



**REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE NO. 904 OF 1995**

JOHN KAGOYA NJOROGE PLAINTIFF

VERSUS

GOLDEN FEEDS LIMITED DEFENDANT

RULING

This suit was filed on 22nd March 1995 by John Kagoya Njoroge against Golden Feeds Limited. The plaintiff, a commercial chicken farmer has sued the Defendant for special damages amounting to Kshs.3,118,080 as well as general damages in respect of his chicks which died after he fed them with unwholesome chicken feed bought from the Defendant sometime in August 1992. The Plaintiff also seeks an award for costs of the suit and interest on both the special damages and general damages plus any other relief the court may deem just.

The facts as set out in the plaint are that in August 1992 the Plaintiff's wife bought from the Defendant chicken feed which when fed to the chicken caused them to die. The plaintiff caused saurfiles of the said feed to be analysed by the Kenya Bureau of Standards. The same was found to have a very high content of aflatoxin contrary to the statutory standard specification and which caused the chickens to die. The plaintiff states further that the defendant was consequently charged in Criminal Case No. 45 of 1994 with the offence of manufacturing sub-standard poultry feed and was convicted on its own plea of guilty and fined. The plaintiff relates the death of his chickens directly to the negligence and/or breach of duty on the part of the Defendant the breach of which has caused him loss and damage. The plaintiff particularizes the special damages as follows: -

1. Loss of 1000 layers

12 trays per layer each

Kshs.120 per packet Shs.1,440,000.00

2. Loss of 100 growes

12 trays per growes each

Kshs.120 per packet Shs.1,440,000.00

3. Loss of 1000 broiles

Finishers sale 150 each Shs. 150,000.00

4. Loss of 1000 broiles startess

Sale 100 each	Shs. 100,000.00
5. Loss of 1000 spent growes	
Sale each 110	Shs. 110,000.00
6. Loss on purchased	
Unwholesome feeds	<u>Shs. 32,000.00</u>
	<u>Shs. 3,118,080.00</u>

From the oral evidence adduced at the hearing it became clear that the words “growes” should read “growers” “broiles” “broilers” and “startess” “starters”.

The defendant in its defence filed on 4th July 1995 denied having sold the chicken feed in question to the Plaintiff or his wife as well as other contentions which it put the plaintiff to proof. The Defendant further contended that the suit was misconceived, frivolous, vexatious and non-compliant with legal provisions. On 29th June 1995 the Defendants served the plaintiff with a request for particulars which particulars were duly furnished, necessitating the Defendants to apply to amend their defence which was allowed by consent of the parties on 25th February 1998. In the amended Defence the Defendant deny

(i) that the chicken died as a result of feeding on unwholesome feed,

(ii) that there was any contract between them and the plaintiff

(iii) particulars of loss and aver that

(i) the feed complained of was bought from a third party and

(ii) that the losses suffered are too remote and that the plaintiff ought to have mitigated the same.

It is interesting to note that at the hearing, the plaintiff’s counsel did not consider the amended defence but relied on the defence of 4th July 1995.

The suit was argued before me on 19th January 2004. In addition to the plaintiff the plaintiff’s wife also gave her oral evidence. Basically their testimonies were the same and could be summarized as follows: In 1992 the plaintiff and (by presumption) his wife owned 6,650 chicks of which 5,504 died in August that year after they were fed with chicken feed purchased by the plaintiff’s wife at the plaintiff’s bidding, from the Defendants, Golden Feeds Limited. The plaintiff lodged a complaint with the Kenya Bureau of Standards (KBS) when he suspected the deaths to have been caused by the feeds. KBS tested samples collected from the plaintiff’s and found the same highly contaminated. The Bureau issued the plaintiff with an analysis report dated 30th June 1993 which the plaintiff produced as exhibit P4. In it KBS expressly stated that the test results for the samples indicated non compliance with requirements of the Kenya Standard KSO1 -61:1978 with respect to fibre, calcium and aflatoxin contents. It further went to say specifically that

“The aflatoxin content was very high and could thus cause the death of the chicks” .

Certified copies of the proceedings, conviction and sentence were produced in evidence together with a letter dated 23rd February 1994 from Kenya Bureau of Standards in which the Bureau informed the plaintiff of the proceedings and outcome. These were marked “Exhibits P.6” and “Exhibit P.5” respectively.

I have no doubt in my mind that the plaintiff’s have established a case against the Defendants in

negligence. The evidence adduced before me clearly demonstrates that the death of the plaintiff's chickens was directly related to the consumption of the adulterated feed, which the Defendant admits having manufactured. That it is the plaintiff's wife who bought the feeds is irrelevant since the complaint in the criminal case was that of the plaintiff and the investigating officer in his evidence specifically referred to that complaint as being the basis on which the Defendants liability in this suit. That the feed was bought from the Defendant is proved by a cash sale No.30598 dated 24.08.92 which was produced in evidence as exhibit No. P3.

I have a problem however as regards the particulars of damages claimed herein as the plaintiff did not bring in any independent evidence to confirm the figures given as the value of the chickens at the time they died and/or the anticipated profit which would have accrued to the plaintiff had the chicks matured. The plaintiff in his evidence claims that the purchase price for the chicks was Shs.30/= but that at the time they died they were worth about Shs.120/=. All I have before me are copies of receipts, on from, Kenchic Limited and 6 of them from Carene International (K) Ltd showing that the plaintiff did buy 150 chicks from Kenchic for Kshs.3,300/= and 5,554 from Carene International. The receipts are exhibits P.1 and P.2. The said purchases were made between 4th March 1992 and 3rd October 1992. According to the evidence the chicks were fed on the unwholesome feed from the date of purchase i.e. 24th August 1992 since the plaintiff had no other feed in his store. They died within 6 weeks which would take us to early or mid October. On the balance of probabilities, all the chicks evidenced in the exhibits did consume the subject feed. However it is not correct to say that all the chicks were of the same value at the time of death given that some were bought as early as March 1992. On examining the receipts I find that the price of the chicks could not have been Shs.30/= as alleged but lower. My average figure is Shs.22/= per chick. The plaintiff would help the court if he would submit on quantum and also provide legal arguments, supported with authorities as regards the claim for damages.

I find that the suit succeeds and hereby enter judgment in favour of the plaintiff on liability. The plaintiff should file submissions on quantum and have the matter set down for assessment of damages. Orders accordingly.

M.G. Mugo

Ag. Judge

19.01.04