

TANZANIA / JUDGMENT

19840608 TZHC Tanga

COURT
TZHCDECIDED
8 June 1984

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IN.TIM JIGH. COURT OF TMZANIA AT TNGA CIVIL WLSE NO. 5 CF 1980 PLAiNTIFF versus J U D G E M E N T. \$15Th J:-. The plaintiff broht this action seeking to recover from the defendant a principal sum of shs. 57075/50 re'esenting expenses (totalling shs. 6 9 875/50 which he allegedly incurred in effecting repairs to some busineEs premises, and damages (amounting to sbs. 50,600/=) for loss of business for the period ranning from 18t4 July, 1979, to 31s't March, 1980 9 inclusive, at the rate of shs.200/= per diem. The defendant i: said to have unilaterally and/or without any uatifiab1e cause olos(d the business premises to the plaintiff. The plaintiff is also claiaing interest on the principal sum at.the rate of 6% and. coste of the z.uit. The defendant conte.ted the suit. He denied liability for the principal sum or any part thereof. Seven issues were framed at the commencement of hearing of this suit. I will, however, have occasin to refer to them later in this jucigernent0 Evidence was given by the plaintiff, abed ally (RI), to the effect that he and the defendant are personal friends at least they were 'before the events that led to this case. He approached the defendant and asked him for a place where he could ran his business of selling snacks. according to the plaintiff he had inzmind a hut which was already under construction near the house of the defendant's father where the latter was also staying. The defendant told him that the said hut belonged to his, i.e. defendant's father, one àthwnani .Kialiko. Thereafter the plaintiff approached the said father of the deferid.a't who then agreed to lease the hut tohim on cpndition that he, i.e* plaintiff, completed the construction thereof. In the plaint th plaintiff names one Athu.mani Shekilango and not Athumani. Kialik as .. 0 .,.* 0 I -2- his land.lorc1 Indeed, o.thumani Kialiko and Athuinani Shekilango may be one and the same irson but the fact of the matter is that there is no evidence to t..iat effect. Be it as it may, the plaintiff went on to say that the defendant's father did not fix any rent for the premises. He intimated that it would. depend on the prasperity of the business. He, i.e. plaintiff, hired a carpenter iho did all the necessary constructiçn work and ia paid him accordingly. Eventually., he employed the defendant who was hitherto jobless as a cook. 14.fter about fifteen days he changed the defendant from a cook to a cashier. The plaintiff stated in his evidence that when the defendant took over the job of cashier there was a noticeable dwindle in the daily earnings0 As was typioal of the plaintiff' s testimony no figures were given or, quoted. No reason was suggested, let alone proven, either for the dwindleia finances. Tm plaintiff went on to state that on seeixig this ic dismissed the dofendant from service and employed, his own son ,s. cashier. It was then, apperently as a reisal thereof, .tha., tie defendant unilaterally closed down the business premises and hetiever permitted the plaintiff and/or any of his employees to have any access to i.t0 The plaintiff referred

the matter to local elders but; 411 attempts to reconcile him and the defendant did not bear. a : fruit as the defendant remained. adamant. Eventually he referred te matter to tae Urban Court. after a full trial the defendant was 'rdered tb pay him shs.6,000/=. The defendant appealed to the Districi Curt whic'. then declared the proceedings in the frimary Court a i.i.11ity due tc lack of jurisdiction. There- after, the plaintiff tur.i9d to this Ccart. The plaintiff called two witneEses tp his side,, 112., Rashi4i Zulu Gama statea that he was one of the eldsr who sat in an effort to reconcile thc parties,. His evidence iz so far as the parties' association ex.tailed is primarily hearsa.y W-iich is in- admissible andjor has no probative value. - - / The plaintiff0s third witness, Nohamed Rajab swore he was the carpenter whom the plairiiiiff hired to do some constr 0 work s whichhe did, on the business premises. P13 added that tl 1.-aintiff paid him for the work b.u1 he did not say how much. _\ I' /. • . . • 0 j7 pepwç ppioo jou 'stt j6 ojoq. iOo ou 4 9jojaae#T 'AuGbeBuoo 'pu8 1O SM WOW0 0 Jf9v pTS 941 9W899 U * P O aOWa PJOIPUT S .upueJep et. jo eqj ptxe Glq toçtM quweo,i xad st jtutd et{q. o. DUTPaOOOV 'sttj1 •ssiwad SutSriq elfj o ouop f.tOM uotqonuOO uç.JOO JOJ 9Tq Ts uodsea SM aq Tetfl. tU0W JO piom Aq pauopuew floswçt J;tuId etfl 'ptse.zoj s Sr •JJtzt -[d uo seq eett jooad jo uop.rnq oc/cL99stis SOO sai vdai pros req Os ji 'Apuooes 'pus sestuoai ssewtsnq oq stdez Am ptp ;Jr.utTd 8tfl. OU IO JOt.TM St uOt teptsuOo JOJ anseT T SXTJ PTtOO PLN SS9tXtSttQ •Te.OW te ut dtqsu,x jtt Stq..xd ueeq s q osss et jo PUTavTot pessoutM pu uosaJfJ 0J0t4 AVq. 8.IOMS 'oo. TPT e s umr pu (ia) V c3V STI)j WttfS 4 SOSSOUtM. i)tIOJ8p OM. .10tfl.O OTJ •utt.iM O. POOrp9J SM sqess jo uOtnqt.r.9tp eq OJOMS oo. °H •seotrut; .x9AO s14 set.i'I MIJ. uMeq Tex.xaTb et ta o. urpx000y &TLM PUOJOP ot urns l!t.S rrf et eat.rns P8SS 9 .d XO pu . ~ JnOD £xt?wtJd ut eoueptAe .XtwtS eA2 81{ tfl PTTOI °H GSOT4a vd et ueM3q S ~ a SSV SS9trSnq JtOtT1 jo ut.is passetrTM pus Ju9soald SM peJ.SJa. 'lvfT)T TUSTU 9 TOS 'Mct opts STIT uO SOSSeUtM eeJq. p:io UU9P 919 OouepAo ut p.xpu ou SM Jo9.Ietfl. Sdoo io uaurnoop usAeeJ 911q. xq uttJ)t 01 peotipa.z SM UOtOSULx. ot .uspuajop ot. oj. VU T P JOOOY *WO 1 fl. UGGKZGq ppIAt AqtTthe UOtfl. .IeM eoq OqZ 1fl SOSS eqj 'e.zIes ppiS wot1 jo ot.t. eq tfl. POSTAPV U9Tfl. OtTM S.I8p8 -roo e.o;ew eq, pe.LxJa,x oT.j As oq. UO UOM .uspUeJep G qj, JUMO t4. O. S93f Oqj. UXflJ pus 94)TOOT O ppTOOp Tu s puejap 94T STtfl. UtS U /oO019 •ss Sulpvnowv spunJ 8SOT9J oq. posnjax jJuTd E)Ti tt •s9twejd sseutsnq at oj qux Vd O. u&ie pij £etfl. ewoout .It9t.fl. Mom! Oq. W TT4 .IOJ 1 eqtssothJt j.ou ; 'It1, tJJTp cTUt.JOU! utwooq UOt SSM fl eotmutj ;o utpriout suot.tsod oex1.s 1.s UT uexpiqO UMO STtf qrlld JJTI.UT 'e Td. at UOtTM ewo texb mfl. TwepuOJOP eiq oq utpi000v -POTeaa smb RatIT u 9 T4T pus muow etZO AUO JOJ Jetfl80. PGNJOM I r?AOMOTf'Wq. JO OM. Gig 'pO€LI9 aH •sseutsnq sTT4 UT WtTj utoC ppioo GIT Jc wtiT P9 3fSS pus UJTtT poO4de JJT!.UICr "I '1L61 'ii GOUTS saXg us UtUtILI SM 8tfl. peqs quspuojap t GOUOJOp SLIT tTI r - ---4:: be, produced. •Jgain,as aforesaid, the person who allegedly did the work.itself, Fy13, gai evidence in the case. Strange enough the landlord himself was not called as a witness and, therefore, he did not give evidence ;n the case. Pi13 asserted that he did some wOl'k on the businesi premises and the plaintiff claimed that he.paid for the said.wor3i Strange enough neither.the plaintiff himself nor Fy13 stated iw much money wspaidforthe said job0 if the said job :wasthu, indeed, done and.paid for, it beats cme.henion that both the person who paidfor the said job and the one who was paid. for it would fail to know the amountpaid0 This raises some doubts .n mind and I resolve these in favour of the: defendant. cco:.ling].y, I answer the first and second. issues

- in the negativ. •, 'The third issue ii whetherthe plaintiff employed the defendant or if the two of them iere partners0 On the first part of this question the only evithnce available is the plaintiff's word of mouth as against that of i he defendant& The plaintiff claimed that he employed the defendant first as a cook and within a fortnight he èlevated him to the pot of cashier. The defendant denied this. No ;ecOdofoempioinent, o'al orotherwise was produced in evidence. The buid.en of proofher ison the plairtiff and I hasten, onthe tbt'hohaa isoably failed to discharge t his d• . the othe:. .hand several witnesses gave evidence on the defendant's side to Ue effect that after the breakd.own of the .assoiation thes' two persons shared the assètsof the busiessbetwsenhemselVs. To my mind this is not the sort of thing: one. iqou d expect to happen between an employer and his employee. On.a prepônðerance O;probabilitiesI an satisfied, and.I so find., *Jiattlieo parties we'e prtiiersinthebusiness and their partnership aeto.anabrLtpteñd due tothe aitrust (and/or greed?) which they i "t eabhothor, .held-agan8 his disposes of the third issue. Now,turning to the :fOurth issue, the ..laintiff :.d.idflotVen yhow.iuch :ihen the.gOifig :sstiIl.goed, an..how mthh.wasbèig eanedhen thedfeldan.....toOk vrc*shier. ; stands, there is not even' a' ct.ntiia :of evidence from which thiscourt can determine .jhether , or not . itidoedas. any loss, .a rid - ~ w hoz caused thesame. .1, thereforç,answr tke foui'th issue .nthe:negat.ive. Theent :.ôf the. loss,. if My,:also i7/9/9 DL 2 ')c7 SSOO Ifl. 4cT TT TtA J314UTTd Gqj 'op 'cqo 'I tjOtM WtW[O JO I3W9TP aT t oUSumoxto - 'T PtW 3.It dLd ei qOtTM O JTT" A1UO aq 'as op 6q. POTTJ sutl Oil iic, JJtqUt[d oqq o SM èso sçt eAo.Id o. Aqnp Oifl pEtIo tIEtIJJOJ! sr 'joo.xd Jo u;'p.xnq Sq OTM U1OAJ St UT UOATP aq O qu ,)Li.a.9pnr EUM Ot(M UOSJEKI St qt M q uotqtsoct Oqq pu Poo Ippu eouopt) ot uo eso et 3ptoap O at It100 SU JO 4d4 SM çRu jo pJoee ou ptr 1c icI •tto ioi oqtIT pw OIOM SqUGWOJ O OIL 'pXpUS pe.xttthoi oT pOAO1tJ UPOC qO StT WTT0 51141 W9AO IJ 14I- UI UOTfIUt SUTgUJO.X

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Prepared on 14 October 2026 · Esheria