



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

HIGH COURT CIVIL APPEAL NO. 20 OF 2009

HAGGAI PAUL OBUYA.....APPELLANT

VERSUS

THE CHAIRMAN, SECRETARY,

TREASURER & THE EXECUTIVE SECRETARY KNUT

BUSIA (All on behalf of KNUT Education Scheme).....RESPONDENT

(An Appeal arising out of the judgment of E.O. Obaga Principal Magistrate

in BUSIA CMCC. no. 298 of 2008 delivered on 16th June 2009).

JUDGMENT

1. By a plaint dated 25th August 2008 and filed on 8th September 2008, Haggai Paul Obuya (the **Appellant** herein also referred to as the **Plaintiff**) sued the officials of Busia KNUT Education Scheme (hereinafter referred to as the Defendant Scheme) for the sum of Kshs. 62,500/- with interest thereon from November 2003. The plaintiff is disappointed and aggrieved by the judgment of the Trial Court that found in his favour only in the sum of Kshs. 2000/- with costs and interest.

2. In the pleadings before the Subordinate court, the Plaintiff sought the principle sum of Kshs. 62500/- on account of shares allegedly held by the Defendant Scheme. The Defendant on the other hand denied the Plaintiff's claim and put him to strict proof thereof.

3. The evidence before court is not involved. At the time material to the claim, the plaintiff was a teacher at Busire Primary School. He joined what at that time was referred to as KNUT Education Scheme in October 1994. Then he made a monthly contribution of Kshs. 200/-. His payslip for October 1994 was Plaintiff Exhibit 1. The name of the Scheme changed to KNUT Builders Scheme and then to its current name KNUT Education Scheme. By the time he ceased being a member in November 2003, he was making a monthly contribution of Kshs. 500/- (see payslip for November 2003 P exhibit 2). It was his testimony that he has made a total contribution of Kshs. 56,000/- which he now wanted refunded.

4. The 2nd witness for the Plaintiff was Benson Okumu Adweya (PW2). He just like the Plaintiff is a School Teacher and an employee of Teachers Service Commission. Again, just like the Plaintiff, he was a member of the Defendant Scheme. He knew the Plaintiff as a member and contributor to the Scheme. But in cross-examination he told court that he did not know the shares held by the Plaintiff.

5. As the Defence did not call any evidence, that was all that the Trial court could work with. Having made an evaluation of the evidence on record, the Trial court found that the Appellant had only proved a claim of Kshs. 2000/-.

6. The Memorandum of Appeal cited seven (7) grounds of appeal. To be fair, however, the single question the Appeal raises is that the Learned Trial Magistrate erred in law and fact in failing to hold that the Appellant had proved his entire claim. As I turn to consider the grievance. I am obliged as the first Appellate Court to reconsider and re-evaluate the entire evidence as whole (see ***Selle Vs Associated Motor Boat Company Ltd (1969) EA 123.***)

7. The evidence of PW2 did not give any substantive support to the claim as PW2 did not know what was due to the plaintiff or the shares he had contributed. Looking at the plaintiff's own evidence, I find that he was able to strictly prove contributions he made in October 1994 being Kshs. 200/- and in November 2003 being Kshs. 500/-. The amount proved was Kshs. 700/- . Remembering that the plaintiff's claim was in special damages, he had a duty to provide strict proof thereof. The documents he produced before court showed a contribution of Kshs. 700/- It does seem to me that the Learned Trial Magistrate was in fact generous to the Plaintiff in finding that he had proved contribution of Kshs. 2000/-. But as there was no cross appeal, the Plaintiff should be glad to live with that outcome.

8. The upshot is that the appeal is dismissed with costs.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 20th DAY OF MAY 2015.

F. TUIYOTT

J U D G E

IN THE PRESENCE OF:

OILE.....COURT CLERK

N/A.....FOR THE APPELLANT

N/A.....FOR THE RESPONDENT