



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT 5 OF 2016

BANODA OIL LIMITED.....PLAINTIFF

-VERSUS-

DENIS KIPKOSKGEY BETT.....DEFENDANT

JUDGMENT

INTRODUCTION

1. The plaintiff filed this suit against the defendant seeking the following reliefs:-

- i. An order that the defendant ought to make taxes and the surcharge to the plaintiff by Kenya Revenue Authority for the petroleum product which were meant for export but dumped within the country.
- ii. An order that motor vehicle registration number KCE 453N/ZE 1906 ought to be detained by the plaintiff until the defendant makes good the surcharge and the taxes for illegal dumping of the products.
- iii. Cost of the suit.

2. The Defendant failed to entered appearance and file the defence despite being served with summons to enter appearance. Interlocutory judgment was entered on 2nd March, 2018. The case proceeded for formal proof on 19th June 2019.

PLAINTIFF'S EVIDENCE

3. The plaintiff's evidence is that it is a company dealing in petroleum products whose sale and Kenya Revenue Authority regulates distribution; one of the rules imposed being to sell and distribute petroleum products meant for export. This imposes a duty on the dealer to ensure that they transports the petroleum products to the desired destination failure which the dealer is surcharged by KRA and the dealer in turn recovers from the transporter.

4. The plaintiff availed one witness PW1 who is its former employee. He testified that on 7th January 2016, the defendant went to the plaintiff company and purchased 35,000 litres of petrol for export to Southern Sudan.

5. He testified that the defendant loaded the petrol in a lorry on a Friday and left then came back the following Monday to load for another company. This raised suspicion as it was not logically possible to reach Juba Southern Sudan on Friday and come back to Kenya the next Monday.

6. PW1 testified that he was later informed that the defendant's truck never crossed the border. He said that when a client fails to transport fuel to destination, he sells fuel locally and benefit from import duty.

7. PW1 testified that when he learnt that the defendant never transported fuel across the border, he reported to Kenya Revenue Authority and requested for detention of his truck.

8. PW1 further stated that in such an incident, Kenya Revenue Authority demands payment of fine from the plaintiff and in turn the plaintiff recovers from the defendant; and they raised demand letter for import duty from the plaintiff and detained the truck. He showed court notice of detention of the truck and demand for payment of fine.

9. PW1 testified that the plaintiff was charged, fined and storage fee was on account of defendant's mistake. He prayed that the defendant be ordered to pay to the plaintiff kshs1,695,072 surcharged by Kenya Revenue Authority plus interest and costs of this suit.

ANALYSIS AND DETERMINATION

10. On perusal of Notice Number 192306, I confirm that motor vehicle registration KCE 453N/ZE 1906 was detained in Customs Warehouse on 13th January 2016. Payment Authorization eslip No. 2016NB1346029F dated 9th February 2016 confirm that the plaintiff was surcharged kshs1,695,042. The defendant has not adduced any evidence to controvert the plaintiff's evidence.

11. The plaintiff has in its evidence demonstrated that the surcharge by KRA was on account of the defendant's fault. There is no evidence to the effective that the plaintiff played any role in failure to deliver the said petrol to its destination being Southern Sudan. The plaintiff is therefore entitled to compensation from the defendant.

12. FINAL ORDERS

1. Judgment is hereby entered for plaintiff against the defendant for kshs 1,695,042.
2. Interest on 1 above at courts rate from the time of filing this suit.
3. Costs of this suit to be paid by defendant to the plaintiff.

Judgment dated, signed and delivered at Nakuru this 9th day of October, 2019.

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:-

Jenifer - Court Assistant

Maina holding brief for Githui Counsel for plaintiff

No appearance for Counsel for defendant