



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

Civil Appeal 6 of 2005

1. CHARLES KILEL

2. WELDON KILEL.....APPELLAANTS

VERSUS

SAMWEL LANGAT.....RESPONDENT

JUDGEMENT

The respondent sued the appellant claiming a sum of Kshs.10,300/= as special damage after the appellant's cattle trespassed into the respondent's farm and destroyed his sweet potatoes which were valued at the aforesaid sum. The respondent also claimed general damages as well as costs of the suit. The appellants filed a joint statement of defence and denied the respondent's claim.

The trial magistrate held that the cattle that trespassed into the respondent's farm belonged to the appellants and the damage that was caused there at was assessed by an Agricultural Officers at Kshs.10,300/= and therefore he entered judgment for the respondent in the said sum.

Although the trial magistrate entered judgment for the plaintiff against the defendants as prayed in the plaint with costs and interest, it is apparent that the claim for general damages was not proved at all. That may explain why the learned trial magistrate did not give any award for general damages.

The appellants were dissatisfied with the said judgment and filed an appeal to this court. The appellants wet out five grounds of appeal which were as follows:

- “1. THAT the learned trial magistrate erred in law and fact in entering judgment in favour of the plaintiff against the weight of evidence adduced.***
- 2. THAT the learned trial magistrate erred in law and fact in holding that the subject herds of cattle were constructively held by the defendants.***
- 3. THAT the learned trial magistrate erred in law and fact in failing to address the material issues of law in the judgment.***
- 4. THAT the learned trial magistrate erred in law and fact in shifting the burden of proof to the defendants.***
- 5. THAT the learned trial magistrate erred in law and fact in considering extraneous issues in the judgment.”***

Mr. Orina for the appellants submitted that there was no sufficient evidence that the subject animals belonged to the appellants. He further stated that there were vital contradictions in the evidence that was adduced by the respondent and his witnesses. He attacked the plaint that was filed by the respondent saying that the same was neither dated nor signed. In his view, the trial should have struck out the entire suit.

Mr. Koech for the respondent supported the trial magistrate's judgment and submitted that the appeal was unmeritorious. He added that the learned trial magistrate relied upon an assessment done by an Agricultural Officer who stated that the value of the damage that was occasioned to the respondent by the appellant's cattle was Kshs.10,300/=.

Regarding the plaint, Mr. Koech submitted that the appellants' counsel did not raise that issue before the trial court and therefore the court proceeded to consider the case that was before it based on the merits of the same.

Before considering the merits of the case itself, I will first dispose of the issue as to whether the plaint was before the trial court was dated and signed as required. Although the copy that is contained in the record of appeal is neither signed nor dated, the one that was before the trial court was duly signed and dated. In the circumstances therefore, the said omission does not invalidate the appeal.

Turning to the evidence that was tendered before the subordinate court, the respondent testified that on 1st September, 2003, he was informed by his mother that herds of cattle that belonged to the appellants had entered into his parcel of land known as L.R. NO.Kericho/Sigor/452 and destroyed his sweet potatoes. The appellant went to his farm and ascertained that his sweet potatoes' field had been destroyed. He reported the matter to the area village elder who in turn convened village elders meeting at his farm.

The respondent had the damage that was occasioned to his sweet potatoes assessed by an Agricultural Officer. The loss was assessed at Kshs.10,300/=. The appellants were ordered to compensate the respondent but they declined, arguing that the herd of cattle belonged to their deceased father.

The learned trial magistrate rightly observed that it was difficult to ascertain who the owner of the cattle was. He went on to hold that cattle belong to the owner of the homestead where they ordinarily stay unless strong evidence to the contrary is adduced.

I agree with the above holding by the learned trial magistrate. There was nothing to show that the cattle that destroyed the respondent's potatoes did not belong to the appellant. With regard to the sum of Kshs.10,300/= which the appellants were ordered to pay, the same was proved by the evidence of the Agricultural Officer which was not challenged by the appellants. I therefore find no sufficient reason to warrant any interference with the judgment that was delivered by the trial court and dismiss this appeal with costs to the respondents.

DATED, SIGNED and DELIVERED at Nakuru this 21st day of August, 2007.

D. MUSINGA

JUDGE

2/8/2007

Before D. Musinga, Judge

Makana, court clerk

Mr/. Mongeri holding brief for Mr. Orina for the appellants

N/A for the Respondent

Court:

Judgment delivered in open court.

D. MUSINGA

JUDGE