

IN THE HIGH COURT OF LESOTHO

In the Appeal of

PAKI MOAKI

Appellant

v

MOKETE THABA

Respondent

J U D G M E N T .

Delivered by the Hon, Mr Justice J.L. Kheola
on the 27th day of February, 1986

This is an appeal against the judgment of the Resident Magistrate for the district of Butha Buthe in which he dismissed the appellant's claim for damages for breach of contract and upheld a counterclaim in which the respondent claimed R1,000-00 as damages for breach of contract

The facts of this case are not very clear and to make things worse the two written contracts are missing from the file. However, the facts seem to be that the appellant and the respondent entered into a written contract. The terms of the contract were that the respondent was to build the appellant's house measuring 25 x 67 metres and 10 lines high. It was agreed that the respondent would be paid the sum of R3,500-00. It is common cause that some time after the respondent had started building, the appellant decided to increase the size of the house to 25 x 76 metres while the height remained the same. It was agreed by the parties that remuneration of the respondent would have to be increased by R1,500-00. A new written contract was entered into showing the new dimensions of the house and the new remuneration.

It appears that before the respondent completed the building according to the second written contract, the appellant again wanted to

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make a change to the building by increasing its height by two lines. He, however, refused to increase the remuneration of the respondent accordingly. The respondent alleges that the appellant expelled him at this stage and employed another builder.

The learned Resident Magistrate conducted an inspection in loco and was convinced that the respondent had built up to what he calls the face canopy. I wish he would have been more precise because the contract refers to 10 lines. The respondent deposed that he was expelled after he had reached the 10th line and this is, to some extent, confirmed by the observations of the court during the inspection in loco. If that is the case, the respondent has fully complied with the second written agreement and was entitled to the balance of R1,500-00. But he is claiming only R1,000-00 as "profit if he had worked the building to a finish as the house was R5000-00" (See page 5 of the proceedings lines 18-19). Further down on same page lines 26.29 the respondent makes it clear that R3,500-00 was payment for the work he had done up to the window level. He stated that the appellant did not pay him for the two lines he built above the window level.

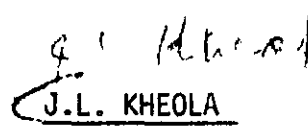
The trial court found that the respondent had proved that the appellant had breached the contract by increasing the height of the walls without increasing the respondent's remuneration accordingly. I cannot say that the trial court misdirected itself on this finding because the appellant agreed that the respondent left the building at window level but came back and built for three days above the window level. It is for this work that the respondent counterclaimed for R1,000-00. The learned Resident Magistrate was wrong in saying that the sum claimed by the respondent was a balance from R3,500-00 because the respondent had been paid only R2,500-00. It is common cause that he was paid R3,500-00.

As far as the claim by the appellant is concerned the trial court

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dismissed it on the ground that it was the appellant who was in breach of contract. I cannot accuse the lower court of any misdirection on this point. The claim of R2,000-00 has no basis at all. If the appellant paid the new builder who completed the building the sum of R2,000-00, he is not entitled to recover the entire amount from the respondent because if the respondent had himself completed the building the appellant still had to pay him R1,500-00. If it had been proved that the respondent had breached the contract, the appellant would be entitled to damages in the amount of R500-00 which is the difference between what he actually paid the new builder and what he would have the respondent.

The appeal is dismissed with costs.


J.L. KHEOLA
J U D G E .

27th February, 1986.

For Appellant - Dr. Tsotsi

For Respondent - Mr. Mofolo.