



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO 561 OF 1999

ELIUD NGUGI MUNGAI APPELLANT

VERSUS

SAMUEL KANGAU NJENGA RESPONDENT

JUDGMENT

In Joseph Ungadi Kedera vs Ebby Kangisha Kawai (Personal Representative of Ephraim Kawai (Deceased)) C A No 239 of 1997 the Court of Appeal said as follows:

“There can be no general damages for breach of contract”

The same court held in Waweru vs Ndiga (1983) KLR 236 that damages for loss of use of a motor vehicle can be claimed as special damages and not general damages. It is now well settled beyond peradventure that where a party claims special damages, he must plead and prove them strictly (See Coast Bus Service Ltd vs Murunga & Others C A No 192 of 1992 ; P. R. Siree & Another vs Lake Turkana El Molo Lodges Limited C A No 229 of 1998; Mary Mukiri vs Njoroge Kiania C A No 48 of 1996 , and Duncan Manwel Murigi (A minor suing through his father and next friend Ngovi Mwasu) vs Kenya Railways Corporation HCCC No 2442 of 1999 .

The Respondent in this appeal filed the claim in the lower court on 17th January, 1996 seeking Judgment against the Appellant as follows:

“1. An order for the release of motor vehicle registration number KTA 725 with all the missing parts duly replaced and in good working condition

2. General damages for the loss of use of the said motor vehicle

3. General damages for breach of contract

4. (Costs)

5. (Interest)

6. (Other relief).”

After the motor vehicle was released pursuant to an order of the court, the Respondent amended his Plaintiff in which he sought the same prayers in the original Plaintiff save for prayer No 2 which was amended by adding the following words after the word “motor vehicle”, that is “at Kshs.1,000/= per day from March

1995 until the motor vehicle is released to the ... (Respondent) in good working condition.”

At the conclusion of the trial, the lower court entered Judgment for the Respondent by awarding him Kshs.19,647.65 as general damages for breach of contract and Kshs.92,100/= for loss of use.

The Appellant was aggrieved by the decision of the lower court and appealed to this court. The appeal was based on 14 grounds set out in the Memorandum of Appeal but, for the reason that will become apparent (if it is not so by now), I see no reason to reproduce them here.

The case law cited earlier is very clear that the Trial Magistrate did not have jurisdiction to award general damages for loss of use nor for breach of contract. The Judgment entered for the Respondent is, therefore, wrong and must, if for no other reason, be set aside. On this conclusion alone, I see no useful purpose of considering the arguments of counsel on other matters.

I, therefore, allow the Appellant’s appeal and set aside the decree of the lower court. The Appellant will have the costs of this appeal and in the court below.

Dated and delivered at Nairobi this 19th day of May, 2004.

ALNASHIR VISRAM

JUDGE