



**Meera Umoja Kenya Ltd v Gikaria & another (Civil Case
63 of 2015) [2023] KEHC 20765 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20765 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL CASE 63 OF 2015
HK CHEMITEI, J
JULY 27, 2023**

BETWEEN

MEERA UMOJA KENYA LTD PLAINTIFF

AND

DAVID GIKARIA 1ST DEFENDANT

THE ATTORNEY GENERAL 2ND DEFENDANT

JUDGMENT

1. In its plaint dated 26th August 2015 the plaintiff prayed for judgement against the defendants for the following orders;
 - (a) Damages amounting to Kshs 13,835,250 being the value of goods destroyed.
 - (b) General damages for loss of business.
 - (c) A permanent injunction restraining the defendants and their agents from approaching the vicinity of Meera Umoja Kenya Limited premises or interfering with its business operations in any manner whatsoever.
 - (d) Costs of the suit.
2. The 1st defendant filed his defence denying the charge. The 2nd defendant filed a preliminary objection instead of a defence. The preliminary objection though was never canvassed.
3. When the matter came up for hearing the 1st defendant failed to turn up although the date was taken by consent. It is also on record that the matter had previously been adjourned to allow the 1st defendant conduct counsel but the same as at the time of trial was not forthcoming. As a result, it was only the plaintiff who testified and did not call any witness.



4. The learned state counsel who was present and cross examined the witness did not call any witness and she too closed her case.
5. The court directed the parties to file written submissions which the plaintiff only complied.
6. The plaintiff witness Rakesh Gudka in his testimony relied or adopted the statement on record as well as the bundles of documents or exhibits already on record.
7. He testified that on the 6th day of July 2015 around noon the 1st defendant in the presence of many vigilante youths invaded his business premises situate at Sangura Avenue, within Industrial area in Nakuru town. He said that apart from him there were police officers who escorted them claiming that they were enforcing presidential directives on destroying illegal alcohol.
8. He said that the crowd led by the 1st defendant broke the padlock and stormed into the premises and carted away all the alcohol therein and some of them were placed in the 1st defendant's vehicle.
9. The plaintiff stated that the alcohol products which were in his premise were lawfully purchased or imported and that he was licence to do so. That all had Kenya Bureau of Standards certification or stamps and were not second generation in nature. He exhibited the licences and the relevant import declaration documents as well as Kenya Revenue Authority documents which were produced without any objection.
10. The witness said that he knew the 1st defendant as a member of parliament for Nakuru East constituency. He said that his son was at the scene when the incident occurred and he arrived when the process was ongoing and his son was already in a police land rover.
11. The plaintiff stated that the value of the destroyed properties was over Kshs 13 Million and he prayed that he be compensated as prayed in the plaint
12. The defendants save for the defence and the preliminary objection on record offered no evidence. Neither did they file any submissions.
13. I have perused the entire pleadings on record, the plaintiff's witness testimony and the submissions. There is no doubt that the said goods were carted away or destroyed as per the plaintiff's testimony. There is no defence to the fact that the goons were led by the 1st defendant ostensibly to undertake a presidential directive on alcoholic drinks that had wreaked havoc in the area. The 1st defendant defence alludes to this.
14. I do not think the 1st defendant was simply an ordinary person. He was a member of parliament of the area and therefore a prominent figure. His word would definitely carry weight with his followers.
15. The paperwork presented by the plaintiff shows that the said alcoholic products were imported and accepted by KEBS and KRA. If they were second generation I doubt whether the two agencies would have allowed.
16. In any case there was no reason why the defendants jointly and severally took action into their own hands. There was a better legal way to carry out the exercise. It is also instructive to note that there were no criminal charges preferred against the plaintiff which goes to prove that it was innocent of the accusations.
17. The 1st defendant would not have carried out the same without the sanction and protection by the police. There was no rebuttal that those who protected and shielded the goons were the police. Clearly, they were complicit. I doubt whether the plaintiff's report at the police station would have received any



hearing since they were part and parcel of the illegal exercise. Illegal because there was no court order or any lawful authority.

18. In the premises i agree with the plaintiff's suit and find the action by the defendants unlawful and malicious. The said alcohol was never recovered. Nobody knows whether they were destroyed or not. It is the defendants who ought to have explained.
19. The plaintiff's prayers for general damages for loss of business was not established by way of evidence and I shall decline the same.
20. Consequently, judgement is hereby entered against the defendants jointly and severally for
 - (a) Kshs 13,835,250 as prayed for in the plaint.
 - (b) The same shall attract interest at courts rate from the date of filing of the suit till payment in full.
 - (c) Costs of the suit.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 27TH DAY OF JULY 2023.

H K CHEMITEI

JUDGE

