



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL APPEAL NO. 508 OF 1999

JULLIE COMPANY LTD

AND

4 OTHERS .....APPLICANTS

VERSUS

WAMBURU MUNENE & ANOTHER .....RESPONDENTS

J U D G M E N T

This appeal arises from the ruling of the learned Senior Principal Magistrate (C.O. Kanyangi) delivered on 4th November, 1999.

It related to objection proceedings instituted by the appellants over the proclamation of 4 (four) motor vehicles, namely motor vehicle registration number KAK 905S, KAH 355H, KAJ 994G and KAG 994A, by the decree-holder for the defendant's failure to satisfy a court decree.

The objection was heard by the court on 19th October 1999 wherein counsel for the decree-holder submitted that the objectors had failed to prove the ownership of the motor vehicle while counsel for the objectors submitted that the decree-holder justly proclaimed the motor vehicles.

When the learned magistrate wrote his ruling, he wondered why the 5th appellant had not filed an affidavit in support of the objection if indeed it had financed the purchase of the proclaimed motor vehicles.

The application was dismissed on the basis that the said 5th appellant could as well have been paid off, hence it had no interest in the said motor vehicles.

This is the cause of this appeal which has listed five (5) grounds of appeal.

These are that the learned magistrate erred in dismissing the objection proceedings on the basis of speculation, that he erred in failing to consider the appellant's grounds of objection; that he erred in finding that the proclaimed motor vehicles was proper in absence of evidence to this effect; and that he was influenced by extraneous matters in arriving at his decision.

The appeal was heard by this court on 29th July 2002 wherein counsel for both parties appeared to submit on the same.

Counsel for the appellants submitted that log books for motor vehicle registration numbers KAH 335H, KAG 994A and KAJ 994G had the names of, 1st appellant, 4th appellant and 2nd appellant

respectively, and that the names of the defendants did not appear anywhere.

That the lower court speculated about the financier having been paid off.

According to counsel the fact that the motor vehicles were found in the premises of the first defendant did not mean they belonged to him.

Counsel submitted that the decree holder did not prove that the motor vehicles did not belong to the appellants but that the court speculated that they belonged to the judgment debtors.

Counsel prayed that the appeal be allowed with costs. Counsel for the respondent – decree holder opposed the appeal arguing that it was upon the appellants to establish to the court that the motor vehicles belonged to them by swearing supporting affidavits.

According to the counsel, the motor vehicles had been sold to the judgment – debtors and property in them had been passed to them and this is why they were found in their premises.

Counsel dwelt on motor vehicle registration number KAK 905S for which no logbook was produced saying even if the appeal succeeded in respect to other motor vehicles, it could not in respect to this particular motor vehicle. He prayed for the appeal to be dismissed with costs.

It is actually true to say, that unless the contrary is proved, the person in whose name the logbook is issued is actually the owner of the motor vehicle.

And it is upon the person putting forward the contrary view to prove that view.

There was no evidence adduced in the lower court or an acceptable submission made on this appeal to confirm that the proclaimed motor vehicles had been sold to the judgment debtor – respondents and mere submission in this appeal in that regard does not convince this court.

And that the subject motor vehicles were found parked at the premises of one of the judgment-debtors is not good reason for saying the said motor vehicles belong to the judgment-debtors.

Or that the financier did not swear and file an affidavit to show its interest in the motor vehicle was not good reason for dismissing the objection proceedings.

I allow this appeal with costs.

Delivered this 26th day of September, 2002.

D.K.S. AGANYANYA

JUDGE