



**Rutere v Kirumene Tea Buying Centre (Sued thro its officials Joseck Maru) & 3 others
(Civil Appeal E170 of 2022) [2023] KEHC 24465 (KLR) (26 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24465 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E170 OF 2022
TW CHERERE, J
OCTOBER 26, 2023**

BETWEEN

JULIUS MWIRIGI RUTERE APPELLANT

AND

**KIRUMENE TEA BUYING CENTRE (SUED THRO ITS OFFICIALS JOSECK
MARU) 1ST RESPONDENT**

PATRICK MURIUNGI 2ND RESPONDENT

JAMLECK MURIUNGI 3RD RESPONDENT

DANIEL MWITI 4TH RESPONDENT

*(An Appeal from the Judgment and Decree in Nkubu PMCC 38
OF 2020 by Hon. E.M.Ayuka (SRM) on 17th November, 2022)*

JUDGMENT

1. A meeting of Kirumene Tea Buying Centre was held on April 25, 2020 and in attendance were the respondents and on Francis Mwenda and the appellant. The agenda of the meeting was to discuss alleged misconduct of the appellant that had taken place on April 22, 2020 in which appellant was alleged to have created disturbance by insulting members and failing to observe Covid-19 regulations.
2. After the deliberations, appellant was found blameworthy and was fined and barred from accessing the tea buying centre for three months. Consequently, by dated July 20, 2020, appellant sued respondents seeking orders that:
 1. An order compelling respondents to collect, weigh and transport his green leave
 2. A declaration that the meeting held on April 25, 2010 was illegal and consequent fines imposed on Appellant illegal



3. Special and general damages of Kes 174,356/-
 4. Interest
 5. Any other relief
3. Respondents filed their joint defence on August 27, 2020 denying appellant's claim. The pleaded that appellant was given a chance to defend himself and that the decision taken against him was justifiable.
 4. At the hearing, appellant conceded that he was subjected to disciplinary proceedings in terms of the KTDA tea buying centre bylaws and did not appeal the decision of the buying centre committee.
 5. Concerning his alleged loss, appellant placed reliance on a valuation report dated July 9, 2020 which quantified his loss for 3 months at KES 174,356/-. In cross-examination, the maker of the report conceded that it included sums that were not expended and that he charged KES 5,000/- and not KES 15,000/- indicated in his report. He equally conceded that he was not certain of the actual number of appellant's tea bushes
 6. Respondents through its witness stated that the disciplinary proceedings against the appellant were conducted according to the KTDA tea buying centre bylaws and their decision was binding on the Appellant since he did not appeal.
 7. By judgment dated November 17, 2022, the learned trial magistrate found the appellant's case not proved and dismissed it with costs to Respondent.
 8. Aggrieved by the dismissal of his case, appellant filed this appeal on December 16, 2022 mainly on the following grounds:
 1. The court erred in holding that appellant's case was misconceived
 2. Whether the disciplinary proceedings were lawful
 3. The court erred in holding that appellant did not prove the pleaded special damages

Determination

9. I have considered the appeal in the light of the trial court record, the submissions and authorities cited by the parties.
10. This being a first appeal, the role of this court is to re-evaluate and subject the evidence to afresh analysis so as to reach an independent conclusion as to whether or not to uphold the decision of the trial court. The court also takes note of the fact that it did not have the benefit of seeing or hearing the witnesses testify and therefore has to make an allowance for the same. (See *Selle vs Associated Motor Boat Co* [1986] EA 123, *Peters v Sunday Post Ltd* [1958] EA 424 and *Abok James Odera t/a AJ Odera & Associates v John Patrick Machira t/a Machira & Co Advocates* [2013] e KLR).
11. Concerning the first ground of whether appellant's suit was misconceived, the drafting of the plaint clearly reveals that it was the officials of Kirumene Tea Buying Centre that were sued as 1st to 4th respondents. In their defence, respondents admitted the description attributed to them by the appellant. Consequently, the finding by the trial court that the suit against the Respondents was misconceived was in my considered view made in misapprehension of the pleadings.
12. Concerning the issue of whether the disciplinary proceedings against the Appellant were lawful, section 43 of the KTDA tea buying centre by-laws provides for Disciplinary Processes/Disciplinary



Committee. appellant has not demonstrated that the provisions of that section were breached and the proceedings were in my considered view lawful.

13. Section 44 of the by-laws grants an aggrieved party the right to appeal the decision of the Disciplinary Committee. Appellant did not exercise that right and I find that the trial court's finding that Appellant failed to follow the laid down procedure to challenge the decision of the Disciplinary Committee was well founded.
14. Concerning special damages, it is trite that special damages must be specifically pleaded and strictly proved. In *Capital Fish Kenya Limited v The Kenya Power and Lighting Company Limited* [2016] eKLR, the Court of Appeal observed:

“The appellant apart from listing the alleged loss and damage, it did not...lead any evidence at all in support of the alleged loss and damage. As it were, the appellant merely threw figures at the trial court without any credible evidence in support thereof and expected the court to award them. Indeed, there was not credible documentary evidence in support of the alleged special damages.”

1. And in *David Bagine v Martin Bundi* (CA No. (Nbi) 283 of 1996), the Court of Appeal, referring to the judgment by Lord Goddard CJ in *Bonhan Carter v Hyde Park Hotel Limited* [1948] 64 TLR 177), once again observed that:

“It is trite law that the plaintiff must understand that if they bring actions for damages it is for them to prove damage. It is not enough to note down the particulars and, so to speak, throw them at the head of the court saying ‘this is what I have lost’, I ask you to give me these damages; they have to prove it.”

15. I have considered the evidence on record and it was conceded that the sums of fertilizer and transport, labour and supervision were assumptions and the finding by the trial court that they were not proved was therefore well grounded.
16. The valuer confirmed that he did not have a receive for the Kes 5,000/- which he said was paid to him for preparing the valuation report. The finding that the said sum was equally not proved was equally well founded.
17. Appellant did correspondingly not demonstrate that he lost tea valued at Kes 24,256/- and I find that the award for the said sum was fittingly denied. Concerning bonus, appellant did tender any evidence to prove his weekly or monthly payments and the basis for calculation of bonus was therefore not properly laid
18. From the foregoing, I find that merely threw figures at the head of the court saying ‘this is what I have lost’, but failed to specifically prove what he had lost.
19. Consequently, I find that this appeal has no merit and it is dismissed with costs to the respondents.

DATED IN MERU THIS 26TH DAY OF OCTOBER 2023

WAMAE. T.W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene



For Appellant - Mr. for Kiautha Arithi & Co Advocates

For Respondents - Mr. Heyi for Gathungu for Joe Gathungu & Co Advocates

