



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 725 OF 1999.

ROLF BARTSCHER.....1ST PLAINTIFF

ABRAHAM SOGOMO.....2ND DEFENDANT

VERSUS

KIPRONO CHELUGUI

T/A COFFEE FACTORY SERVICES.....1ST DEFENDANT

THE LIQUIDATOR KAPINGAZI FARMERS

COOPERATIVE SOCIETY LTD.....2ND DEFENDANT

J U D G M E N T

In this suit the Plaintiff's claimed money which they alleges are due to them for the 1st and 2nd Defendants. I will deal with the claims of the two Plaintiffs separately.

The first plaintiff claims a sum of sh.680,000 made up of two elements. The first is for a sum of Shs.240,000/- equal to four months consulting fees at the rate of Shs.60,000 per month.

In support of this claim the 1st plaintiff produced Exhibit 1 which is an agreement signed by the 1st Plaintiff and 1st Defendant setting out the 1st Plaintiffs duties as consultant and agreeing to pay Sh.60,000 per month net for his services.

The agreement refers to a figure of three months but the 1st Plaintiff worked for five months. In his evidence the 1st plaintiff said the 1st Defendant confirmed he had worked for 122 days. It was put to him in cross-examination that he only worked for 23 days, which the Plaintiff denied. In the Defence the Defendant alleges the 1st Plaintiff only worked for 19 days. In his evidence in chief the 1st Plaintiff agreed that he and the 1st Defendant entered into an agreement for 3 months (Exhibit 1) but denied the 1st Plaintiff worked for the months of May, June, July and August 1998 but only worked for 23 days. In support of his contention the 1st Defendant produced a book Exhibit A called a staff register which contains the names of employees for the months of April to September 1998. On some of the sheets the name Mr. Rolf appears which is the 1st Plaintiff's first name. This document like a number of others was produced by the Defendant like a rabbit out of a hat. However I allowed the documents to be produced for what they were worth but subject to the stricture that documents which are not included in the list of documents must be examined with greater care by the court.

The second leg of the 1st Plaintiff's claim relates to monies which the 1st Plaintiff alleges he advanced to the 1st Defendant or paid on his behalf. Details of this cash expenditure of Shs.435,503/- are contained in Exhibit 7. The 1st Plaintiff produced a written agreement which he signed and which he says

the 1st Defendant signed in which it was stated that financial assistance had been provided by the 1st Plaintiff to the 1st Defendant and provided for repayment of the moneys from outstanding debtors. This is confirmed in Exhibit 3 a letter from Coffee Services (E.A.) Ltd. Of the 27.6.98 (a company owned by the 1st Defendant) addressed to Kapingoy Farmers Society Limited requesting two sums of Shs.319,506=80 and 178,425,00 to be paid to the 1st Plaintiff. In the result these sums which are referred to in Exhibit 2 were not forthcoming.

It was the 1st Defendant case that he accepted the Plaintiff summary of expenditure Exhibit 7 but later on found it was incorrect in a number of instances. He contended that two cheques for shs.100,000/- each had been paid by him to the 1st Plaintiff. He also stated he gave the 1st Plaintiff 100,000/- cash. The 1st Defendant called Mr. Emmanuel Kiprotich who worked for the 1st Defendant as an accountant who stated that two cheques for Shs.100,000. Exhibit B & C issued by the 1st Defendant in favour of the 1st Plaintiff were not paid by the 1st Plaintiff to the Defendant but that he retained these sums. The 1st Plaintiff states that these sums were for cash to be collected by him which he duly accounted for to the 1st Defendant.

Before making my findings in respect of this claim I will deal with the claim by the 2nd Plaintiff.

The second plaintiff claim sum of Shs.142,000/- in respect of transport costs incurred whilst providing marketing services to the 1st Plaintiff. The only Defence is in paragraph 8 of the Defence which merely denies this claim and puts the 2nd Plaintiff to strict proof thereof. The 2nd Plaintiff gave evidence that the 1st Defendant and he agreed that the 2nd Plaintiff would provide transport which he did for the months of February to September 1998. Although the 1st Defendant agreed he was indebted to the 2nd Plaintiff the 1st Defendant did not pay him. Exhibit 11 which is an acknowledgment of the debt for Shs.142,000 is signed by the 1st Defendant. The 1st Defendant says that the Plaintiffs took his vehicle KAP 921T and refused to give it back until he signed Exhibit 11. He claimed he did not get the services he anticipated. *Findings*;-

Having heard the witnesses I have no hesitation in saying that I accept the evidence of the 1st and 2nd Plaintiff evidence in its entirety. They seemed to me to be honest witness as for the 1st Defendant however, I regret to say, I found wholly untruthful. It is possible he may not have obtained as great a benefit as he had hoped from the 1st Plaintiff's services but that is no reason not to pay him his just dues. I was not impressed by the 1st Defendant's second witness who was an employee of the 1st Defendant and gave evidence to please the 1st Defendant.

I find that the 1st Plaintiff was employed on the terms stated in Exhibit 1 and that he worked for four months at least on the 1st Defendant's business. I do not accept the 1st Defendant's explanation of Exhibit 2 which I find he voluntarily signed being a method to pay the 1st Plaintiff what was due to him. The fact that the sums he anticipated would be paid by the debtor failed to materialise does not absolve the 1st Defendant from personal liability. I find also that the 1st Plaintiff paid for and on behalf of the 1st Defendant the sums set out in Exhibit 7 and the 1st Defendant owes these sums to the 1st Plaintiff.

I take note that the Defence filed alleged that the contract with the 1st Plaintiff was void for the misrepresentation as to the identity of the 1st Plaintiff. No evidence was adduced by the 1st Defendant in respect of the defence which I reject. The same applies for the defence set out in paragraph 6 of the Defence. I do not accept that the 1st Defendant repaid the 1st Plaintiff as alleged in paragraph 7 of the Defence and hold that the evidence with regard to the alleged payment of the several sums of Shs.100,000/- to the 1st Plaintiff was untrue. I accept the 1st Plaintiff's evidence on this point namely that he accounted to the 1st Defendant for the same.

I accept that the 1st Defendant employed the 2nd Plaintiff as alleged by the 2nd Plaintiff and reject the 1st Defendant's evidence that Exhibit 11 was signed under duress. In my view this document constitutes a clear admission of liability.

In the result, I give judgment against the 1st Defendant in favor of the 1st Plaintiff in the sum of shs.680,000/- and in favor of the 2nd Plaintiff in the sum of Shs.142,000/- as prayed in the plaint together

with interest from the date of the filing of plaint at court rates and the costs of the suit. No claims were provided against the 2nd Defendant.

Dated and delivered at Nairobi this 4th day of July, 2001.

PHILIP J. RANSLEY

COMMISSIONER OF ASSIZE.