



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 539 OF 2000

NGANGA WANGOTO APPELLANT

VERSUS

PACKAGING MATERIALS LTD DEFENDANT

J U D G E M E N T

This appeal arises from the decree of the Senior Principal Magistrate at Nairobi dated 15th September, 2000 in the Chief Magistrates' Court Civil Case Number EJ 1018 of 1998.

In that case the Plaintiff claimed Kshs.315,000/= being refund of the purchase price of motor vehicle registration number KAD 076 Z which the defendant had sold to the plaintiff during April, 1997. It was claimed in the plaint that after the plaintiff had paid the money to the defendant and possession of the vehicle had been given to the plaintiff, a Senior Resident Magistrate sitting in Nairobi in Criminal Case Number 1564 of 1997 ordered on 8th September, 1998 that the defendant, had no good title to the said motor vehicle which he could pass to the plaintiff and ordered the plaintiff to surrender the same to Central Police Station, which order was duly complied with.

This is why the plaintiff claimed refund of the purchase price with interest thereon at 30% per annum from 30th April 1997 until payment thereof in full. There was also a prayer for costs of the suit and any other relief that may be just.

The defendant applied and was granted leave to issue third party notice to a third party from whom he had bought the subject motor vehicle, namely Rex motors Ltd.

Both the defendant and the third party filed defences to this suit and the matter was set down for hearing, and indeed heard on 12th June, 2000, 25th August, 2000 and 15th September, 2000 when Judgement was delivered dismissing the suit against the defendant and the third party, hence this appeal.

The plaintiff testified in the case to show how he purchased the motor vehicle in dispute only later to be approached by the police and be told to surrender the same that there was a criminal case pending in court in relation thereto.

That later there was an order issued in that case that the motor vehicle be detained in central police station Nairobi where it remained up to the time the judgement subject to this appeal was delivered.

Another witness who testified as PW2 was a representative of National Industrial Credit who were claiming a lien over the subject motor vehicle by virtue of having advanced a loan to one Ruth Ambutu

Mpindah who did not repay the whole loan but forged documents which she used to sell off the same to a third party. A representative of the defendant, one Alswad Visram testified that the subject motor vehicle had been purchased by the defendant in 1995 from Rex motors at Kshs.385,000/= and later sold to the plaintiff and forwarded to him the original log book and transfer forms obtained from the said Rex motors.

That the defendant had no reason to believe that the title to the motor vehicle was defective. That the vehicle was purchased when it was clean with a proper title.

A director of Rex motors, the third party in the case, also testified and said the said third party purchased the motor vehicle in dispute in the suit from a lady called Ruth for Kshs.300,000/= which was paid to the seller in cash. This is the party who sold the motor vehicle to the defendant. Later the third party learned the seller had been arrested.

As I understand the ruling of the learned Senior Principal Magistrate in the case, he was saying that since Ruth had not been convicted of the offences instituted against her in relation to the motor vehicle, it was too early to decide that she did not pass a good title of it to Rex motors who subsequently sold it to the defendant and who in turn sold it to the plaintiff.

I agree. Without a decision in the criminal case to question the title of Ruth in the motor vehicle, it is not easy or proper to jump to the conclusion that the contract between the plaintiff and the defendant regarding this motor vehicle was frustrated by the unfolding events.

What is being alleged to be the cause of the frustration has not yet been proven.

I cannot agree that the NIC and the State have interfered with the plaintiff's right to the motor vehicle. NIC has the duty and right to report the suspected commission of an offence to the police and the latter has a duty to carry out investigation and prosecute the offender which must have happened herein to culminate in Criminal Case Number 1564 of 1997.

Though with lots of regret and sympathy for the plaintiff I would dismiss this appeal which I hereby do, but direct that each party do bear his/their own costs of the appeal and the case below.

These are the orders of this court.

Delivered and dated this 28th day of February, 2002.

D.K.S AGANYANYA

JUDGE