



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 1 OF 2013

WILLIAM ONYANGO RUBIA..... APPELLANT

VERSUS

JAMES NJAAGA NJAU.....RESPONDENT

RULING

1. William Onyango Rubia, the Appellant herein, filed a suit before the chief magistrate's court, Nairobi, against James Njaaga Njau, the respondent herein, claiming for interalia kshs.1,039,028/= arising from a contract of employment which was allegedly unlawfully terminated. The respondent filed a defence to deny the appellant's claim. The suit was eventually heard and dismissed on 9th July 2011. Being dissatisfied with the aforesaid decision the appellant preferred this appeal.

The Appellant put forward the following grounds of appeal.

1. *The learned magistrate erred in fact and law in dismissing the whole suit without enough evidence.*
2. *The learned magistrate erred in fact and law by finding that the appellant failed to prove his case to the balance of probabilities.*
3. *The learned magistrate erred in fact and law by ignoring the fact that the Appellant was an employee of the respondent.*
4. *The learned magistrate erred in fact and law by ignoring that the Appellant had pleaded in the pleadings that he was employed as a High Security Guard and also as a Gardener.*
5. *The learned magistrate erred in fact and law by ignoring the fact that the appellant is a laymen and/or pauper.*
6. *The learned magistrate erred in fact and law in failing to consider the compelling evidence adduced by the appellant at the trial court and arriving at a decision contrary to the evidence adduced before him.*
7. *The learned magistrate erred in fact and law by relying on the only statement of defence without any additional evidence throughout the entire proceedings. The Respondent never appeared in the trial court to support his statement of defence.*
8. *The learned magistrate erred in law and fact by not realizing that the appellant was only*

seeking what was his rightful dues from the Respondent but instead frustrated by dismissing the entire suit.

- 9. The learned magistrate erred in fact and law and proceeded on the basis of discredited and unreliable evidence to dismiss the suit.***
- 10. The learned magistrate erred in fact and law by disregarding and or overlooking the particulars of the plaint filed by the Appellant.***
- 11. The learned magistrate erred in fact and law by failing to base his judgement on the merits of the case.***
- 12. The leaned magistrate was out rightly biased against the Appellant in arriving at the judgment.***
- 13. The learned magistrate erred in fact and law by attaching too much underserved credibility on the appellant's pleadings.***
- 14. All in all the learned magistrate misdirected himself on matters of both law and facts to occasion a miscarriage of justice against the appellant***
- 15. The subordinate's court decision was manifestly unfair and prejudice to the Appellant.***

2. On 13th March 2015, this court directed the appeal to be disposed of by written submissions. At the time of writing this judgment, the Appellant was the only party who had filed his submissions.
3. I will consider the grounds of appeal as I re-evaluate the case that was before the trial court. The record shows that the trial magistrate dismissed the Appellant's suit on the basis that the Appellant had failed to present any evidence to support the fact that he was employed by the Respondent. The learned senior Principal Magistrate also found that the Appellant had failed to demonstrate what sought of employment or contract he had with the Respondent.
4. Though the appellant put forward a total of 15 grounds in his memorandum of appeal, those grounds can actually be summarised to one main ground that is to say that the trial magistrate erred by failing to give due attention to the evidence he presented to support his case. It is appellant's argument that the trial magistrate disregarded the documentary evidence he presented before him. This being the first appellate court, this court is enjoined to re-evaluate the case that was before the trial court and come up with its independent conclusions but bearing in mind that it had no advantage of hearing the witnesses. The record shows that the Appellant was the only party who testified before the trial court. The appellant told the trial magistrate that he was employed by the Respondent in the year 2000 at a monthly salary of ksh.6,000/= which amount was increased to kshs.7,000/= on 5th June 2002. The Appellant further informed the trial court that he worked well with the Respondent until 2007 when the Respondent joined politics and unsuccessfully vied for the Subukia parliamentary seat. The Appellant further told the trial court that when the respondent came back he was unable to pay his salary.
5. The appellant gave the particulars of his claim in the plaint. In para 5 of his defence, the respondent admitted that he engaged the services of the appellant as a part-time gardener. In para 7 the Respondent alluded that he would tender evidence showing that he paid the appellant's dues in full for the period he worked for him.
6. After a careful re-evaluation of the case that was before the trial court, I am convinced that the learned senior principal magistrate committed a serious error when he concluded that the appellant had failed to tender evidence to prove his case. The learned senior principal magistrate simply failed to give due consideration to the Appellant's evidence. He did not indicate whether or not he believed the Appellant's testimony. The trial magistrate further failed to consider the parties'

pleadings. He simply did not analyse the evidence and pleadings presented before him.

7. In the final analysis I find the appeal to be with merit. Consequently it is allowed. The order dismissing the suit is set aside. The suit is reinstated. A fair order to be made in the circumstances, is to order for the suit to be reheard a fresh before another magistrate of competent jurisdiction other than the magistrate who initially heard the case. The appellant is awarded costs of the appeal to be met by the Respondent.

Dated Signed and Delivered in open court this 6th day of November, 2015.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

.....for the Respondent