



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS

Civil Appeal 717 of 2001

JOHN GIKONYO T/A GARAM INVESTMENT..... APPELLANT

VERSUS

GEORGE GAITI T/A URAFIKI TOURS AND SAFARIS..... RESPONDENT

(From judgment and decree of M W Wachira, Principal Magistrate in CMCC No. EJ 22 of 1999)

J U D G M E N T

In an amended Plaintiff dated 9th February, 1999, the Plaintiff/Respondent claimed against the Defendant/Appellant, a sum of Kshs.252,000/-, costs and interests. The Plaintiffs had alleged that the Appellants had without lawful cause or reason, sold or auctioned to the public, several of his goods and items, including furniture which the Appellant had unlawfully seized from the Respondent under a process of distressing for unpaid rents.

The Appellant/Defendant had filed a defence in which he had admitted carrying out the distress exercise, but denied that the same was unlawful. He also had denied the particulars and the total sum of special damages pleaded in the plaint.

During the trial of the suit before the lower court, the Respondent had produced evidence for proof his claim. He alleged that the distress of his goods by the Defendant/Appellant was not warranted and produced certified proceedings and judgment by the Auctioneers Licencing Board which had ruled that the distress was unlawful. The Respondent called a witness who gave evidence in his support.

The Appellant/Defendant had also testified in support of his defence. He said that they had indeed proclaimed and sold several good for rent. He said that he had not valued the goods he attached and therefore, did not know their value. He admitted that he sold the goods without properly giving required notifications including the date of sale. He said that he recovered only his fees.

In her short judgment, the honourable trial magistrate found that the Appellant had indeed, been

instructed to levy distress against the Respondent. She however, found that the Appellant had wrongfully and irregularly carried out his duties. She found that the Appellant as auctioneer did not advertise the relevant sale or auction after attachment of the Respondent's goods. That the Appellant did not even show the date of auction. The court noted further that the attached goods were heavily undersold. The trial court accordingly made a finding that the distress process was not only irregular and contrary to established rules and law governing such distress, but was also malicious and intended to cause loss to the Respondent. She noted that the value of the auctioned goods was much higher and the Appellant had failed to properly account. She considered and accepted the receipts produced by Respondents showing the value of the goods sold by the Appellant and was satisfied that the Respondent/Plaintiff had proved his claim on the balance of probabilities. She entered judgment in favour of the Plaintiff/Respondent. That is what triggered this appeal.

In his Memorandum of Appeal the Appellant complains mainly that the claim was not proved on the balance of probability and in particular, the claim being a claim of special damages, should have been proved strictly.

I have carefully perused the pleadings, the evidence adduced similarly, and the written submissions from the parties. It is clear to me that the dispute majorly hang on whether the figure of judgment of Ksh.252,000/- was proved or not. The evidence shows that the Appellant admitted carrying out the levying of distress for rents due. The Appellant however, conceded that he carried out the process irregularly. He failed to value the goods and items attached in the distress. He sold the goods at terribly low prices without considering their values. It was established by the trial court that the Appellant only wanted to recover his fees and nothing else.

In the above circumstances, I find no lawful reason to disturb the findings of the trial court. I accept the fact that the receipts produced by the Respondent to show the actual value of the goods auctioned were not challenged or questioned by the Appellant or his advocate. The trial magistrate's conclusions were in my view, sound. I find that she did not act against any principle of law. She took into account all issues before her and made lawful findings. She was not, in my view, influenced by extraneous circumstances.

The conclusions I reach, therefore, is that this appeal raises no meritorious objections to the finding of the trial magistrate. It is hereby dismissed with costs to the Respondent. Orders accordingly.

Dated and delivered at Nairobi this 18th day of September, 2012.

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D.A. ONYANCHA

JUDGE