



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL APPEAL NO. 35 OF 2010

KENYA FARMERS ASSOCIATION LTD APPELLANT

VERSUS

NDEGWA KAMAU t/a

NDECO TECHNICAL SERVICESRESPONDENT

*(Appeal arising from the judgment of S.R.M.C.C. NO. 69 of 2009 delivered on 17th February 2010 by
Miss Hannah Ndungu,
Principal Magistrate Nanyuki)*

JUDGMENT

Ndegwa Kamau T/a Ndeco Technical Services , the Respondent herein, sued Kenya Farmers Association Ltd., the Appellant herein, claiming for interalia

- (i) *Vacant possession of premises to the Respondent.***
- (ii) *In the alternative a refund of a deposit of Kshs. 22,500/=.***
- (iii) *Payment of damages for breach of contract.***

The suit was filed before the Nanyuki Principal Magistrate's court. The Appellate filed a defence denying the Respondent's claim. The suit was heard by Honourable Ndungu, learned Principal Magistrate. The learned Principal Magistrate entered judgment in favour of the Respondent in the sum of Kshs. 150,000/= being damages for breach of contract and the consequential expenses incurred. The Appellant was aggrieved his this appeal.

On appeal the Appellant put forward the following grounds of Appeal in its Memorandum of Appeal.

- 1. *The learned trial magistrate erred in law and in fact in making a find that a contract had been sealed between the Appellant and the Respondent.***
- 2. *The learned trial magistrate further erred in law and in fact in awarding the Respondent damages for breach of a contract which had not been sealed.***
- 3. *That learned trial magistrate erred in law in awarding damages for breach of contract without sufficient material being placed before her that could guide her in assessing the damages.***

4. The learned trial magistrate erred in law in awarding the Respondent a sum of Kshs. 150,000/= being “damages for breach of contract and any costs incurred by him as a result of the breach”, in light of the fact that she had already rejected the claim for expenses incurred for not being specifically pleaded and proved.

5. The learned trial magistrate erred in law in awarding the Respondent an award for costs incurred which were not specifically pleaded and proved.

6. The learned trial magistrate erred in law and in fact in awarding a hefty sum as general damages without attaching any reason thereto.

When the appeal came up for hearing, it was directed that the same be disposed of by written submissions. I have re-evaluated the case that was before the trial court plus the written submissions. Though the Appellant put forward a total of six grounds, the same may be summarized to two main grounds. The first ground is to the effect that the learned trial magistrate erred when she found that there was a contract between the Appellant and Respondent which was breached. I have re-evaluated the evidence. There is evidence that the Respondent applied for space to lease in the premises owned by the Appellant in Nanyuki town. The Appellant offered the Respondent spaces at a monthly rent of Kshs. 7,500/= a with a rider that he would sign a lease agreement containing the conditions in the letter and other terms of the lease. The Respondent proceeded to pay the Appellant a sum of Kshs. 22,500/- representing three (3) months rent. The Appellant said that it was not possible for the Respondent to take up possession of the premises because the previous tenant settled all the outstanding arrears of rent. That information was passed to the Respondent. He was also advised to collect a refund of his money. It is the submission of the Appellant that no contract had been sealed between it and the Respondent. A careful perusal of the Appellant’s letter of offer will reveal that the Respondent was required to execute a formal lease agreement which would give the details of the terms and conditions of the tenancy. The parties did not execute any lease hence it was erroneous for the trial Principal Magistrate to conclude that a contractual relationship has arisen. The second ground of appeal is basically challenging the award of Kshs. 150,000/= as damages for breach of contract. The Respondent tendered evidence to show that he incurred expenses in preparation for entry of the premises. He claimed he purchased materials, paid a contractor and other incidental expenses. The aforesaid evidence indicates that the Respondent meant to establish special damages which he did not specifically plead. The learned Principal Magistrate awarded him a lump sum of Kshs. 150,000/= as damages for breach of contract and for any costs incurred as a consequential of the breach. In my considered opinion there was no basis to make the award because there was no formal agreement in the first place hence the element of breach does not arise.

In sum, I am convinced the appeal has merit. It is allowed. The judgment of the Principal Magistrate is set aside and is substituted with an order entering judgment in favour of the Respondent as against the Appellant in the sum of Kshs 22,500/=. Costs of the appeal is given to the Appellant while costs of the suit based on the above award is given to the Respondent.

Dated and delivered this 29th day of July 2011.

J.K. SERGON
JUDGE

In open court in the presence of Miss Mwai for the Appellant and Mr. Ombachi holding brief Kiget for the Respondent.