Crop Health Technologies Limited v Pride Drive Limited (Civil Appeal E198 of 2022) [2023] KEHC 17338 (KLR) (Commercial and Tax) (12 May 2023) (Judgment)

Neutral citation: [2023] KEHC 17338 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

CIVIL APPEAL E198 OF 2022

DAS MAJANJA, J

MAY 12, 2023

BETWEEN

CROP HEALTH TECHNOLOGIES LIMITED ..... APPELLANT

AND

PRIDE DRIVE LIMITED ..... RESPONDENT

(Being an appeal from the Judgment and Decree of Hon. J. W. Munene, RM/Adjudicator dated 19th August 2022 at Nairobi Small Claims Court at Milimani in SCCC No. E2737 of 2022)

JUDGMENT

1. This is an appeal against the judgment and decree of the Small Claims Court ordering the appellant to pay the respondent Kshs. 160,133.00 with costs and interest on account of therespondent leasing two motor vehicles to the appellant.

2. In its Memorandum of Appeal dated December 7, 2022, the appellant raises three issues for consideration. First, that the Adjudicator erred in law in admitting an unsigned or unexecuted contract as evidence contrary to the laws of evidence and the practice. Second, that the Adjudicator erred in allowing the Respondent claim without considering the appellant's submissions that there was no evidence to support the contract and last, that the court did not follow the decision in *Kangethe and Company Advocates v Kenya Pipeline Company Limited* [2021] eKLR. The parties filed written submissions in support of their respective positions.

3. Before I deal with the matter in issue, a brief outline of the case before the trial court will suffice. In its Statement of Claim dated April 20, 2022, the respondent's case was that on diverse dates in the year 2000, the appellant, through its agents, entered into a Rental Agreement with the respondent for provision of transport services in respect of two vehicles ("the Agreement"). According to the Agreement, the appellant would pay Kshs. 20,000.00 plus VAT and also remit a daily allowance of

Kshs. 1,000.00 for the driver amounting to Kshs. 30,000.00 monthly together with a monthly fuel charge of Kshs. 10,000.00. Therespondent claimed that the appellant failed to pay Kshs. 164,613.00 which it now claimed.

4. The appellant denied the claim in its Response to the Statement of Claim. It specifically denied entering into the Agreement. It stated that it was a stranger to the allegations in the claim. It also pleaded that the Agreement and invoices produced by therespondent were not in its custody and that it never received any calls or emails regarding the Agreement.

5. When the matter came up for directions on May 19, 2022 and in the presence of counsel for both parties, the court directed as follows, "The matter to proceed by way of documents. The documents filed to be deemed as duly produced without calling the makers. The claimant to file written submissions within 7 days from today. The respondent to respond within 7 days of service. Judgment on 6/7/2022."

6. After considering the submissions and documents, the court rendered its judgment on August 19, 2022. The court held thatthe respondent had proved it case on the balance of probabilities based on the Agreement produced and the invoices which reflected an amount of Kshs. 160,133.00. This is the decision that has precipitated this appeal based on the grounds I have highlighted earlier in this judgment.

7. The jurisdiction of this court in hearing appeals from the Small Claims Court is limited in terms of section 38(1) of the *Small Claims Court Act*, 2016 ("the SCCA") which provides that, "A person aggrieved by decision or an order of the court may appeal against that decision or order to the High Court on matters of law". In dealing with matters of law, the court is not permitted to re-evaluate the entire record of evidence and come to its own conclusion as required in ordinary appeals (see *Selle and another v Associated Motor Boat Co., Ltd and others* [1968] EA 123). In *Charles Kipkoech Leting v Express (K) Ltd & another* NKU CA Civil Appeal No. 40 of 2016 [2018] eKLR, the Court of Appeal in relation to its jurisdiction on second appeals to determine matters of law observed as follows:

> This is a second appeal. Our mandate is as has been enunciated in a long line of cases decided by the court. See *Maina v Mugiria* [1983] KLR 78, *Kenya Breweries Ltd v Godfrey Odongo*, Civil Appeal No 127 of 2007, and *Stanley N. Muriithi & another v Bernard Munene Ithiga* [2016] eKLR, for the holdings *inter alia* that, on a second appeal, the court confines itself to matters of law only, unless it is shown that the courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse. See also the *English case of Martin v Glywed Distributors Ltd (t/a MBS Fastenings)* 1983 ICR 511 where in, it was held *inter alia* that, where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court (s) and resist the temptation to treat findings of fact and law, and, it should not interfere with the decisions of the trial or first appellate court unless it is apparent that, on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad in law. [Emphasis mine]

8. I have looked at the judgment. It is two pages and the appellant is right to point out that on the face of it, the Adjudicator did not consider the respondent's case and or submissions. Although the parties agreed that the court would consider the documents on records and parties' submissions, the judgment does not reflect the fact that the trial court dealt with the appellant's case. The trial court has the duty consider both sides of the case as this is the essential element of the rules of natural justice. This is reflected in section 3 of the *SCCA* which sets out the guiding principles of the Court which included under section 3(3)(c), "fairness of the process." Further section 17 of the *SCCA* provides that the court

in exercise of the claims before it, "shall have regard to the principles of natural justice.". A judgment or court decisions that does not reflect consideration of both sides of the case falls a foul of the rules of natural justice and cannot stand.

9. Apart from the aforesaid error, the appellant claims that it was blindsided by the production of the Agreement. There is considerable merit to this complaint. When the suit was filed, the Agreement was not one of the documents attached to the Statement of Claim. The only documents, at least from the record before this court, on the date the court gave directions on the mode of hearing were the invoices and a demand letter. When the matter came up for judgment on July 6, 2022 and in the absence of the appellant, the court directed that, "The claimant to file and serve the rental agreements alluded to in paragraph 4 of the statement of claim within 3 days from today. The court was unable to finalise and determine the matte in the absence of the rental agreements. Judgment is therefore deffered to 19/8/2022. Judgment notice to issue."

10. It is clear that the Agreement had not been produced with the initial documents and if it was admitted after the judgment was reserved, the appellant had a right to either object to its admission or comment on it given that the Agreement was at the very center the case and specifically the appellant's defence where it denied the Agreement. This action by Adjudicator was a violation of the principles of natural justice.

11. The rules of natural justice are fundamental to the judicial process whose breach renders the decision null and void. In the circumstances, the judgment cannot stand and must be set aside. Since the decision is a nullity, the parties must be given a chance ventilate their case properly, I shall therefore order a re-trial of the case.

12. For the reasons I have given, I allow the appeal and order as follows:

    a. The judgment dated August 19, 2022 be and is hereby set aside.

    b. The respondent shall bear the costs of the Small Claims Court and of this appeal. The costs of this appeal are assessed at Kshs. 20,000.00.

    c. The deposit of Kshs. 180,000.00 made in court as a condition for stay pending appeal shall be refunded to the appellant.

    d. The suit shall be retried by any other Adjudicator other that Hon. J. W. Munene, RM.

DATED AND DELIVERED AT NAIROBI THIS 12TH DAY OF MAY 2023.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango.

Mr Pala instructed by Muhatia Pala and Associates Advocates for the Appellant.

Ms Kirimi instructed by Prow and Company Advocates for the Respondent.