THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL APPEAL NO. 1 OF 2017

SSENKONDO JOHN :: APPELLANT

VERSUS

KABAGAMBE CHARLES :: RESPONDENT

BEFORE HON. JUSTICE MUSA SSEKAANA

JUDGMENT

The appellant herein filed a suit in the trial court against the respondent seeking for inter alia; nullification of a purported agreement between him and the respondent dated 8th November, 2013, an order setting aside the purported agreement, a refund of Ugx. 2,500,000, aggravated damages, interest and costs. After hearing both parties, the trial court dismissed the suit with costs hence this appeal.

The appellant brought this appeal against the whole judgement on grounds that;

1. The learned trial magistrate erred in law when she held that the appellant's son pleaded guilty to the offence of obtaining money by false pretense in Masindi Criminal Case No. 694 of 2014
2. The learned trial magistrate erred in law and fact when she held that the purported agreement signed between the appellant and respondent on the 8th November 2013 is valid.

3. The learned trial magistrate erred in law and fact when she ignored the various points of law that arose during the testimonies in the proceedings.
4. The learned trial magistrate erred in law and fact when she failed to access general damages which the plaintiff would have been entitled in the case.
5. The learned trial magistrate erred in law and fact when she awarded costs to the defendant.

The appellant was represented by Mr. Enock Tumwesigye.

The parties were ordered to file written submissions and the appellants accordingly filed the same. However, the respondents did not file any submissions to court.

None the less, court determined the issues raised by the appellant.

First of all, our duty as a first appellate court is to re-evaluate evidence. Following the cases of **Pandya vs R (1957) EA 336; Kifamunte Henry vs Uganda Criminal Appeal No.10.1997, Bogere Moses and Another v Uganda Criminal Appeal No.1/1997,** the Supreme Court stated the duty of a first appellate court in **Father Nanensio Begumisa and 3 Others vs Eric Tiberaga SCCA 17/20 (22.6.04 at Mengo from CACA 47/20000 [2004] KALR 236.**

The court observed that the legal obligation on a first appellate court to re-appraise evidence is founded in Common Law, rather than the Rules of Procedure. The court went ahead and stated the legal position as follows:-

"It is a well-settled principle that on a first appeal, the parties are entitled to obtain from the appeal court its own decision on issues of fact as well as of law. Although in a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor

heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions."

The Court with approval, quoted the Court of Appeal of England which stated the Common Law position in **Coghlan v Cumberland (1898) 1ch.704** as follows:-

"Even where, as in this case, the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the court must reconsider the materials before the judge with such other; materials as it may have decided to admit. The court must then make up its own mind, not disregarding the judgement appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the court comes to the conclusion that the judgment is wrong….. When the question arises which witness is to be believed rather than another and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may show whether a statement is credible or not; and these circumstances may warrant the court in differing from the judge, even on a question of fact turning on the credibility of witnesses whom the court has not seen."

In **Pandya vs R (1957) EA 336,** the Court of Appeal for Eastern Africa quoted the passage with approval, observing that the principles declared therein are basic and applicable to all first appeals within its jurisdiction.

I shall, therefore, in the course of this judgement re-appraise the evidence on record.

The appellant in their submissions argued ground 1 and 3 together then 2 separately. Ground 4 was abandoned.

I shall handle ground 1and 3 of the appeal first then I shall proceed to handle ground 2.

Submissions

In respect to the ground 1 and 3, counsel submitted that in resolving these issues as to whether the plaintiff had been misrepresented prior to signing PE1, the holding that there was no misrepresentation because PW1 pleaded guilty is error of law. That PW1 was charged on the complainant's statement is not supported by any evidence on court record. That the only document that the trial court relied on, is IDI- the purported record of proceedings in court CR-694-2013 which was only tendered in court as an identification document. Counsel cited the case of Kirya Robert v Uganda HC-Crim. Appeal No. 50 of 2016 at pg. 7 where it was stated that it is trite law that a document tendered in court for identification cannot be considered as evidence. Counsel therefore submitted that the trial court erred in law when she treated ID1 as an exhibit.

Counsel further stated that to be considered as an exhibit, the contents in ID1 did not disclose the offence of obtaining money with false pretense in law. He cited the case of Ugandan versus Daudi Bbosa HC-Criminal Revision No. 94/1977 where court noted that a person who obtains money fraudulently on promising to render services or to deliver goods cannot be convicted either of obtaining money by false pretense or obtaining credit by fraud, the reason being that a statement of intention about future conduct whether or not it be a statement of existing fact, is not such a statement as it will amount to a false pretense in law.

It was further submitted that it was not sufficient to rely on facts disclosed in ID1 without further requiring further proof as required in civil matters for reason that the purported record of proceedings would not be

conclusive proof in civil matters (see: section 40 of the Evidence Act, Cap. 6).

Court's analysis.

As per the evidence on record, there is no record of plea taking upon which the appellant's son pleaded guilty to the offence of obtaining money by false pretense. It is however evident that PW2, the appellant's son was charged before court but was later released on the day he was presented to court.

Much as this seems to be the case, ground 1 raises issues on a criminal offence that was handled under CR-694-2013 upon which this court handling civil matters cannot entertain. This court lacks jurisdiction to handle criminal appeals or grounds emanating from criminal matters as this. **Section 16 of the Judicature Act, Cap 13** provides that **s**ubject to the Constitution, this Act and any other law, the High Court shall have jurisdiction to hear and determine appeals which lie to it by virtue of any enactment from decisions of magistrates' courts and other subordinate courts in the exercise of their original or appellate jurisdiction.

Much as the high court has jurisdiction to hear an appeal from the magistrate court, the ground of appeal in this particular case falls within the jurisdiction of a high court under the criminal division as obtaining money by false pretenses is an offence under section 305 of the Penal Code Act and not a civil matter to be handled by this court.

I therefore resolve ground 1 and 3 of the appeal in the negative.

Ground 2: The learned trial magistrate erred in law when she held that the purported agreement between the appellant and the respondent on the 8/11/2013 is valid.

On ground 2, counsel submitted that court ignored the circumstances and nature of how PE1 was reached between the parties herein. The finding that the appellant knew the facts of the case is not supported on record. All PW1 said was that he called home to inform them that he had been arrested. PW2, the appellant talked about PW1 his son calling him. Counsel stated that it was clear that PW1 never at any point brief Pw2 about the facts of the case before PE1 was executed. PW2, the appellant testified that he was/ is illiterate in English. The record shows that the agreement was written by Kiganda Solomon who was in the company of the defendant (respondent). Counsel submitted that no certificate of translation was attached as provided for under sections 1, 2 and 3 of the Illiterates Protection Act.

Counsel therefore submitted that the defendant misled the appellant into signing PE1 on ground that he was settling a criminal case against the appellant's son yet such an offence never existed.

Court's analysis

The appellant alleges that the agreement entered into between him and the respondent is invalid since the appellant was under a misrepresentation as to the circumstances under which his son PW2 was arrested and charged in Masindi.

Misrepresentation vitiates a contract and makes the contract voidable. **(see: the Contracts Act, 2010, section 16).**However, it is important to note that since there is a written agreement between the parties and the Parole evidence rule is applicable in this case.

It is a well-established principle of law that evidence cannot be admitted (or even if admitted it cannot be used) to add, to vary or contradict a written instrument. ***See D.S.S Motors Limited vs Afri Tours And Travels***

Limited And Amin Tejani Hct-00-Cc-0012-2003. This is the parole evidence rule. The Parole evidence rule has been applied in various cases some of which are ***L'Strange vs Gracoub Ltd [1934]2 KB 394*** where Scrutton LJ in his lead judgment underscored the principle that once an agreement is reduced into writing and executed by the parties, the parties are bound and it is wholly immaterial whether the parties read the Document or were not aware of the contents of the same. Scrutton LJ also noted the exceptions to the rule which would include Fraud and misrepresentation. In **Jacobs vs Batavia & General Plantations Ltd [1924] 1 Ch. 287 P.O Lawrence** stated that, ***"It is firmly established as a rule of law that parole evidence cannot be admitted to add to, vary or contradict a deed or other written instrument ……..".***

From the above legal principles, it is clear that once parties have executed agreements, they are bound by them and evidence of the terms of the agreement should be obtained from the agreement itself and no extrinsic evidence shall be admitted or if admitted, shall be relied on to contradict, add to, vary, subtract from the terms of a contract except where there is fraud, duress, illegality, lack of consideration, lack of capacity to execute the contract or mistake. ***See Golf View Inn (U) Ltd vs Barclays Bank (U) Ltd (CIVIL SUIT NO. 358 OF 2009).*** From the testimony of PW1, the agreement was made between him and the respondent at the time when the appellant's son was brought before court under a charge for obtaining money by false pretense. Upon signing off the contract, the appellant's son was indeed released and charges withdrawn. This was after the appellant had entered into the said contract and further made a part payment of Ugx. 2,500,000/=. It is very hard for this court to believe that the appellant was under a misrepresentation as to the circumstances under which the agreement was made or so that he did not understand the contents of the said agreement. Had he not understood the terms of the contract, then he

would not have partly performed the same by depositing the money of Ugx. 2,500,000/=. We have to note that this contract was partly executed before the appellant's son was released on the charges that had been brought against him.

It is the duty of court to evaluate the evidence and determine what happened so as it determine this matter to its logical conclusion. When undertaking that task of evaluating evidence, the court should be mindful of the standard of proof which Lord Nicholls in ***Re H (Minors) [1996] AC 563 at 586***, explained is a flexible test: The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. I find it more likely that in these circumstances the appellant knew and understood the terms of the contract he entered into with the respondent and that there was no misrepresentation as alleged by the appellant.

This ground of appeal fails.

Whether the Plaintiff is entitled to the remedies sought.

On the basis of my findings on the above issues, I find that the appellant has not satisfied this court to grant the remedies sought.

The appeal is thereby dismissed with costs.

I so order.

SSEKAANA MUSA
JUDGE
18th December 2020