



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 321 OF 1995

RUNYUA FARMERS COMPAPNY LIMITED APPELLANT

VERSUS

PATRICK NGUGI NDONGA RESPONDENT

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

JUDGMENT

In this appeal the Respondent who claimed to be share holder in the Appellant company alleged that the Appellant had refused to register him as a full paid up share holder of the company despite the Respondent having paid the whole sum of money necessary for him to be so registered. The Respondent therefore wanted a court order that he is a full shareholder and prayed that the order should direct the Appellant to register him as a full share holder and further direct the Appellant to allocate to him land on L.R. No. 295/16 equivalent to the said shareholding.

The Appellant's defence was that the Respondent having paid a sum of Kshs 4000/= full share, he subsequently sold half that share to one Luka Njararuhi and that therefore the Respondent remained with half share although he subsequently again paid Shs 1000/= excess whose refund the Respondent has declined to accept. The Appellant wanted the Respondent's suit dismissed saying the Appellant is prepared to give to the Respondent a piece of land equivalent to Kshs 2000/= half share.

The learned trial magistrate granted the Respondent's prayers and caused the Appellant file this appeal.

Having carefully considered what was brought to my attention during the hearing of the appeal, in light of the pleadings and the evidence in the Senior Principal Magistrate's Court at Thika, I find that the Respondent's claim was that he was a fully paid up share holder but the Appellant had refused to register him as such. That was as at 1st December 1994 when the Respondent filed this suit in the Senior Principal Magistrate's Court at Thika. He said the Appellant told him to pay Kshs 4000/= towards full share. He paid the money to the Appellant

"but the defendant has refused to register him as a full paid up share holder"

In paragraph seven of the plaint the Respondent says:

"The Plaintiff contends that failure to register him as a full share holder will render him ineligible to an allocat ion of a piece of land equal to his full share holding".

Consequently, the Respondent prayed for court orders as stated in paragraph one above. During the hearing the Respondent, in his evidence in chief stated:

“I paid Kshs 1000/= on 26/7/91 and I was unable to clear the balance. Lucas Njonambi is a joint owner of the share. The Kshs 1000/= I paid was my Portion and Lucas being a joint Owner. I was refused to pay the balance and now want court to make an order that I pay the Kshs 1000/= considered and fully (paid up member; ---,)”

During cross examination the Respondent said:

“I had not fully paid for along time. I was given a deadline on 6/8/91. I was unable to clear balance. I was not aware of the subsequent mee tings once I found difficulties paying at the beginning. I do not want land equivalent to what I have paid. I want to complete

Payment per demand letter. Letter was addressed to me and Njarahuni must have gotten his”.

To my mind, that evidence by the Respondent did not support his case as set out in the Plaintiff. The Respondent was bound by his case as set out in the Plaintiff. Since he had not amended that Plaintiff, he was not entitled to succeed on the basis of the evidence he adduced which clearly showed that he was not a fully paid up share holder and justified the Appellant’s refusal to register him as a fully paid up share holder.

While the Appellant accepted that the Respondent was a share holder in the company, the Appellant went on to show that the Respondent was not a fully paid up share holder as he held only half share having sold the other half of the full share he had held, to one Lucas Njararuhi whom I suppose is the Njarahuhi or Lucas Njonambi mentioned in the evidence of the Respondent. According to the Appellant, the Respondent had sold half share. He had not made Lucas Njararuhi a coowner as the Respondent claimed. Since the Respondent had sold half share, meaning that the money Lucas Njararuhi paid went to the Respondent and not to the Appellant, the Respondent remained with half share as Lucas Njararuhi took the other half share, and it was a mistake on the part of the Appellant if the Appellant subsequently wrote to the Respondent demanding payment of Kshs 2000/= more thereby resulting in the Respondent’s payment of Kshs 1000/= whose refund he said to have refused. Consequently there was no balance of Kshs 1000/= from the Respondent to the Appellant and the learned Resident Magistrate erred in ordering the Appellant to accept that payment. As a full share holder is one who has bought a full share costing Kshs 4000/=, the Respondent in this appeal could not be one such full share holder and could not be registered as such full share holder.

From the foregoing therefore, this appeal is allowed. The learned Resident magistrate’s judgment dated 14th September 1995 and the decree therefrom set aside, and the Respondent’s case in that court dismissed.

The Respondent to pay costs of this appeal, and costs of the proceedings in the Senior Principal Magistrate’s court at Thika, to the Appellant.

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

June 2003.

J.M. KHAMONI

JUDGE

