

Civ. App. 4/2006

IN THE COURT OF APPEAL OF SIERRA LEONE

BETWEEN:-

HAMID MOJOE KAMARA	-	APPELLANT
AND		
OKEKEY FISHING CO. LTD.	-	RESPONDENT

CORAM:

HON. JUSTICE S.A. ADEMOSU, J.A.
 HON. JUSTICE E.E. ROBERTS, J.A.
 HON. JUSTICE MRS. C.L. TAYLOR, J.

ADVOCATES:

E.A. HALLOWAY ESQ. FOR THE APPELLANT
 K.M. LISK ESQ. FOR THE RESPONDENT

JUDGMENT DELIVERED ON THE 22nd DAY OF February 2010
 ADEMOSU, J.A.

This is an appeal against the judgment of Hon. Justice A.B. Raschid dated the 20th October 2005 in which the plaintiff's action was dismissed with costs against the plaintiff. The following grounds of appeal are as follows:

1. That the learned trial judge having found that the plaintiff submitted his daily catches, then prepared the record with the relevant amount of money received erred in law in ordering dismissal of plaintiff's case.
2. The learned trial judge's conclusion that the plaintiff's claim is dismissed is inconsistent with the acceptance in evidence of the statement of daily catches and cash received.
3. The judgment is against the weight of the evidence.

Mr. Halloway for the Appellant filed a Notice to amend two of the grounds of appeal in the Notice dated 7th November 2009.

The first ground of appeal was amended to read:

"That the learned trial judge having had knowledge of the contents of the Record Book of Income and Expenditure of the Rural Artisanal Fishing Union which Record Book, he carefully perused misdirected himself in law and in fact in dismissing the plaintiff's case.

Particulars

Page 19A of the Records particularly lines 12 – 17 and page 30 lines 3-12.

Ground Two: "That the learned trial judge's conclusion that the plaintiff's claim is dismissed is inconsistent with the acceptance in evidence of the statement of daily catches and cash received.

That the ground be amended to read.

"That the learned trial judge holding that the plaintiff having failed to produce his statement of Account has not proved his case is inconsistent with the evidence adduced by the Plaintiff/Appellant of the daily average catches in the amount of Le2,000,000/00 (two million Leones per day).

By that way, page 19A of the Record and lines 12 to 17 are in these terms:

"I have carefully perused the Record Book. I have also considered the arguments of counsel respectively. In my view the matter of a document or someone who has custody of the document is eligible to tender it in evidence. The weight to be attached to produce a document is the Judge to decide. In the light of the above I will admit in evidence."

At page 30 of the records the case of Kabia V. Kamara (1967/ 68) ALR 455 was cited by the learned trial judge in support of the proposition that special damage must be specifically pleaded and strictly proved. The learned trial judge emphasised that there must in every case be production of evidence to satisfy the court regarding the actual loss which the plaintiff suffers. In conclusion, he held that the plaintiff failed to produce his statement as account of hold.

He dismissed the plaintiff's claim with costs against the plaintiff.

The appellant's claim was for loss of fishing time at the rate of Le2,000,000/00 (two million Leones from 1st June 200 to 5th September 200 i.e. 450 days times Le2,000,000/00 (two million leones which is Le900,000,000/00 (Nine hundred million leones) until payment or judgment. For this claim the appellant relies for compensation for loss of fishing time on section 31 (1) and (2) of the Fisheries (Management and Development) Act 19 of 1994.

In support of this ground the appellant relied on the evidence of the Plaintiff/appellant in the Court below where he said among other things that the eight million and three hundred thousand leones paid to him and which he signed for was not sufficient to buy the fishing gears again and that as a result of ^{the} they have not started their fishing business. That they stopped fishing on the 11th June 2000 after the Trawler destroyed their net and payment for one net was made in March 2001. He admitted that it was for full and final settlement for the net damaged by the defendants he received the said amount in March 2001. Relying on this evidence leaving out the evidence in cross-examination will, in my view be incomplete. It is for this reason I consider it ~~opposite~~ to refer to it.

The evidence under cross-examination revealed that the plaintiff/appellant sued in a representative capacity which is not reflected in the writ of summons but only in evidence. He is representing Artesanal Fishing Association and that the claim is being made on their behalf and not a personal action as such. He admitted that the fish catch of the vessel is not the same every day and that there are some days in which the Fishing Vessel is not functional and is being maintained and also days when the weather is inclement. In my view the totality of the evidence is that the plaintiff cannot be said to have a fixed sum of Le2 million (two million Leones) as loss of fishing time and as such the claim can only be general damages and not special damages. For this reason ground 4 of the appeal succeeds.

What remains to be considered is the issue of statutory compensation pursuant to section 31(1) and (2) of the Fisheries (Management and Development) Act of 1994. I have perused the relevant section of the Act. In view of exhibit d it is agreed that the Respondent has complied with section 31 (2) (a) of the Act and what only remains to be done is compensation for lost fishing time under section 31(2)(b) which calls for assessment of damages.

On this issue, the plaintiff/appellant told the court that since the destruction of the fishing gear they have not been able to continue their fishing business for over

1,090 (one thousand and ninety days and that their average catch per day was Le2 million (two million Leones). In his address counsel for the plaintiff/appellant submitted that loss of fishing time should be calculated as 275 (two hundred and seventy five) days and which would bring the amount payable to five hundred and fifty million leones and interest at 35%.

Before proceeding to the issue of assessment of damages. I think it is pertinent to refer to ground 5 of the appeal. Looking at it, I observe that it cannot be said to be different from the others because it is only restating in different words what has been stated in the other grounds. The conclusion, I have reached is that it does not merit a separate consideration.

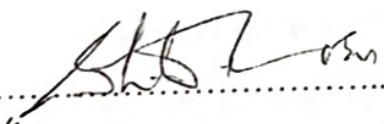
Turning back to the issue of assessment of damages. To start with I think I should state here that it has not been seriously disputed that the plaintiff/appellant is entitled damages for loss fishing time. The contention as I understand it is the question of the quantum. In my own opinion, all the grounds canvassed in this appeal hinged on the question of damages. Without doubt, the trial judge after admitting the Record did not make use of all the materials that were available to him. We are therefore quite satisfied on the facts proved in this case and the argument of counsel for the plaintiff/appellant that the learned trial judge came to an erroneous conclusion by dismissing the plaintiff/appellant's case.

On the issue of damages, the question of mitigation of damages is one of juristic importance. The law imposes upon the plaintiff to take all reasonable steps to mitigate the loss caused by the defendant.

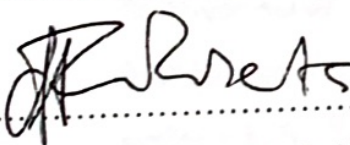
It is common to find a plaintiff like in the instant case claiming for continue loss of use because he has not the means to pay for repairs or replacement of the damaged article. Authorities are abound that say this cannot be recovered. It must be noted that there is no difference between the position in admiralty law and common law as regards the measure of damages see. *The Susquehanna* (1926) AC 651 at p. 661 per Lord Dunedin. In another matter "The point was neatly put in argument that the defendants were liable for restitution but not to pay for destitution. "See *The Liesbosch, Liesbosch, Dredger v Edison SS* (1933) AC 449; (HL). In the *Liesbosch*

case (supra) in that case the plaintiff was too poor to be able to expend the money on repairs for two years or up to the trial. Held that the consequence of his own poverty were not damages resulting from the tort of the defendant.

The above stated principle applies equally to the plaintiff/appellant's claim for lost fishing time. We are of the opinion that the impecuniosity of the plaintiff/appellant cannot be considered as part of the damages resulting from the lost of the defendant/respondent. The plaintiff/appellant can only claim damages up to a reasonable period which in the instant case would be from the date of the Writ of Summons which is 6th September 2001 to the date of the judgment which is 20th November 2005 and for which we award the plaintiff/appellant a global sum of Le250 million as damage plus costs in this court and the Court below. Such costs to be taxed. The result is that this appeal is allowed. Judgment of the court below dated 20th November 2005 is set aside.

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Hon. Mr. Justice S.A. Ademosu - J.A.

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Hon. Mr. Justice E.E. Roberts - J.A.

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Hon. Justice Mrs. C.L. Taylor - J.