**Galaxy Paints Co Ltd v Falcon Guards Ltd**

**Division:** Court of Appeal of Kenya at Nairobi

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**Date of judgment:** 14 April 2000

**Case Number:** 219/98

**Before:** Gicheru, Shah and Bosire JJA

**Sourced by:** LawAfrica

**Summarised by:** H K Mutai

*[1] Practice – Trial – Pleadings – Issues for determination – Whether a court could pronounce judgment*

*on issues not pleaded or framed for its determination – Whether the Appellant could rely on an issue that*

*had not been pleaded at trial – Orders XIV and XX – Civil Procedure Rules.*

**Editor’s Summary**

Sometime in 1982, the Appellant engaged the Respondent to provide one day and one night guard for its factory in the industrial area of Nairobi. Though no written contract was executed, a document containing the standard conditions on which the guards were provided was delivered to the Appellant for signature. The Appellant never signed the document nor did it object to any of its terms. The document contained an exemption clause that provided, *inter alia*, that the company would not be responsible to the client under any circumstances for any deliberate wrongful act committed by an employee in or with reference to the services provided. On the night of 27 or 28 August 1984, 45 drums of assorted chemicals, each weighing 200 kilograms, were stolen from the Appellant’s premises. The guard on duty failed to either raise any alarm or do anything to prevent the burglary and theft and it was not until the morning of 28 August that the Appellant’s employees discovered the theft. The Appellant sued the Respondent claiming KShs 219 975, being the value of the stolen drums, on the grounds that the theft occurred due to the negligence of the Respondent’s guard. The trial Judge found as fact that the relationship between the parties was governed by the document delivered to the Appellant and that a theft had indeed occurred. He also found that the Respondent’s guard must have participated in the theft either passively or actively and that, as a result, the Respondent was not liable due to the exemption clause in its standard conditions of contract. On appeal, counsel for the Appellant submitted that the trial Judge erred in finding that the guard must have participated in the theft and surmised that the guard must have been absent when the theft took place. The Respondent argued that the Appellant’s case as pleaded and presented to court was based on the guard’s negligence not on his absence from the factory, that the case had been correctly heard and decided on that basis and that consequently, the trial Judge could in no way be faulted for his conclusions.

**Held** – The issues for determination in a suit generally flowed from the pleadings and a trial court could only pronounce judgment on the issues arising from the pleadings or such issues as the parties framed for the court’s determination. Unless pleadings were amended, parties were confined to their pleadings; *Gandy v Caspair* [1956] EACA 139 and *Fernandes v People Newspapers Ltd* [1972] EA 63 considered. Accordingly, the possibility of the Respondent’s guard being absent on the material night not having been included in the agreed issues, it was not open to the trial Judge to consider that issue. The judge had considered and dealt with all the issues agreed on by the parties and there was no basis upon which to interfere with his decision. **Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Fernandes v People Newspapers Ltd* [1972] EA 63 –