



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OKWENGU, KIAGE & SICHALE J.J.A)

CIVIL APPEAL NO. 300 OF 2017

BETWEEN

MICHAEL CHEGE.....APPELLANT

AND

CHATUR PROPERTIES LTD.....RESPONDENT

(Appeal from the judgment and order of the High Court of Kenya

At Milimani Commercial Courts at Nairobi (Sitati, J.) dated 11th May, 2012

in

H.C.C.A No. 69 of 2008

JUDGMENT OF THE COURT

This is an appeal against the ruling of **Sitati, J.** delivered on 11th May 2012. A brief background is that **Michael Chege**, the appellant herein filed an amended plaint dated 2nd September 1999. **Sunrise Properties Ltd** the respondent herein was named as the then defendant. In the amended plaint, the appellant averred that there existed a tenancy relationship between him and the respondent but that when he wanted to vacate the respondent's premises, the latter detained his goods.

In an amended defence and counter claim dated 16th November 2001, the respondent denied having detained the appellant's goods. Instead, the respondent averred that it was owed rent as well as other out goings. In the counter-claim, the respondent sought orders for unpaid rent of Ksh.84,700/- and other outgoings totaling to Ksh.5,620/- as well as interest and costs of the suit.

In a judgment rendered on 7th August 2002 by **Murage, SRM**, Milimani Commercial Court, the respondent's counter claim was dismissed and judgment entered in favour of the appellant.

Following the said judgment and after many unsuccessful attempts to attach the respondents' goods, certain goods were attached by M/s Bell & Hammer General merchants on 12th September 2007. Immediately thereafter Sunrise Properties Limited (the objector) in a chamber summons application dated 28th September 2007 sought to have the attachment lifted. In a ruling delivered on 7th February 2008 **E. Maina** the then Ag SPM lifted the attachment and had the attached goods released to the objector.

The appellant was dissatisfied with the said outcome and filed an appeal at the High Court. In a judgment rendered on 11th May 2012, **Sitati, J.** dismissed the appeal, thus provoking the appeal before us. In a the memorandum of appeal dated 23rd October 2012 the appellant listed ten grounds of appeal. In all the ten grounds, the learned Judge was faulted for lifting the attachment following objection proceedings by an entity who, according to the appellant, is the respondent but under the disguise that it is Sunrise Properties Limited, the objector.

On 27th November 2018 the appeal came before us for hearing. There was no representation on behalf of the respondent in spite of service of a hearing notice upon its counsel, **Zablon Mokuwa & Co. Advocates** on 10th July 2018.

In urging the appeal **Mr. Chege** who acted in person asked us to find that the attached properties belonged to Chatur Properties Ltd, who was hiding under the guise of other companies and that the goods were proclaimed in the same office where he used to pay rent, to his landlord, M/s Chatur Properties Limited and that Chatur Properties Ltd. owns many other companies including the objector.

The appeal before us is a second appeal. In this Court's decision of **Kenya Breweries Ltd. vs. Godfrey Odoyo CA No. 127 of 2007** Onyango Otieno J.A. expressed himself as follows:-

“In a second appeal however, such as this one before us, we have to resist the temptation of delving into matters of facts. This court in a second appeal, confines itself to matters of law unless it is shown that the two courts below considered matters they should not have considered or failed to consider matters they should have considered or looking at the entire decision, it is perverse.”

The appellant based his case on the contention that the director of Chatur Properties Limited is one and the same person as the director of the objector. In our view, that may well be the position but the fact that a director appears in two companies as a director is not sufficient, from a legal stand point for arguing that the two companies are one and the same.

The other ground urged by the appellant was that the objector was a fraudulent company as it did not have records at the Company's Registry. Again, we are in agreement with the 1st appellate Judge when she clarified this issue as follows:

“The appellant relied heavily on a letter dated 28th

November 2007 from the Department of the Registrar General to Shining Cargo Agencies regarding “SUNRISE PROPERTIES LIMITED”. In the said letter, the Registrar of Companies said that there were “apparently two companies registered with the above name –being Registration Nos. 34029 and 71776. These double registration occurred inadvertence (sic) and we are instituting steps to ensure that the latter registered company changes its name so as to avoid any confusion.” It was noted in the letter that file No. 71776 was currently not available at its slot and for that reason, the Registrar of Companies could not confirm any information on it.

Armed with the above letter, the appellant submitted before the trial court and also on appeal that the objector company, bearing certificate No. 71776 was illegal and the same was registered without care and attention. The appellant also argued that the goods that were the subject of the objection proceedings were the same goods that had been proclaimed earlier from the same people in the same office.

After carefully considering all these submissions against the back drop of the ruling of the trial court, and also having carefully tested the conclusions reached by the trial court, I am of the view that this appeal lacks merit. As rightly pointed out by the trial court, the Registrar of Companies did not say that the objector company did not exist. All that the letter said was that there was another company bearing the same name but which was registered earlier under Certificate No. 34029. Secondly, all the companies mentioned by the Appellant are separate legal entities and each carries its own burdens even if they are housed in the same premises.”

We agree. It does not matter that the objector and Chatur Properties Limited were housed in one office. The onus was on the appellant to prove that the attached goods belonged to the Chatur Properties Ltd. He failed to do so.

We find that the appeal herein has no merit. It is hereby dismissed. We however, make no order as to costs as the respondent failed to attend the hearing in spite of being aware of the hearing date.

Dated and delivered at Nairobi this 8th of March, 2019

HANNAH OKWENGU

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JUDGE OF APPEAL

P. O. KIAGE

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JUDGE OF APPEAL

F. SICHALE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR