REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

CIVIL APPEAL NO. 379 OF 2003

PATRICK M KARANJA ……...… APPELLANT/

ORIGINAL RESPONDENT

VERSUS

SHERIA CO-OPERATIVE SAVINGS

AND CREDIT SOCIETY LTD ……..…..… RESPONDENT/

ORIGINAL PLAINTIFF

(Being an appeal from the judgment of Hon. N. Owino, Senior Resident Magistrate delivered on 5th June 2003 in CMCC 532 of 1994 at Milimani Commercial Courts, Nairobi)

JUDGMENT

INTRODUCTION

-

Before this appeal was heard, this court declared its interest and association with the respondent/original plaintiff. The parties herein had no objection to this court hearing this appeal. The reasons being that majority of judicial officers are members of the co-operative society. The appellant no longer works with the Attorney General Chambers but, at the time the appeal was filed, he was working with a university. He is an accountant by profession.

In brief, the appellant/original plaintiff was a member of the

Sheria Co-op Savings and Credit Society. This is an organization that pools together moneys of its members to effect loans and matters incidental thereto, on banking.

The appellant/original defendant was a member. He had begun to take a loan with the respondent as far back at the year 1988. His salary in 1988 was Ksh. 3,350/= and in 1989 Ksh. 3,590/=. The loan he took from the society he admits was for Ksh. 30,000/= and Ksh. 60,000/= respectively. According to the appellant, he had paid off these two loans using the check-off system from his salary.

The appellant actually wrote to a second ministry where he had been transferred and there deducted his payslip.

He denied owing any moneys. Any attempts to have an out of court settlement failed. The sum of Ksh. 297,600/= was not due and owing to the respondent from him.

The respondent had an interlocutory judgment entered. There was execution of his property valued at Ksh. 114,500/=. He filed a counter-claim to have these funds repaid back to him.

The respondents' case had always been that according to their records, the following sums were loaned to the appellant:

	Cheque No.	**Date**	**Amount**
7.1)	073536	31.7.1987	Ksh. 30,000/=
7.2)	402966	30.1.1988	Ksh. 50,000/=
7.3)	892736	31.7.1989	Ksh. 70,000/=
7.4)	108357	30.3.1990	Ksh. 60,000/=

In 1999, the co-operative bank records were in disarray because of the bomb blast of that year. Nonetheless, the respondent were able to produce during the trial, the cheques issued in the name of the appellant.

The appellant admits all the cheques were issued to him. He acknowledges the cheque for Ksh. 30,000/= and Ksh. 60,000/=. The amount he owed after being transferred to another institute from the ministry was Ksh. 25,000/= using the check-off system. The shares he held was Ksh. 38,000/= to date and this, he implied could be used to off set that debt. His payslip reflected the deduction.

As to the other sums of moneys being Ksh. 50,000/= and

Ksh. 70,000/=, it was not uncommon to have members with no bank account, who would then use an account of members who would personally encash their cheques in the name of members having accounts. This is what occurred to him. He is unable to remember the names of the members who used his account but he recalls encashing the cheques and paying them.

The trial magistrate entered judgment against the appellant for the sum of Ksh. 297,600/= being the total sum due and owing.

(5th June 2003.) The counter-claim was dismissed.

The appellant/original defendant, filed appeal on 1st July 2003.

II APPEAL

The appellant prayed that the judgment delivered on 5th June 2003 be set aside and the Hon. Court do make its own findings [or] the facts presented in this appeal.

The appellant was of the view that the Hon. Trial Magistrate had arrived at the wrong decision. This was because there was no documentary evidence that the respondent had actually given him the loan as stated in cheques 073530 for Ksh. 30,000/= and No. 108357 for Ksh. 60,000/=.

There was no application for the loan made by the respondent. There was no explanation given as to why he had encashed the said cheques.

The appellant also argued that there ought to have been a deduction on the sum already being paid back on the check-off system.

There was a default judgment that had been set aside. The respondent asked he be paid compensation for this.

In reply, the respondent stated that there was no evidence that the loans in question were being deducted. This meant that the loans in question did not relate to the deduction already being made from the check-off system.

The evidence before the court is that all four cheques were encashed by the appellant.

The appellant required to demonstrate that he never received any of the four cheques. He has nonetheless admitted he received the cheques cashed the same on his behalf and behalf of others and kept no records. He wished the respondent original plaintiff bring up those records. This was not possible due to unforeseen circumstances of the 1998 bomb blast.

The deduction of loan had no connection with loans that were disbursed. There will be no off set to the sum deducted towards the four cheques paid to the appellant.

I find that the Hon. Magistrate came to the correct conclusion. I would not interfere with the whole findings. This appeal stands dismissed against the respondent/original defendant.

The appellant will pay the cost of this appeal and the costs in the subordinate court.

Dated this 4th Day of October 2011 at Nairobi

M. A. ANG'AWA
JUDGE

-
-

Advocates :

J.K. N Gichahi instructed by M/s Gichahi & Co Advocates for the appellant/ original respondent

E.K. Mbaabu instructed by M/s P K Mbaabu & Co Advocates for the respondent/original plaintifft