**Mathuri v Nyaga**

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

**Date of judgment:** 31 May 1974

**Case Number:** 88/1971 (63/74)

**Before:** Chanan Singh and Waiyaki JJ

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*[1] Jurisdiction – District Magistrate – Slander – Magistrate may try case subject only to financial limit*

*– Magistrates’ Court Act* (*Cap.* 10), *s.* 10 (*K*)*.*

*[2] Civil Practice & Procedure – No case to answer, submission of – Bars defendant from giving*

*evidence – Evidence struck off record.*

**JUDGMENT**

The considered judgment of the court was read by **Chanan Singh J:** This is a simple case in its essence but has been complicated by legal technicalities. The respondent sued the appellant in a third class district magistrate’s court for damages for slander and, to bring his case within the pecuniary jurisdiction of the district magistrate, limited his claim to Shs. 1,000/- – at least so it seems. At the end of the plaintiff’s case, Mr. Navin Patel, who appeared for the appellant, submitted “No Case”. The district magistrate (instead of warning Mr. Patel that the matter needed serious consideration because once “No Case” was submitted the appellant would be deprived of the opportunity of producing any evidence) ruled that there was a case to answer and called upon the appellant to produce his evidence. The appellant’s evidence was heard and the district magistrate dismissed the case with costs. The respondent appealed to the resident magistrate, Nyeri, on the ground mainly that the district magistrate ought not to have allowed the appellant to give evidence but ought to have entered judgement for the respondent on the basis of the respondent’s evidence on record. The resident magistrate, instead of considering the objection to the respondent, took the point suo moto that the district magistrate had no jurisdiction to hear a case of slander and declared the whole proceedings a nullity. In effect, the respondent had lost again, but the appellant appealed to this court mainly on two grounds which will now be considered. The resident magistrate says in his judgment: “The civil jurisdiction of the District Magistrate is provided by section 10 of the Magistrates’ Court Act and in general deals with claims arising under customary law and in contract. The section makes no reference to claims arising under Common Law such as actions for slander and the District Magistrate could not invest himself with jurisdiction merely because the amount of damages claimed was Shs. 1,000/-. In my opinion sub-section (1) (*b*) of section 10 refers to a claim in contract only and excludes a claim for slander; therefore the District Magistrate had no jurisdiction to try the present case because it arose under Common Law. For this reason this Appeal is dismissed and the proceedings before the District Magistrate are declared a nullity.” The section to which the resident magistrate refers could have been more clearly worded but we agree with Mr. Clive Salter, Q.C., for the appellant, that the intention is clear. District magistrates have jurisdiction in proceedings of “a civil nature” provided that one of the two conditions mentioned is complied with. The proceedings must either concern a claim under customary law in which case there need be no upper limit to the value of the subject matter or they must concern another claim of a civil nature when the value of the subject matter must not exceed the sum of Shs. 1,000/- or Shs. 2,000/- in the case of a first class magistrate’s court. This should be read with s. 3 of the Judicature Act which requires “the High Court” and “all subordinate courts” to exercise their jurisdiction, in the absence of a relevant provision in the Constitution or other written law, “in conformity with” *inter alia* “the substance of the common law”. We must hold, therefore, that the resident magistrate was wrong in declaring the trial a nullity. We may add that the court of the district magistrate is a court of limited jurisdiction. The limit is set, generally, by the value of the subject matter but law may expressly exclude certain types of subject matter from its purview, e.g. s. 159 of Registered Land Act. Mr. Y. P. Vohra, for the respondent, filed a cross-appeal immediately after the filing of the appeal three years ago. In this, he stated that the resident magistrate had erred in declaring the trial a nullity. Thus, both parties were dissatisfied with the judgment appealed from. Mr. Vohra also argued another point, namely, that the resident magistrate should have considered the appeal on its merits. Mr. Y. P. Vohra had, in the Nyeri Court, relied on the point that the appellant having pleaded “No Case” ought not to have been allowed to give evidence but that the court ought to have given the respondent judgment on his uncontradicted evidence. That point still remains to be considered. The position is that if a defendant in a civil case submits at the end of the plaintiff’s case that there is no case which he is required to meet, then he is in effect saying that he does not want to offer any evidence. Such position does occasionally arise. The defendant may have some irrefutable point of law on his side. But that is a decision which a defendant should not take lightly, because he is depriving himself of the right to offer evidence. The practice, therefore, is that the court points out to the defendant the seriousness of the decision he is making and gives him an opportunity to reconsider the matter. If the defendant still persists in pleading No Case, then the court makes note of this and proceeds as though the defendant had no evidence to offer. In the present case, the district magistrate did not comply with this requirement of practice but it has to be borne in mind that the respondent appeared in person whereas the appellant was represented by an advocate. In our opinion, the appellant by pleading “No Case” disqualified himself from giving or producing evidence. Therefore, all “evidence” after the end of the respondent’s case ought to be struck out. We so order. As the district magistrate’s judgment was based partly on the defence evidence, it was not based on materials properly before the court and we set it aside. In these circumstances, it will be profitless to ask the resident magistrate to consider the appeal on its merits because the only point requiring consideration is the one which the district magistrate himself did not consider. The resident magistrate will himself want to remit the matter to the trial court for reconsideration in the light of this judgment. We have, therefore, decided to remit the matter to the resident magistrate so that he may in turn remit it to the district magistrate to enable him to call the parties together and to deliver a judgment based solely on the evidence given by the respondent and his only witness and ignoring all the evidence recorded from the appellant and his witnesses. The question of costs is no easier to decide. Before us, both the appeal and the cross-appeal have succeeded – ignoring appeals on costs for the time being. The result, as it affects the proceedings in the resident magistrate’s Court, is that the respondent has succeeded in getting the matter reheard on its merits. The appellant has the satisfaction of being instrumental in getting a point decided in the public interest. The judgment of the trial court has been set aside and it would not be fair to award costs to either side. On the whole, we feel Mr. Vohra’s suggestion that each party should bear his own costs of all proceedings so far is eminently fair. We so order. The costs of any proceedings that may take place in the future will abide the event. *Order accordingly.* For the appellant:

*C Salter QC & NC Patel*

For the defendant:

*YP Vohra*