



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KISII
CIVIL APPEAL NO. 67 OF 2017

JASON ACHOCHI BONUKE.....APPELLANT

VERSUS

JUDI ONSERIO.....1ST RESPONDENT

DELPHINE NAFTA.....2ND RESPONDENT

RUDIAH MOGAKA.....3RD RESPONDENT

OLYMPIC SELF-HELP GROUP.....4TH RESPONDENT

(Being an Appeal from the Ruling of Hon. S.K. Onjoro SRM

in Kisii CMCC No. 67 of 2015 delivered on 3/11/2017)

JUDGMENT

1. The appellant, **Jason Achoki Bonuke**, appeals against the judgment of Hon. S.K. Onjoro dismissing his case against the respondent. He was the plaintiff before the subordinate court while the respondent was the defendant. I shall refer to the parties in their respective capacities before the trial court in this judgment.

2. The plaintiff filed a case before the Chief Magistrates Court averring that his wife **Rose Kerubo Bonuke** had a loan facility and had defaulted in her repayments, the amount due was Kshs 38,000/=. The Plaintiff alleged that the Defendants broke into the Plaintiff's business seized his 2 sewing machines, clothes, materials, 2 television sets and household items valued at Kshs 115,000/= while the security for the loan facility were dairy cattle.

3. The Defendants filed their defense on 2nd June 2016 denying the plaintiff's claim. It averred that in case there was seizure of property then the same did not belong to the Plaintiff. In the alternative the Defendants acknowledged that there was a loan facility taken up by the Plaintiff's wife and guaranteed by the Plaintiff to and the Plaintiff was aware of the consequences of default.

4. When the matter was set down for hearing, the Plaintiff (Pw1) and Shadrack Nyaberi (Pw2) testified while the Defendants called Judith Kemunto Onserio (Dw1), chairman of the Olympic Self Help Group. As the first appellate court I am now tasked to re-appraise all the evidence and reach an independent decision bearing in mind that I neither saw nor heard the witnesses testify so as to be able to make a judgment on the demeanor (see *Selle and Another v Associated Motor Boat Company Ltd [1968]EA 123*).

5. Pw1 testified that the Defendants took 2 sewing machines, clothes, materials, 2 television sets and household items worth Kshs 115,000/- without telling the plaintiff and prayed that the same be returned to him. Pw2 testified that he saw two women remove items from a shop and gave the items to a women's group. He told court that the items were placed in a different shop.

6. Dw1 testified that Rose Kerubo defaulted on a loan facility by Kenya Women Bank. The amount due was Kshs 53,000/- and the bank demanded that the Defendants pay the amount. She told court that it is the finance bank that took the security Rose Kerubo had committed.

7. After hearing the witnesses, the learned Magistrate concluded as follows:

“It is trite law that he who alleges must prove. I do not find that the plaintiff has proven that indeed the items attached from his

