



Geoffrey Njenga v Godfrey W Karuri & Another

REPUBLIC OF KENYA  
High Court Of Kenya At Nairobi September 18, 2000  
Milimani Commercial Courts  
T Mbaluto, Judge

Civil Case No 795 of 1998

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By a judgment delivered on May 12, 2000 this court substantively determined the suit and counter-claim lodged by the parties herein, leaving unresolved only the issue of costs of the suit and counter-claim.

The prayers sought in the plaint included:

- (a) A declaration that the instrument dated January 17, 1996 is not a lawfully competent chattels mortgage and is null and void *ab initio*.
- (b) A permanent injunction to restrain the defendants from possessing or in any way interfering with plaintiffs motor vehicle registration number KAC 596R.
- (c) An order that accounts be done to determine the actual debt if any net of the terminal benefits and pension contribution that the plaintiff owed the defendant as of June 24, 1998.

In the counter-claim the defendant sought to recover the sum of Kshs 266,816.45 being the net balance due from the plaintiff to the 2<sup>nd</sup> defendant upon computation of the plaintiff's terminal dues and setting them off against what the plaintiff owed the defendant in respect of outstanding loans and insurance premiums.

The result of the matter was that the court found no basis for granting the prayers (a) and (b) above. However, an order was made directing the second defendant to work out, on the basis of guidelines formulated by court, the sums that may be due from either of the parties to the other. As will be obvious, that order was substantially in accordance with what the plaintiff was seeking in prayer (c) above, and consequently it would not be quite correct to say that the plaintiff was wholly unsuccessful in the suit.

Upon the computation of the accounts by the 2<sup>nd</sup> defendant pursuant to the court order, it was established and accepted by both parties that the plaintiff owed the 2<sup>nd</sup> defendant the sum of Kshs 202,186.65 and a consent judgment to that effect was entered. Although the said sum was less, by Kshs 64,629.80 than what is claimed in the counter claim, considering that the plaintiff had even denied owing 2<sup>nd</sup> defendant the lesser sum of Kshs 217,769,45 which it is I think, fair to say that the plaintiff has been shown to be wrong and that the position taken by the 2<sup>nd</sup> defendant has been vindicated.

The law is that the "*costs of and incidental to all suits shall be at the discretion of the judge provided that the costs of any action ... shall follow the event unless the court or judge shall for good reason otherwise order*". Section 27 of the Civil Procedure Act.

In his submissions on this matter Mr Chege for the 2<sup>nd</sup> defendant said that the outcome of the computation of the accounts substantially agreed with the 2<sup>nd</sup> defendant's claim and accordingly it would

not have been necessary to come to court if the plaintiff had agreed to the figures as formulated by the 2<sup>nd</sup> defendant.

Mr Mbigi for the plaintiff did not agree with Mr Chege's submissions. Citing Mulla on the Code of Civil Procedure page 143, he submitted that though the general rule was that costs shall follow the event there were two exceptions to the rule. These were (a) where the successful party was guilty of misconduct or (b) where there was some other good cause for not awarding costs to the successful party. Mr Mbigi contended that the 2<sup>nd</sup> defendant was guilty of misconduct in insisting on charging interest on the moneys due to it from the plaintiff while at the same time refusing to allow any interest on the sums due from it to the plaintiff. He also accused the 2<sup>nd</sup> defendant of having acted unreasonably by threatening to attach the plaintiff's motor vehicle before the dispute had been resolved.

As I have observed above, the position taken by the 2<sup>nd</sup> defendant in this matter has been vindicated by the outcome of the case and accordingly it would be unfair to accuse it of misconduct. In the end it was successful in its counterclaim.

My own assessment is that this was not a wholly frivolous matter. The plaintiff who is a former employee of the 2<sup>nd</sup> defendant was obviously concerned that what he perceived as his rights were being ignored. His judgment may have been somewhat blurred by strong personal feelings. Nevertheless, it can be said in his favour that once the court indicated to him and to the 2<sup>nd</sup> defendant how the dispute could be resolved, the plaintiff and also the 2<sup>nd</sup> defendant co-operated in reaching an acceptable conclusion. Consequently, given all the circumstances of this matter, I think the order that ought to be made and which I do hereby make regarding costs is that the plaintiff do bear ½ the costs of the counter-claim together with all the 2<sup>nd</sup> defendant's disbursements together with interest at court rates.

September 18, 2000

T Mbaluto, Judge