



REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAIROBI

(CORAM: OMOLO, TUNOI & LAKHA, JJ.A.)
CIVIL APPEAL NO. 78 OF 1996

BETWEEN

VISOI SAW MILLS LTD. APPELLANT

AND

THE ATTORNEY-GENERAL RESPONDENT

(Being an Appeal from a Judgment and Decree of the High Court
of Kenya at Nairobi (Justice E. Owuor) dated 25th July,
1995
in
H.C.C.C. NO.210 OF 184)

JUDGMENT OF THE COURT

This is an appeal by the plaintiff from an assessment of damages made by the superior court (Owuor, J.) on July 25, 1995 whereby she awarded to the plaintiff special and general damages for a breach of contract.

On or about the 6th day of August, 1979 the then Ministry of Environment and Natural Resources granted to one Elijah K. Boiywo a licence to extract and mill timber for the period 1st January, 1980 to 31st December, 1984. The said licence was later with the consent of the said Ministry transferred to the appellant by the said Elijah K. Boiywo. On or about the 11th day of March, 1982, the Ministry cancelled the licence in breach of the terms and conditions thereof. In consequence thereof the appellant instituted proceedings against the respondent claiming damages.

By her "judgment" of August 2, 1993 the learned judge found in favour of the appellant on the issue of liability. No appeal was preferred from that judgment. The case then proceeded to hearing on the issue of damages and judgment was delivered on July 25, 1995 whereby the trial Judge made awards in favour of the appellant on each of the heads of damages claimed and particularised in the plaint. These included actual expenditure incurred for purchase or commissioning of plant, machines and related expenses, loss of profits on business upto 31st December, 1983, expenses (abortive) as a result of stoppage of operations, interest paid on loans obtained to run business upto 31st December, 1983 and finally damages for loss of profits for the remaining year that the licence had to run. There was no appeal on these heads or on the quantum awarded thereon.

There were six grounds of appeal set out in the Memorandum of Appeal to this Court but at the

hearing five of them were abandoned and the only one ground argued before the Court was:-

"That the trial judge erred in failing to consider the appellant's claim for general damages and in failing to award the appellant general damages suffered by the appellant from the time of filing of suit on January 19, 1994 to the time of judgment on July 25, 1995."

Mr. Kuria for the appellant submitted that this was a case in tort of wrongful interference with the contract. From the reading of the plaint we are unable to agree. It appears to us to be a plain case of a breach of contract. But whether the claim is in contract or tort the only damages to which the appellant is entitled is a pecuniary loss: it is to put the appellant into as good position as if there had been no such breach or interference. Normally this would entitle the appellant to recover damages for the expenses caused by and gains foregone because of the breach or interference. The normal measure of damages where a licence such as in the present is terminated is the loss of profits of the unexpired term, i.e. profits upto and including the 31st December, 1984. These were in fact awarded by the trial Judge. There is no basis pleaded for loss of profits for any further or other period beyond the date of expiry of the term of the licence and none may, therefore, be awarded. The learned trial Judge also awarded the expenses claimed. Mr. Kuria conceded that the annual profits were Shs.600,000/= and this is what has been awarded.

We do not see any grounds for making any increase in the award already made. Clearly, there is no merit in this appeal and it is dismissed with costs.

Dated and delivered at Nairobi this 7th day of March, 1997.

R.S.C. OMOLO

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.A. LAKHA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR