In the premises, the learned magistrate did not misdirect himself. Consequently, the appeal lacks merit. Accordingly, it is dismissed with costs to the Respondent.

DATED, SIGNED and DELIVERED at MACHAKOS this 27TH

day of **JANUARY, 2015.**

L.N. MUTENDE

JUDGE