

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUSIA

CIVIL APPEAL NO. 48 OF 2000

(From Original Civil Suit 382/1999)

MARK WANGAI MUCHEMI.....APPELLANT

VERSUS

JELO LIMITED.....RESPONDENT

JUDGEMENT

In this Appeal filed on 29th September, 2000, the appellant takes issue with the Learned Trial Magistrates' judgement restraining the appellant from using the respondents licence to trade in petroleum products and the award of shs.20,000/- damages in favour of the respondent payable by the appellant as loss suffered by the respondent for use of the licence by the appellant.

The respondents' case as per pleadings in the lower court was that it was the owner of licence to trade in petroleum products on a plot owned by the appellant who denied the respondent the use of the plot and used a photocopy of its licence to trade in petroleum products and despite a request to cease so using the respondent's licence, the appellant had continued so doing leading to the filing of the suit for a restraining order and damages. On the other hand, it was the appellants case that the licence had been procured on his behalf by the respondent and that the respondent had assigned all rights thereunder to the appellant. The appellant counter-claimed for deletion of his plot No. 1875 from the respondent's licence. The parties reiterated their respective cases, with the respondent producing a copy of its licence in its name. On its part, the appellant produced vouchers for payment of some money to the respondent prior to the issue of the licence said to be donations by one of its directors. No agreement for assignment of the licence was produced by the appellant. On the above pleadings and evidence, the trial court found for the respondent and proceeded to award Shs.20,000/- for loss of anticipated income.

As can be seen, it is not in dispute that the licence is in the name of the respondent. It was therefore illegal to operate using it without the consent of the licensing authority. The purported assignment, which was in any case denied, was completely in operative as it was not in writing nor authorised by law as the law does not authorise such use of another licence.

I find some difficulty on the second limb of the respondents suit, namely the award of damages. In the first place the agreement to lease the respondent's plot being one for an interest in land required to be in writing or part performance. There was nothing of the sort and as such the claim was not maintainable.

As regards the counter claim, the licence was not transferable. There was also evidence that the same was obtained with his consent. It was therefore not unlawfully quoted thereon and the court was therefore entitled to dismiss it.

In view of the above, I uphold the orders restraining the appellant from using the respondents licence. I however allow the appeal against damages and hereby set aside the award of Shs.20,000/-. I dismiss the claim for same and the appellants counter claim without costs.

As none of the parties has been entirely successful, there will be no order for costs of the appeal and each party will meet its own costs of this appeal. The respondent will however have the costs of his suit in the

lower court. Orders accordingly.

Dated and delivered at Busia this 6th day of March, 2002.

G.P. Mbito

JUDGE