



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS) Civil Suit 3021 of 1995

PHILIP YOGO ONDIEK.....PLAINTIFF

VERSUS

JAMES OTIENO AYUGI1ST DEFENDANT

TERESA A. OCHOO.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

This old case was heard ex-parte after the court was satisfied that all the Defendants were served properly but chose not to appear before the Court.

The Plaintiff claims for general damages on the acts of removal of his belongings, in his absence and without his consent, by the 1st and 2nd Defendants on 25th June, 1994 at around 10 a.m., from his house no. 53 situated in Ayany Estate, Kibera, Nairobi.

He prays for general damages, exemplary damages and special damages of Shs.700,000/=

The 1st Defendant vide his statement of Defence dated 31st October 1995 averred that the Plaintiff and the 2nd Defendant were husband and wife and were cohabiting at House No. 53, Ayany Estate and thus it was lawful for 2nd Defendant to enter the house and the goods were removed at the behest of the 2nd Defendant. It is denied that the value of goods removed was Kshs.700,000/= or the removal of the goods was unlawful as averred in the plaint.

The Attorney General also filed the Defence on 16th January 1995 which states that the 3rd Defendant is a total stranger to the

averments made in the suit. It is also stated that the officers who removed the goods are not named in the Plaintiff.

The 2nd Defendant in her statement of defence dated 15th April 1996 echoed the statement of defence of the 1st Defendant and further averred that she was also a wife of the Plaintiff at the time of filing the said defence.

With these pleadings issues were raised. In short the issues to be determined are:

- 1) Whether the 1st and 2nd Defendants unlawfully removed goods from the house of the Plaintiff.
- 2) Whether the acts of 1st Defendant in assisting 2nd Defendant to transport goods with the assistance with police officers and Army officers in Army Vehicle Registration No. 40 KA 72 was unlawful, or within his duty.
- 3) What was the value of the goods.
- 4) Whether the 2nd Defendant was a wife of the Plaintiff.
- 5) What damages the Plaintiff suffered.

The Plaintiff testified and stated that 2nd Defendant was his girl friend and on 25th June 1994, while he was at work, he was informed by one Gordon Asego that the 1st Defendant with three unknown Army officers and two unknown Police Officers ransacked his house and removed goods therefrom and placed the same in Army vehicle Registration NO. 40 KA 72. He went back to his house and found the same empty.

He went to the 1st defendant's house, who is an Army Officer, to question the removal of goods but he simply told him to organise how he wanted to stay with the 2nd Defendant and that she told the 1st Defendant that she was moving out with the Plaintiff to another place. According to Plaintiff he saw his goods stacked in the balcony of the 1st Defendant's house but he refused to return the same to him.

He reported the matter to Military Police and received a letter dated 5th December 1994 (P Ex 1), addressed to the 1st Defendant asking him to avail at Military Police Headquarters to present his case. He was not given any intimation as to what happened, after the said letter. Thereafter the work ticket of the said vehicle was sent to his previous Advocate vide a letter of 16th July, 1997, which does not have any entry of 25th June, 1994 (P Ex 2). In any event the work Ticket mentioned medical duties and school children as the purposes of movement of the vehicle

The Plaintiff testified that the inventory of the goods removed and taken away by the 1st Defendant is annexed to the Plaintiff.

PW 2 Gordon Asego reaffirmed what he saw on 25th June, 1994 and his testimony corroborated what the Plaintiff has averred.

He stated that the ex-girl friend of the Plaintiff accompanied by the Army and Police officers removed the goods from his house and transported the same in an Army vehicle Registration No. 40 KA 72 which he noted when the incident occurred.

The above is the evidence before this court.

First of all the Plaintiff has failed to prove, on balance of probability, that the goods removed were his properties, thus I cannot find that the goods worth shs. 700,000/= were taken from his premises.

Yes, I have the proof that goods were removed by 1st and 2nd Defendants with the assistance of Army and Police Officers. I find so as both the Defendant have agreed that the goods were removed and as per their defence, 2nd Defendant was a wife of the Plaintiff and 1st Defendant was told by 2nd Defendant that they were moving to another place as a couple.

This act of removing the goods in absence of the Plaintiff, by the use of an Army Lorry (when the 2nd Defendant is not an Army officer) was definitely an unauthorized act by an Army Officer, the 1st Defendant. I am also surprised to note that despite the admission by the 1st and 2nd Defendants that the Army Lorry was used, that occurrence is not reflected in the work ticket of the vehicle in question.

The action by the 1st Defendant to that extent was absolutely unlawful and he has to be answerable for such action.

I may further note that even if the 2nd Defendant was a wife of the Plaintiff, which I would not believe without the proof from the Defendants, a wife has no right in law to remove the goods from the matrimonial home without consent and/or by knowledge of the husband. That becomes a tortious act liable in payment of damages.

Considering the facts of the case, I would estimate the special damages in the sum of Shs. 100,000/= and the general damages in the sum of shs. 50,000/=

I thus enter judgment for the Plaintiff in the sum of Kshs. 150,000/= with costs and interest as per law against the 1st and 2nd Defendants jointly and severally.

Dated, Signed and delivered at Nairobi this 2nd day of February, 2010.

K. H. RAWAL

JUDGE

2.2.2010