



**Wambugu v Omundhe (Civil Appeal E696 of 2022)  
[2024] KEHC 8996 (KLR) (Civ) (26 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8996 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E696 OF 2022**

**WM MUSYOKA, J**

**JULY 26, 2024**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. E696 OF 2022**

**BETWEEN**

**GRACE WAMUYU WAMBUGU ..... APPELLANT**

**AND**

**FREDRICK OLUOCH OMUNDHE ..... RESPONDENT**

*(An appeal arising from the decree in the judgment of Hon. Caroline Ndumia, Senior Resident Magistrate, SRM, Adjudicator, delivered on 27th July 2022, in Milimani SCC Comm. No.E498 of 2022)*

**JUDGMENT**

1. The suit, at the primary court, was initiated by the appellant, against the respondent, for compensation, for loss tabulated at Kshs. 350,000.00, being moneys loaned to the respondent by the appellant, on a verbal or oral agreement. The appellant resisted the claim, by a defence, in which he denied owing the appellant any money. A formal hearing was conducted. 2 witnesses testified for the appellant, and 3 for the respondent. Judgment was delivered on 27<sup>th</sup> July 2022. The case by the appellant was dismissed.
2. The appellant was aggrieved by that verdict, hence the instant appeal. The grounds of appeal, in the memorandum of appeal, dated 20<sup>th</sup> August 2022, revolve around the trial court not considering the evidence adduced by the appellant and her written submissions, shifting the burden of proof, not considering the admissions made in the text messages exchanged by the parties, and holding that the money-lending was founded on immoral consideration.



3. Directions were given, on the disposal of the appeal, on 31<sup>st</sup> July 2023, for the appeal to be canvassed by way of written submissions. Both sides filed written submissions.
4. The appellant submits on only 1 issue, whether she had discharged her burden of proof. She cites sections 109 and 112 of the *Evidence Act*, Cap 80, Laws of Kenya, *Robert Ouma Njoga vs. Benjamin Osano Ondoro [2016]* eKLR (Majanja, J), *Isca Adhiambo Okayo vs. Kenya Women Finance Trust [2016]* eKLR (Maraga, Musinga & Gatembu, JJA) and *Patrick Njuguna Kimondo vs. Geoffrey Vamba Mbuti [2019]* eKLR (JN Mulwa, J), on the incidence of burden and standard of proof in civil cases.
5. The respondent argues 2 grounds: whether there was proof of a loan advanced to the respondent by the appellant, and on the construction of the text messages between the parties. On the first ground, he cites section 107 of the *Evidence Act*, *Muriungi Kanoru Jeremiah vs. Stephen Ungu M’Mwarabua [2018]* eKLR (Gikonyo, J) and *Rupa Mills Limited vs. Daniel Machoka Osoro [2018]* eKLR (DK Kemei, J), to support the submission that the case before the trial court had not been established to the required standard. On the second ground, he relies on *Richard Mark t/a Busuru RM and Partners Architects vs. BA Omuse t/a Afro-Analo Investments Ltd [2016]* eKLR (Mutungi, J). He also submits that costs follow the event, and he cites *Orix (K) Limited vs. Paul Kabeu & 2 others [2014]* eKLR (Gikonyo, J), on that.
6. There was really only 1 issue for the trial court to determine, whether there was money owed by the respondent to the appellant.
7. I have very scrupulously gone through the trial record, comprising of the pleadings, the documents relied on and the recorded oral testimonies, and I did not find any material to establish that the appellant had advanced money to the respondent, on the understanding or promise that the respondent would repay the same. The evidence presented disclosed that there was a double relationship between the 2 parties, at one point of an employer and an employee, and on the other a personal or romantic friendship. There was no dispute that moneys changed hands between the appellant and the respondent, in both directions, but the documents presented were not clear on whether the moneys changed hands as loans, or as payments made in the context of the employment relationship or the romantic one. Given that kind of evidence, the trial court cannot be faulted for finding and holding that it was unable to find that the said moneys were exchanged on the understanding that it were loans being advanced, to be repaid in future.
8. There was the issue of the text messages exchanged between the parties, that were placed on record. Those texts were exchanged after the 2 relationships between the parties soured, and the same did not provide any illumination on the purpose for which the 2 parties had exchanged the moneys. Texts exchanged at the point the moneys were being exchanged would have been more useful, in terms of giving an indication of the context within which the moneys were being exchanged, or the background to explain the circumstances of the exchanges.
9. I find no merit in the appeal herein. I disallow the same, with the effect that the appeal is hereby dismissed, with costs to the respondent.

**DELIVERED BY EMAIL, DATED AND SIGNED IN CHAMBERS, AT BUSIA, THIS 26<sup>TH</sup> DAY OF JULY 2024**

**W MUSYOKA**

**JUDGE**

Ms. Veronica, Court Assistant, Milimani, Nairobi.

Mr. Arthur Etyang, Court Assistant, Busia.



Ms. Eva Odhiambo, Legal Researcher.

Advocates

Mr. Muhia, instructed by SM Muhia & Company, Advocates for the appellant.

Mr. Otieno, instructed by Oscar Otieno & Company, Advocates for the respondent.

