

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL NO 98 OF 2015

1. JOHN MBUGUA NJUGUNA

2. SAMUEL NYINGI MUHIA

3. JOHN WAINAINA NJOROGE.....APPELLANTS

VERSUS

NGERE TEA FACTORY.....RESPONDENT

(Appeal from Original Decree dated 30/09/2015 in Thika CM Civil Case No 734 of 2009 – M W Mutuku, SPM)

J U D G M E N T

1. This is an appeal from the decree of the trial court passed on 30/09/2015 by which the Appellants' (plaintiffs') suit was dismissed with costs. The Respondent was the defendant.

2. The plaintiffs claimed against the defendant by an amended plaint dated 13/06/2011 an order that the defendant do "receive, accept and/or buy the plaintiffs' tea leaves; that the defendant do pay to the plaintiffs the "cost of loss and damages of tea leaves from 30th July 2009"; costs of the suit; and interest on damages and costs. The plaintiffs' claim was that the defendant had refused to receive, accept or buy their tea leaves for processing as mandated by the contract between the defendant and themselves.

3. The suit went to trial. I have read through the record of the trial court in order to evaluate the evidence and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have borne in mind however, that I neither saw nor heard the witnesses testify, and I have given due allowance for that fact.

4. The evidence laid before the trial court was that the plaintiffs' problem was with their local tea-collection centre, not the defendant. That problem was that the plaintiffs had refused or neglected to pay a contribution of KShs 300/00 each for improvement or maintenance of the centre as passed by members in general meeting. The plaintiffs were members of the collection centre. As a result their membership was suspended and they could no longer take their tea leaves to the collection centre for transport to the defendant's factory. They had in fact sued the tea collection centre in a different suit and obtained orders for their re-admission back, subject to each paying the KShs 300/00. They did not pay, and instead brought the suit against the defendant giving rise to this appeal.

5. The evidence placed before the trial court also established that the plaintiffs were free to join other tea-collection centres, or indeed deliver their tea directly to the defendant. There was no evidence at all that the defendant had refused to accept their tea into the factory.

6. Had the plaintiffs paid the KShs 300/00 as ordered by the court in the other suit, their problem with their tea collection centre would have been resolved, and they would have resumed delivery of their tea leaves to the defendant's factory through the collection centre. There was absolutely no reason to sue the defendant; they appeared to have gone to all that trouble just to avoid paying the KShs 300/00! The suit was indeed an abuse of the process of the court. Their special damages claim was not even specifically pleaded, and certainly not proven at all on balance.

7. Upon my own evaluation of the evidence placed before the trial court, I arrive at the same conclusion as that court. The plaintiffs' suit against the defendant was not only an abuse of the process of the court in light of the order they had already obtained in the other suit, their claim was not proved on a balance of probabilities. Their suit was properly dismissed with costs.

8. I find no merit in this appeal. The same is hereby dismissed with costs. It is so ordered.

9. The considerable delay in preparation and delivery of this judgment was occasioned by the fact that this file escaped my attention when I got fully immersed in my work in my new station after transfer. The delay is regretted.

DATED AND SIGNED AT NANYUKI THIS 10TH DAY OF AUGUST 2021

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 29TH DAY OF OCTOBER 2021