



REPUBLIC OF KENYA

COURT OF APPEAL AT NAIROBI

CIVIL CASE 1090 OF 1983

SAMSON B NYABWARI t/a

NYABWARI & SONS.....PLAINTIFF

versus

NYARANGI NCHOGU..... DEFENDANT

JUDGMENT

The plaintiff consigned 15 colour television sets, 1 projector and 2 video sets from Denmark to Kenya. The defendant collected and sold them as the plaintiff agent. As such agent he was under a duty to account to the plaintiff as to his stewardship. The only account he has given was in a letter of October 8, 1981. In this letter he says he sold the TV sets for Kshs 210,000 but it cost him Kshs 218,613.80 to pay for air, freight, customs & sales tax and clearing.

The plaintiff disputes the alleged costs. I have heard both the plaintiff and the defendant. The defendant is plainly a liar whose lies were not made any more convincing by his smiles. In the absence of any evidence by the plaintiff as to how much the TV were sold for I must accept the defendants figure of Kshs 210,000. I shall add to this Kshs 40,000 as the value of the videos and the projector making in all a sum of Kshs 250,000.

As against this sum I accept that the defendant paid freight charges of Kshs 18,615.40. Handling and storage charge of Kshs 12,808 and customs & sales tax Kshs 22,451 making in all a sum of Kshs 53,374.40. Accordingly the defendant should have accounted to the plaintiff for the sum of Kshs 196,625.60. The goods costs the plaintiff Kshs 78,074.85 subtracting this sum for the sum the defendant should have accounted for, there is a sum of Kshs 118,550.75 net profits. I would allow the defendant Kshs 11,855 commission at 10%.

I accordingly give the plaintiff judgment for Kshs 106,695 with interest thereon at court rates from October 1, 1981 as being the date when the said sum should have been paid to plaintiff.

The plaintiff is entitled to his costs.

Delivered at Nairobi this 6th day of Novemebr, 1986.

J G SHIELDS

JUDGE



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