



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CIVIL APPEAL NO 271 OF 2013

(Appeal from the Judgment and Decree Dated 08/11/2013

in Murang'a SPMCC NO 236 of 2012 – J Wekesa, SRM)

ADIEL THOMAS MATE.....APPELLANT

VERSUS

GEORGE KARUNJI.....RESPONDENT

J U D G M E N T

1. This is an appeal from the judgment and decree of the lower court by which the court refused to allow the Appellant's (plaintiff's) total claim of KShs 1,969,902/00 (allowing him only KShs 20,000/00 as money lent and advanced, with interest at court rates). The court also refused the Appellant's claim for damages for misrepresentation. He was however awarded costs of the suit.
2. The Appellant's claim was based upon an alleged business venture between him and the Respondent (defendant) by which both contributed for purchase of a lorry to be used for petroleum transport business, with proceeds thereof to be banked in a joint account, and to be shared equally after deducting business expenses. Although a lorry was indeed bought, the Appellant alleged that it had been bought for a price lower than the Respondent had stated, and that he was thus defrauded by the Respondent. The Appellant further pleaded that the Respondent had subsequently sold the lorry without informing him and without his consent, and without paying out to him his half share of the proceeds of the sale. Finally, the Appellant pleaded that the Respondent had not paid to him his share of the profits of the business.
3. The Respondent denied that there was any joint business venture between him and the Appellant. He pleaded instead that the Appellant had lent and advanced to him some money by way of friendly loan, which he had repaid in full.
4. Both parties testified. The Appellant called one witness whose testimony went only to the extent that he had informed the Appellant about a lorry which was being sold by a bank at Malindi, and that the Respondent heard that conversation.
5. After assessing the testimonies of the parties, the trial court was not satisfied that the Appellant had proved his case of a joint business venture with the Respondent to the required standard. The court noted that there was no written agreement for such joint venture and no corroboration by some other independent evidence. The court also noted that the Appellant had relied upon hearsay evidence by people not called to testify regarding the alleged proceeds of the business and purchase of the lorry.
6. The trial court therefore accepted the Respondent's story that what had happened was that the Appellant had advanced to his friend, the Respondent, a substantial amount of money by way of a friendly loan, which he had repaid in full, except for the KShs 20,000/00 which the court gave him judgment for.
7. The Appellant faulted the findings of the trial court upon the various grounds in the memorandum of appeal, which amount to the submission that the judgment of the lower court was against the weight of evidence.
8. I have read through the record of the trial court in order to evaluate the evidence placed before that court and arrive at my own conclusions regarding the same. This is my duty as the first appellate court. I have borne in mind that I neither saw nor heard the witnesses myself, and I have given due allowance for that fact.
9. The alleged business venture was never reduced into writing. So, it was ultimately the Appellant's word against that of the Respondent. But the evidential burden was upon the Appellant to prove on a balance of probability the existence of such a joint venture.

10. The only evidence that the Appellant placed before the court was the deposits of money that he made into the Respondent's account allegedly for purchase of the lorry. There was also the joint account that was opened and into which the Respondent made some deposits.

11. It is difficult in this day and age to conceive a situation where two people would enter into a business venture without a written agreement spelling out all the relevant conditions thereof. There was no evidence of any business name to be used. There was no evidence of any property (the lorry) being registered in the joint venture's name or in the joint names of the Appellant and the Respondent.

12. It is possible that the Respondent duped the Appellant into advancing him money under pretence that there was going to be a joint venture. But the bottom line is that there was no proper evidence of such joint venture.

13. In the peculiar circumstances of this case, the trial court arrived at the correct and just decision that any money given by the Appellant to the Respondent was in reality money lent and advanced as a friendly loan, and not a contribution towards a joint venture. The money was repaid fully except for the KShs 20,000/00 for which the Appellant got judgment. He also got costs of the suit.

14. In the circumstances, I am unable to find fault with the judgment of the trial court. I find no merit in this appeal, and the same is dismissed.

15. As for costs of the appeal, I hold the view that each party should bear its own costs. It is so ordered. I hope this might help towards restoration of the friendship between the parties that had existed for over 30 years.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 29TH DAY OF MARCH 2019

H P G WAWERU

JUDGE