



Solution Savings & Credit Coop Society Ltd v Kathure (Civil Appeal 151 of 2019) [2022] KEHC 11099 (KLR) (23 June 2022) (Judgment)

Neutral citation: [2022] KEHC 11099 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL 151 OF 2019
TW CHERERE, J
JUNE 23, 2022**

BETWEEN

SOLUTION SAVINGS & CREDIT COOP SOCIETY LTD APPELLANT

AND

BEATRICE KATHURE RESPONDENT

(Being an Appeal from the Judgment and Decree in Meru CMCC No. 225 of 2016 by Hon. M.A.Odhiambo (RM) on 10th August, 2019)

JUDGMENT

1. By a plaint dated 17th August, 2016 filed on 17th August, 2016, Appellant sought judgment against the Respondent for Kshs. 683,683.15 cts arising from a loan advanced to the 1st Respondent in 2010 and which Respondent declined to pay.
2. By her defence dated 22nd September, 2016 filed on 29th September, 2016, Respondent denied each and every pleading in the plaint.
3. At the hearing, only the Appellant's witness testified. He tendered a statement of account showing that the loan amount unpaid as at 10th March, 2016 was Kshs. 683,683.15 cts. Also tendered in evidence was a demand notice dated 02nd December, 2013 for the said sum.
4. By a judgment dated 18th October, 2019, the learned trial magistrate dismissed the Appellant's case on the ground that the statement of account was produced in contravention of Section 106B of the [Evidence Act](#).



The Appeal

5. The Appellant being dissatisfied with the lower court's decision preferred this appeal mainly on the ground that the learned trial magistrate erred in dismissing the Appellant's exhibit without any objection and as such occasioned a miscarriage of justice.

Submissions by the Parties

6. On 27th April, 2022, this court directed that the appeal be canvassed by way of written submission which the Appellant dutifully filed.

Analysis and Determination

7. In carrying out its mandate, the appellate court must reconsider the evidence before it, evaluate it and draw its own conclusions. (See [Abok James Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates](#) [2013] eKLR).
8. I have carefully considered the evidence on record and the submissions and cases cited by Appellant.
9. Appellant holds the view that the applicable law on production of electronic evidence is to be found under the provisions of Section 65 of the [Evidence Act](#) and more particularly subsection 6 and that a certificate is not necessary,
10. Section 65(6) of the Act provides that:

The conditions referred to in subsection (5) in respect of a computer printout shall be the following, namely—

 - a. the computer print-out containing the statement must have been produced by the computer during the period in which the computer was regularly used to store or process information for the purposes of any activities regularly carried on over that period by a person having lawful control over the use of the computer;
 - b. the computer was, during the period to which the proceedings relate, used in the ordinary course of business regularly and was supplied with information of the kind contained in the document or of the kind from which the information so contained is derived;
 - c. the computer was operating properly or, if not, that any respect in which it was not operating properly was not such as to affect the production of the document or the accuracy of its content;
 - d. the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of business
11. In dismissing the Appellant's claim, the learned trial magistrate ruled that the statement of account that Appellant tendered in support of its case was an electronic document that did not comply with the provisions of Section 106B of the [Evidence Act](#) on Admissibility of electronic records which provides that for electronic evidence to be deemed admissible, it must be accompanied by a certificate in terms of S. 106B (4) and placed reliance on [Republic v Barisa Wayu Matuguda](#) [2011] eKLR.



12. In *George Onyango & Another V Republic* [2012] eKLR. Ngugi J stated as follows:

An accompanying certificate would only have been required if the Applicants insisted that one of the conditions mandated by Section 65(6) was inapplicable or had been flouted.

13. The Appellant's witness who was a loans officer did not lead evidence to explain how the computer printout was produced and therefore failed to demonstrate that it complied with Section 65(6) of the *Evidence Act*. I therefore find that the learned trial magistrate's finding that the computer printout of the statement of account that was not accompanied by a certificate was not admissible was well founded.

14. Further to the foregoing, it is worthy to note that Respondent had denied that any loan was advanced to her. Even assuming that the statement of account was admissible, it would on its own not have been insufficient for the reason that whereas it is pleaded that the loan was advanced in 2010, the statement of account is for the period January 2013 to March 2016 and does not contain evidence of the sum of Kshs. 350,000/- that was allegedly advanced to the Respondent.

15. In the end and for the reasons given on the foregoing analysis, I have come to the conclusion that this appeal has no merit and it is dismissed.

DATED AT MERU THIS 23RD DAY OF JUNE 2022

T. W. CHERERE

JUDGE

Appearances

Court Assistant - Morris Kinoti

For Appellant - Ms. Mwirigi for Mwirigi Kaburu & Co. Advocates

Respondent - N/A

