



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL APPEAL NO. 25 OF 2019

CHURCH OF GOD IN EAST AFRICA (K).....APPELLANT

VERSUS

PATRICIA MUTHINA MUKHOBI.....1ST RESPONDENT

THE REGISTERED TRUSTEES

MISSIONARY BOARD OF THE

CHURCH OF GOD.....2ND RESPONDENT

JAMES A. OBASO

T/A MASENO SERVICES.....3RD RESPONDENT

[An appeal from the Judgment of Chief Magistrate's Court at Kisumu Hon. R. M. Ndombi delivered on 28th February, 2019 in Kisumu CMCC No. 413 of 2014]

JUDGMENT

The Appellant, **CHURCH OF GOD IN EAST AFRICA (KENYA)**, was an Objector to the attachment of a motor vehicle **KCH 782Z**.

1. The said vehicle had been attached during the process of the execution of the Decree in the case of **PATRICIA MUTHIMA ABU MUKHOBI Vs THE REGISTERED TRUSTEE MISSIONARY BOARD OF THE CHURCH OF GOD & ANOTHER CMCC NO. 413 OF 2014.**
2. In his judgment, the learned trial magistrate found that the Defendants were jointly and severally liable for the accident which led to the death of Raphael Mukhubi.
3. The Plaintiff, Patricia Muthina Mukhobi had brought the suit in her capacity as the legal representative of the estate of the deceased.
4. The trial court awarded to the Plaintiff the sum of Kshs 480,000/= on account of General Damages. The Plaintiff was also awarded the costs of the suit, together with Interest.
5. The trial court thereafter assessed the Party & Party costs in the sum of Kshs 256,745/=.
6. Those orders were made against the Defendants. In effect, the orders were not made expressly against the Objector, who is the Appellant herein.
7. Therefore, when the Respondents caused the attachment of the motor vehicle in issue herein, the Objector instituted proceedings seeking orders to lift the attachment.
8. The Appellant exhibited the logbook for the motor vehicle Registration Number **KCH 782Z**, which shows that the registered proprietor of the vehicle was **CHURCH OF GOD IN EAST AFRICA (KENYA)**.
9. According to the Appellant, it is a completely separate and distinct entity from the Defendant, **THE REGISTERED TRUSTEES MISSIONARY BOARD OF CHURCH OF GOD.**

10. The learned trial magistrate came to the conclusion that the Objector and the Defendant were one and the same entity.

11. In the appeal before me, the Appellant reiterated that it is definitely not the same entity as the Defendant.

12. Secondly, the Appellant pointed out that it tendered evidence before the trial court, which proved that it had a legal interest in the attached motor vehicle.

13. On its part, the Respondent drew attention to the fact that on the face of the Certificate of Registration which the Appellant had exhibited before the trial court the following words were printed;

***“FORMERLY CHURCH OF GOD IN
EAST AFRICA”***

14. Whilst conceding that those words were printed on the Certificate of Registration, the Appellant emphasized that the Defendant had not obtained judgment against the Appellant, whether in its current name or in its previous name.

15. But the Respondent submitted that the Appellant should not be permitted to split hairs, with an attempt to run away from the Decree which had been passed against it. This court was invited to hold that the Appellant was clearly the Successor of the Defendant.

16. It was the Respondent’s contention that because Churches are registered under the Societies Act, the interpretation of their identity ought not to be strictly approached in the same manner as Limited Liability Companies.

17. Noting that the Appellant had obtained registration on 13th November 2001, the Respondent expressed the view that the Registrar of Societies had been sufficiently careful to note that the said registration merely constituted a Change of Name.

18. The Respondent further stated that the Appellant cannot escape the liabilities of its former self, as the Appellant had assumed the operations of the Defendant.

19. Being the first appellate court, I am obliged to reconsider all the evidence on record, and evaluate it anew, so that I can draw my own conclusions therefrom. However, as I did not have the benefit of observing the witnesses when they testified, the first appellate court must make an allowance for any determination which the trial court may have made on the basis of the demeanour of witnesses.

20. Of course, I appreciate that in this case there was no oral evidence that was tendered by witnesses. All the evidence was tendered by way of affidavits.

21. On matters of factual evidence, it is only if the appellate court came to the conclusion that the trial court had either failed to take into account some particular consideration or if the said trial court had taken into account some irrelevant consideration that the appellate court could set aside the findings made by the trial court.

22. If the trial court had not properly evaluated the evidence or if the trial court had drawn wrong inferences from the evidence, the appellate court should set aside the determination of the trial court.

23. The issue that the trial court had to determine was whether or not the Objector had established ownership or any other alternative legal or equitable interest over the vehicle that had been attached.

24. Secondly, the trial court had to determine whether or not the Objector was the same entity as the Defendant.

25. The trial court expressed itself thus;

“There is no dispute that the logbook indicates the true legal and rightful owner of the motor vehicle.”

26. From the Certificate of Registration issued by the Registrar of Motor Vehicles, the registered owners of the motor vehicle are indicated as;

1. SMEP DEPOSIT TAKING MICROFINANCE LIMITED and

2. CHURCH OF GOD IN EAST AFRICA (KENYA)

27. In effect, the name of the Defendant was not cited in that certificate. Therefore, on a prima facie basis, the Defendant was not the owner of the vehicle. There was no evidence to show that the Defendant had any equitable or other legal interest in the said vehicle.

28. Nonetheless, the trial court held that;

“..... the Objector herein is the lawful successor of the 1st Defendant considering the certificate of registration.”

29. It was the understanding of the trial court that the Objector;

“are one and the same, with the 1st Defendant save for change of name done on account of its growth and expansion.”

30. The certificate in issue indicated that the **CHURCH OF GOD IN EAST AFRICA (KENYA)** was formerly known by the name **CHURCH OF GOD IN EAST AFRICA**.

31. The certificate did not have the name of the Defendant, which is **THE REGISTERED TRUSTEES MISSIONARY BOARD OF THE CHURCH OF GOD IN EAST AFRICA**.

32. Therefore, there was no evidence linking the Defendant to the Objector.

33. Secondly, the vehicle was owned by two persons, who included **SMEP DEPOSIT TAKING MICROFINANCE LIMITED**. It therefore follows that the vehicle was owned by more than one person. Unless the Respondent was executing a Decree against the 2 persons who were the registered proprietors of the vehicle, the attachment of the said vehicle was wrongful.

34. Accordingly, the appeal is well-merited. I therefore set aside the trial court’s Ruling delivered on 28th February 2019, and I substitute it with an order upholding the Appellant’s objection to the attachment of the motor vehicle registration **KCH 782Z**.

35. The attachment is lifted forthwith, and the auctioneer who had attached the vehicle is ordered to hand it over to the Appellant.

36. The costs of the appeal are awarded to the Appellant, who will also get the costs of the application dated 20th June 2018.

37. In the event that the auctioneer seeks fees in relation to the work done when the vehicle was attached, such costs shall be paid by the Respondent.

38. The auctioneer shall not withhold the vehicle from the Appellant on the grounds of non-payment of his fees, as the Appellant has no obligation to pay such fees.

DATED, SIGNED and DELIVERED at KISUMU This 10th day of November 2020

FRED A. OCHIENG

JUDGE