**Mununga Tea Factory Limited & another v Karani (Civil Appeal 24 of 2006) [2023] KEHC 19439 (KLR) (27 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19439 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT EMBU**

**CIVIL APPEAL 24 OF 2006**

**LM NJUGUNA, J**

**JUNE 27, 2023**

**BETWEEN**

**MUNUNGA TEA FACTORY LIMITED ..... 1ST APPELLANT**

**KENYA TEA DEVELOPMENT AGENCY ..... 2ND APPELLANT**

**AND**

**SUSAN WANJIRU KARANI ..... RESPONDENT**

## JUDGMENT

1. The appeal herein arose from the judgment of Hon. Nditika SRM delivered on 15.03.2006 in Kerugoya CC No. 221 of 2004.

2. The appeal is premised on the fact that the respondent who was a tea grower delivered to the 1st appellant an accumulated weight of 9,022.50 Kgs of tea. The 1st appellant paid the respondent all the monthly dues and interim bonus through her account number 016/5052677 but failed and/or refused to pay her the final bonus of Kes. 94,550 which was supposed to be paid at the rate of Kes. 15 per kilo. The trial magistrate after considering the facts and the evidence as presented before him together with the law, found in favour of the respondent.

3. Being dissatisfied with the said judgment, the appellants filed the appeal herein in which they listed six grounds of appeal in the memorandum of appeal dated 11.04.2006.

4. The appeal proceeded by way of written submission as had been directed by this court.

5. The appellants merged the 6 grounds of appeal into two main grounds and thus submitted that the trial court did not set out the issues for determination as required by the provisions of Order 21 Rule 4 of the Civil Procedure Rules. It was argued that from the judgment of the trial court, it was crystal clear that the learned magistrate did not give the points of determination and reasons thereof. That the resultant judgment was not only deficient but also erroneous thereby leading to a miscarriage

of justice. Reliance was placed inter alia on the case of Flanner Vs Halifaz Agencies Ltd [2001] All ER 273 and Soulemezes Vs Dudely Holdings [1987] 10 NSWLR 247. Additionally, the appellants contested the said judgment for the reason that the same was against the weight of evidence. That during cross examination, the respondent did know the title of her land and further, it was not clear how she managed to pick 9220 kilograms of tea leaves. The appellants argued that their officers visited the respondent's farm on 28.07.2003 and found that the tea bushes were not properly managed and as such, an opinion was formed that the farm could only produce 1.5 kgs per bush per year. That despite the respondent stating that she had leased 4,500 bushes of tea from eight people, there were no lease agreements produced before the court to confirm the same and as such, the respondent failed to prove her case on a balance of probability. Therefore, it was prayed that the judgment by the trial court be set aside and the appeal herein be allowed.

6. The respondent on the other hand submitted that though the trial magistrate did not set out the issues for determination in his judgment, the issues need not be openly outlined but the same can be deduced from the judgment itself. It was submitted that the appellants/defendants in their own submissions did not outline the main issues that they expected the trial court to deal with but they only dwelt on the issue of falsification. That the judgment is clear that the main issue for determination was whether there was any falsification of the weight of the tea which had been delivered by the respondent to the appellants. The respondent submitted that the trial magistrate stated the reasons for giving his judgment in favour of the respondent. On the ground of the weight of evidence tendered by the respondent, it was argued that it was clear that the respondent was a tea farmer and during the period of 1st day of July 2002 upto 30th day of June, 2003, the respondent delivered 9,022kgs of tea to the 1st appellant; that she was paid a monthly pay for the said tea but an issue arose when the appellants declined to pay the final bonus which was Kes. 94,550.00. That the appellants did not produce any evidence to support their alleged falsification and further, they confirmed that their clerks were not charged with any criminal case relating to the said allegations or falsifications. It was argued that the appellants' refusal to pay the respondent her dues was without reason. This court was therefore urged to dismiss the appeal herein with costs to the respondent.

7. I have considered the grounds of appeal, lower court record and the written submissions by the parties and in my view, this court has been called upon to determine whether the appeal herein is merited.

8. This being a first appeal, the duty of a first appellate court was well stated in the case of Selle & Another Vs Associated Motor Boat Co. Ltd. & Others (1968) EA 123 in the following terms:

> "I accept counsel for the respondent's proposition that this court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally (Abdul Hammed Saif Vs Ali Mohamed Sholan (1955), 22 E.A.C.A. 270).

9. It therefore follows that this court has a duty to reassess, reanalyse matters of both law and facts and reconsider the evidence afresh and come up with its findings of course bearing in mind that it did not see the witnesses testifying and therefore give due allowance for that.

10. I have perused the judgment of Hon. Nditika and the question is whether that judgment meets the requirements of Order 21 Rule 4 of the Civil Procedure Rules.

11. It is true that judgment must comply with Order 21 Rule 4 of the Civil Procedure Rules which provides that:

> "Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision thereon and the reasons thereof."

12. This court is alive to the fact that indeed the litigants should see the extent of the court's understanding of their main issues as raised and as such, the trial court should come up with the issues for determination in its judgment. [See Soulemezes Vs Dudley Holdings [1987] 10 N S W L R 247].

13. In "The writing of Judgments [1948] 26 Canadian Bar Review at 491" it is stated thus, the articulation of reasons provides the foundation for acceptability of the decision by the parties and by the public and Secondly, the giving of reason furthers Judicial accountability. As Professor Shapiro stated (In Defence of Judicial Candour [1989] 100 Harvard Law Review 731 at 737 thus:

> "..... A requirement that judges give reasons or their decision, grounds of the decision that can be debated, attacked and defended serves 9 vital functions in constraining the Judiciary's exercise of Power."

14. In Black's Law Dictionary, 5th Edition, "Judgment" is defined as:

> "The official and authentic decision of a Court of Justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to its determination."

15. Examining the impugned judgement, the same was only on whether the respondent supplied the 1st appellant with tea leaves that totaled to Kes. 9,022.00kgs hence the issue of falsification.

16. From the appellants' submissions before the trial court, it is clear that the appellants' argument was in general that the tea bushes registered by the 1st appellant could only produce 4897 kgs for the material time. That the plaintiff/respondent was duly paid for the 4897 kgs which reflects the weight delivered to the 1st appellant; to counter that, the plaintiff/respondent stated that she had leased 4,500 bushes of tea from eight people and as a consequence, delivered 9,022kgs of tea to the 1st appellant during the period in issue.

17. The question that arises therefore is whether indeed the respondent herein proved her case that she deserved the amount claimed from the appellants herein?

18. In determining the above issue, I will be having in mind the trite law that he who alleges must prove. In civil matters, the burden of proof is on he who alleges a fact. Sections 107 and 108 of the *Evidence Act* provide as follows:

> 107
>
> (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."

[See Alice Wanjiru Ruhiu Vs Messiac Assembly of Yahweh [2021] eKLR].

19. That the standard of proof in civil cases is proof on the balance of probability. [See Ahmed Mohammed Noor Vs Abdi Aziz Osman [2019] eKLR].

20. I have perused the trial court's record and what I note is that the respondent provided slips upon which she laid the basis of her claim to demand from the appellants herein the alleged amount owed. The respondent averred that she delivered to the 1st appellant an accumulated weight of 9,022.50 Kgs of tea. That the 1st appellant paid the respondent all the monthly dues and interim bonus through her account number 016/5052677 but failed and/or refused to pay her the final bonus of Kes. 94,550 which was supposed to be paid at the rate of Kes. 15 per kilo. The appellants on the other hand contested the judgment by the trial court for the reason that the same was against the weight of evidence. That during cross examination, the respondent did not know the title of her land and further, it was not clear how she managed to pick 9,022 kilograms of tea leaves.

21. From the advice slip for June 2003, it is noted that the accumulated weight of the tea supplied was at 9,022.50 and that the same was contested to have been falsified for the reason that their officers visited the respondent's farm on 28.07.2003 and found that the tea bushes were not properly managed and as such, an opinion was formed that the farm could only produce 1.5 kgs per bush per year. That despite the respondent stating that she had leased 4,500 bushes of tea from eight people, there were no lease agreements produced before the court to confirm the same and as such, the respondent failed to prove her case on a balance of probability.

22. The trial court in dealing with the issue of falsification, stated that the defendants/ appellants herein brought a witness who gave the procedure as to how money is paid and again how tea bushes are produced; and that the witness claimed that there was falsification. The trial magistrate stated that if it was true that there was falsification, then there was nothing as easy as charging the respondent. That the same having not been done, and having looked at the demenour of the plaintiff/respondent, he was convinced that the respondent was being truthful. And on a balance of probability, the plaintiff/ respondent proved her case.

23. In my considered view and as already mentioned above, the respondent who claimed to have supplied the 1st appellant 9,022.50 kg of tea, the 1st appellant in casting doubt on the said figure, stated that the same might have been falsified but in the end, no evidence was produced to support the said allegation. It is trite that he who alleges must prove and the same having not been done, it is my view that the respondent ought to be paid her dues.

24. Therefore, the only orders that are commendable to me are:

25. That the appeal has no merits and is hereby dismissed.

26. Costs to the respondent.

27. It is so ordered.

**DELIVERED, DATED AND SIGNED AT EMBU THIS 27TH DAY OF JUNE, 2023.**

**L. NJUGUNA**

**JUDGE**

.....for the 1st Appellants

.....for the 2nd Appellants

.....for the Respondent