



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT MERU**

**JULIUS**

**KAURU**

**MUGAA.....APPELLANT**

**VERSUS**

**KAINGA M'ITHILI.....RESPONDENT**

**Civil Appeal 75 of 2001**

***(An appeal from the Judgment of the Hon. Mr. Omondi M.N. R.M. Meru***

***in CMCC No. 416 of 2000 delivered on the 26<sup>th</sup> day of June 2001)***

**JUDGMENT**

The appellant sued the respondent in the lower court seeking the return of his 3 goats valued at Kshs. 5000/= each and for Kshs. 12,000/= being expenses incurred by him. That suit was defended by the respondent. In evidence the appellant stated that on 26<sup>th</sup> July 1999 his goats went missing. With the assistance of others he did not name he tried but could not get them. He reported the matter to the chief. On 28<sup>th</sup> July 1999 at 3pm, he said,

***“We recovered all the 3 goats out of the home of the defendant (respondent). We requested the defendant to give us the goats but he declined.”***

He said that the defendant failed to return those goats which were mature and which he had purchased for Kshs. 5000/= each. Thereafter, an elders meeting was convened in an attempt to resolve the issue. The issue was not resolved and he said that he spend Kshs. 12,000/= to entertain the elders. PWII was one of the elders who arbitrated on the matter. He said that after the arbitration the respondent failed to return the goats. He said that the elder's expenses were Kshs. 1,500/= per meeting and the meetings took place for 3 weeks. According to my calculation, if that is so, the total amount spent is Kshs. 31,500/= and not Kshs. 12,000/= as claimed by the appellant. PWIII in his evidence stated that he met the appellant and the respondent at the chief office. He was given the responsibility of getting the goats from the respondent. The respondent did not return the goats. On being cross examined, this witness said that the appellant's goats were at the DO's office. The respondent stated that on 30<sup>th</sup> July 1999 the appellant goats were grazing on his land. He took them to the DO's camp and the goats remained in that camp for

6 months. Meanwhile an agricultural officer attended to his land and made a report relating to the damage caused by the goats the basis of which he used to sue the appellant at the resident magistrate court Maua. In his view, the appellant sued him for the lost goats because of that suit in Maua. DWII said that on 30<sup>th</sup> July 1999 as he went to the respondent's home, he found 2 of the appellant's goats grazing on the respondent's land. He drove them off the land and took them to the appellant but the appellant declined to have them saying that they ought to be taken to the DO's camp. That was the evidence the lower court had to deal with in considering this case. The lower court found that the appellant had not proved his case on a balance of probability. The appellant was aggrieved by that finding and has brought before this court the following 5 grounds which are as herein under:-

- 1. *The learned resident magistrate erred in law and in fact in dismissing the appellant's case when the plaintiff had proved his case on a balance of probability.***
- 2. *The learned resident magistrate erred in law and in fact in dismissing the plaintiff and his witness evidence without giving reasons for so doing.***
- 3. *The learned resident magistrate erred in law in not properly analyzing the appellant and his witness's evidence hence arriving at the wrong conclusion.***
- 4. *The learned resident magistrate relied on extraneous matters in arriving at the decision.***
- 5. *the judgment of the learned resident magistrate is against weight of law and evidence.***

In considering the evidence on record, I find that I am in agreement with the finding of the learned magistrate. The evidence of the appellant that his goats were taken by the respondent was not corroborated by anybody else. He seeks from the court either the return of the goats or the compensation of their value. He also failed to prove to the court the value of those goats. He did not call any evidence to show the value attached to them. None of the witnesses that he called supported the evidence that it was the respondent who took those goats. To the contrary, the respondent's evidence was corroborated by DWII. The respondent and his witness confirmed that the goats which was said to be two were grazing on the respondent's land and had been driven off to the DO's camp but the appellant had failed to collect them. The learned magistrate in my view did not error in law and in fact in dismissing the appellant's case. He also did not rely on any extraneous matters in reaching his decision. His judgment is well supported, I would say, by the evidence adduced before him. The present appeal has no merit and is dismissed with costs to the respondent.

Dated and delivered at Meru this 6<sup>th</sup> day of November 2009.

**MARY KASANGO**

**JUDGE**