

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 322 OF 1995

RUNYUA FARMERS COMPANY LIMITED APPELLANT

VERSUS

LUCAS NJUGUNA KAROBIA RESPONDENT

(Appeal from the judgment/decree of the Resident
magistrate Mrs G.N. Ngari in Thika Resident
Magistrate Court Case No. 1314 of 1995)

JUDGMENT

In this matter the Respondent as a share-holder in the Appellant's company and having initially paid a sum of money entitling him to half share, was required by the Appellant to pay the remaining half to cover the a full share. A letter dated 20th July 1991 was written by the Appellant to the Respondent in that respect and it asked the Respondent to pay the balance before 6th August 1991. From the learned trial magistrate's judgment, it is apparent the English translation of the letter does not bring out the exact meaning of the wording in the letter concerning the date 6th August 1991 as is conveyed in the letter in Kikuyu language. The Magistrate understood Kikuyu language.

The balance was Kshs 2420/=. The Respondent paid Kshs 2200/= on 2nd August 1991 leaving a balance of Kshs 220/= which he paid on 7th August 1991 and explains that on 6th August 1991 he tried to pay Kshs 220/= but found the office closed. The Appellant does not accept the office was closed. But what is important is that the Appellant accepted Kshs 220/= on 7th August 1991.

The date 6th August 1991 was not mandatory as there was no resolution of the Appellant to make it mandatory. It was after that date had passed that the Appellant is said to have held a meeting. The date of the meeting is not given and a copy of the minutes of the meeting has not been produced as exhibit.

In any case if such a meeting took place, then the resolution passed may be deemed to have taken effect from the date of that meeting. The Respondent's evidence in chief on that issue was:

“After 6/8/91 there was

a general meeting and members resolved that no member should make further payments. That only the old paid up amount would be conside red”.

The witness did not expand on the meaning of “the old paid up amount”. In my view it should include the amount paid up to the date of the meeting.

The Respondent had paid Kshs 2200/= before 6th August 1991. The balance of Kshs 220/= had been accepted one day after the date 6th August 1991. I have said it was not mandatory, notwithstanding the letter dated 20th July 1991, that all the money must be paid before 6th August 1991 and that any proper and mandatory dead line must be the date of the alleged subsequent shareholder's meeting or a subsequent date fixed at that meeting. However in case that holding is not acceptable, by accepting payment of Kshs 220/= made by the Respondent on 7th August, 1991, the Appellant had thereby extended the dead line up to 7th August 1991 and should not be heard to renege. Moreover, this was only a small sum of Kshs 220/= which was remaining to be paid, a substantial sum having been paid.

Conducting itself properly, the Appellant stood to suffer no loss, as in fairness the Respondent is entitled full share holdership.

From the foregoing and bearing in mind the evidence adduced in the trial court, I find that the learned Resident magistrate was entitled to come to the conclusion he came to and I have no sound reason to disturb his decision. Accordingly this appeal is hereby dismissed with costs to the Respondent.

Dated, delivered and signed at Nairobi this 25th day of June 2003.

J.M. KHAMONI

JUDGE