

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Civil Appeal 17 B of 1998

FABIANO KOBIAAPPELLANT

VERSUS

PATRICK NJURERESPONDENT

(From the decree and order of D. K. Gichuki,SRM in

Meru PMCC No.541 of 1994)

J U D G M E N T

The appellant was the plaintiff and the respondent the defendant in Meru PMCC No.541 of 1994 from which this appeal arises. By a plaint dated 27.7.1994, filed in court on 28.7.94, the appellant sought damages in terms of the value of cut down and damaged 316 coffee trees and 180 banana plants. The plaint did not give the actual value of the plants which he indicated, would be given during the hearing of the case. The plaint however indicated that the respondent had committed the tort in 1989 and that the court had granted the appellant leave to file the claim outside the time prescribed by the Limitation of Actions Act, Cap 22, under Meru PMCC Misc. Application No.61 of 1993.

The respondent had filed a defence dated and filed the 27.1.1995. The respondent's defences included the averments that the claim was(a) bad in law and a nullity for lack of the Land Adjudications consent under S.30 of the Land Adjudication Act Cap 284,(b) malicious and greedy and (c) bad in law for lack of particulars of the alleged loss or damage, this being a claim for special damages.The honourable trial Magistrate dismissed the respondent's claim over three grounds. The first was that the land over which the plants were growing was under adjudication and no claim arising there from could be entertained unless the consent of the Land Adjudication Officer, first had and obtained, was granted in respect of the suit. The second ground was that the plaint failed to specifically plead the specific damages since the claim was for special damages. And the third and final ground was that the appellant's evidence on record was inadequate and did not prove the claim on the balance of probability as required in civil cases.

I have as a first court of appeal considered the claim carefully, examining the pleadings and the evidence adduced from both parties and their witnesses. I have come to the conclusion that the appellant's claim was for special damages. He pleaded that his 316 coffee trees and 180 banana plants were damaged by the respondent. The law governing special damages is now trite. They must first be pleaded, and they must then, during the hearing be strictly proved. The character of the acts which produce the alleged damages and/or the circumstances under which those acts were committed, must regulate the degree of certainty and particularity with which the damage ought to be stated and proved. It is now in law, accepted that no less should be insisted upon as the principle is intelligible and carries reasonableness and wisdom. The purpose of the principle is to give the defendant an opportunity to fully understand the plaintiff's claim so that he can face it squarely and thus avoid being prejudiced.

Applying the above principle to this case, I find that the appellant's pleadings were incompetent. He needed to give, with particularity, the value of the damaged plants and if possible circumstances surrounding the acts that caused the damage. He had failed to do so making the plaint liable for striking out for incompetency.

I have also carefully examined and considered the appellant's evidence in the lower court. It was not sufficient to uphold his pleadings, defective as they were. There is sufficient evidence from the

respondent and his witness to satisfy the court that the respondent bought the land upon which the coffee trees was planted, from one Peter M'Ibere, his uncle, who gave the land together with the coffee and banana plants. Peter M'Ibere gave evidence to that effect and stood strong cross-examination. Another witness, Elijah Mbogo Manyara confirmed that in 1989 the coffee plants had been pruned on his advise to improve their yield. He said that the coffee plants were not damaged as claimed by the plaintiff. Manyara who was an Agricultural Technical Officer of the area ruled out any damage to the appellants coffee and bananas and his evidence was believed by the trial court. I see no ground to disbelieve the evidence.

And finally on this issue there is credible evidence on the record (which was not disputed by the appellant) that the land in question was registered in the defendant. This means that the appellant could not have a claim over plants on the land. Infact the appellant admitted this fact but tried to argue that he had planted the coffee and banana trees before the land was allocated to the respondent, hence his claim to the plants. There was no adequate evidence in support of this and the trial court did not believe him. I see no reason to interfere with the trial magistrate's finding on this issue as well. In conclusion therefore, it is my finding that the honourable trial Magistrate considered all the evidence on the record. He found that the plaintiff/appellant failed to prove his claim to the required standard in civil cases. I find no reason to interfere with that finding since I would have come to the same conclusion.

Another issue I would wish to consider is whether the plaintiff required a prior consent of the Land Adjudication Officer of the Section before he could file his claim. It is clear from the record that the appellant obtained such consent only a year after the suit had been filed. Appellant admitted this fact. On my part I am not convinced that he needed the consent to file a claim for damages arising from unlawful damage to property, unless he was at the same time claiming the piece of land upon which the damaged plants grew as well. There is no evidence on the record to indicate any claim on the land. I would therefore find that he needed no such consent, although such a finding by this court will not definitely help him in this appeal.

Having come to the conclusions to which I have come above, I have no hesitation in ruling that the appellant's appeal has no merit. It is hereby dismissed. Costs here and in the lower court are to the respondent.

It is so ordered.

DATED AND DELIVERED AT MERU THIS 15TH DAY OF SEPTEMBER,2005

D. A. ONYANCHA

JUDGE