



**Vinepack Limited v Attorney General (Civil Suit 2 of 2016)
[2023] KEHC 3888 (KLR) (2 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 3888 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT 2 OF 2016
MM KASANGO, J
MAY 2, 2023**

BETWEEN

VINEPACK LIMITED PLAINTIFF

AND

ATTORNEY GENERAL DEFENDANT

JUDGMENT

1. Vinepack Limited (the plaintiff filed this case on July 4, 2016 against the Attorney General (the defendant)).
2. By its pleading, the plaintiff's case is that at the material time it was lawfully manufacturing, packaging and distributing alcoholic drinks at its Licensed premises at Kakuzi Road, off Garissa Road in Thika town. That on July 4, 2018 its business premises was invaded by police officers and other unidentified persons led by the area Member of Parliament (MP) and Senior Divisional Police Service Commanders.
3. The plaintiff further pleaded:

“The assailants destroyed the plaintiff's packaging material and the processing and filling machine amongst other manufacturing equipment. The plaintiff's offices were also looted and destroyed.”
4. Further, the plaintiff's case as pleaded in the plaint is that on July 28, 2016 its premises were raided by police officers led by the Governor of the Kiambu County, County Commissioner amongst other public officers. The pleading states that:

“They searched the premises and loaded all the packaged product of the plaintiff that remained from the earlier raid into trucks belonging to the County Government and



destroyed them publicly in a ceremony presided over by the County Governor of Kiambu at the Ka-ngooki dumping site in Thika.”

5. The plaintiff’s claim is for general damages for trespass by the defendant without lawful excuse and for allowing unruly persons to enter the premises. It is also a claim in special damages for the loss the plaintiff alleges it suffered totaling Kshs 139,291,667.
6. The plaintiff’s case is denied by the defendants through a defence dated March 29, 2017. The defendant by that defence denied invading the plaintiff’s premises and denies the alleged loss.
7. The defendant further pleaded that following His Excellency the President Uhuru Kenyatta’s directive of July 2, 2015 the government formed an Inter-Agency Taskforce on control of potable spirit and combat of illicit brew vide Gazette Notice No 5069 dated July 10, 2015. That the plaintiff was inspected against various regulatory requirements and was found lacking many of those requirements. The defendant reiterated that it did not participate in the invasion of the plaintiff’s premises as pleaded.
8. The plaintiff called seven witnesses to prove its case while the defendant called one witness.

Analysis and Discussion

9. Having considered the pleadings and the witness evidence and the parties written submission, I find that there is one single issue for consideration, that is:-
10. Did the plaintiff prove its case against the defendant?

I shall begin my discussion by reminding the parties that they are bound by the pleadings before Court. This truism was repeated in the case of [Sakari Sugar Industries Ltd –v- Ocbola Peter Ariyo](#) (2021) eKLR thus:

“It is indeed trite that each party to a suit is bound by its own pleadings and courts have repeatedly confirmed that fact. In the Stephen Mutinda case (*supra*) approval the Supreme Court of Nigeria in Adetoun Oladej Ltd Vs Nigeria Breweries PLC 91 of 2002 where Pius Adereji, JSC expressed himself as follows:-

‘It is now a very trite principle of law that parties are bound by their pleadings and that any evidence led by any of the parties which does not support the averments in the pleadings or put in another way, which is at variance with the averments of the pleadings goes to no issues and must be disregarded.... In fact that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.’”

11. I begin by dealing with the binding effect of pleadings because the plaintiff’s witness evidence did not entirely support the pleadings.

It will be recalled as I discuss the plaint that the plaintiff pleaded that their premises was invaded on July 4, 2015 by police with others whereby their products were destroyed and their offices were looted. The evidence of Dickson Mwangi, the plaintiff’s operation director was to the effect that the attack that ensued on July 4, 2015 was led by the area MP, Alice Ng’ang’a. This is how the testimony of this witness proceeded:

“Yes, I learnt the attack led by area MP. We did not sue her – Alice Ng’ang’a. ...



Yes first invasion led by area MP. The police were present when invasion occurred. They did not participate in the destruction. ...

I want to retract that police were present but did not participate in the destruction of the goods...

The second attack led by the county Governor. He is not sued either. The second attack did not involve the police. I don't blame them.”

12. Similarly, the plaintiff's witness, Johnson Murei Muthigoro testified that the area MP with police arrived and the people who followed them into the premises destroyed and looted the plaintiff's property. On being cross examined this witness stated that armed people who accompanied the area MP jumped over the premises wall, they did not wait for the gate to be opened and they destroyed the plaintiff's property. The witness described a fracas between the people who arrived with the area MP and the plaintiff's employees which prompted the police to fire their guns into the air. This witness ended his testimony by stating:

“Police did not damage our goods...

Shots fired by police quelled the violence.”

13. The third plaintiff's witness, Joseph Kimani stated that the police were there possibly to forestall violence. He stated there were 10 police officers and he estimated the assailants were about 100 people. This witness also blame those people for the destruction of their property and not the police. He further stated:

“Police did something to disperse the crowd...

They did not stand by the police tried to intervene...

The police were trying to disperse [the] group...

It took time for the entire mob to be removed by police.

14. Seamon Ng'ang'a Maina testified that the rowdy youths were led by leaders as they destroyed the plaintiff's goods and that the police although at the scene they did nothing and only shot in the air when there was a fracas.
15. Further although the plaintiff pleaded that its premises were attacked twice, on July 4, 2015 when the goods were destroyed and July 28, 2016 when the remaining items were collected and set on fire at the dumpsite; the evidence in respect to the alleged second attack is contradictory. Whereas some witnesses stated that the alcohol products were burnt at the dumpsite the witness Johnson Murei Muthigoro stated that the plaintiff did not encounter another attack after the first one on July 4, 2015. This was also the evidence of the loss adjustor, Martin Mwangi Muchoki, through the report of Cunningham & Lindsey. In that report the loss adjustor noted that the loss incurred by the plaintiff was as a result of the destruction at the plaintiff's premises on July 4, 2015. That report does not make reference of the alleged destruction of July 28, 2016, as pleaded in the plaint.
16. It is also pertinent to note that the plaintiff only produced in evidence on Occurrence Book (OB) report of July 4, 2015 attack.
17. The evidence for the defence was adduced by Daniel Kinyua, the Thika Sub-County police Commander. He stated that following the president's directive that there be a crackdown on illegal brewing members of the public took it upon themselves to invade alcohol manufacturing firms and by



the time police arrived at the scene they would find the members of the public had caused destruction to the firm's property. That in regard to the plaintiff's company the same was invaded by members of the public and on the plaintiff calling the police the police were able to avert destruction of property. He denied that the plaintiff's premises was invaded by the police.

18. Section 254 of the *National Police Service Act* provides that the function of the National Police Force is amongst others to maintain Law and Order, to preserve assistance to the public when in need.

19. The High Court, in the case of *Charles Murigu Muriithi & 2 Others -v- 2 Others Attorney General* (2015) eKLR had to consider a petition filed by persons who suffered destruction of property following this country's post-election violence of 2007-08 where the petitioners alleged the state failed to protect their homes and property from armed gang who set their properties ablaze. The trial court's judgment in that case, was upheld by Court of Appeal where that court stated as follows:

"56. We agree with the learned judge. In the circumstances of this case, and given the interpretation of the law by the United States Courts as can be seen in the authorities we have cited above, we are in agreement with the Respondent that for this court to find that the police owed a duty to the Petitioners to protect them and their property against violence and destruction caused to their property by private persons, they had to fit into the exceptions to the general rule. On our part, we find that the State's duty through its various security agencies, including the Police, to protect its citizens and their properties from violence is owed generally to the public at large and not specifically to each and every individual resident within Kenya as the Petitioners were in December 2007.

57. Having so said, we hasten to add that for the State to be liable for its failure to protect the lives and properties of its citizens, there must be a special duty activated by information made available to the State or the Police; that certain individuals or some members of the public were at the risk of being exposed to acts of violence so that the State could in turn take necessary measures to protect the lives and properties of those individuals in question."

20. The plaintiff's own witnesses more than once stated that there was no violence that was contemplated on the material date when people went to its premises. Indeed, when violence and destruction erupted the plaintiff's own witnesses confirmed the police shot in the air until calm was restored. The plaintiff by the evidence tendered failed to prove that the police invaded and destroyed or looted its property. The clear evidence of the plaintiff is that the people who came on the premises were led by the area MP. The area MP nor those persons who accompanied her were not sued. If supposedly the plaintiff's case is that the area MP or the Governor are sued in this case through the Attorney General, then I will at once dispel that misgiving by stating that the *Government Proceeding Act* and *County Governments Act* exclude an area MP and a Governor from being sued through the Attorney General, unless they are officers as defined under the *Government Proceedings Act*.

21. In my judgment I find and hold that the plaintiff failed to prove the police, who are the only parties in this case who could be sued through the Attorney General invaded and destroyed the plaintiff's property. They did not invade because the plaintiff's evidence is that the plaintiff's employees opened the gate and permitted the area MP and the police to enter into the premises. Additionally, evidence of the plaintiff's witnesses is that the police tried and eventually succeeded to quell the fracas and destruction taking place at the plaintiff's premises. Consequently, the plaintiff's claim against the



police fails for lack of evidence implicating the police in wrong doing and also because the evidence contradicted its pleadings.

Conclusion

22. In the end the plaintiff's case is dismissed with costs for the reasoning set out above.

JUDGMENT DATE AND DELIVERED AT KIAMBU THIS 2ND DAY OF MAY, 2023.

MARY KASANGO

JUDGE

In the presence of :-

Coram

Mourice/Julia: - Court Assistants

For the plaintiff: Kabugu & Company Advocates:- Mr. Kabugu present

For the Defendant: Attorney General:- N/A

Court

Judgment delivered virtually.

MARY KASANGO

JUDGE

