



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 306 OF 2017

NATIONAL INDUSTRIAL CREDIT BANK LIMITED.....APPELLANT

VERSUS

ESTHER WANGUI NGUGIRESPONDENT

(Being an appeal from the Ruling delivered on 19th May, 2017 by Hon. M. Murage (Resident Magistrate) Chief Magistrate's Court at Milimani Commercial Courts in CMCC No. 5443 of 2015).

JUDGMENT

1. The Appellant, National Industrial Credit Bank Limited and another were sued by the Respondent, Esther Wangui Ngugi for special damages of Ksh.262,020/=. The Respondent's claim was that on 13th September, 2012 her motor vehicle registration No. KBR 954V was involved in an accident with motor vehicle Registration No. KBS 016X which was stated to be Registered in the name of the Appellant and another.
2. The Appellant in its statement of defence denied the claim.
3. The Appellant subsequently filed the application dated 25th July, 2016 seeking orders that it be struck out of the suit as it was merely a financier of motor vehicle registration No. KBS 016X and had no interest in the same and was only registered as a joint owner to safeguard it's interest.
4. The Respondent opposed the Application. It was contended in the replying affidavit that the issue of ownership of the motor vehicle could only be determined after a full hearing.
5. After hearing the application, the trial court dismissed it with costs. That is what triggered the appeal herein.
6. The appeal was canvassed by way of written submissions which I have considered.
7. This being a first appeal, this court is duty bound to re-evaluate the facts afresh and come to its own independent findings and conclusions. See for example the case of **Selle v Associated motor Boat Co. & others [1968] E.A. 123** where it was stated as follows:-

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally (Abdul Hameed Saif v Ali Mohamed sholan (1955), 22 E.A.C.A. 270)”.

8. The Appellant raised six grounds of appeal. The central issue in the said grounds is whether the Appellant was lawfully enjoined as a party in the suit.
9. The Appellant annexed to it's affidavit in support a chattels mortgage Agreement and stated that it had only advanced a loan to the purchaser of the Motor vehicle in question. That the joint registration in the name of the bank and the purchaser was solely for the purpose of safeguarding it's interest as the financier and was not in possession, control or management of the motor vehicle. The replying affidavit reflects that the objection to the application was based on the issue of ownership which according to the Respondent could not be determined at an interlocutory stage.

10. The Appellant's evidence established that as a financier, the bank was only registered as a co-owner to secure its interest. The Appellant's evidence has also established that the bank had no control over the use of the motor vehicle and that the Co-Defendant was not an agent of the bank. The bank cannot therefore be held vicariously liable for the accident herein. Consequently, the bank is not a necessary party in this suit. (See for example the following persuasive authorities: **Jane Wairimu Turanta v Githae John Vickery & Equity Bank & another [2013] eKLR** and **Investments and Mortgages Bank Limited v Nancy Thumari & 3 others [2015] eKLR**).

11. With the foregoing, the position taken by the Respondent is not tenable. Consequently, the appeal is hereby allowed with costs. The ruling of the lower court is hereby set aside and the suit against the Appellant (2nd Defendant) struck out.

Dated, signed and delivered at Nairobi this 3rd day of Oct. ,2019

B. THURANIRA JADEN

JUDGE