

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 2296 OF 1980

FRANCIS NAMATOI OBONGITA PLAINTIFF

AND

COCKER PRINTERS AND DESIGNERS LTD..... DEFENDANT

JUDGMENT

The plaintiff Francis Namatsi Obongita filed this suit against the defendant company Cocker Printers & Designers Limited seeking judgment for general damages for breach of contract and costs of this suit. As no appearance was entered nor a defence filed this suit proceeded by way of formal proof.

The plaintiff entered into a written agreement (Exhibit 2) with the defendant company. The plaintiff was to buy the defendant's printing press. The agreement was dated the 14th March, 1980.

The plaintiff started operations on the 22nd January 1980 but was forced to stop on the 15th May 1980 due to the defendant's failure to pay electricity leading to disconnection of electricity supply.

Close 4 of the agreement provides:- "4. During the time of the tenancy the Buyer would be responsible for all telephone charges but the seller would be responsible for water and electricity charges

From the above it is quite clear that the defendant as the seller of the printing press was responsible for electricity charges. The defendant failed to honour its obligation and hence the plaintiff was forced out of operations.

I have studied the written sale agreement (Exhibit 2) and I am satisfied that the defendant was in breach. What I have to do now is the assessment of damages for this breach.

In *Addis v Gramophone Co Ltd* [1909] A C 488 at p.496 Lord Atkin said: "In many other cases of breach of contract there may be circumstances of malice, fraud, defamation, or violence, which would sustain an action of tort as an alternative remedy to an action for breach of contract. If one should select the former mode of redress he may no doubt recover exemplary damages, or what is sometime vindictive damages, but if he should choose to seek redress the form exaction for breach of contract, he lets in all the consequences of that form of an action. *Thorpe vThorpe* one of these consequences is, I think this, that he, is to be paid adequate compensation in money for the loss of that which he would have received had his contract been kept and no more "

In the Kenyan case of *V R Chande and Others v E A Airways Corporation* (1964) E A 78 at pp 80-81 Mayer J held:-

"The general rule as to the quantum of damages to be awarded for breach of contract was stated by ALDERSON, B in *Hadley B axendale* (1885) 9 Ex 341 (156 E R 145 at p. 151) in the following terms:- "Now we think a proper rule in such a case as the present is this; where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally i.e according to the usual course of things from such a breach of contract

itself or such as may be reasonably supposed to have been in the contemplation of both parties, at the time they made the contracts the probable result of the breach of it.”

In the present case the plaintiff had started operations. He produced a report (Exhibit 3) from Certified Public Accountants which report shows inter alia that the plaintiffs net income for the first four months was shs.27211/=. The same report shows that projected net income was shs.204,600/=. These figures are to be used in assisting the court arrive at what should be considered as a fair figure. From the plaintiffs evidence it would appear that the defendant deliberately caused the disconnection so that the plaintiff could be forced out of operations. The plaintiff who had started off very well was abruptly stopped and this affected his income.

Looking at the figures supplied by the plaintiff through the reports of the accountants and bearing in mind inflation in this country I am of the view that the plaintiff income should be taken as shs.30,000/= in four months. In my view the plaintiff should be compensated for a period of 12 months so that he can be put in a fair position to engage in a similar project. Hence I award the plaintiff shs.90,000/= as general damages plus interest at court rates. The plaintiff will of course have the costs of this suit. Order accordingly.

Delivered at Nairobi this 29th day of May 1984.

E O’KUBASU

JUDGE

29.5.1984