



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CIVIL APPEAL NO. 173 OF 2002**

**JOSEPH GICHERU MUCHIRI.....APPELLANT**

**VERSUS**

**THE CHAIRMAN, KIANGIMA TRADING CENTRE.....1ST RESPONDENT**

**LEAF BASE MANAGER IRIAINI.....2ND RESPONDENT**

**KENYA TEA DEVELOPMENT AUTHORITY.....3RD RESPONDENT**

*(Appeal from the Judgment and order of the Chief Magistrates Court at Nyeri*

*(C.D.Nyamwea R.M) in C.M.C.C No.47 of 2001 dated 17th October 2002)*

**JUDGMENT**

**Joseph Gicheru Muchiri**, the Appellant herein, sued the 1st, 2nd and 3rd Respondents respectively, namely **Chairman Kiangima Trading Centre**, **Leaf Base Manager-Iriaini** and **Kenya Tea Development Agency** before the Chief Magistrate's Court, Nyeri claiming both special and general damages for the loss occasioned to him by the Respondents' decision to ban him from delivering his green tea leaves for a period of six months. The Respondents denied the Appellant's claim by filing a defence. At the end of the trial, Hon. C.D. Nyamweya learned Senior Resident Magistrate, made the following orders:

- 1. Declared that the Appellant is only entitled to payment for 5 ½ Kgs of tea.**
- 2. The appellant is not entitled to costs.**
- 3. The appellant to pay costs to the 1st and 2nd Respondents.**

Being aggrieved, the appellant preferred this appeal:

- 1. The learned Magistrate erred in law and in fact in failing to address himself to the issues raised by the parties in their pleadings.**
- 2. The learned Magistrate erred in law and in fact in failing to make a finding of costs incurred by the appellant on fertilizer.**
- 3. The learned Magistrate erred in law and in fact in making a finding that the**

**rehabilitation had not been done by the Plaintiff which finding was against the evidence on record.**

**4. The learned Magistrate erred in law and in fact in making a finding that there were any bylaws in existence at the time of the cause of action.**

**5. The learned Magistrate erred in fact and in law in arriving at the decision that the Plaintiff was guilty of contravening the 1st defendants bylaws.**

**6. The learned Magistrate erred in law and in fact in failing to appreciate that the ban of delivery of tea was un-procedural, illegal, null and void.**

**7. The learned Magistrate erred in law and fact in holding the defendants had any right to ban the delivery and sale of tea per the law in force.**

**8. The learned Magistrate erred in law and in fact in denying the Plaintiff costs of the suit.**

**9. The learned Magistrate erred in failing to award the Plaintiff judgment incapable of being executed.**

**10. The learned Magistrate erred in fact and in law in failing to make an award for the Plaintiffs' loss and damage.**

When the appeal came up for hearing, the Appellant and the Respondent's advocate recorded a consent order to have the appeal disposed of by written submissions. The brief history of this appeal is that, the appellant being a tea grower who delivers green leaf tea to Iriaini Tea factory through Kiangima Tea Buying Centre. He sued the Chairman of the Tea Buying Centre, his Leaf Base Manager and Kenya Tea Development Agency Ltd, the Tea Marketing Agent. The Appellant alleged that when he delivered his green leaf tea on 2nd January, 1999 the tea collection clerk recorded 5 ½ Kgs lesser weight than what he delivered. He claimed he suffered a shortfall of 5 ½ Kgs. The next day he said that when he attempted to deliver the green leaf tea, the same was rejected hence he suffered loss. The Respondents' denied the appellant's claim and tendered evidence showing that the appellant had breached the Tea Buying Centres By -Laws attracting a sanction of suspension for six months when he refused to make amends for his misconduct.

Though the appellant raised 10 grounds of appeal, the same may be summarized to three. The first ground is an argument that the learned Senior Resident Magistrate failed to consider all the issues put to his attention. I have reconsidered the evidence presented before the trial court and it is apparent that the trial magistrate managed to consider all the issues put to his attention for determination and that is how he managed to award the appellant payments of 5 ½ Kgs for green leaf tea. In fact, the trial magistrate rejected the appellant's other claims on the basis that the appellant breached the Tea Buying Centre, By-laws and that is why he was banned from delivering green leaf tea. The misconduct which manifested itself is that the appellant sold his land and did not prune the tea bushes in order to rehabilitate the same. In the circumstances of this case, it cannot be said that the trial Magistrate did not consider the evidence and pleadings.

The appellant's second ground is that he was unfairly denied costs. The appellant has argued that since he was a successful party he should have been awarded costs of the suit against the 3rd Respondent. The learned Senior Resident Magistrate declared that the appellant is entitled to payment for the value of 5 ½ Kgs of green leaf tea from the 3rd Respondent. He denied him costs without giving any reasons. It is trite law that costs follow the event. The appellant should have been awarded costs.

The appellant has attacked the judgment of the trial court on the ground that the same is incapable of being executed. With respect, I do not agree with the appellant. It is easy for one to ascertain the value of the green leaf tea per kilogram. I see no merit on this ground.

In the end, the appeal is dismissed save that the order denying the appellant costs against the 3rd Defendant (3rd Respondent) is set aside and is substituted with an order giving costs to the appellant as against the 3rd Respondent of both the suit and on appeal.

**Dated, Signed and delivered in open court this 21st day of February, 2014.**

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**J.K.SERGON**

**JUDGE**

**In the presence of:**

Mr. G. Mwangi holding brief for M/s Mwai for Respondent

Appellant in person