



Skillman Construction Limited v Citizen Credit Limited & 2 others (Civil Appeal E205 of 2020) [2024] KEHC 11655 (KLR) (Civ) (2 October 2024) (Judgment)

Neutral citation: [2024] KEHC 11655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E205 OF 2020

AM MUTETI, J

OCTOBER 2, 2024

BETWEEN

SKILLMAN CONSTRUCTION LIMITED APPELLANT

AND

CITIZEN CREDIT LIMITED 1ST RESPONDENT

HOMELINE REALTORS LIMITED 2ND RESPONDENT

DAN OPIYO AYOMO 3RD RESPONDENT

(Being an appeal from the judgment and decree on Nairobi Senior Resident Magistrate Hon. E. Wanjala dated and delivered on 20th August 2020 in Nairobi CMCC No. 7535 of 2016)

JUDGMENT

Introduction

1. The appeal arises from a decision rendered by the Learned Honourable E. Wanjala SPM in CMCC No. 7535 of 2016 in which the learned Honourable Magistrate found that the 2nd Respondent in this appeal lent money to the 1st Respondent.
2. The appellant aggrieved by the decision has moved to this Court on the following grounds:-
 1. The Learned Magistrate erred in law and fact by finding that there was a valid contract between the Appellant and the 1st Respondent.
 2. The Learned Magistrate erred in law and in fact in finding that the sum of Kshs. 424,000.00 was lent to the 2nd Respondent by the 1st Respondent.



3. The Learned Magistrate erred in law and in fact by finding that the sum of Kshs. 424,000.00 was paid to the 2nd Respondent despite admission by the 1st Respondent that it was paid to the 3rd Respondent.
 4. The Learned Magistrate erred in law and in fact by failing to take into account submissions filed on behalf of the Appellant to the effect that a company is a legal person distinct from its directors.
 5. The Learned Magistrate erred in law and in fact by failing to take into account and to consider the evidence adduced on behalf of the Appellant.
 6. The Learned Magistrate erred in law and in fact in finding that the 1st Respondent was entitled to judgment for the sum of Kshs. 424,000.00 a sum which was not pleaded in the plaint.
 7. The Learned Magistrate erred in law in entering judgment in favour of the 1st Respondent against the Appellant for the sum of Kshs.424, 000.00.
 8. The Learned Magistrate erred in law and in fact in awarding interest on the sum of Kshs. 424,000.00 from the date of filing suit until payment in full.
 9. The Learned Magistrate erred in law in awarding costs of the case to the 1st Respondent.
3. The appellants memorandum of appeal raises two main issues:-
- a. Whether the 1st Respondent was entitled to judgment in the sum of Kshs. 424,000 as against the appellant yet the same was not pleaded.
 - b. Whether the decision of the learned Honourable Magistrate was supported by evidence.

Analysis

4. The claim by the plaintiff Citizen Credit [1st Respondent] in the Lower Court was filed on 2nd November 2016.
5. The plaint read;-
 - a. The Plaintiff is a limited liability company registered under the [Companies Act](#), Laws of Kenya, based in Nairobi within the Republic of Kenya. Its core business is lending money to the general members of the public. Its address of service for the purpose of this suit shall be care of Kisilu & Company Advocates, Kenindia House, 1st Floor, The Law Chamber, Loita Street, P.o Box 29294-00100 Nairobi.
 - b. The 1st Defendant is limited liability Company registered under the [Companies Act](#), Laws of Kenya, based in Nairobi within the Republic of Kenya. Service to the 1st Defendant shall be effected through the Plaintiff's Advocates office.
 - c. The 2nd Defendant is a limited liability company registered under the [Companies Act](#), Laws of Kenya, based in Nairobi within the Republic of Kenya. Service to the 2nd Defendant shall be effected through the Plaintiff's Advocates office.
 - d. The 3rd Defendant is a Kenyan individual living and working for gain within Nairobi and a director of the 1st Defendant. Service to the 3rd Defendant shall be effected through the Plaintiff's Advocates office.



- e. The Plaintiff avers that on or around 22nd March, 2016 the 3rd Defendant, acting as an agent and director of the 1st Defendant approached the Plaintiff with two invoices, i.e. invoice No. 231 and 237 (both issued to the 2nd Defendant) and sought to be advanced credit facilities by way of invoice discounting and in this regard, gave the two aforementioned invoices as security for the loan to be advanced.
 - f. Out of abundance of caution and good business practice, the Plaintiff wrote to the 2nd Defendant and explained the nature of credit facilities sought by the 1st Defendant and the proposed security. In particular, the Plaintiff sought confirmation whether the 2nd defendant could commit to paying the monies indicated on the two invoices directly to the Plaintiff of which the 2nd defendant agreed and signed an agreement dated 22nd March, 2016 (the "Agreement") to that effect. The value of the two invoices and which value was to be paid by the 2nd Defendant directly to the Plaintiff is Kshs. 800,030/-.
 - g. Based on the Agreement where the 2nd Defendant covenanted to pay the invoices amount (Kshs. 800,030/-) directly to the Plaintiff, the Plaintiff advanced to the 3rd Defendant, as a representative and director of the 1st Defendant, certain credit facilities hoping that when the invoice amount is paid to the Plaintiff by the 2nd Defendant, it would deduct all the monies outstanding and remit the balance, if any, to the 1st Defendant. The aforesaid credit facilities were disbursed by way of cheques written in the name of the 3rd Defendant, at the request of the 1st Defendant. Subsequently, other funds were also disbursed on the same arrangements.
 - h. The Plaintiff avers that in what appears to be a well-orchestrated scheme by the Defendants herein to defraud the Plaintiff, and in a clear blatant breach of the clear provisions of the 22nd March, 2016 Agreement, the 2nd defendant paid the invoice amounts directly to the 1st defendant and nothing was paid to the Plaintiff. This being the case, the Plaintiff did not get that opportunity to reimburse itself any of the monies which it had advanced as credit facilities to the 1st Defendant.
 - i. Consequently, the Plaintiff engaged the Defendants with a view to recovering the credit facilities advanced as stated herein under the guarantee of the 2nd Defendant but none of them has given any slightest indication of willingness to pay.
 - j. The Plaintiff avers that it has incurred huge losses due to the actions of the Defendants.
 - k. The Plaintiff further avers that this Honourable Court has Jurisdiction to hear and determine this case.
- 4. The 1st Respondent contended that Skillman Construction (the appellant) paid the invoice amounts directly to Homeline Realtors Limited (the 2nd Respondent). According to the 1st Respondent no money was paid to them.
 - 5. As a result, the 1st Respondent claimed he did not get any opportunity to reimburse itself any of the monies it had advanced to the 2nd Respondent.
 - 6. The first Respondent further claimed that when he engaged the appellant and the 2nd Respondent over the matter, he was unsuccessful thus rendering the suit necessary for recovery of his monies.
 - 7. The 1st Respondent in his suit sought to recover Kshs. 800,030 from all the defendants [Homeline Realtors Ltd, Skillman Construction Limited and Dan Opiyo].
 - 8. The suit was predicated upon an agreement allegedly entered into on 22nd March 2016.



9. After hearing the suit the magistrate found that the appellant was liable to pay the 1st Respondent the sum of Kshs. 424,000 provoking this appeal.
10. The issues that arise in this appeal are:-
 - a. Whether there was a valid agreement between the parties dated 22nd March 2016.
 - b. Whether the agreement was legally enforceable between the parties.

Analysis

14. As a first appellate Court the duty of this Court is to review the evidence tendered before the trial court re-appreciate the same and draw its own conclusions on the facts and evidence. The appeal basically is akin to a rehearing the suit save for the fact of this Court not having the benefit of hearing the witnesses. The Court finds guidance in *Selle v Associated Motor Boat Corporation & Another*.
15. The 1st Respondent through one Syengo Nyamai filed a written statement on 2nd November 2016. In the statement Syengo Nyamai narrates how the 3rd Respondent acting as an agent of 2nd Respondent approached the 1st Respondent with two invoices and sought to be advanced credit facilities by way of invoice discounting and gave the two invoices as security for the loan.
16. According to the witness the 1st Respondent out of abundance of caution reached out to the appellant in writing explaining the nature of the credit facility sought by the 2nd Respondent and the proposed security.
17. The witness goes further to state that the 1st Respondent sought to know if the appellant could commit to paying the monies indicated on the two invoices directly to the 1st Respondent.
18. According to him the appellant agreed to the arrangement and entered into an agreement dated 22nd March 2016.
19. The value of the two invoices was Kshs. 800,030 which the appellant was supposed to pay directly to the 1st Respondent.
20. The witness goes further to state that credit facilities were disbursed by way of cheques written in the name of the 3rd Respondent; the agent.
21. The witness states that in breach of the agreement the appellant paid the invoice amounts directly to 2nd Respondent.
22. According to the witness, no money was paid to the plaintiff and that the debt stood at Kshs.550,000.
23. The evidence of Syengo Nyamai is reiterated in the statement of Kenneth Muriuki also for the plaintiff.
24. At page 19 of the record of appeal is a document bearing the letter head of Citizen Credit Micro Finance dated 22nd March 2016 signed by Dan Opiyo Ayomo on behalf of Homeline [2nd Respondent] on the 22nd June 2016 and Operations Manager Susan K. Omooyo and Ndege Kevin Finance officer on behalf of Skillman Construction Ltd [the appellant].
25. The document is also duly stamped with the official stamp of Skillman Construction Ltd.
26. I have also noted that at page 22 of the record of Appeal there appears a cheque of Kshs. 424,000 drawn in favor of Dan Opiyo Ayomo the drawer being Citizen Credit Ltd.



27. The appellant denies ever entering in a valid agreement to settle the debt. He maintains that the document committing the company was signed by unauthorized persons who were not directors thus according to them the document was invalid and unenforceable.
28. The statement of Benard Ondari Ratemo filed on 5th December 2016 indicates that the appellant took the position that even assuming that the agreement was valid , the 2nd Respondent did not supply goods set out in LPO No. 726 of 27th April 2016 and therefore there was no sum due to them that could be paid to the 1st Respondent.
29. The appellant thus denied owing the sum of Kshs. 800,030 to the 1st Respondent or any sum whatsoever.
30. The record reflects that the 1st Respondent only called Kenneth Muriuki as witness who adopted his statement in evidence and the documentary evidence.
31. Upon cross examination of the witness, evidence emerged that could only establish a debt of Ksh.424,000 as opposed to Kshs.800,030 as pleaded.
32. The appellant also called Benard Ondari who adopted his statement and the documents filed therewith.
33. The witness Bernard Ondari admitted in evidence that the persons who signed the documents guaranteeing payment to the 1st Respondent were employees of the appellant but were dismissed for they were not authorized to commit the company.
34. According to the witness. the company could only be bound by its directors but not any other employee.
35. The witness further maintained that they never received any goods from Homeline Realtors Ltd thus they did not owe any money and as such had nothing to transfer to the 1st Respondent.
36. The appellant in his submission urged this Court to find that if at all there was any money advanced to the 3rd Respondent , the 3rd Respondent was not a director of Homeline Realtors Ltd thus even if there was such a transaction it could not bind the company.
37. The appellant further submitted that Homeline Realtors Ltd did not supply the goods set out in LPO No. 726 of 27th April 2016 therefore there was no sum due to them that could be paid to the 1st Respondent.
38. It was further urged on behalf of the appellant that there was no valid agreement for assignment of debt and the agreement relied on by the 1st Respondent did not bind the appellant having been signed by the unauthorized officers.
39. It is trite law that a company as a legal entity is bound by the actions of its directors or any of the delegates of the authority to sign. Directors have the ostensible authority to bind a company but any other office purporting to sign a contract for and on behalf of the company must be given explicit authority or by virtue of his position be deemed to have apparent authority to act for the company see *Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd* {1964}2 Q.B 480.
40. In ordinary business dealings an innocent third party at the time of entering into the contract can in the nature of things hardly ever rely on the "actual" authority of the agent. His information as to the authority must be derived either from the principal or from the agent or from both, for they alone know what the agent's actual authority is. All that the innocent third party can know is what they tell



- him, which may or may not be true. In the ultimate analysis he relies either upon the representation of the principal, that is, apparent authority, or upon the representation of the agent, that is, warranty of authority.
14. The appellant has not denied that the signatories to the agreement were its employees and he further did not offer any evidence to demonstrate that in the ordinary course of business they could not execute the kind of agreement relied on by the 1st respondent. The appellant did not also tell the court that such an undertaking by the company through its agent would be ultra vires its Memorandum or Articles of Association.
 15. In the premises therefore, the appellant cannot avail itself of the defence of lack of authority by its senior officers for it is apparent from their designation that the officers who signed the document in question were responsible officers of the company whose actions could bind the company.
 16. In *Royal British Bank v Turquand* [1856] 6 E&B 326 the Court established the indoor management rule or the Turquand Rule as is commonly known. The rule protects the rights of a bona fide third parties who enter into transactions with a company allowing them to be entitled to assume that internal rules are complied with even if this is not true.
 17. The rule is basically meant to cushion those third parties who enter into a contractual relationship with a company and have the company officials holding themselves out as having authority to execute documents that bind the company.
 18. The turquands rule basically states that a person dealing with a company is not bound to inquire into the company's internal affair or ascertain whether the company has complied with its internal procedures.
 19. The innocent party only needs to prove that he was acting in good faith and within the apparent scope of the company's authority.
 20. In the present case the document giving rise to liability against the appellant was signed by the operations manager of the appellant and the finance officer.
 21. The operations manager by mere description of his duties would be presumed to be in the know of the entire company's operations. He would thus be presumed to be in a position to tell if at all the company had any dealings with the 2nd and 3rd Respondents that would make it possible for the company to meet the financial burden that the agreement placed on the company.
 22. The finance officer too would be able to tell whether indeed the company would be able to meet its financial obligation under the agreement .
 23. The appellant contends that the two officials did not have authority to bind the company.
 24. It is on that basis that they seek to avoid liability.
 25. The 1st Respondent having addressed the document to the finance manager of the appellant would not be expected to delve into inquiring as to who was the authorized officer to execute the document.
 26. That was an internal matter for the company and thus the 1st Respondent would be within his right to invoke the turquand's rule.
 27. There is evidence that money to the tune of Kshs.424,000 was paid by way of a cheque to Dan Opiyo Ayomo. The 3rd Respondent did not participate in these proceedings and so was the 2nd Respondent.
 28. However, there is an interlocutory judgment on record entered against the 2nd Respondent.



29. The 3rd Respondent in his defence did expressly state that if any at all there was any money owed to the 1st Respondent that was Kshs. 368,000 and that he was indemnified for the sum by the appellant. The 3rd respondent by his own admission confirmed that there was a binding agreement between the appellant and the respondent otherwise why would the appellant pay the sum of Ksh 368,000.

Determination

14. From my analysis of the evidence on record and the law, I have come to the conclusion that this appeal has no merit.
15. The signatories to the agreement of 22nd March 2016 were responsible officers of the company , and they had apparent authority by virtue of their job description to bind the company.
16. The official stamp of the company having been affixed to the document and the same not having been denied by the appellant no doubt the 1st Respondent had every reason to belief that he was dealing with persons with authority to bind the company and so the 1st Respondent was well with the protection of law as per the Turquands rule.
17. The amount in issue was properly proved thus the Magistrate's decision was adequately supported by evidence.
18. It is thus the finding of this court that the appeal has no merit, the same is dismissed with costs to the 1st Respondent.
19. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF OCTOBER 2024.

A. M. MUTETI

JUDGE

In the presence of:

Court Assistant: Kiptoo

Mrs Nyaencha for the Appellant

No appearance for the Respondent

