

MIGUEL KAIRUZ, PETITIONER, VS. ELENA S. PACIO AND CLEMENT T. PACIO, RESPONDENTS.

G.R. No. L-14505. July 26, 1960

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition by Miguel Kairuz to review thru certiorari the decision of the Court of Appeals in CA-G.R. No. 13003-R, promulgated on March 31, 1958, and the resolutions of June 20, 1958 and September 16, 1958, amending said decision.

This action was commenced on July 26, 1951, in the Court of First Instance of Baguio by Elena S. Pacio and her husband Clement T. Pacio against Miguel Kairuz to recover the possession of a certain motor engine and for damages. On October 21, 1953, the trial court rendered judgment in favor of the plaintiffs, respondents herein. Both parties appealed to the Court of Appeals which rendered the decision now under appeal, the dispositive part of which reads as follows:

"In view of all the foregoing considerations, the appealed decision is modified as follows:

"A. Under the first cause of action, to pay plaintiff Elena S. Pacio the sum of P593.12 with legal interest from the date of the filing of the complaint on June 26, 1951 until the whole amount is fully paid;

"B. Under the second cause of action, defendant Miguel Kairuz is ordered to return to the plaintiff the 6.M.G. motor with serial No. 270358531 with all its accessories and spare parts in the same running condition as when taken by him, or to pay their value in the sum of P1,552.95 in case delivery cannot be effected;

"C. To indemnify plaintiff Elena S. Pacio in the sum of P4,035.00 as the loss suffered by her during the period of 161 days that plaintiff's business was forcibly stopped or interrupted;

"D. To pay plaintiff Elena S. Pacio the sum of P10.00 per day for the use of the machine and its accessories and spare parts from November 5, 1951, the date on which plaintiff acquired a new machine, until plaintiff Elena S. Pacio receives the motor and its accessories and spare parts in question, or is paid the cost thereof in the sum of P1,552.95 in accordance with Par. B hereof;

"E. Under the fourth cause of action, to pay the plaintiff P1,500.00 for attorney's fees; and

"F. To pay the costs.

"The third cause of action is dismissed for insufficiency of evidence to support it and no action is taken on the counterclaim mentioned in the appealed decision because none appears to have been alleged or proved."

On motions of defendant-appellant Kairuz, petitioner herein, two resolutions were issued by the Court of Appeals on June 20, 1958 and on September 16, 1958, the first resolution reducing the damages provided for in paragraph (C) of the judgment, from P4,025.00 to P2,012.50, and the second resolution reducing the damages provided for in paragraph (D) of the same judgment from P10.00 a day to P7.00 a day. The present appeal of Kairuz is

confined to the damages at the rate of P10.00 a day, reduced to P7.00 a day by the second resolution.

The facts in this case are quite clear and we accept the findings of fact of the Court of Appeals. Said, findings of fact are stated on pages 17 to 21 of the Brief for the Petitioner, Kairuz, and inasmuch as the appellees-respondents in their brief accept that statement of facts of the petitioner as sufficiently comprehensive and correct, we adopt and reproduce the same:

FACTS WHICH ARE THE BASIS OF THIS APPEAL

"The facts of this case, insofar as they are pertinent to this appeal, are stated in the following portion of the original decision of the Honorable Court of Appeals dated March 31, 1958 (Annex 'A' of the Petition, or Appendix 'A' of this Brief):

"There is no dispute as to the following facts:

- That on or before April of 1950 the plaintiffs spouses had a timber concession granted by the Government in the name of Clement T. Pacio, husband of plaintiff Elena S. Pacio. The initial 'S' stands for Sotero. As the plaintiff husband is a government employee, the wife Elena was the one who took charge of managing and exploiting the timber concession. The defendant was a dealer in logs, buying and selling them to the different mining companies in the Mountain Province.

- During the first days of April, 1950, plaintiff Elena S. Pacio and defendant Miguel Kairuz entered into a verbal contract by virtue of which the latter delivered to the former a G.M.C. motor engine bearing serial number 270358531 and some spare parts to be used by the former in hauling logs from the timber concession on condition that she would sell the logs thus cut and hauled to the defendant at the rate of P12.50 per cubic meter.

- When the motor was delivered by the defendant to the plaintiffs it was not in running condition but it was agreed that defendant was to furnish and did in fact supply plaintiffs with the necessary spare parts and was also authorized to buy on credit for his account some more spare parts from Yu Ku Hardware in Baguio City the prices of which were to be paid by the defendant to the vendor Yu Ku Hardware. Plaintiff Elena was also authorized to employ a mechanic to repair and put the machine in running condition, the cost of which, including the compensation of the mechanic, were all paid by the defendant.

- After the machine was repaired and installed in plaintiffs' timber concession in Kilometer 32, Atok, Bangued, Mountain Province, plaintiff Elena with seven laborers and with this hauling machine, began cutting and hauling logs in the month of April 1950 and from April 22 to May 21, 1951 she had supplied and sold to the defendant all the logs she had cut and hauled from the concession.

- From April 22, 1950 to May 21, 1951, plaintiff Elena S. Pacio delivered to the defendant a total of 868.02 cubic meters of logs worth P10,850.25 at P12.50 per cubic meter as agreed upon between the parties. The amount of timber delivered by Elena to the defendant appears in the documentary evidence presented by her, consisting of receipts signed by the defendant and by his driver who hauled the logs in defendant's trucks from Atok to the mines. The receipts were expressly recognized and admitted by the defendant.

- On many occasions during the said period, defendant gave Elena cash advances for the wages of the laborers rice and other things needed by her in cutting and hauling the logs.

- During that period of time, Elena and defendant made a monthly liquidation and defendant paid plaintiff for the prices of logs delivered by her to defendant. Every month all cash advances and prices of everything she got from him were deducted from the prices of the logs hauled by her. The cost of the spare parts bought by plaintiff from the defendant and those taken from the hardware store, including the amount paid to the mechanic which defendant paid first, were all deducted from the prices of the logs hauled by Elena to the defendant.' (pp. 9-11, Decision, Annex A of Petition; Appendix A of this Brief)

"In so far as the controverted facts at issue are concerned, Honorable Court of Appeals further found:

- That the contract with respect to the aforesaid G.M.C. motor serial No. 270358531 'was one of sale and not of commodatum', as contended by petitioner, (p. 13, Decision, Annex 'A' of Petition; Appendix 'A' of this Brief)
- That the total amount that Elena S. Pacio was indebted to petitioner Kairuz, corresponding to the value of the motor in question (which include its cost, plus the value of the spare parts delivered to or paid for by petitioner and the services of the mechanic which was also paid for by Kairuz), amounted to a total of P1,552.95, which Elena had paid to Kairuz on May 21, 1951 (discounted from the value of the logs delivered by her to petitioner). (p. 14, Decision, Annex 'A' of Petition; also Appendix 'A' of this Brief).
- That when petitioner learned that plaintiff Elena S. Pacio was selling her logs or posts to another person (Felix Villanon), he (Kairuz) took possession of said motor on June 28, 1955' (should be June 28, 1951). (p. 15, Decision, Annex 'A' of Petition Appendix 'A' of this Brief.)
- That because petitioner had taken possession of said motor on June 28, 1955 (should be June 28, 1951), respondents had to suspend, operation of their timber concession for 161 days, and were able to resume their logging operations only on November 5, 1951, when they acquired a new motor or machine. pp. 14, 18-19, Dec., Annex 'A' of Petition; Appendix 'A' of this Brief.)
- That because of the interruption of respondents' logging operations for 161 days up to November 5, 1951, respondents failed to realize profits of P12.50 per day which the Hon. Court of Appeals estimated to be P2,012.50 for 161 days up to November 5, 1951. (Decision, Annex 'A' of Petition, or Appendix 'A' of this Brief; p. 2, Resolution of June 20, 1958, Annex 'B' of Petition, or Appendix 'B' of this Brief.)

As already stated, the sole issue in this appeal is the propriety and justice of the award of damages in paragraph (D) of the judgment of the Court of Appeals, which says:

"D. To pay plaintiff Elena S. Pacio the sum of P10.00 per day (reduced to P7.00 per day by the second resolution of the Court of Appeals) for the use of the machine and its accessories and spare parts from November 5, 1951, the date on which plaintiff acquired a new machine, until plaintiff Elena S. Pacio receives the motor and its accessories and spare parts in question, or is paid the cost thereof in the sum of P1,552.95 in accordance with Par. B hereof." (Words in parenthesis supplied).

The very assignment of errors of petitioner Kairuz confirms this to be the sole issue. It reads:

"ASSIGNMENT OF ERRORS

"I. The Honorable Court of Appeals erred in awarding to respondents, by way of additional actual and compensatory damage, the highly 'speculative', 'contingent' and 'arbitrary' damage of P7.00 per day from November 5, 1951 until respondents shall have received the motor in question (together with its accessories and spare parts), or shall have been paid the sum of P1,552.95 representing its value, which award is contrary to the express provisions of Article 2199 et seq. of the New Civil Code and the settled jurisprudence in our jurisdiction prohibiting the award of speculative or contingent damages.

"II. The Honorable Court of Appeals further erred in not holding that, at the most and if at all, respondents are entitled to recover legal interest at the rate of six per cent (6%) per annum computed on the value of the motor in question (P1,552.95), from November 5, 1961 until respondents shall have received said motor or shall have been paid the sum of P1,552.95 representing the value thereof, which amount (P1,552.95) the Honorable Court of Appeals ordered petitioner to pay to respondents as an alternative monetary obligation, and not applying the provisions of Article 2209 and 2211 of the New Civil Code."

The Court of Appeals in justifying its award of these damages of P7.00 per day indulges in a quite extensive

commentary or discussion, citing various provisions of the Civil Code. And petitioner-appellant to counteract and meet that commentary and discussion, also saw fit to devote many pages of his brief to extensive citations of authorities. After a careful study of the legal issue involved, we find no extensive discussion or commentary necessary, and we agree with counsel for petitioner-appellant that the damages at the rate of P7.00 a day from November 5, 1951 until the motor engine was returned or its value of P1,552.95 was paid to plaintiffs-respondents, are highly speculative, contingent, arbitrary and unjust. Just to show how speculative and uncertain that amount of P10.00 is, at the hearing before the trial court plaintiff declared that she could have rented the motor engine at the rate of P20.00 a day, and that was what she sintered as damages for the loss of said engine. The Court of Appeals did not believe her and fixed the said amount at P10.00 a day. On motion for reconsideration, this amount was further reduced to P7.00 by the Court of Appeals itself. There is no reliable basis for fixing said amount of damages. The plaintiffs had no use for said engine even if they had it in their possession because they already had a new one. Neither could they have possibly rented it out to another party because it was used only in a timber concession for hauling logs, and not everyone has a timber concession and the few that have concessions have their own motor engines for hauling timber from the forest, and probably new ones at that. The petitioner-appellant himself could not have used the motor engine because he was not a timber concessionaire. So, in all probability, he just kept or dumped it in a corner. Furthermore, the motor engine in question is not too valuable a property. It was surplus property which Kairuz had acquired for P150.00 and which he sold to the plaintiff for P245.00. To put it in good running condition, many spare parts had to be bought and placed in it and the services of a mechanic had to be availed of. So all in all, it came to cost P1,552.95. That was in 1950 and it had been used by plaintiff herself for over a year. Machinery, specially engines, deteriorate fast and their rate of depreciation is quite high. That is the reason why car owners from experience find it more profitable after using a car for two or three years, to trade it in or sell it and buy a new one because the repair and overhauling of an old car, specially an old model, would in the long run cost more than acquiring a new one. That is the reason why assuming that if the plaintiffs had had this motor engine in their possession on November 5, 1951, and assuming further that they could have rented it to another party, the amount of the rent would have been hard to determine, much more the period for the lease because running a motor engine everyday, as already stated, could not last forever. Spare parts have to be bought or it may have to be overhauled, and the time will come when the engine itself will be completely useless. That is the reason why damages awarded on this basis are highly speculative, contingent, and arbitrary. And to give an idea of the injustice of the award of damages on said basis, according to counsel for petitioner, as of the writing of his brief on December 20, 1958, the damages would amount to over P18,000.00. And as of the writing of this opinion, at the rate of P7.00 a day from November 5, 1951, the damages would amount to over P24,000.00.

The most practical basis for assessing damages would be the payment of legal interest on the value of the engine. It will be remembered that the judgment against defendant-petitioner was to return the motor engine or to pay its value of P1,552.95. This form or basis of damages is widely accepted and employed. When a piece of personal property, say, a jeep, is the subject of estafa or theft, the accused if found guilty, is sentenced to return the property stolen or misappropriated, or to pay its value. Even interest is seldom, if at all, ordered. And when a party defendant is declared liable to pay a certain amount of money which he owes, he is sentenced to pay said amount with legal interest from the date that he was supposed to have paid the same, or when the action to collect was brought in court. No speculative damages as to the profit which the creditor could have obtained by the use of said money, its investment, etc., is allowed. In the present case, the petitioner-appellant should and is hereby ordered to pay legal interest from November 5, 1951 on the amount of P1,552.25 until the motor engine is returned or its value of P1,552.25 is paid to respondent-appellee. This is in lieu of the payment of P7.00 a day from November 5, 1951, ordered in the appealed decision.

In view of the foregoing, with the above modification, the appealed decision is hereby affirmed. No costs.

Paras, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

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