

GI284

11, 1954

No. 12 of 1953.

In the Privy Council.

ON APPEAL

FROM HER MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.

UNIVERSITY OF LONDON
W.C.1.
24 FEB 1955
INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

DYAL SINGH Appellant

AND

KENYAN INSURANCE LIMITED Respondents.

37712

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Case for the Appellant.

RECORD.

1. This is an appeal from the judgment of the Court of Appeal for Eastern Africa (Nihill, P., Worley, U.P., and Thacker, J.) given on the 10th day of April, 1952, affirming a judgment of the Supreme Court of Kenya at Nairobi (Bourke, J.) given on the 14th June, 1951. p. 14.

2. The proceedings before the Supreme Court of Kenya at Nairobi were brought on the 22nd August, 1950, by way of case stated by the Appellant, as Plaintiff, and the Respondents, as Defendants, wherein the questions before the Court were stated to be :— pp. 1-3.

20 (A) Had the Appellant secured a clear title in respect of a certain motor omnibus by virtue of his having purchased the same at a public auction carried out in pursuance of a Court Order in that behalf, or had the Respondents any enforceable security against the said omnibus by virtue of a Chattels Mortgage, having failed to lodge any objection proceedings before its sale? p. 3.

(B) Who should pay the costs of the proceedings?

30 3. The case was heard before the Honourable Mr. Justice Bourke on the 13th April, 1951, when argument on behalf of the Appellant and Respondents was adduced on the facts as stated in the case, and on the 14th June, 1951, judgment was given by the Honourable Mr. Justice Bourke ordering :— pp. 4-6. pp. 7-8.

(A) That the Appellant had not secured a clear title to the said motor omnibus. p. 9.

(B) That the Respondents retained their interest and rights in the said vehicle under an Instrument of Mortgage dated the 12th October, 1946.

(c) That the Appellant pay to the Respondents the sum of Shs.1,944/83 as the taxed costs of the suit.

p. 22. The Court of Appeal for Eastern Africa dismissed with costs the appeal of the Appellant from the said judgment.

4. The question for decision in this appeal is whether upon a sale of the said motor omnibus at public auction by or under the authority of a bailiff pursuant to an order of the Supreme Court of Kenya, such omnibus having been in the possession of an execution-debtor at the time of seizure by a bailiff, the Appellant by then purchasing the said omnibus acquired a clear title to the same by virtue of Section 45, Subsection (3) of the Bankruptcy Ordinance (Chapter 30) Laws of Kenya 1948, or whether by virtue of Section 4 of the Chattels Transfer Ordinance (Chapter 281) Laws of Kenya, 1948, the title of the Appellant was subject to or defeated by an interest of the Respondents in the said omnibus. 10

p. 2, ll. 13-20. 5. On the 12th October, 1946, one Njoroge, son Daudi, who was then the owner of the said motor omnibus, executed a Chattels Mortgage in respect of the said omnibus in favour of the Respondents to secure a loan of Shs.3,600/- with interest thereon at 7 per centum per annum. The Respondents duly registered the instrument of mortgage pursuant to the provisions of Chattels Transfer Ordinance, 1930. The amount secured by the said mortgage remains undischarged. 20

pp. 1, 2. 6. Subsequently, the said Njoroge failed to satisfy an order for the payment of money made against him in an action in the Supreme Court of Kenya, intituled *Ram Parkash, son of Isher Dass Gulalirai v. Njoroge, son of Daudi*, Civil Case No. 212 of 1947, and under Order of the said Court in the said action the said omnibus, as having been in the possession of the said Njoroge as execution debtor at the time of its seizure by a bailiff, was sold at public auction on the 3rd February, 1948, by Ismail, Court Broker, Nairobi, to the Appellant for Shs. 2,000/-. No claim to the vehicle was made by the Respondents or anyone else before the said sale, and the bailiff sold or purported to sell the absolute property in the said vehicle. 30

p. 15, ll. 40-43.
p. 1, ll. 28-31.
p. 4, ll. 1-20.
p. 15, ll. 37-39.

p. 2, ll. 12-20. 7. On the 29th April, 1950, the Respondents, purporting to act under rights which they claimed to possess under their Chattel Mortgage and registration of the same, seized the said omnibus whilst it was in the possession of the Appellant.

8. Section 45 (3) of the Bankruptcy Ordinance 1930 (Ordinance No. 32 of 1930) which Ordinance is now cited as Chapter 30 of the Laws of Kenya, 1948, is as follows :— 40

“ (3) Where any goods in the possession of an execution debtor
“ at the time of seizure by a bailiff are sold without any claim having
“ been made to the same, the purchaser of the goods so sold shall

“ acquire a good title to such goods, and no person shall be entitled
 “ to recover against such bailiff or any other person acting under his
 “ authority, for any sale of such goods or for paying over the
 “ proceeds thereof prior to the receipt of a claim to such goods,
 “ unless it is proved that the person from whom recovery is sought
 “ had notice, or might by making reasonable inquiry have
 “ ascertained that such goods were not the property of the execution
 “ debtor :

10 “ Provided that nothing in this subsection contained shall affect
 “ the right of any claimant, who may prove that at the time of
 “ Sale he had a title to such goods, to any remedy to which he may
 “ be entitled against any person other than such bailiff.”

9. Section 4 of the Chattels Transfer Ordinance, 1930 (Ordinance No. 24 of 1930), which Ordinance is now cited as Chapter 281 of the Laws of Kenya, 1948, is as follows :—

“ All persons shall be deemed to have notice of an instrument
 “ and of the contents thereof when and so soon as such instrument
 “ has been registered as provided by this Ordinance.”

10. On behalf of the Appellant it was contended before the Supreme
 20 Court of Kenya at Nairobi and before the Court of Appeal for Eastern
 Africa that, by virtue of Section 45, Subsection (3) of the Bankruptcy
 Ordinance the purchaser at an auction sale under Court execution process
 acquires a good title against the whole world in the circumstances set forth
 in the case stated, and that such purchaser is not affected by the Chattels
 Transfer Ordinance. Before both the said Courts it was contended on
 behalf of the Respondents that under Section 4 of the Chattels Transfer
 Ordinance the Appellant must be deemed to have had notice of the interest
 of the Respondents in the said omnibus under the Chattel Mortgage of the
 12th October, 1946, and that accordingly the Appellant was a person who
 30 had notice within the meaning of Section 45 (3) of the Bankruptcy Ordinance
 and was therefore not entitled to the benefit of that Section but could only
 acquire such title as the judgment creditor had in the said omnibus.

p. 4, ll. 32-36.

p. 12, ll. 21-23.

p. 6, ll. 13-15.

p. 13, ll. 15-32.

11. In the Court of Appeal for Eastern Africa, the judgment of
 Worley, U.P., with the reasoning and conclusion of which Nihill, P., and
 Thacker, J., concurred, stated that : pp. 14-20.

40 “ The point of construction debated in this appeal is whether the
 “ statutory notice imputed to ‘ all persons ’ by virtue of Section 4
 “ of the Chattels Transfer Ordinance is notice for the purposes of
 “ Section 45 (3) of the Bankruptcy Ordinance ; or, alternatively,
 “ whether this statutory notice puts a purchaser of goods at a sale
 “ by a bailiff, without any claim having been made to the same,
 “ upon his enquiry as to the existence of a registered instrument
 “ relating to the goods purchased.”

p. 15, ll. 18-24.

and after reciting the facts and summarising the reasons for the decision
 of the Honourable Mr. Justice Bourke and the substance of the grounds
 of appeal, proceeded to consider the history and combined effect of the

p. 15, ll. 25-46.

p. 16, ll. 5-24.

p. 16, ll. 25-29.

legislative provisions set forth in paragraphs 8 and 9 above. In arriving at the conclusion that the appeal should be dismissed the view of the learned Judge was that, despite the arguments on behalf of the Appellant including, inter alia, "that the rights of a purchaser of the goods of an execution debtor are specifically protected by Section 45 (3) of the Bankruptcy Ordinance" and the seeming unjustness of the Respondents in the circumstances having the right to seize the vehicle, and although it had to be "conceded that Section 45 (3) of the Bankruptcy Ordinance created an exception to the common law rule" (that no man can give a better title than he has got), nevertheless as "the Chattels Transfer Ordinance is of later date" than the said Section, the "Legislature must be presumed to have had that section in mind when the Chattels Transfer Ordinance was enacted" but had not shown by the language thereof any intention "to restrict the generality of Section 4 by an exception in favour of a purchaser of goods of an execution debtor."

p. 19, ll. 5-7.

p. 19, ll. 48-49.

p. 20, ll. 1, 2.

p. 20, ll. 32-33.

p. 20, ll. 34-39.

p. 26.

12. On the 19th January, 1953, the Court of Appeal for Eastern Africa made an order granting final leave to appeal to Her Majesty in Council against the aforementioned judgments and order of the said Court.

p. 22.

pp. 7-9.

13. The Appellant respectfully submits that the judgments and order of the Court of Appeal for Eastern Africa dated the 10th April, 1952, should be reversed altered or varied and that the judgment and order of the Supreme Court of Kenya of the 14th June, 1951, should be reversed and set aside and that it should be decreed that the Appellant acquired a clear title to the said omnibus for the following among other

REASONS.

- (1) BECAUSE by Section 45 (3) of the Bankruptcy Ordinance a purchaser of goods thereunder is expressed to acquire and does acquire "a good title to such goods."
- (2) BECAUSE the acquisition of good title under the said Section is not, by the said Section or the Chattels Transfer Ordinance or otherwise, affected by any notice that the purchaser may be deemed to have under Section 4 of the Chattels Transfer Ordinance.
- (3) BECAUSE the provisions with regard to notice in Section 45 (3) of the Bankruptcy Ordinance do not relate to the person referred to therein as the purchaser.
- (4) BECAUSE the decision of the Court of Appeal for Eastern Africa is unsound in law.

LEONARD CAPLAN.

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BETWEEN

DYAL SINGH . . . *Appellant*

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Case for the Appellant.

**HERBERT OPPENHEIMER,
NATHAN & VANDYK,
20 Copthall Avenue,
London, E.C.2,
*Solicitors for the Appellant.***