



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 341 OF 2012

CHI MOTORS LIMITED.....APPELLANT

- V E R S U S -

CHASE BANK (K) LTD.....RESPONDENT

(Being an appeal from the judgement of Hon. Obulutsa (SPM) at Milimani Commercial Court in CMCC No. 626 of 2010 delivered on 12th June, 2012)

JUDGEMENT

1) The appellant Chi Motors Limited, filed a claim against Chase Bank (K) Limited, the respondent herein, seeking for general damages for breach of contract and loss of business and reputation. The appellant vide its plaint dated 4th February, 2010 alleged that it being in the business of import and sale of motor vehicles, held a bank account with the respondent's Hurlighnam branch. On 17th September 2009, the appellant deposited a sum of kshs.400,000/=. The respondent was then instructed by the appellant to send the aforesaid amount by telegraphic transfer to the appellant's supplier, Nikkyo Company Limited in Tokyo Japan. The money was not sent to Nikkyo company until on the 25th September, 2009. The delay which the appellant claimed to have caused it a loss of business and reputation. The suit was heard on various dates and in the end, the learned trial magistrate, Hon. C. Obulutsa dismissed the claim on the basis that the appellant did not prove the loss it had suffered to entitle it to any award of damages.

2) Being aggrieved by the dismissal order, the appellant preferred this appeal and raised the following grounds:

- 1. That the learned magistrate erred in law and in fact in failing to appreciate the issues raised in the appellants claim and in dismissing the plaintiff's suit.***
- 2. That the learned magistrate erred in law and in fact in failing to weigh the evidence and testimony of the witnesses for the appellant as against the respondent's evidence.***
- 3. That the learned trial magistrate erred in law and in fact in failing to evaluate the documentary evidence adduced by the appellant.***
- 4. That the learned magistrate erred in law and fact in finding that the respondent had not breached any terms of the contract between the appellant and the respondent.***
- 5. That the learned magistrate erred in law and in fact in holding that the respondent was entitled to the costs of the suit payable by the appellant.***

3) The aforementioned grounds may be summarised to two main grounds namely;

i. Whether the learned trial magistrate erred in law and fact in finding that there was no breach of contract.

ii. Whether the learned magistrate erred in law and fact in finding that the appellant was not entitled for compensation for breach of contract by the respondent.

4) The first issue for determination is whether or not the learned trial magistrate erred in law and fact in finding that there was no breach of contract.

The appellant submits that it instructed the respondent to send the money to Nikkyo Company Limited in Tokyo Japan via telegraphic transfer on 17th September, 2009. The same was not done until the 25th of September 2009 causing a record of eight days of waiting. The appellant being a customer of the respondent had previously placed similar instructions for telegraphic transfers which were promptly acted upon and the funds transferred on the same day or at most within a day. The respondent vide its letter dated 29th September 2009 apologised to the appellant for the delay caused and blamed it on a technical error on its part.

5) There existed a customer –bank relationship between the appellant and the respondent. The appellant with time was used to having its services for telegraphic transfers effected within a day or two, this was effected within 8 days. I find this delay inexcusable.

PW1 stated that the transfer usually takes two days. When the respondent failed to send the money in the required time, the appellants vehicles were not shipped by the supplier and thus they suffered loss.

DW1 stated that the whole process takes 3 days. DW1 confirmed having been given the instructions to effect a telegraphic transfer, the invoice details were not complete as it did not have the banking details. DW1 stated that the appellants contact had been changed, and when they got their new contact, they informed the appellant of the delay, then they effected the transfer the same day by which date days had passed.

6) However the apology letter sent to the appellant for the delay PExb1b, apologised for the delay and blamed it on a technical hitch on their side. I am inclined to agree with the appellant that indeed the respondent breached the contract terms and should be held liable. This ground of appeal is found to be meritorious.

7) The second issue for determination is whether or not, the learned magistrate erred in law and fact in finding that the appellant was not entitled to compensation for breach of contract by the respondent.

The appellant submits that due to the delay of 8 days, the appellant's supplier did not ship out three motor vehicles which were meant for the Kenyan market. They were shipped on 5th October 2009. The appellants submits that its reputation was severely damaged in the industry because word spread amongst its clientele that the appellant could not be trusted with money to import and ship vehicles. This the appellant states that, it made it suffer loss of reputation and loss of business as a direct breach by the respondent's delay in effecting the telegraphic money transfer.

8) The appellant proposed a compensation of ksh. 400,000/- as general damages for breach of contract based on the amount of telegraphic transfer the subject of this appeal and ksh 600,000/- as general damages for loss of reputation and cited the case of **Nicholas O.Ombija –vs- Kenya Commercial Bank Limited Nrb HCCC No. 547 of 2008** where the plaintiff was awarded ksh. 2,500,000/- in general damages in a case of almost similar nature like that of the appellant herein.

9) The general principle with regard to damages for breach of contract were set out in the often quoted case of **Hudley's paxendale [1854] 9 Exch 341** where the court stated inter alia:-

“where two parties have made a contract which one of them had broken, the damages which the other party ought to receive in receipt of such breach of contract should be such as may fairly and reasonably be considered either naturally that is in accordance to the usual course of things from such a breach itself ,or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it.”

There is no doubt the breach of contract by the respondent caused the appellant loss of business, reputation and trust as seen in the evidence of PW1. DW1 delayed in effecting the transfer and the imported cars arrived into the country later than the date the appellant had expected them. DW1 apologized to the appellant for the delay and inconvenience caused.

10) I am convinced that for the court should make orders which restore the parties to the position they were at the time they made the contract.

11) In the end the appeal succeeds. The trial court’s judgement is set aside and is substituted with an order entering judgement in favour of the appellant as follows:

- i. General damages for breach of contract in the sum of ksh.250,000/=
- ii. Interest at court rates from the date of judgment until full payment.
- iii. Costs of the appeal and the suit are awarded to the appellant.

Dated, Signed and Delivered in open court this 23rd day of February, 2018.

J. K. SERGON

JUDGE

In the presence of:

.....for the Appellant

.....for the Respondent