REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 16 of 2008

MUNUNGA TEA FACTORY CO. LTD & ANOTHER.....APPELLANTS

VERSUS

SUSAN WANJIRU KARANI.....RESPONDENT

J U D G M E N T

The Respondent in this Appeal had sued the 2 Appellants before the Resident Magistrate's Court at Kerugoya for KShs.14,607 plus interest at the court rate of 12% from October 2003 until payment in full. She also prayed for costs of the suit.

Her claim was that she was a tea farmer and she used to deliver tea to the 1st Appellant factory. During the period starting from 1st July 2002 up to 30.6.03 she delivered 1,112,50 Kg for which she was paid her monthly dues and the interim bonus. The Appellants nonetheless refused to pay her the final 'bonus' of KShs.14,607 which was pegged on the said weight.

According to the defendants the Respondent had falsified the weight. They therefore refused to pay the bonus and also issued directives for the recovery of the overpayment.

The plaintiff/Respondent disputed that she had falsified the weight of the tea. She produced the payment slips showing that she had delivered the tea and received the interim payments for it. She maintained that the money she was claiming was owed to her by the Defendant/Appellants.

On their part, the defendants adduced evidence to the effect that they assess or approximate the correct weight of tea sold to them by the standard production per bush. According to the Defendant/Appellants, the highest production one bush can yield per year is 1.5 kg. From the total weight of the tea sold by the plaintiff, the Defendants were able to conclude that her tea bushes had yielded 1.83 kg which was therefore on the higher side and hence the conclusion that she must have falsified the weight. They therefore refused to pay her the amount claimed and hence the filing of the suit.

After hearing the parties and their witnesses and submissions of both counsel, the learned trial magistrate found the plaintiff's case proved on a balance of probabilities. He entered judgment in her favour for the amount claimed in the plaint. The Defendants were aggrieved by the said judgment hence the filing of this Appeal. They have proffered 6 grounds of Appeal which I do not find necessary to repeat for purposes of this Appeal. They urge the court to allow the appeal, set aside the judgment of the trial magistrate and dismiss that suit with costs to them.

Both counsel filed written submissions in this Appeal. I have considered the same carefully along with the said grounds and the evidence adduced before the trial court. The only issue for me to determine is whether the learned trial magistrate on the basis of the evidence before him arrived at the right decision. In his judgment, he did make a finding that the delivery slips produced before him were evidence that she had delivered the tea indicated thereon. He further observed and found that if the defendants had measured and ascertained that the tea in question was delivered then they could not later turn round and deny the same. I could not agree with him more. The slips in question were made by the Appellants' authorized agents and not by the Respondent. The presumption is that they measured the tea correctly. If there was any falsification, then it was them who falsified the weight and not the plaintiff. None of those weighing clerks was called as a witness to say why they indicated false weights in the pay in slips. The evidence before the trial court was that none of the defendants'/Appellants'

employees was ever charged with falsifying the documents. How then could they heap the entire blame on the Respondent? Further, the method used to ascertain whether the weight had been falsified or not was not error proof. They said that they just used to visit the farms and confirm how many bushes there were and the expected harvest. That in my considered view is not a procedure that is foolproof. It is indeed open to error and even abuse by the people said to be assessing the tea bushes. That kind of examination is not scientific and cannot be totally reliable. In any case, if it was supposed to be faultless, why were the initial payments made for the same tea?

I agree with the learned trial magistrate that the plaintiff did prove her case on a balance of probabilities. The legality or otherwise of the lease agreement was neither here nor there. The issue was not where or how the tea was grown but that the tea delivered at the factory by the plaintiff was received and accepted by the Appellants as correct and they should have paid the final bonus for it.

I find no fault in the judgment and findings of the learned trial magistrate. I uphold the same. This Appeal is therefore dismissed with costs to the Respondent. It is so ordered.

Delivered, dated and signed at Embu this 6th day of July 2010.

W. KARANJA
JUDGE