

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

CIVIL CASE 4505 OF 1992

MUNGE.....APPLICANT

VERSUS

AGRICULTURAL FINANCE CORPORATION LTD.....RESPONDENT

JUDGMENT

July 10, 1998, Keiwua J delivered the following Judgment.

The defendant is sued for unlawful seizure and detention of the plaintiff's tractor registration No. KDZ 866 which was later released to the plaintiff in May 1990. It is contended, and in the absence of evidence to the contrary and I believe to be so, that the tractor was stored in an open yard under which the same suffered the vagaries of the weather for 15 months. It was accordingly released in a dilapidated state and was of no use to the plaintiff any longer.

In view of all that compensation is sought from the defendant in which particulars have been set out as follows:-

(a) Ploughing 8 acres a day X Kshs 390 per acre = 3120 per day.

As the applicant did not lead any corroborative evidence to show the performance in a day of the machine and the prevailing rates per acre I reduce these daily earnings to Kshs 2,000/= to take care of any possible exaggerations by the plaintiff. In a month Kshs 2000 x 20 days instead of the plaintiff's 24 days = 40,000. This comes to Kshs 40,000/= X 3 (months) to take care of the possible in the trade of agriculture where not every day is a working day for various reasons. That results in the sum of Kshs 120,000/= for that head.

(b) Shelling maize about 100 bags (a day) for Kshs 6/= a bag shelled X 2 months.

The plaintiff of course has no records what so ever to show and substantiate any of these statements. I shall do the best I can and accept that he shelled 50 (bags of maize a day) at Kshs 3/= (per bag shelled) for 1 month (of 25 days). This gives $50 \times 3 = 150 \times 25 = 3,750/=$.

(c) Fall in value of tractor is said to be the difference between the price it was sold and the value when it was seized which fall in the price is Kshs 105,000/-. I shall award this special damage. In all:

(a) Kshs. 120,000 plus

(b) Kshs. 3,750

(c) Kshs. 105,000

Kshs. 228,750/= on all heads plus costs and interest as prayed in the plaint.

July 10, 1998

Keiwua, J