

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL SUIT NO. 154 OF 2020

KABEI PETER ===== PLAINTIFF

VERSUS

KIDAWALIME BAKERY LTD ===== DEFENDANT

BEFORE: HON. JUSTICE EMMANUEL BAGUMA.

JUDGMENT

Background.

The plaintiff, filed this suit against the defendant for negligence arising from consumption of stale bread allegedly bought from a retail shop at Kisaasi Kampala wrapped in packages of Kiddawalime Bakery and he prayed for general damages, punitive damages and costs of the suit.

Legal Representation.

Mr. Julius Kinyera of Kayongo Jackson & Co. Advocates represented the plaintiff while Mr. Kayiwa Wilber of Crimson Associated Advocates represented the defendant.

At scheduling, both parties agreed to file a joint scheduling memorandum, witness statements and trial bundle and then come for cross examination of the witnesses.

The plaintiff's case is that on the 25th day of May 2020 the plaintiff bought a loaf of bread produced and supplied by the defendant from a retail shop at Kisaasi Kampala. After several bites the plaintiff discovered that the bread was adulterated with dirty material thread. As a result, the plaintiff suffered mental shock and emotional distress. The plaintiff then got the contact of the defendant Tell. No. 0752 344499 but got no positive response.

On the other hand, the defendant's case is that the defendant has been in business of making all kinds of pastries and food staffs since 1976 at the time when completion

was low. The defendant produces products of high standard and of good quality fit for human consumption as satisfied by the Uganda National Beaural of Standards.

With the passage of time, many bakeries have emerged and the competition has increased which has caused some bakeries to pass off using names and packaging of those that have existed and built a brand like the defendant in order to break through the competitive market.

In the joint scheduling memorandum parties agreed on three issues to wit:-

- 1. Whether the alleged bread was unfit for human consumption at the time of the purchase.*
- 2. Whether the alleged bread was produced and supplied by the Defendant.*
- 3. Remedies available to parties.*

Issue No. 1

Whether the alleged bread was unfit for human consumption at the time of the purchase.

Counsel for the Plaintiff relied on the case of **Kalemera Godfrey and 2 Ors Vs Unilever (U) Limited and anor HCCS No. 1181 of 1997** where court noted that:-

“to succeed in an action of this nature, it is incumbent on the plaintiff to prove that there was a defect in the product latent therein at the time it left the factory, that the defect was occasioned by the carelessness of the manufacturer, and that the circumstances were such as to place the manufacturer a duty to take care not to injure the plaintiff as a customer.

That the manufacturer’s duty of care, a manufacturer is liable for its failure to exercise due care to any person who sustains an injury proximately caused by the manufacturer’s negligence in (among others) using appropriate product processes, placing adequate warnings on the product, which inform the user of dangers of which an ordinary person might not be aware of”.

Counsel submitted that in this instant case the plaintiff (**PW1**) testified in his witness statement that on 25th May 2020, he bought a one Kilogram of bread belonging to the defendant at Ugx 4,500/= from a retail shop at Kisasi near Kampala so he could have it for super. With the aid of PEX1 (photos of decomposing bread), the plaintiff

testified that after several bites of the slices, he discovered that the bread was adulterated with dirty material of thread.

Counsel further submitted that Mr. Charles Lwabulindi (**DW1**) and Mr. Kabanda Aron (**DW2**) all testified that the plaintiff called them and complained about the adulterated bread. In cross examination they all accepted that looking at PEX1 the bread was adulterated and unfit for consumption.

Counsel for the defendant on the other hand submitted that the existence of a defect in the product latent therein at the time it left the factory is the test used to determine whether a product is fit or unfit for human consumption and indeed caused the injury and/or damage that the defendant alleges.

Counsel cited the case of *Kalemera Godfrey supra*, where it was stated that this is rather a technical area which requires expertise. The unfitness as to human consumption of the blue band was determined by a Bio- Chemist and Senior Government analyst who determined that the blue band sold was not fit for human consumption after subjecting the product to thorough examination.

Counsel submitted that in the instant case, there is no evidence on court record of any such report from an expert determining that the bread allegedly consumed by the plaintiff was unfit for human consumption and this fact was also admitted to by the plaintiff during cross examination.

According to section 101 and 103 of the Evidence Act, the burden is on the plaintiff to prove that bread at the time it left the factory was unfit for human consumption.

Counsel submitted that PEX1 which are photos of a decomposed bread does not aid this case since there was no examination of an expert to prove that by the time bread left the factory it was not fit for purpose and neither did the plaintiff produce a medical report to prove that it was the defendant's bread that caused the injury he suffered.

Counsel submitted that receiving of phone calls by Charles Lwabulindi (**DW1**) and Kabanda Aron (**DW2**) from the plaintiff does not imply admission of liability. DW1 asked the plaintiff for his location with the intention of reaching him and investigate the matter but the plaintiff refused to disclose the same.

Counsel further submitted that the plaintiff did not adduce any evidence to prove that the bread belonged to the defendant

Issue No. 2

Whether the alleged bread was produced and supplied by the Defendant.

Counsel for the plaintiff submitted that the plaintiff (**PW1**) in his witness statement testified that it is the defendant who produced the alleged bread. The defendant's two witnesses admitted that the packaging belonged to the Defendant but denied the bread inside. Counsel submitted that the alleged bread belonged to the defendant unless the contrary is proved and the burden is on the defendant to do so.

Counsel for the Defendant submitted that the bread produced and supplied was not of the defendant. DW1 and DW2 stated that the packaging resembles that of the bread manufactured by the defendant, However, they denied that the bread that was produced in court was not produced and supplied by the defendant.

That the defendants failed to verify from whom the bread belonged and the authenticity of the same because the Plaintiff refused to disclose his location and that of the retailer who sold it to him to the defendant's employees which information would have aided the defendant to investigate who the supplier of such counterfeit goods are.

Issue No. 3

Remedies available to parties.

Counsel for the Plaintiff submitted that in the case of **Kalemera Godfrey and 2 Ors Vs Unilever (U) Limited and anor Supra** it was held that;

“the plaintiff need not prove that he suffered general damages”.

Counsel prayed that the this court declares that the defendant was negligent, grant general damages of 60,000,000/=, punitive damages of 20,000,000/=, issue a permanent injunction restraining the defendant from further supplying adulterated good, costs of the suit and interest on general and punitive damages.

Counsel for the Defendant submitted that the plaintiff does not deserve any remedies since he did not adduce medical evidence to show that he suffered mental anguish and neither did he adduce any expert evidence to show that the bread was unfit for human consumption. He prayed that the suit be dismissed with costs to the defendant.

Analysis of court.

Issue No. 1

Whether the alleged bread was unfit for human consumption at the time of the purchase.

In the instant case, the plaintiff (**PW1**) in his witness statement stated that he bought bread from a retailer in Kasasi but not directly from the defendant's factory. In cross examination, the plaintiff admitted that no government analyst or expert examined the bread in issue. Further the plaintiff did not adduce any medical evidence in respect of the injuries he suffered.

The defendants on the other hand through the evidence of DW1 & DW2 stated that the bread in issue did not belong to the defendant's factory

It is hard for this court to establish the state in which the alleged breach left the manufacturer's premises which is an essential element in this case. I therefore find the plaintiff failed to prove that at the time bread left the factory it was unfit for human consumption and there was no evidence whatsoever that connected the impugned bread to the defendant's factory.

Issue No. 1 is answered in the negative.

Issue No. 2

Whether the alleged bread was produced and supplied by the Defendant

The plaintiff PW1 in his witness statement he bought 1 kilogram loaf of bread from a retail shop in Kaisasi Kampala and not from the defendant's factory. The defendant's witnesses DW1 and DW2 in their witness statements denied ownership of the bread in issue.

The plaintiff did not adduce any evidence to link the bread he consumed to that produced by the defendant. This leave court with no evidence to link the offensive bread to the defendant.

This issue is answered in the negative.

Issue No. 3

Remedies available.

Since the plaintiff failed to prove his case at the balance of probability, He is not entitled to the remedies sought.

Conclusion.

In the final analysis court makes the following orders.

1. The suit is dismissed.
2. Costs of the suit are awarded to the Defendant.

Dated, signed, sealed and delivered by email this **12th** day of **April 2023**.

Emmanuel Bugama

Judge.