

REPUBLIC OF KENYA

High Court at Kakamega

Civil Appeal 14 of 2008

(Appeal arising from the judgment of [MR. E.O. OBAGA, SRM] in the Chief Magistrate's Court at Kakamega in Civil Case No.391 of 2003)

NAOMI WAIRIMU APPELLANT

V E R S U S

SAMUEL MANDERE OGWORI 1ST RESPONDENT

PETER NJOROGE GITAU 2ND RESPONDENT

J U D G M E N T

This is an appeal from a ruling of the subordinate court delivered on the 26.2.2008. The grounds of appeal are that the trial magistrate erred in law by holding that the transfer of motor vehicle registration number **KAN 049 X** was fraudulent, that the trial magistrate erred by rejecting the appellant's supporting documents, that the court erred in law by holding that the unlawful attachment of the appellant's property was proper and that the findings of the trial court are against the weight of the evidence.

Parties agreed to file written submissions as a way of determining the appeal. Counsel for the appellant submits that the suit motor vehicle was lawfully transferred to the appellant by one **PETER NJOROGE GITAU**. The suit motor vehicle was attached by auctioneers and the appellant filed objection proceedings and proved that she was the registered owner of the motor vehicle. The appellant's shop goods were also attached and she paid the auctioneers KShs.30,000/= which amount she wanted to be refunded. Counsel further submitted that the attachment was unlawful as the attached goods had not been proclaimed before. Counsel relies on the case of **BRAR V WARENG QUARRY ACAHRE CONSTRUCTION [1984]KLR 705** and that of **TRANS AFRICA ASSURANCE COMPANY LIMITED V NSSF [1999]EA 352**. In the first case the court upheld that the log book indicates the lawful owner of the motor vehicle while in the second case the court held that it is incumbent upon trial courts to seek more information whenever there are objection proceedings.

Counsel for the 1st respondent submitted that the trial court made the correct decision. The 1st respondent was awarded damages and was in the process of executing the decree. The suit motor vehicle belongs to the 2nd respondent and the appellant is his wife. Counsel contends that the transfer of the motor vehicle to the objector was simply intended to defeat the execution of the court decree.

The record of the trial court shows that the 1st respondent was involved in a road traffic accident on or about the 15.12.2000. He was awarded **KShs.450,000/=** as general damages and **KShs.29,820/=** as special damages on the 23.8.2005. The 2nd respondent was the defendant in the suit before the trial court vide Kakamega CMCC 391 of 2003. The record also shows that a decree was issued and execution process started. The accident motor vehicle registration number **KAN 049 X** was proclaimed. The appellant herein filed objection proceedings by way of an application dated 26.7.2007. The appellant indicated that she was the owner of that motor vehicle. The trial magistrate heard that application ex-parte and dismissed it on the grounds that the transfer of the vehicle was made after the court had issued its judgment and was merely intended to deny the decree holder the fruits of his judgment.

The log book for the suit vehicle shows that it was transferred to the 2nd respondent on or about the

26.5.2004. The judgment of the lower court awarding the 1st respondent damages was made on the 23.8.2005. The transfer of the vehicle to the appellant was made on the 11.5.2007 when the execution process was ongoing. Although counsel for the appellant seems not to connect the appellant with the 2nd respondent, I do find that the transfer of the said motor vehicle to the appellant was made to defeat the cause of justice. If indeed the property was sold lawfully to the appellant there was no sale agreement or consideration indicated in the application before the trial court. I have read the supporting affidavit of the appellant sworn on the 4.7.2007 and the appellant does not indicate how she bought the motor vehicle or how much she paid for it. The mere production of a log book cannot bar the court from seeking to know how a claimant came to own a property. From the evidence before the trial court I am satisfied that the trial court arrived at the proper decision. With regard to the other attached properties the trial court noted that the properties were not in the names of the appellant but the receipts exhibited showed that the goods belonged to one **GITAU** while others were purchased from **MALIK SHOP**. The court found that other than the shop license the attached properties did not belong to the appellant. I do find that that holding was proper as the appellant did not prove that she the owner of the attached properties. As held by the trial court, the appellant should not be allowed to use the court process to defeat justice. The transfer of the suit motor vehicle to the objector was mainly intended to defeat the cause of justice and the appellant was well aware that the vehicle had been involved in an accident.

In the end, I do find that the appeal lacks merit and the same is hereby dismissed with no orders as to costs.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 29TH DAY OF MAY 2013

SAID J. CHITEMBWE
J U D G E