

REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT KISUMU

CIVIL APPEAL NO 130 OF 1986

RICHARD SAIDIAPPELLANT

V

SEMBI MOTORS.....RESPONDENT

JUDGMENT

Richard Saidi the appellant in this case sued Sembi Motors on November 16, 1983 in the resident magistrate's court at Kakamega. The suit was defended and was duly heard by the DMI at Kakamega commencing on March 27, 1984 and completed on November 19, 1985; judgment was delivered on November 26, 1985. In his judgment the trial magistrate found that on a balance of probabilities the appellant failed to prove his case and dismissed it with costs.

Thereafter the appellant filed two applications to the trial court (1) seeking leave to amend his plaint and (2) seeking a review of the judgment whereby his claim had been dismissed. Both these applications were heard on December 24, 1985 and the rulings thereon were reserved till January 21, 1986 when both applications were dismissed. The appellant being dissatisfied with the dismissal of his two said applications appealed to the High Court at Kakamega in its civil appeal No 14 of 1986. That appeal was duly heard by Aganyanya, J who on June 11, 1986 dismissed it on the ground that it would not have been legally proper to allow the appellant to amend his plaint after the suit had already been tried and the judgment delivered; as to the application for review he held that it had no merits and he upheld the decision of the trial court to that effect. The present appeal arises from the said judgment of Aganyanya, J. It is a second appeal and this court can only entertain it on issues of law.

The appellant filed a petition of appeal and during the hearing put in what he called submissions but which are in effect a repeat of the contents of the petition of appeal. The appellant complains that the first appellate court erred in supporting the trial court in its decision to dismiss the applications to amend the plaint and to review the judgment. He also complained that the High Court erred in failing to find that the case ought not to have been tried by the court in Kakamega because the learned judge did not consider the matter sufficiently. In this connection we note that the appellant had filed Kisumu Misc CC No 28 of 1984 seeking transfer of the appellants case from Kakamega court to any other court and that the application was dismissed as having no reasonable basis on August 1, 1984 by Schofield, J.

In reply to the appellants' submissions Mr Dhankal for the respondent reiterated the legal position that in a second appeal it is incumbent on the appellant to show that an error of law has been committed by the lower court. Upon our consideration of the proceedings in the two lower courts and hearing the submissions of the appellant we cannot find any such error. In the result this appeal is ordered to be dismissed with costs.

November 30, 1987

PLATT, APALOO JJA & MASIME Ag JA