



IN THE COURT OF APPEAL

AT KISUMU

(Coram: Nyarangi, Gachuhi & Apaloo JJA)

CIVIL APPEAL NO 58 OF 1986

RICHARD SAIDI.....APPELLANT

VERSUS

MANASSE LUMWACHI HAJANI.....DEFENDANT

JUDGMENT

September 19, 1988, Gachuhi JA delivered the following Judgment.

This appeal is on computation of the figures in the process from the time of filing suit sailing through to execution. The appellant has not understood these figures. He particularly stated, that there is a mistaken on the record.

It is true, the claim in the plaint is for Kshs 48,776.25. Summary judgment was applied for and the judgment was entered on October 23, 1978 for Kshs 48,776.25. There is no difference of Kshs 20,000 which the appellant, claims to have paid in excess in the judgment. Considering the number of applications and costs involved and the interest charged, the appellant has to be satisfied that the figures are correct before he can firmly submit that judgment was entered for Kshs 68,477.25. If it was entered for Kshs 68,477.25 has he been called to pay the principal as Kshs 68,776.25 or did he pay the principal amount as Kshs 48,776.25. Judgment having been entered and before execution, a decree has to be issued. Execution is therefore based on the decree. It is the amount in the decree that should be considered as correct for the purpose of execution. The appellant should attack the decree and not the figure he considers the judgment was entered for. I have been in pains to go through the original record to see a mistake in entering judgment. In my view, the appellant has been misled by the typed record. I appreciate that it ... the handwriting of Contran, J (as he then was) as The figure 4, and read it as 6. This is the whole ... The figure is Kshs 48,776.25 and not Kshs 68,776.25. I have also looked at the draft decree filed and signed by the deputy registrar. It reads:

Principal amount - Kshs 48,776.25

Interest thereon at 8% -

From the date of filing suit May 20, 1978 To November 20, 1978 - Kshs 1,095.80

Kshs 49,872.05

From this figure, it is clear that the appellant could not have paid the principal amount more than what is in the decree. So the judgment was opted for Kshs 48,776.25 and not Kshs 68,775.25. The other complaint is on the taxed costs. The bill of costs filed on November 24, 1988 does not, in my view, appear to have been taxed. I could not find a certificate of costs in the file as provided by order XX rule 8() of the Civil Procedure Rules. Mr Azangalala handed to the court a letter he had written to the deputy registrar, of the Court of Appeal tabulating the figures of claim, costs, interest and payment in this appeal. In that letter he refers to certified costs as Kshs 11,845. Surely the amount shown by Mr Azangalala is more, and if the bill of costs had been taxed, some amount, could have been taxed off leaving less figure than what is claimed as certified costs. The appellant has all through complained that the total figure shown in the bill of costs is more by Kshs 1,183. Mr Azangalala has conceded to this complaint somehow by reducing the figure in the above-quoted letter by Kshs 1,178 as the arithmetical error.

My addition ... figure indicates that the total should be Kshs 10,57... The difference is not as shown by the appellant or Had the bill of costs been taxed normally a different figure could have been reached.

I think it is worthwhile to indicate to the appellant that so long as the ... remains uncertified it becomes more costly in the end as the interest would have increased. The situation becomes worse if there are several intermediary applications made as it has been done in this case, because those applications go to enhance costs in the whole process.

Having gone through the record, the appellant has not paid Kshs 20,000, ... as he thought. In fact, had he been supplied with the figure in the letter sent to court by Mr Azangalala before, which even now he has not been given a copy of it, he could have understood the situation and probably this appeal could not have been filed. Mr Azangalala's letter, a balance of Kshs 2,509.55 still remains. In my view, the question of taxation of the bill of costs could have been the only issue raised by way of excess claim, which is true. I think Mr Azangalala should have taxed his bill before execution. Since there is amount due, it should be taxed. After taxation, the interest claimed will have to be adjusted which will either wipe out the balance outstanding or make a refund which will be found to have been paid in excess. To this extent, I would dismiss this appeal. As the whole misunderstanding was on figures, I would order that each party bear its own costs of this appeal.

Nyarangi JA. I agree. So does Apaloo JA. The appeal is therefore dismissed with each party bearing his costs.

Apaloo JA. The only question of substance raised in this appeal, involves figures and is a pure question of arithmetic. Gachuhi, JA has .. into that and pointed out what caused the confusion and the difference between the parties. Having done that, he considers that no ground exists for interfering with the judgment.

Having had and considered Gachuhi, JA's analysis of this matter, I find no reason to differ from his conclusion. So like him, I would also dismiss this appeal without costs.

Dated and delivered at Kisumu this 19th day of September , 1988

J.O. NYARANGI

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JUDGE OF APPEAL

J.M. GACHUHI

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JUDGE OF APPEAL

F.K. APALOO

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR



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