



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS

CIVIL CASE NO. 1530 OF 1992.

KENYA FISHING INDUSTRIES LTD.....PLAINTIFF

VERSUS

INDUSTRIAL & COMMERCIAL

DEVELOPMENT CORPORATION.....DEFENDANT

J U D G M E N T

The Plaintiff claims in detinue for the return of the title deed being Title No. CR 19911 to the suit premises L.R. No. 12870 Kilifi which the Defendant took from the land office in Mombasa. The Defendant does not dispute that the title to the suit premises is registered in the name of the Plaintiff and that one of its employees collected the title deed from the Registrar of Titles in Mombasa.

At the commencement of this suit on the application of Mr. Fraser for the Plaintiff 1 ruled that by reason of these admissions they then shifted to the Defendant to show by what right it had collected and retained the said title deed. The Defendant called in support of its contention that it had a right to retain the said title deed Mr. Nelson Khahame Chesoni the acting Managing Director of the Defendant.

In his evidence Mr. Chesoni stated that the Plaintiff had charged its property to the Defendant by a debenture dated the 8 August 1980 and that subsequently the Plaintiff had issued a further debenture dated the 27.1.82 (which was at page 7 of the agreed bundle) in which both the National Bank of Kenya Limited (the bank) and the Defendant were parties.

The purport of this second Debenture was that the Defendant agreed that its security over the property of the Plaintiff charged in the first debenture was deferred in favor of the Bank save for two vessels known as M.V. Fango and M.V. Uchumi as appears in clause 3 of the second Debenture at page 9 in the bundle.

Initially Mr. Chesoni said that joint Receivers and Managers were appointed over the assets of the company by the Bank and the Defendant, but in cross-examination he conceded that the appointment was made by the bank only (see the Appointment at page 21 & 22 of the bundle).

He further stated that the two vessels had been sold and the proceeds accounted for by the Receivers to the Defendant but that he was suspicious that there had been some foul play in so far as the bids for the vessels accepted was concerned, due to the low price received for them. For this reason the Defendant felt it was entitled to have the benefit of the suit premises and this was why the Defendant collected and retained the title deed to the suit premises.

There is in fact no charge over the title to the suit premises in favour of anyone, and although the second Debenture gave the Bank a right to a legal charge over all property owned by the Plaintiff, this was never perfected.

The position in law is that the title deed and the suit premises are the property of the Plaintiff and the Defendant has failed to show that it has any legal right to retain the title deed.

In the circumstances, I have no alternative but to uphold the Plaintiff's claim and order that the Defendant do deliver up to the Plaintiff the title deed forthwith.

The Plaintiff has proved no damages and is not entitled to the same. The Plaintiff will have the costs of the suit.

I would add that if the Plaintiff goes into liquidation the suit premises would be available to all the unsecured creditors of the Plaintiff including both the Bank and the Defendant.

Dated and delivered and Nairobi this 5th day of April, 2001.

PHILIP J. RANSLEY

COMMISSIONER OF ASSIZE.