



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 88 OF 2006

ONE EIGHTY INVESTMENTS LTDPLAINTIFF

V E R S U S

DICCON C. WILCOCK (being sued as the legal representative/executor

of the Estate of MARIAN NICHOLAS).....DEFENDANT

JUDGMENT

1. **ONE EIGHTY INVESTMENT LTD**, the Plaintiff, sued **DICCON WILCOCK** as executor of **MARIA NICHOLAS** (Deceased), for damages caused by fire which started from the property of the Deceased and spread to its property Plot Nos **KWALE/MSAMBWENI "A" 3109** and **KWALE/MSAMBWENI "A" 3110** Mbuyuni Kwale District. On those two properties Plaintiff operated Cottages business and had staff quarters.
2. At this initial stage I wish to state that the Defendant called no evidence and the Plaintiff's evidence therefore was unchallenged. I wish also to say that the evidence in this case was received by Justice Sergon but the responsibility of writing this judgment fell on me because the said Judge was not in Mombasa High Court when the case was marked as concluded.
3. Evidence was tendered and title deeds of the two plots were exhibited. There was also exhibited copy of the grant of Probate of Will which was issued in respect of Deceased's Estate to Diccon Croft Wilcock.
4. Dr. Michael Craden, PW1, stated that he is one of the Directors of the Plaintiff's Company. While in America on 19th April 1998 he was informed by telephone that fire had destroyed the houses on the two plots. On returning to Kenya he was able to confirm that damage. One Plot there was two bedrooms ensuit, one was a separate honeymoon ensuit, there was six bedrooms house behind the honeymoon suite, which were all destroyed by the fire. The fire emanated from the Deceased's plot. There is evidence produced to prove the ownership of Plot No. 'A' 2945, where fire started was registered in the Deceased's name. PW1 also produced photographs of the destroyed houses on Plaintiff's plots.
5. PW1 assessed the damage Plaintiff suffered at Kshs. 6,761,190/- which consisted of sum of Kshs. 5,010,000/- representing the damaged houses and Kshs. 1,751,000/- representing the goods Plaintiff lost. He was unable to produce receipts because they were destroyed in the fire.

6. ROBERT KIOKO, PW2 gave evidence as an Executive Officer of Kwale Court. He produced the register of the Court which showed Miragi Mwasibho was charged in that Court under file SRMCC No. 581 of 1998. He was charged with offence of unlawfully and negligently kindling fire contrary to Section 3(2) Grass Fires Act Cap 327. He was unable to confirm the outcome of that case because by the time he testified the Court file had been destroyed.
7. P. C. Paul Lyambila gave evidence of the Police inquiry into the fire that burnt properties which included Plaintiff's property. The inquiry was concluded with the recommendation that Miragi Ali Mwasibho be charged with the offence of kindling fire.
8. Omar Masud and Shehe Athuman Mwadzombo working for Sea Scapes Resort and gardner of PW1, respectively, testified that Miragi started the fire on Deceased's property attempting to kill a snake and that fire spread to other properties causing damages.
9. Richard Munyua Kyampi from Tyson, Mombasa, carried out valuation of Plaintiff's property whereby he assessed value of the building destroyed by fire to be Kshs. 5,010,000/-.
10. Miragi Ali Mwasibho, who started the fire on the Deceased's property was employee of the Deceased. That evidence came out clearly from the witnesses who testified in Court. Miragi owed a legal duty to exercise care when lighting the fire to ensure it did not spread to Plaintiff's property. The damage the Plaintiff suffered is attributable to him and inturn under the doctrine of vicarious liability the Deceased, and now her Executors, are liable. The damage of fire on Plaintiff's property as foreseeable and Miragi should have taken care to avert it. A case in point is the case of **NORTHWESTERN UTILITIES LIMITED –Vs- LONDON GUARANTEE AND ACCIDENT COMPANY LIMITED [1936]A.C. 108** whereby embodying the rule of strict liability in **Rylands v. Fletcher** (supra), Viscount Hailsham L.C. Lord Blanesburg and Lord Wright held at p. 109:-

“... as the appellants were carrying gas at high pressure which was very dangerous, if it should escape, they owed a duty to the owners of the hotel, to exercise reasonable care and skill that the hotel should not be damaged. The degree of care which that duty involved must be proportioned to the degree of risk involved.”

Similarly in this case the employee of Deceased owed a duty to the Plaintiff to ensure the fire did not spread to Plaintiff's property.

11. The Plaintiff has proved its case on a balance of probability, on the claim for special damages. There were no submissions on the claim for general damages and that claim fails. The Defendant's defence was not supported by evidence and it therefore remains allegations of denial.
12. In the end there shall be judgment for the Plaintiff as follows-
 - a. **For Kshs. 6,761,190.00 with interest from the date of filing suit until payment in full.**
 - b. **For costs of the suit.**

DATED and DELIVERED at MOMBASA this 26TH day of FEBRUARY, 2015.

MARY KASANGO

JUDGE