**Behange v School Outfitters (U) Ltd**

**Division:** Court of Appeal of Uganda at Kampala

**Date of judgment:** 18 October 2000

**Case Number:** 53/99

**Before:** Okello, Berko and Engwau JJA

**Sourced by:** P Karugaba

**Summarised by:** M Kibanga

*[1] Contract – Privity of contract – Parties agreeing on price – Part payment made – Party rejecting*

*balance saying goods under valued – Party suing for “true value” under contract – Whether court has*

*power to interfere with agreement.*

*[2] Practice – Costs – Section 21(1) of the Civil Procedure Act (Chapter 65) – Court ordering each party*

*to bear their o wn costs – No reason given for order – Whether Court of Appeal may interfere with the*

*order on costs.*

**JUDGMENT**

**BERKO JA:** The appeal arises from the decision of the High Court (Arach-Amoko J) given on 2 July

1998 in High Court Civil Suit number 750 of 1997. The brief facts are as follows:

The School Outfitters (U) Limited, the Respondent, is a limited liability company engaged in the business of tailoring school uniforms in its factory situated at Uganda House in which they had installed industrial sewing machines. The managing director of the Company was one Monica Erapu. On 11 July 1997 the said Monica sold to the Appellants a number of the company’s industrial sewing machines at an agreed price of UShs 6 900 000. The Appellants paid a deposit of UShs 5 300 000 leaving a balance of UShs 1 600 000. The sale agreement was reduced in writing and tendered in evidence as Exhibit Pl.

The Appellants took possession of the industrial sewing machines. They in turn sold them to a company called Uniform Manufacturers and Distributors Uganda Ltd. The Appellants’ cheque for the balance of the purchase price was rejected by the company. It brought action against the Appellants for:

(a) A declaration that the agreement of sale, Exhibit P1, was null and void;

(b) An order for the return of the machines to it;

(c) in the alternative, an order compelling the Appellants to pay to it UShs 20 million which was said to be the real value of the machines; and

(d) Costs of the suit.

The Appellants, in their written statement of defence, denied that the contract of sale was null and void.

They contended that the said Monica Erapu held herself out as the managing director of the company and held out that she had power to carry out and manage all the businesses of the company.

The following issues were joined for determination at the trial:

(i) Whether the managing director had no authority to sell, thereby rendering the agreement invalid;

( ii) if so, whether the Defendants had notice of the managing director’s lack of authority to sell; and

(iii) What are the remedies available to the parties.

On the first issue, the learned trial Judge found that the managing director had authority to sell the machines as she was held out as the person who had authority not only to manage the business of the company but to sell the company’s properties. Consequently the second issue was answered in the negative. The Judge accordingly held that the sale agreement was valid and declined to grant the reliefs prayed in (a) and (b). There has been no appeal against the said finding.

At this stage one would have expected that the Learned trial Judge would dismiss the company’s claim and enter judgment in favour of the Appellants plus costs of the suit, but she did not. Instead, she proceeded to consider the alternative prayer in (d) in which the company prayed that the Court should order the Appellants to pay to it the real value of the machines, which was said to be UShs 20 million.

The Judge found that there was no evidence to prove the figure of UShs 20 million and so she declined to make the award. In my view that should have been the end of the matter. Surprisingly, the learned trial Judge directed herself that the only way to establish the actual value of the machines was to have them valued. She accordingly proceeded to make the following orders:

(1) The registrar was to appoint a valuer to value the machines within seven days after his appointment;

(2) if the actual value of the machines exceeded UShs 6,9 million then the Defendants should pay that amount less the UShs 5 300 000 already paid within 30 days from date of the report;

(3) She also awarded interest at the court’s rate on the value found by the valuer, the interest to commence 30 days from date of the report till payment in full;

(4) The parties were to share the cost of the valuation equally; and

(5) Each party was to bear its own costs.

These orders are the subject of the appeal, on three grounds, namely, that:

“(i) the Learned trial Judge erred in law and fact when she ordered for a fresh valuation of the sewing machines, when there was no evidence that the price stated [in] the sale agreement Exh P1, did not represent the true value of the machines,

( ii) the Learned trial Judge erred in law when she ordered for a fresh valuation of the sewing machines thereby interfering with the terms of the contract amicably and willingly agreed upon by the parties when she had held that there was a valid contract of sale, and

(iii) The Learned trial Judge misdirected herself when she ordered each party to bear its costs without giving good reason for so ordering”.

Grounds one and two were argued together under a broad proposition that the Judge, having found that the contract of sale was valid and that the managing director had authority to sell the machines, ought not to have interfered with the terms of the agreement by ordering fresh valuation of the machines. The price was fixed by the parties themselves. There is no allegation in the plaint that the company entered into the contract under duress or mistake. The company’s complaint was that the managing director had no authority to sell the machines. It was submitted that since the Judge had found that the managing director had authority to sell and that the contract was valid, she ought to have dismissed the company’s suit.

I think there is force in the argument of Mr Nkuruziza, learned counsel for the Appellants. One of the basic principles in the law of contract is that the parties have freedom to fix the terms of their own bargain. The courts do not concern themselves with the question whether “adequate” value has been given or whether the agreement is harsh or one-sided. The fact that one person pays “too much” or “too little” for a thing may be evidence of fraud or mistake or it may induce the Court to imply or to hold that the contract has been frustrated. But it does not in itself affect the validity of the contract. Thus in the absence of fraud, duress, undue influence, mistake and misrepresentation the courts will enforce a promise so long as some value for it has been given.

The evidence in this case shows that the managing director agreed to sell the machines to the

Appellants at an agreed price of UShs 6 900 000. The Learned trial Judge found that the managing director had power to enter into the contract on behalf of the company and held that the contract was valid and binding on the company. Having so found the Judge had no business in law and in equity to inquire into the adequacy of the purchase price agreed upon.

In the case of *Campbell Discounts Company Limited v Bridge* [1961] 2 All ER 97 Holroyd Pearce LJ observed at page 103:

“It would be a novel extension for the law to interfere on equitable grounds with ordinary contracts freely entered into by persons under no duress or mistake merely on the ground that in certain events it has turned out harshly for parties who subsequently wished or were compelled to by circumstances to abandon their contract”.

Harman LJ in the same case at page 103 also said:

“Similarly I rather deprecate the attempt to urge the Court on what are called equitable principle to dissolve contracts which are thought to be harsh or which have turned out to be disadvantageous to one of the parties.

The observation of Lord Nottingham C in *Maynard v Mosely* [1676] 3 Swan at page 655 is still true that . . . the Chancery mends no man’s bargain and I do not therefore see any way to call in aid equity to mend what may be an unfortunate situation and one which, if it calls for remedy, calls for aid by the legislature rather than by the judiciary”.

In the instant case the Learned trial Judge did not even call in aid equity or any rule of law when she ordered the valuation of the machines. On general principles the evidence in this case does not justify the

Court’s interference with the contractual rights of the parties. I am of the opinion that grounds one and two should succeed.

The complaint in ground three is that the learned trial Judge erred in law in ordering each party to bear his or its own costs. It was contended that as the Appellants were successful at the trial, they should have been awarded costs. The Judge did not give any reason for denying them costs.

Before considering the merit of the ground it is convenient to refer briefly to the law applicable.

Section 21(1) of the Civil Procedure Act, while giving the court a wide discretion as to costs of a suit, contains the following proviso: “Provided that costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order”.

In *Devian Manji Duttani v Haridas Kalidas Dauda* [1949] 16 EACA 36, the Court of Appeal of

Eastern Africa held that a successful defendant can only be deprived of his costs when it is shown that his conduct, either prior to or during the course of the suit, has led to litigation which, but for his own conduct, might have been averted. In that case, the following passage from the judgment of Lord

Atkinson in *Donald Campbell v Pollak* [1927] AC 732 at 813 was applied:

“It is well established that when the decision of such a matter as the right of a successful litigant to recover his costs is left to the discretion of the Judge who tried the case, that discretion is a judicial discretion, and if it be so its exercise must be based on facts . . . if, however, there be, in fact, some grounds to support the exercise by the Judge of the discretion he purports to exercise, the question of the sufficiency of those grounds for this purpose is entirely a matter for the Judge to decide, and the Court of Appeal would not interfere with his discretion in that instance”.

Thus, where a trial court has exercised its discretion on costs, an appellate court should not interfere unless the discretion has been exercised injudiciously or on wrong principles. Where it gives no reason for its decision the appellate court will interfere if it is satisfied that the order is wrong. It will also interfere where reasons are given if it considers that those reasons do not constitute “good reason” within the meaning of the rule.

Here the Judge having dismissed the Plaintiff/Respondent company’s suit against the Appellants, departed from the rule that costs shall follow the event and did not award costs of the suit to the

Appellants. This was a clear departure from the rule for which no reason was given by the learned trial

Judge. With great respect, I can find no ground for depriving the successful Defendants of their costs in this matter and in the absence of good reason they are entitled to them. Ground three accordingly succeeds.

Not without regret, I would accordingly allow the appeal, set aside orders directing the registrar to appoint a valuer to value the suit properties and all the consequential orders that followed.

I would dismiss the company’s suit against the Appellants and enter judgment for the Appellants with costs here and below.

(Okello and Engwau JJA concurred in the judgment of Berko JA.