**Equip Agencies Ltd v Credit Bank Ltd**

**Division:** Milimani Commercial Courts of Kenya at Kisumu

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**Date of ruling:** 7 June 2004

**Case Number:** 1265/02

**Before:** Emukule J

**Sourced by:** LawAfrica

**Summarised by:** A Mwanzia

*[1] Advocate – Client – Ostensible authority – Whether advocate has ostensible authority to*

*compromise a case on client’s behalf.*

*[2] Civil procedure – Review – Consent judgment – Ground upon which a consent judgment may be*

*reviewed – Order XLIV, rules 1, 3 and 4 – Civil Procedure Rules – Section 80 – Civil Procedure Act*

*(Chapter 21).*

*[3] Mortgage – Chattels mortgage – Whether party may sell movable property situated on a mortgaged*

*property in absence of a specific chattels mortgage or general debenture.*

**Editor’s Summary**

The applicant made application under the provisions of Order XLIV, rules 1, 3 and 4, Order XXXIX, rules 1, 2 and 3 of the Civil Procedure Rules and sections 3A and 80 of the Civil Procedure Act seeking various reliefs. It sought review of a consent judgment entered into between its previous advocates and the respondent’s advocates, and also sought temporary injunctions to restrain the respondent from selling the piece of land known as land registration number Eldoret Municipality/Block 10/34 including the plant and machinery thereon. In the alternative the applicant sought an injunction restraining the respondent from selling all the plant, equipment, machinery and chattels situated on title number Eldoret Municipality/Block 10/34. The applicant argued that its previous advocates had entered into the consent judgment without the applicant’s knowledge or authority, and that there was an error on the face of the record in that the consent was intended to be recorded on an application thus giving rise to an order and not on the whole suit as happened leading to a decree. Further, the applicant contended that the respondent had not issued a proper statutory notice and that the charge document sought to be enforced was defective for want of compliance with section 108 of the Registered Land Act. The respondent opposed the application on the grounds that the applicant’s previous advocates had ostensible authority to enter into a consent on behalf of the applicant and that the respondent had issued a proper statutory notice which had been acknowledged by the applicant’s advocates. The issue of delay was also raised since the consent decree was more than one year old as at the time the applicant filed the current application and further, that the applicant was guilty of inequitable conduct since it had issued cheques for settlement of the decree but which cheques had been returned unpaid.

**Held** – Advocates were recognised agents of their clients and had ostensible authority to compromise a suit so far as the opponent was concerned – *Waugh v HB Clifford and Sons* [1982] Ch 374, *Chandless-Chandless v Nicholson* [1994] 2 All ER 315 adopted. A consent judgment or order had contractual effect and could only be set aside on grounds which would justify setting a contract aside. There were no valid reasons to justify the setting aside of the consent decree in this case *Wasike v Wamboko* [1982-88] 1 KAR 625, *Hirani v Kassam* [1952] 19 EACA 131 and *Brooke Bond Liebig v Mallya* [1975] EA 266 followed. The applicant had not established a *prima facie* case for granting an interlocutory injunction, since the record showed that a statutory notice had been issued and further the charge document had been examined and caused to be duly registered by the Chief Land Registrar as mandated under section 108 of the Registered Land Act (Chapter 300). In the absence of a chattels mortgage or a general debenture, the respondent had no legal basis for selling plant, machinery, equipment and other chattels situate on the suit property. An injunction would therefore issue restraining sale of such immovable assets. Application succeeds in part.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Brooke Bond Liebig v Mallya* [1975] EA 266 – **F**

*Galot and others v Kenya National Capital Corporation* [1993] LLR 1628 (CCK) – **AP**

*Giella v Casman Brown and Co Ltd* [1973] EA 358 – **C**

*Hirani v Kassam* [1952] 19 EACA 131 – **F**

*Kanorero River Farm Ltd and others v National Bank of Kenya Ltd* [2001] LLR 1056 (CCK) – **C**

*Kenya Commercial Bank Ltd v Kariuki* [2001] LLR 1642 (CCK) – **C**

*Kimita and another v Wakabiru* [1985] LLR 246 (CAK) – **C**

*Simiyu v Housing Finance Co of Kenya* [2001] 2 EA 540 – **C**

*Tropical Food Products International v Eastern and Southern African Trade and Development Bank and*

*another* [2001] LLR 1530 (CCK) – **C**

*Wasike v Wamboko* [1982-88] 1 KAR 625 – **F**

***United Kingdom***

*Chandless-Chandless v Nicholson* [1994] 2 All ER 315 – **A**

*Channel Ltd v FW Woodworth and Co Ltd and others* [1981] 1 All ER 745 – **C**

*Purcell v FC Trigell Ltd*[1970] 3 All ER 671 – **C**

*Siebe Gorman and Company v Principal* [1982] LR 185 – **C**

*Waugh v HB Clifford and sons* [1982] Ch 374 – **A**