



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CIVIL APPEAL 45 OF 2016**

**MARY MUTHONI MAKANGA.....APPELLANT**

**VERSUS**

**BEATRICE WANJIKU KARIUKI.....RESPONDENT**

**(Being an appeal from the Judgment and Decree of Hon. John Aringo RM delivered on the 22/07/2016 in**

**Nyeri CMCC No.99 of 2015}**

**JUDGMENT**

**FACTS**

1. This matter originates from a court order made in Civil Case No.819 of 2006 dated 7/05/2006
2. The appellants being dissatisfied with the ruling that was delivered on the 9/10/2017 appealed against it in its entirety; and listed thirteen (13) grounds of appeal as are set out in their Memorandum of Appeal dated 27/10/2017 are as summarized *inter alia*;
3. The appellants were represented by learned counsel Mr. Abwour whereas the respondent was unrepresented and acted in person; the appeal was canvassed by way of written submissions; hereunder is a summary of the rival submissions;

**APPELLANTS SUBMISSIONS**

4. The appellants contend

**RESPONDENTS SUBMISSIONS**

5. In response the respondent submitted that the facts

**ISSUES FOR DETERMINATION**

6. Having perused the trial court's proceedings and read the written submissions of the respective parties herein, the following are the issues found by this court for determination;

**ANALYSIS**

7. Being the first appellate court it is incumbent upon this court to re-evaluate the evidence on record and arrive at an independent conclusion. Refer to the case of **Arrow Cars Limited V. Bimomo & 2 Others, C.A. No. 344 OF 2004.**

**FINDINGS**

8. For the reasons set out above this court makes the following findings;

**DETERMINATION**

9. The appeal is found to be partially successful;

10. The appellant is found to be initially indebted to the respondent in the sum of Kshs.139,000/-; of which sum the appellant is found to have paid the Kshs.30,000/- to the respondent;

11. The decision of the trial court in CMCC No. 99 of 2015 is hereby set aside; and substituted with a judgment in favor of the respondent in the sum of Kshs.109,000/- together with costs;

12. There shall be interest on the sum of Kshs.109,000/ at court rates from the date of the judgment until payment in full;

13. The appellant shall bear the costs of the appeal;

**Orders Accordingly.**

**Dated, Signed and Delivered at Nyeri this 12<sup>th</sup> day of March, 2020.**

**HON.A. MSHILA**

**JUDGE**