



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 30 OF 2000

JAMES MTOKAAPPELLANT

VERSUS

ASSOCIATED MOTORS LTD.....RESPONDENT

JUDGMENT

James Mtoka & Associated Motors Ltd. The court has before it the record of the appeal and the Supplementary/appeal record. In the memorandum of appeal the appellant has submitted three grounds of appeal.

In his submissions two counsel for appellant has vigorously argued that the learned trial magistrate was wrong in his conclusions and in his judgment, inter alia.

It is argued that the appellant resignation was not voluntary. It is further argued that the assessment of conventional figure of Shs.120/= per day was incorrect and further more the amount allowed as counter claim was not supported by the evidence adduced by the plaintiff.

The appellant also made the point that his car be restored to him the condition in which it was impounded. The defendant/respondent generally opposes these arguments and supports the conclusions of the learned trial magistrate and his findings.

Both appellant and respondent has submitted a number of authorities in support of their respective stand canvassed. I do not wish to reproduce these suffice it to say that I have perused and noted the principles enuludiated in there arise decisions which I keep in mind where relevant when arriving at my judgment. As a first count of appeal I have perused the record of the court and the submissions made by the learned counsel for the appellant and respondent, so as to arrive at my own conclusions afresh.

However I am concerning the fact that the Senior Principal Magistrate who heard and determined the hearing had the opportunity to have seen and heard the witnesses who testified before him and be made a finding of their respective demoneaour and their credibility. This court does not possess. However I have scrutinized the evidence on the court record and the document exhibited and on my independent assessment Peter Vs Sunday Post) on the totality of evidence I arrive at the same conclusion as the one deprived at by the SPM. I find that the resignation of the appellant was tendered at his own hebest and voluntarily and the consequence followed therefrom. This court finds that on a balance of probability the plaintiff was unable to establish his case and the learned trial magistrate was correct in providing at his decision. The letter of resignation forwarded the crucial part of this litigation.

The learned trial magistrate correctly held that the respondent/defendant had no right to informed the appellant/plaintiff which he and that the respondent/defendant remained liable for the right of use which

the plaintiff was deprived of. The Senior Principal Magistrate proceeding arrived at a figure. The learned trial magistrate decision in this respect and in respect of the defendant's counter claim are adequately supported by the evidence before the court on a balance of probability.

However the appellant demand is justified that his vehicle which was wrongly impounded be returned to him in the condition in which it was obtained by the defendant/respondent. In view of the court the learned Senior Principal Magistrate did not direct his mind to this feature of the case.

The upshot is thus p

1. The respondent/defendant to restore the vehicle KDK 539 to the appellant in the condition in which it was impounded. For this purpose this matter is to be placed before trial magistrate for his directions and action and modality of restriction/comparison be worked out.
2. The appeal is dismissed as lacking merit on the grounds stated.
3. In the Outcome of this appeal each party to bear its own costs of this appeal.

Entered accordingly.

Dated at Nairobi Read and delivered.

SHAIKH AMIN

JUDGE

30.7.2002

Coram: D.K.S. Aganyanya, J

Keyonzo for appellant

Kairo for Mohamed for respondent

Matu – court clerk

COURT:

Judgment delivered by Hon. Justice Aganyanya D.K.S. this 30th day of July, 2002.

D.K.S. AGANYANYA

JUDGE