



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL APPEAL NO.166 OF 2008

LUCY NJERI.....APPELLANT

VERSUS

NYAHURURU VETERINARY & AGRICULTURAL SUPPLIES.....RESPONDENT

**[An Appeal from the Judgment/Decree of Hon. W. M. Kagendo, Senior Resident Magistrate in
Nakuru C.M.C.C.No.1143 of 2004 dated 12th October, 2007]**

JUDGMENT

The court below, Hon. W. Kagendo, entered judgment in the sum of Kshs.188,384/= with costs and interest in favour of the respondent for goods supplied to the appellant.

The appellant being aggrieved brought this appeal arguing, *inter alia*:

- i) that the court below failed to consider the appellant's evidence and submissions
- ii) that the learned magistrate took into consideration extraneous matters
- iii) that the learned magistrate failed to give reasons for her decision
- iv) that the learned magistrate failed to consider the applicable laws
- v) that the magistrate erred in finding that the respondent had proved the claim to the required standard

This court is enjoined to re-evaluate afresh the evidence on record in order to arrive at an independent conclusion. Through the evidence of its directors, **P.W.I, Dr. Christopher Waithaka Karitu** and **P.W.2 Rose Wandia Karitu**, the respondent claim against the appellant was that in 1997 the former supplied to the latter in her Namanga AgroVet shop veterinary drugs amounting to Kshs.325,412/=, out of which Kshs.137, 028 was paid leaving a balance of Kshs.188,384/= the amount claimed in the court below. Despite demands by the respondent and promises by the appellant to settle this debt, the appellant failed to do so.

At one time, the appellant undertook in writing to pay the debt but once again failed prompting the institution of the suit which has in turn given rise to this appeal. The written undertaking was witnessed by the respondent's employee, **P.W.3, Ruth Njambi Ndichu**.

On her part, the appellant maintained that at the time of the alleged transaction, she was engaged in a matatu transport business; that the respondent, who has been known to her for along time approached her with a proposal for an AgroVet shop at Namanga. In other words, the respondent wanted to open a shop in Namanga where the appellant was living. After identifying premises, the appellant invited the respondent to Namanga for the other formalities, such as licences. The shop was to be and was called Namanga AgroVet.

All the licences and receipts issued to the respondent remained with the appellant who was to be in charge of the shop. Since there was no bank in Namanga, the proceeds of sale were deposited in the appellant's account and payments for supplies were similarly made from that account. It was the appellant's case that she fully accounted for the funds received in the business. She denied signing any undertaking or acknowledging the debt.

The learned magistrate in a one-page judgment found that the respondent had proved his claim against the appellant and entered judgment as explained earlier. From the grounds of appeal set out in the foregoing paragraph, the issues falling for determination are:

- i) whether the respondent supplied the drugs to the appellant in her personal capacity;
- ii) whether the supply was to Namanga AgroVet;
- iii) whether Namanga AgroVet was owned by the appellant or the respondent;
- iv) whether the appellant fully accounted for the funds due to the respondent

The respondent relied on a statement dated 21st May, 1997 which showed that between 24th February, 1997 and 18th April, 1997 through various invoices, drugs worth Kshs.325,412 were supplied, Kshs.137,028 paid and a balance of Kshs.188,384/= was outstanding. The respondent also relied on a letter addressed to **P.W.1 – Dr. Karitu** by the appellant acknowledging her indebtedness and seeking indulgence.

Then there was a handwritten agreement dated 18th May, 1999 in which it is alleged that the appellant undertook to pay the sum due at an annual interest rate of 25%. What was the appellant's response to these documents? She stated that she did not write or sign any of these documents; that she did not go to school. That, however, is not to say she did not know how to write or sign. The only letter she is said to have written is one dated 12th August, 1997 to P.W.1, Dr. Karitu seeking to be allowed more time to pay the debt.

The other document is a handwritten agreement dated 18th May, 1999 where the debt of Kshs.188,384/= at a 25% annual interest was acknowledged. In that document the appellant has disputed the signature attributed to her. It was the appellant who was refuting those claims. It was upon her to rebut those claims by calling evidence of handwriting expert. Indeed if the two documents were forgeries, that alone was enough ground to lodge a criminal complaint with the police.

From the totality of the evidence presented and the conduct of the parties, I come to the conclusion that the appellant was indebted to the respondent; that the drugs were supplied to her; that she acknowledged her indebtedness to the respondent. I reject the appellant's contention that Namanga AgroVet belonged to P.W.1, Dr. Karitu merely because of one document, the trade licence in his name. I entertain serious doubt as to the authenticity and credibility of that document. Why is it that of the four documents said to have been issued to operationalize the business, only the Trade Licence was issued in the name of P.W.1, Dr. Karitu while the rest were in the name of Namanga AgroVet. The two trade

licences, the clearance certificate and a receipt for miscellaneous income relate to the month of January, 1997 and are all, except one, in the name of Namanga AgroVet.

The appellant explained that she was in charge of the shop at Namanga without explaining the terms of her engagement. Was it *gratis*; if not, what was the consideration?

In conclusion, it is a well know principle of company law that a company acts through its authorized officials or directors. The respondent was represented by its director, P.W.1, Dr. Karitu. The appellant cannot run away from her debts to the respondent simply because the respondent company itself did not transact with her.

While the respondent's claim is in the sum of Kshs.188,384, there was admission that it owed the appellant Kshs. 29,700 which, although was not counter-claimed ought to have been awarded to her. The award will and is hereby reduced by that sum, leaving a balance of Kshs.158,684/=.

Costs of this appeal and in the court below are awarded to the respondent as well as interest.

Dated, Delivered and Signed at Nakuru this 14th day of February, 2011.

W. OUKO
JUDGE