Macharia v Muranga County Government (Civil Appeal 073 of 2021) [2024] KEHC 9428 (KLR) (24 July 2024) (Judgment)

Neutral citation: [2024] KEHC 9428 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CIVIL APPEAL 073 OF 2021

J WAKIAGA, J

JULY 24, 2024

BETWEEN

ARTHUR KOGI MACHARIA ..... APPELLANT

AND

MURANGA COUNTY GOVERNMENT ..... RESPONDENT

(being an appeal against the whole judgement delivered on 17/11/2021 by Hon. Ochanda PM in Muranga CMCCNO 261 of 2021)

JUDGMENT

1. By Re-amended plaint dated 21st day of August 2014 , the Appellant sued the Respondent for a declaration that the Respondents act of towing on the 29th day of July 2012 and detaining his motor vehicle registration number KBK730S was illegal and for an order for the release of the said motor vehicle, together with payment of Kshs. 105,832 being the cost of repairs and Kshs. 5000 per day for the duration of such detention as loss of business from the 29th day of July 2012 to 10th day of august 2012.

2. By a statement of defence thereon dated 23rd day of august 2012, the Respondent denied the contents of the amended plaint and stated that the Appellant motor vehicle was notorious for flouting the Respondent's by laws and that the Respondent was executing pending warrants to enforced compliance and that the suit raised no reasonable cause of action against the same

3. By a judgement thereon dated 17th November 2021, the Court allowed the Appellant declaratory claim that the towing was illegal and dismissed the claim for special damages on the account that the same was not specifically pleaded and proven.

4. Being dissatisfied by the said judgement, the Appellant filed this appeal and raised the following ground of appeal;

a. The trial Court erred in law and fact by failure to award the Appellant special damages of Kshs. 105,832 despite the same having been pleaded and proved.

b. The learned trial magistrate erred in law and fact by failure to note that the special damages of Kshs.. 105,832 was supported by the evidence of an assessment report and assorted receipts which were produced during the trial.

Submissions

5. Directions were given on the hearing of the appeal by way of written submissions. It was contended by the Appellant that the same testified and adopted his witness statement as evidence in chief and produced the list of documents as exhibits in support of his case. In response the Respondent also testified and produced one exhibit in support of its case.

6. It was contended that in allowing prayer 1 the Court found as a fact that the Respondent impounded the motor vehicle without any evidence that the same had flouted any by laws and that the sums claimed were never disputed by the Respondent and therefore the Court arrived at an erroneous decision in dis missing the claim.

7. On behalf of the Respondent it was stated that the Court clear stated that the claim of special damages which was introduced by an amendment which was introduced two year after the suit was filed was not proved as the assessment does not reflect the repair works were done as the same was not supported by receipts.

8. This being a first appeal, the Court is under a duty to re-evaluate the evidence tendered before the trial Court and to come to its own determination thereon while giving allowance to the fact that unlike the trial couirt, it did not have the advantage of seeing and hearing witnesses

9. The Appellant testified ass PW1 and relied on his witness statement, he produced an assessment report and a receipt thereof for the sum of Kshs. 500. In cross examination he stated that he did not have any document to prove that he was earning Kshs. 5000 per day.

10. On behalf of the Respondent DW1 Samuel Gathata Njogu relied on his statement as evidence in chief and produced the then by laws on the omni-bus motor vehicles and parking places which allowed towing. in cross examination he stated that they were executing their duties but had not seen the warrants.

Determination

11. From the proceedings herein and the submissions I have identified the following issues for determination:

    a. Whether the Appellant proved his claim for special damages

    b. What order should the Court make herein.

12. From the judgement it is clear that the Court found as a fact that the Respondent did not prove as a fact that the Appellant had flouted the by laws and that the witness by the Respondent on the alleged violence was not called to testify and therefore made a declaration that the towing and detention was illegal and since the motor vehicle had been released, she declined to make an order for its release on what she considered having been taken by event. There is no cross appeal on this finding of fact and would therefore not interfere with the same.

13. On special damages, as submitted by the Respondent and as found by the Court, the same has not be strictly pleaded and proved. From the amended plaint, the Appellant pleaded a sum of Kshs. 5000 per day as lost of earning but in his evidence in chief produced no evidence in support thereof. He further claimed a sum of Kshs. 45,832 as assessed cost of repairs but only produced a receipt for Kshs. 5000 being the cost of the report.

14. It is therefore the finding of this Court that the only amount proved was Kshs. 5000 being the cost of the assessment report and would thereto that extent allow the appeal herein and substitute the trial Court finding in dismiss the entire claim with an award of Kshs. 5000 being the proved amount.

15. In the finals analysis I allow the appeal and make the following orders

    a. Declaration that the towing of the Appellants motor vehicle was illegal

    b. Special damages of Kshs. 5000 being the cost of assessment report

    c. Cost of the appeal to the Appellant

16. And it is ordered.

DATED SIGNED AND DELIVERED AT MURANGA THIS 24th DAY OF JULY 2024

J. WAKIAGA

JUDGE

In the presence of :

Ms Kimani for Mr. Kirubi for Appellant

No appearance for Kimwere for the Respondent

Quinteen – Court Assistant