THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL N0 78 OF 2011

(Appeal from the judgment of the High Court of Uganda Civil Appeal No HCCA.59 of 2011 before the Honourable Lady Justice Faith Mwondha dated 1st June 2011 arising from Civil Suit No.35 of 2010 of Chief Magistrates Court Nakawa)

BETWEEN

KASOMA FRED:: APPELLANT

VERSUS

SEMBATYA JAMES::: RESPONDENT

CORAM: HON. MR. JUSTICE ELDAD MWANGUSYA, JA
HON. MR. JUSTICE RICHARD BUTEERA, JA
HON. LADY JUSTICE PROF. L.E. TIBATEMWA, JA

JUDGMENT OF THE COURT

This is a second appeal. The appellant, Sembatya James was dissatisfied with the judgment of her Lordship Justice Faith Mwondha upholding the findings and orders of the Chief Magistrate and thus lodged this appeal.

The following are the grounds of appeal as per the Memorandum of Appeal.

1. That the learned judge erred in law and fact when she held that the trial Magistrate properly evaluated all the evidence whereas not.

2. That the learned judge erred in law and fact when she held that there was no subsequent failure of justice caused by the matter being tried and heard in Uganda outside the jurisdiction the cause of action arose.

3. The learned judge erred in law and fact when she held that the appellant went to Japan with knowledge of the respondent's interest whereas not and thereby wrongly concluding that the appellant was not a bonafide purchaser for value.

4. That the learned judge erred in law and fact when she ignored the expert's evidence which led to her arriving at a wrong decision.

5. That the learned judge erred in law and fact when she failed to properly re-evaluate the evidence from Interpol Uganda leading her to arrive at a wrong decision that the appellant connived with car staff to deprive the respondent of his trucks.

6. That the learned judge erred in law and fact when she failed to properly re-evaluate the evidence on the record hereby arriving at erroneous decisions.

The appellant prayed this Court for orders that

(a) The appeal be allowed.

(b) The judgment and orders of the High Court be set aside.

(c) The respondent pays costs of this appeal and the Court below:-

The background facts are the following:-

The respondent worked in Japan doing odd jobs (kyeyo). He bought a number of vehicles including the two which are the subject matter of this appeal. The two were Lorries he bought in 2007. He bought them from a Company known as Three Star Trading Company owned by Mohammed Faried. He obtained original receipts of the two vehicles as chassis No.FK 337K – 540135 and No.FK 417-55072.

He kept the said two vehicles with SADAKO IWAMOTO, the Director of Car Staff Company. He was deported back to Uganda leaving the cars in Japan. He requested his friend Sewanyana who later went to Japan to check on his vehicles at Car Staff Company Ltd. He gave him photocopies of the receipts and logbooks. Sewanyana did not find the vehicles. He found out that the Director of Car Staff Company had colluded with somebody else to dispose of the vehicles and had changed the frame of the vehicle and the chassis numbers. The respondent with that information reported the theft of his cars to Interpol (police) at Kololo in Kampala.

The vehicles were later found and impounded by police in the possession of the appellant. The appellant contended that he had bought the two vehicles from Car Staff Company Ltd in Japan and brought them to Uganda.

Legal representation

At the hearing of this appeal the appellant was represented by learned counsel, Mr. Richard Omongole while the respondent was represented by learned counsel, Mr. Semugera Ronald.

Agreed issues

During the scheduling the parties agreed upon the following two issues and they are the ones argued at the hearing of the appeal:-

1. Whether the learned judge erred in law and fact when she failed to properly evaluate the evidence on record as a whole and as a result came to a wrong decision?

2. Whether the learned judge erred in law and fact in holding that there was a subsequent failure of Justice because of the matter being tried and heard in Uganda outside the jurisdiction of the cause of action?

Submissions of counsel for the appellant

On issue No.1

Counsel for the appellant submitted that the learned judge had a duty to subject the evidence on record before the trial court to a fresh scrutiny and properly re-evaluate it. The learned judge, according to counsel, failed to do that and thereby arrived at an erroneous decision.

Counsel contended that the learned judge was at fault to have concluded that the two vehicles in issue were properly acquired by the respondent because he had receipts and logbooks for the acquisition of the said vehicles. According to counsel, there was no basis upon which the learned judge drew the above conclusion as the there was sufficient evidence that the appellant had rightly acquired the cars from Japan from the bond after the respondent had failed to pay the accumulated demurrage costs.

Counsel submitted that the appellate judge should have considered and found that there was no theft but that the appellant was a bonafide purchaser who bought the cars from an auction. According to counsel, there was no fraud on the part of the appellant. There was evidence, however, that was ignored by the judge which indicated that the respondent had signed the receipts himself, which was fraudulent and this evidence was ignored by the appellant judge in breach of her duty.

Issue No.2

Counsel for the appellant submitted that the learned judge erred in law and fact in holding that there was no subsequent failure of justice caused by the matter being tried and heard in Uganda outside the jurisdiction of the cause of action.

Counsel contended that the resolution of the issue of ownership of the vehicles by the trial Magistrate and the first appellant court in Uganda led to a total failure of justice as the finding on ownership could only be properly done in Japan where the cause of action on ownership did arise.

Counsel submitted that the cause of action in this case was ownership of the vehicles arose and should be resolved in Japan and not in Uganda.

Submissions of counsel for the respondent

Issue No.1

Counsel for the respondent submitted that the learned appellate judge properly re-evaluated the evidence on record before she arrived at her decision. According to counsel, the learned appellate judge did not believe the evidence of the respondent which does not mean that she did not re-evaluate or consider it.

Counsel contended that there is no set format for a judge to follow in re-evaluation of evidence. It is a question of style but in the instant case the appellate judge did re-evaluate all the evidence on record.

Counsel further contended that on re-evaluation of evidence available the learned appellate judge found that the appellant failed to prove ownership of the vehicles. Counsel submitted that there was evidence that the vehicles belonged to the respondent and evidence was believed by the trial magistrate and the appellate judge.

According counsel, there was evidence that the appellant connived and attempted to buy then the vehicles from someone who had no authority to sell and could not pass title to the respondent. The respondent could not get title from people who had no title to pass to him.

Counsel submitted that the respondent had written his own names on the purchase receipts as he bought the vehicles from people in Japan that had problems in writing African names. This according to counsel, was not fraudulent conduct.

Issue No.2

Counsel for the respondent submitted that the cause of action partly arose in Japan and partly in Uganda because the appellant started attempting to convert the vehicles to his own names in Japan. He was still continuing his

effort of converting the vehicles to his names in Uganda. According to counsel the process was an ongoing process in Uganda and therefore the Uganda courts that handled the matter had jurisdiction. Counsel prayed this Court to uphold the judgment of the learned appellant judge and the appeal be dismissed with costs.

The decision of Court

This is a second appeal. We find it appropriate at this juncture to state the law and define our duty as a second appellate court.

This court has had occasion to state its duty as a second appellate court in **Criminal Appeal No.149/2008; Muhwezi Jackson vs Uganda,** it held:

> **"This being a second appeal rule 32(2) of the Judicature (Court of Appeal Rules) Directions S.1. No.13-10 gives this court power to appraise the inferences of fact drawn by the trial court. This court does not have powers to subject evidence to fresh scrutiny unless it is clear that the first appellate court failed to perform its duty. See Kifamunte Henry v Uganda Criminal Appeal No. 10/97 (SC)."**

The Supreme Court has also had occasion to state the duty of a second appellate court rather elaborately in **Criminal Appeal No.21 of 2007 Ongom John Bosco vs Uganda.** It held as follows:-

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"A second appellate court is precluded from questioning the concurrent findings of facts by the trial and first appellate courts, provided that there was evidence to support those findings though it may think it possible or even probable that it would not have come to the same conclusion. A second appellate court can only interfere with such finding where there was no evidence to support the finding because this is a question of law. Inference legitimately drawn from proved facts by the trial and first appellate courts must establish the guilt beyond all reasonable doubt. The above principles were echoed by the former Court of Appeal for East Africa in Okeno vs Republic (1972) EA 32, (where it said): 'It is appropriate on a second appeal only to decide whether a judgment can be supported on the facts as found by the trial and first appellate court as this is purely a question of law'.

This court has had occasion to re-state the principles in Kifamunte Henry vs Uganda, an appeal No.10 of 1997, when it said:

"On second appeal, the Court of Appeal is precluded from questioning the findings of facts of the trial court provided that there was evidence to support those findings though it may think it possible or even probable that it would not have itself come to the same conclusion; it can only interfere where it considers that there was no evidence to support the finding of fact this being a question of law."

That being the legal position of our duty as a second appellate court, we shall now proceed to consider whether in the instance case there was evidence to support the concurrent findings of facts of the trial and the first appellate courts. Our finding in that inquiry will dispose of issue No.1 in this appeal.

We have studied all the proceedings and the judgments both courts below. We have also studied the submissions of counsel for both parties. We are grateful for the authorities counsel provided to court and we have considered them all plus others that we found relevant.

We noted that the learned appellant judge considered the proceedings and judgment of the trial magistrates' court. She was aware of her duty as a first appellate court which duty she stated in her judgment. She went ahead and re-evaluated the evidence before the trial magistrate. She stated the evidence before the trial magistrate in her judgment.

On the issue of ownership of the vehicles we find that the learned appellate judge made his findings based on the evidence on record which she considered on page 12 of her judgment as below:-

> **"After careful evaluation of the record of the lower court and upon careful consideration of both the appellant and respondent's written submissions as filed by their counsels, I find the following:-**

1. That there was evidence established by the plaintiff/respondent that the vehicles in issue belonged and or were owned by the respondent. There was detailed and consistent evidence given by the respondent/plaintiff explaining how he acquired the vehicles in issue and documents of acquisition i.e. the receipt and the logbook. The evidence of the defendant/appellant left a lot to be desired. He conceded that he bought the trucks from Car Staff Company Ltd and this was not the company that had sold the respondent /plaintiff the trucks. He didn't have the receipts as he stated himself. When the trucks were brought into the country, he didn't go through the right procedures until they were impounded by the police after the plaintiff/respondent had reported to Interpol. All that shows that he was doing it with the intent to deprive the respondent of them. So he could not be a bonafide purchaser for value.

He failed to get any evidence to prove his allegations that these trucks belonged to Simon Sakku. But also the evidence he adduced didn't show that he bought them from Simon Sakku but from Car Staff Company Ltd. There was no evidence to connect Simon Sakku ad Car Staff Company Ltd in order to validate his purchase of the trucks. The witness DW2 – DW6 could not help in proving his case on a balance of probability since his evidence o how he acquired the suit trucks was wanting. The trial

magistrate properly evaluated all the evidence and he came to the right decision. So ground number one fails."

We also find that in her judgment the learned appellate judge considered the evidence availed to the lower court by both the appellant and the respondent. She certainly had to choose to believe one side and not the other. That is the ordinary duty of a judge in the judicial decision process. A judicial officer who concludes when believing one party and not the other is judging after hearing and that is not bias as is alleged here.

On this we wish to agree and follow what the Supreme Court held in **Uganda Breweries Limited vs Uganda Railways Corporation Civil Appeal No.6 of 2001**

"There is no set format to which a re-evaluation of evidence by a first appellate court should conform. The extent and manner in which re-evaluation may be done depends on the circumstances of each case and the style used by the first appellate court. In this regard, I shall refer to what this Court said in two cases. In Francis Sembuya v Airport Supreme Court Civil Appeal No.6 of 1999 (unreported), Tsekooko, JSC said at page 11:

'I would accept Mr. Byenkya's submission if he meant to say that the Court of Appeal did not go into details of the evidence, but that is really a question of style. There is really

no set format to which the re-evaluation should conform. A first appellate court is expected to scrutinize and make an assessment of the evidence but this does not mean that the Court of Appeal should write a judgment similar to that of the (trial).'

In Ephraim Orgoru Odongo & Another v Francis Benega Bonge, Supreme Court Civil Appeal No.10 of 1987 (unreported), Odoki, JSC (as he then was) said:

'While the length of the analysis may be indicative of a comprehensive evaluation of evidence, nevertheless the test of adequacy remains a question of substance.'

In the instant case we find that the learned trial judge lived up to her task of re-evaluation of evidence and made findings supported by evidence on record. The appeal therefore fails on issue No.1.

Issue No.2

Counsel for the appellant contended that the trial court and the appellant court had no jurisdiction since the cause of action in this case arose in Japan. He further contended that the learned trial judge erred in law and fact in holding that there was no subsequent failure of justice because of the matter being tried in Uganda outside the jurisdiction of the cause of action.

This appeal arose from an original suit in a Chief Magistrates' Court. Having heard from both counsel we find it appropriate to refer to the law that governs jurisdiction before magistrates' courts.

We shall quote the relevant provisions of The Magistrates Courts Act:

"212. Suits to be instituted where subject matter situate.

(1) Subject to the pecuniary or other limitations prescribed by any law, suits

(a) for recovery of immovable property, with or without rent or profits;

(b) for partition of immovable property;

(c) or the foreclosure, sale or redemption in the case of a mortgage of, or charge upon, immovable property;

(d) for the determination of any other right to or interest in immovable property;

(e) for compensation for wrong to immovable property;

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the court within the local limits of whose jurisdiction the property is situate; except that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his or her personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate or in

the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

215. Other suits to be instituted where defendants reside or cause of action arises. [Emphasis is ours]

(1) Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction-

(a) the defendant or each of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; [Emphasis is ours]

In the instant case, the cars which are the suit property were in Uganda by the time the suit was filed in Court. Both defendants were living in Uganda within the jurisdiction of Court. The learned appellate judge and the trial Magistrates were justified therefore in their finding that the trial court had jurisdiction to resolve the dispute brought before the Court.

We find that the learned appellate judge did not err in finding that there was no failure of justice in having the matter heard in Uganda rather than Japan. Issue No.2 is therefore resolved in favour of the respondent.

The two agreed issues having been resolved in favour of the respondent, the whole appeal fails. It is dismissed with costs to the respondent.

We so hold.

Dated this day.....2nd.....of .....July.....2015

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Hon. Justice Eldad Mwangusya
JUSTICE OF APPEAL

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Hon. Justice Richard Buteera
JUSTICE OF APPEAL

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Hon. Lady Justice Prof. L.E. Tibatemwa
JUSTICE OF APPEAL