



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO 193 OF 2000

MARGARET KIIMBU APPELLANT

VERSUS

JAPHETH R NKONGE 1ST RESPONDENT

AGRICULTURAL FINANCE CORPORATION 2ND RESPONDENT

JUDGMENT

This is an appeal from the Judgment of the Senior Resident Magistrate, Meru (Mr. D. K. Gichuki) in CC No. 764 of 1996 dated July 7, 1998. It is based on the following five grounds of appeal:

- 1. The Learned Senior Resident Magistrate erred in law and grossly misdirected himself in facts in finding that there was no sufficient evidence adduced by the Appellant to support her claim of ownership of the Motor Vehicle Reg. No. KPF 748 whereas there was ample or reliable evidence to prove that the plaintiff indeed owned the Motor Vehicle Reg. No. KPF 748.***
- 2. The Learned Senior Resident Magistrate further erred both in law and in fact in appellant failing to find that the Motor Vehicle Reg. No. KPF 748 was indeed in use as a Matatu by the appellant at the time of attachment by the Respondents and in failing to award damages for loss of user.***
- 3. The Learned Senior Resident Magistrate erred in law and misdirected himself in failing to find that the attachment of the Motor Vehicle Reg. No. KPF 748 was wrongful and illegal and therefore the defendants were liable to pay the plaintiff.***
- 4. The whole judgment of the Learned Senior Resident Magistrate is against the weight of evidence.***
- 5. The Learned Senior Resident Magistrate erred in law in failing to evaluate and analyse the evidence in support of the Appellant's case and as a result the Appellant suffered prejudice.***

As is evident from the grounds, this appeal is based on the Lower Court's findings of facts, rather than on a point of law.

In a Plaint filed in the Lower Court on September 26, 1996 the Plaintiff claimed special and general damages against the defendants for wrongful attachment of her motor vehicle No KPF 748 on account of alleged default by her of a loan taken from the 2nd Respondent. She claimed that she had not taken any

loan from the 2nd Respondent. The 2nd Respondent, on the other hand, claimed that they held a chattel mortgage over the aforesaid motor vehicle which had been secured against a loan to the “owner” of the said vehicle.

The issue, therefore, before the Lower Court revolved around the ownership of the motor vehicle. According to the log book the Appellant (Plaintiff) was not the registered owner, but she had produced an agreement for sale (P Exhibit 1) the log book (P Exhibit 2) and the Transfer of Ownership form (P Exhibit 3).

The Lower Court heard several witnesses, and in a long and considered judgment, found that the

“evidence adduced by the Plaintiff falls far short of the evidence required to prove that she is the owner of the vehicle.” (Page 5, Judgment).

The Magistrate further found that Peter Mukiti Munyithia, the husband of the Appellant, was the owner of the said motor vehicle, and indeed his name was also printed on the door of the vehicle. It was him that had taken the loan from, and charged the motor vehicle to, the 2nd Defendant.

The Magistrate came to this conclusion based on the testimony of several witnesses before him. He had the benefit of observing the demeanour of these witnesses, and I am satisfied that he evaluated the evidence correctly, and came to a just decision. I have no reason to interfere with his decision, and I, accordingly, dismiss this appeal with costs.

Dated and delivered at Nairobi this 30th day of June, 2004.

ALNASHIR VISRAM

JUDGE