



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI LAW COURTS
CIVIL CASE NO. 2756 OF 1993
NELSON MUGUKU PLAINTIFF
VERSUS
JOHN MUCHUI t/a WATER MASTER DEFENDANT

JUDGMENT

According to the evidence of Nelson Muguku, the plaintiff in this case is that he owed two farms. One at Kikuyu and the other at Ngong.

At his Ngong farm he wished to begin a poultry farm which was to be run by his children. There was no water. He engaged the services of defendant, John Muchui who ran a business known as Water Master (K) Ltd.

Mr. Muchui dug a borehole. The water was extremely dirty. When he, the plaintiff insisted that the waters be tested Mr. Muchui permitted the water testing machine drops inside the well together with the pipes.

After waiting for about 2 years for a borehole Nelson Muguku hired the services of another company. They dug a borehole ten metres away from the first borehole. He got clean waters and was satisfied. He paid the 2nd contractor over Ksh.300,000/-.

He had paid the defendant almost Ksh.200,000/- for his services. There was a balance of Ksh.70,000/- that remained. He refused to pay for this as the work was incomplete. He produced the contract, letters of demand and the proof of services rendered by the new contractor.

He claimed in the two years his son had purchased water.

The defendant on the other hand stated that he drilled a borehole well below the intended depth. The water was extremely dirty. The plaintiff insisted that the water be tested before use. Unfortunately the rig he would have used was moved elsewhere. He used a machine which fell in the well. The pipes used, the plaintiff claimed, was too narrow and of no use.

He claimed the Ministry had stated the water was contaminated or not fit for use. He also stated that

no demand letters had been received from the plaintiff.

I find in this case that a demand notice was issued to the defendant by the plaintiff of the intention to sue.

I also find that the defendant drilled a borehole. He was asked to test the same but did not immediately do so as his rig was not on site.

The defendant claimed after the machine fell into the well he finally brought back the rig to pull it out. It was then that he brought his rig machine. The plaintiff detained it and requested to have him remove the machine from the land.

The other fact is concerning the Ministry of Water Analysis. Although they noticed the water had a high contents of dirt of impurities they requested for a further test when the impurities settled. The defendant claimed he was unable to give this as his machines are detained.

He the defendant claimed Ksh.70,000/- being the balance due.

The plaintiff claim that he is entitled to have the refund of his money for breach of contract.

The defendant thought otherwise. According to their contract, his advocate submitted that there was no duration of time on when the contract was to be completed.

I would find that a reasonable time should have been sufficient to complete the contract. This was not given.

I hold that the plaintiff prayer that the machinery be removed from the suit premises had been done.

The plaintiff seeks for a special damages for the amount of work paid to the defendant, bringing a new contractor and costs of bringing water.

The defendant disputes this claim stating that it would amount to the defendant paying for the two boreholes. I hold that the plaintiff has failed to strictly prove that he bought water during this period. It was his son who is said to have done this. He has not in fact come to court to give evidence. I would dismiss this claim of water bought.

I hold that the plaintiff is entitled to the difference in costs between the first borehole (Ksh.250,000/-) and the 2nd borehole (Ksh.370,000/-) namely Ksh.120,000/-.

Once a borehole is sunk whether water is found or not the plaintiff is bound to pay. Nonetheless as the defendant failed to complete the work, a new borehole was dug.

I hereby dismiss the counter claim save as so far as the above findings is concerned with costs to the plaintiff.

I award the plaintiff Special Damages of Ksh.120,000/-.

I award interest from the date of filling suit at 12%

. I award costs of this suit.

Dated this 17th day of July 2000 at Nairobi.

M.A. ANG'AWA

JUDGE

