



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Appeal 407 of 2001

P J PRODUCTS LIMITED

GITAU NG'ANG'A T/A SHEFLO AUCTIONEERS. APPELANTS

VERSUS

ZADOK FURNITURE SYSTEMS LIMITED

CFC BANK LIMITED. RESPONDENTS

J U D G M E N T

By a plaint dated 25th May, 2001, the Plaintiff/Respondents herein, instituted a suit against the Defendant/Appellants herein, seeking damages for illegal distress of motor vehicle registration No. KAJ 663M, then registered in the plaintiffs. The Plaintiffs sought an injunction restraining the Defendants from alienating, disposing, transferring and/or dealing in any way, with the said motor vehicle. Finally the Plaintiff also sought a mandatory injunction compelling the 2nd Defendant to release the motor vehicle to the Defendants.

The Plaintiff at the same time filed an application by Chamber Summons seeking an injunction restraining the Defendants from alienating, disposing, transferring and/or dealing with the said motor vehicle until the suit was heard and finally determined. The plaintiff similarly sought a mandatory injunction for the return of the motor vehicle.

The application was supported by an affidavit deponing that the motor vehicle was registered in and belonged jointly to the Plaintiffs, and not to Swanya Limited who were the defaulting tenant. The Defendants who filed a replying affidavit, on the other hand, deponed that the plaintiff's were probable tenants of Swanya Limited as there was evidence that Swanya Limited had attempted to pay some outstanding rents for them in the past, and that they occupied offices next to each other in the same premises.

The application was heard inter partes on 29th June, 2011 and a ruling was delivered on 10th July, 2001. In the said ruling, the trial magistrate did not grant or refuse the reliefs or injunctions actually sought, but proceeded to grant an order, that **a status quo be maintained** until the suit is finally disposed off. That is what provoked this appeal by the Defendants who were aggrieved by the order.

The appellant raised several grounds of appeal which can be summarized into one. That is to say, that the trial magistrate erred in not considering the actual application before her to grant or to reject the same. Put differently, that the trial magistrate erred in law in granting reliefs not sought by either party.

I have carefully perused the record showing the actual application which was before the trial

magistrate. It sought for orders of injunctions restraining the Defendant/Respondents from alienating, disposing, transferring and/or dealing in any way with a motor vehicle Registration No. KAJ 663M which was at the material time registered in the names of the 1st and 2nd Respondents. The trial court appears to have accepted the above facts and questioned and doubted the fact as to whether an alleged sale of the motor vehicle to a third party could have been valid in view of the existing registration of the motor vehicle.

In my view, therefore, the trial magistrate had sufficient facts as contained in the affidavits, upon which he could have allowed or rejected the application in form it stood. It is totally baffling to say the least, that the trial magistrate instead, decided to grant the order of “**status quo**” which was not sought. Furthermore, the court had not made any attempt to explain to the parties in the ruling what the “**status quo**” which she decided to grant meant at the time. Did the court accept that the distressed motor vehicle still belonged to the plaintiffs or did she accept that it had been successfully sold to a third party who clearly from the record, had apparently taken possession of it and claimed ownership. Did the court appreciate that “**status quo**” to the plaintiff’s meant a different thing from “**status quo**” to the Defendants and the third party?

In the above circumstances this court’s view and finding is that the trial, magistrate erred in law in granting an order which had not been sought. She also erred in law in not properly considering the application before her to grant or reject it. The final result is that this court hereby sets aside the order of “**status quo**” wrongly granted by the honourable trial magistrate.

The correct procedure after the above finding, would be to return the file to the same court to reconsider the application. However, because of the long period that has elapsed since the ruling was made, probably changing the rights of the parties by now, this court’s will consider and decide the application upon the deposition evidence which was before the trial court.

As already earlier observed, the motor vehicle Registration No. KAJ 663M was registered in the names of the Plaintiffs/Respondents. There was no evidence that the motor vehicle belonged to Swanya Limited who was the tenant and against whom the Levy of Distress was taken. The fact that Swanya Limited may have tried to assist the Plaintiffs/Respondents to pay rent could not, in my view make them liable to pay rent for or become the subtenants of the tenancy with Swanya Limited without evidence to that end. Nor was the mere fact that the latter occupied adjacent offices.

There is adequate affidavit evidence upon which the reliefs of injunction should be granted. As to mandatory injunction, the fact that the motor vehicle was still in the name of the plaintiff’s and the court established so, means that the Defendants had no right to attach the vehicle for levy of distress or refuse to return the motor vehicle to the registered owners, once those facts were revealed. It was worse when the defendants/Respondents purported to sell the motor vehicle to a third party, knowing or being in position to know, that no clean title would be passed. In such circumstances the Defendants are seen as deliberately acting in bad faith and therefore liable to an order of mandatory injunction.

I would therefore, and hereby make the following orders: -

ORDERS

1. This appeal is dismissed.

2. The orders of “Status Quo” of the lower court is hereby replaced with an order of injunction and mandatory injunction in favour of the Plaintiffs as sought below.

3. Costs are to the Respondents.

Dated and delivered at Nairobi this 7th day of March 2013.

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D A ONYANCHA

JUDGE