



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 369 of 2004

SAMUEL NGUGI NYAMU T/A SAM'S KINYOZI & SALON
....APPELLANT

AND

DAVID OYATTA T/A OYATTA & ASSOCIATES ADVOCATES.....
RESPONDENT

J U D G M E N T

This is an appeal from the judgment and decree of the Senior Resident Magistrate's Court, Nairobi, given on the 20th May 2004.

The Respondent, David Oyatta, to whom I shall hereinafter refer to as “**the Plaintiff**,” sued the Appellant, Samuel Ngugi Nyamu, to whom I shall hereinafter refer to as “**the Defendant**”, claiming damages for the loss and damage the Plaintiff suffered when the Defendant left water to flood his office on the night of the 31st May 2003.

Both the Plaintiff and the Defendant are adjoining tenants on the piece or parcel of land known as L.R. No.209/976 better known as Gilfillan House, on Kenyatta Avenue, Nairobi. The Plaintiff is an advocate while the Defendant carries on the business of a barber and hair stylist.

On the night in question, the Defendant left one water tap open and running and overnight, both his own salon and the Plaintiff's office were flooded. As a result, the Plaintiff's carpet and computers were damaged.

For a period of two weeks, the Plaintiff's computers were out of use and he had to out-source his typing services. He quantified his loss and asked the Defendant to pay him but the Defendant refused leaving the Plaintiff with no option but to file suit.

In the Plaint filed on the 9th September 2003, the Plaintiff averred that the damage and loss he suffered was caused by negligence on the part of the Defendant and/or his servants in that he or they did not turn off the tap at the close of business on the material date. The Plaintiff asked for judgment for the cost of repairs and loss of user of his computers.

In his Defence filed on the 9th October 2003, the Defendant denied liability and maintained that although the overflow occurred, the Plaintiff did not suffer any loss or damage.

At the trial, the Plaintiff gave evidence and produced receipts to support his claim for special damages.

In his evidence, the Defendant conceded that his employees had left the tap open and as a result water flowed into the Plaintiff's office. But as regards damage to the Plaintiff's computers, the Defendant said this was minimal and he had at his own expense brought in technicians to repair the damage. He gave figures of the expenses he incurred but did not produce any receipts.

In view of the Defendant's conclusion, the learned Senior Resident Magistrate had no difficulty in determining the issue of liability against him. The flooding of the Plaintiff's office was caused by negligence on the part of the Defendant and his servants in failing to turn off the tap at the close of business on the material day.

As regards the claim for special damages, the learned Magistrate accepted as proved K.sh 42,800/= for typing services and K.sh 10,000/= for computer upgrade. And she entered judgment for the Plaintiff for K.sh 52,800/= together with interest and costs.

It is against that judgment that the Defendant has appealed. In his Grounds of Appeal, the Defendant is contesting not only liability but also the quantum of damages awarded by the learned Magistrate.

On the issue of liability, the learned Magistrate's finding that the Defendant was negligent cannot be faulted. In his evidence in chief, the Defendant said, *inter alia* —

“I know the plaintiff, he is my neighbour. The weekend on 31st May 2003. Prior to this we had water shortages then one of the employees left the tap on and water flowed into defendant (sic) office. It is true CPU of his computers had water as they were on the ground.”

In view of that evidence, the Defendant's appeal against liability must fail and is hereby dismissed.

As regards appeal against quantum of damages, the learned Magistrate allowed K.sh 42,800/= in respect of typing services for which the Plaintiff produced evidence of payment. She also allowed K.sh 10,000/= for computer upgrade. The learned Magistrate rejected a number of items for which the Plaintiff did not produce any or satisfactory evidence.

As there was clear evidence that the computers were damaged and had to be upgraded to restore them to their working condition again, it did not require the testimony of an expert to prove that fact. That also goes for the fact that the Plaintiff had to outsource his typing services for the period his computers were down.

All in all, I find no substance in any of the grounds urged by the Defendant in this appeal. Consequently, the appeal fails on all grounds and is hereby dismissed with costs.

Orders accordingly.

Dated and delivered at Nairobi this Tenth day of March, 2006.

P. Kihara Kariuki

Judge