



IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 658 OF 2011

KYOGA HAULIERS (K) LIMITED.....APPELLANT

VERSUS

BENSON WANYAMA MUKUDI.....RESPONDENT

(Appeal from original judgement and order in Milimani Chief Magistrate's Court, Nairobi CMCC No. 2901 of 2009 delivered on 28th November, 2011 by Hon. Riechi-CM)

JUDGMENT

1. The respondent sued the appellant in the subordinate court praying for compensation following a road traffic accident which occurred on 1st November, 2008 at Kakira area along Jinja-Igenga road in Uganda. The respondent's claim is that he was employed as a driver by the appellant who carried out business in Mombasa, Kenya at the material time. He alleged that he sustained injuries following driving the appellant's motor vehicle registration number UAD 092W/UAD 773N Mercedes Benz which was not in good working condition.
2. By its defence dated 13th July, 2009, the appellant denied the respondent's claim. Particularly that the vehicle was in bad working condition. The appellant also took issue with the jurisdiction of the trial court and urged the trial court to dismiss the respondent's suit.
3. Being dissatisfied with the trial court's judgment, the appellant filed this appeal on the following grounds:
 - i. **That the lower court erred in law and in fact by refusing to deal with the issue of jurisdiction that had been raised as the core of the defence and further submissions in support thereof.**
 - ii. **That the lower court erred in law and in fact by finding that motor vehicle UAD092W/UAD773W Mercedes Benz truck belonged to the appellant without necessary documentary proof of the same in the face of an express traverse by the appellant.**
 - iii. **That the honourable court erred in law and in fact in entering judgment against the appellant.**
 - iv. **That the honourable magistrate erred in law and in fact by totally misconstruing the pleadings and proceedings before him and thus failing to appreciate that the respondent as the driver of the motor vehicle UAD092W/UAD773W Mercedes Benz truck was responsible for driving and or controlling the same and not the appellant such that any resulting accident; blame could only be apportioned on the driver.**
 - v. **That the honourable magistrate erred in law and in fact by failing to consider the relevant evidence, exhibits and submissions to support the appellant's case all together and instead based his decision on extraneous matters not on record- the decision is that injudicious.**
 - vi. **That the honourable magistrate erred in law whilst apportioning liability on a 50:50 basis effectively meaning that although the parties herein were equally liable the appellant should**

nonetheless pay the respondent the sum of KShs. 300,000/- thus 150,000/- .

4. Learned Counsels appearing in this appeal agreed to have the appeal disposed of by written submissions. This is a 1st appeal. This court is therefore under duty to reconsider and re-evaluate the evidence adduced by the witnesses before the trial court so as to arrive at an independent finding. I have re-evaluated the evidence on record. While the respondent furnished evidence, the appellant offered none. I do not therefore have any reason not to accept the respondent's uncontroverted evidence.
5. What is left for this court's determination is whether or not the trial court had the jurisdiction to try the matter.

The appellant denied the jurisdiction of the trial court and argued that the cause of action arose in Uganda and that the respondent's evidence was that the appellant conducted business in Mombasa therefore the proper place to file the suit would have been Mombasa or Uganda.

In trying to justify why the suit was filed in Nairobi, the respondent stated that he did so because he got an advocate in Nairobi. The respondent submitted that the purport of section 15 of the Civil Procedure Act is to ensure convenience of the parties and cost effectiveness. Relying on **Atta (Kenya) Limited v. Nesfood Industries Limited (2012) eKLR**, it was argued that it is upon the party aggrieved by the geographical placement of a suit to demonstrate the same before court. It was further argued that the aggrieved party ought to also prove difficulty in accessing justice at the court where the suit has been filed. That to do this the aggrieved party ought to challenge jurisdiction by way of preliminary objection and by way of an application before hearing of the matter.

6. This claim is governed by the **Work Injury Benefits Act (2007), Cap 236 Laws of Kenya. Section 11(1)** of this Act provides as follows:

"11. (1) if an employer carries on business chiefly in Kenya and an employee ordinarily employed in Kenya is injured in an accident while temporarily deployed outside Kenya, the employee is, subject to subsection(3), entitled to compensation as if the accident had happened in Kenya."

7. The question is whether or not this suit was properly filed in Nairobi. **Section 3(2) of the Magistrates Court Act, Cap 10 Laws of Kenya** which is a substantive Act that confers jurisdiction upon the magistrates' courts provides that the resident magistrate's court shall have jurisdiction throughout Kenya. Under **subsection (1)** a resident magistrate's court is duly constituted when held by a Chief Magistrate. The trial court therefore falls within the category of the resident magistrate's court contemplated in section 3(2) of the Magistrates Court Act. It follows that the trial court's territorial jurisdiction is not subject to limits or restrictions within Kenya and I reiterate the sentiments in **Mohamed Sitaban v. George Mwangi Karoki, Civil Appeal No. 13 of 2002** in which it was stated as follows:

"Section 3(2) of the Magistrates Court Act provides that a court of Resident Magistrate (which is defined to include a Senior Principle Magistrate's Court) has jurisdiction throughout Kenya. Such court is not subject of the local territorial jurisdiction contemplated by section 15 of the Civil Procedure Act, in my opinion, section 15 of the Civil Procedure Act applied only to courts lower than the Resident Magistrate Court. I am fortified in that view by the fact that the Magistrates Court Act, Cap 10 of the Laws of Kenya was enacted in 1967 long after the Civil Procedure Act. The Legislature was therefore aware of the provisions of section 15 of the Civil Procedure Act and the hallowed rule of statutory construction that where two provisions in different statutes conflict, the provisions in the latter statute is deemed to amend the earlier provision..."

The trial court's jurisdiction cannot therefore be ousted. In the circumstances, the appeal herein is dismissed with costs.

Dated, Signed and delivered in open court this 10th day of October 2014.

J.K.SERGON

JUDGE

In the presence of:

Mrs. Njuguna h/b for Onyango for the Appellant

Miss Karani h/b for Owino for the Respondent