



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**CIVIL APPEAL 194 OF 2002**

**PETER MATHAI MURAYA ..... APPELLANT**

*versus*

**PHILOMENA WAIRIMU KIBIRA ..... 1<sup>ST</sup> RESPONDENT**

**MAGDALINE WAMBUI KIBIRA ..... 2<sup>ND</sup> RESPONDENT**

***(Being appeal against the Judgment of R. N. Muriuki, Resident Magistrate in the Resident Magistrate's Civil Case No. 5 of 2002 at Kangema)***

**JUDGMENT**

The Respondents in the lower court filed a claim against the Appellant seeking for orders that the Appellant would give pregnancy compensation to the Respondent under the Kikuyu Customary Law. In the plaint in the lower court, the Plaintiff's averred that the Defendant had sexual intercourse with the Second Respondent on 19<sup>th</sup> May, 2001. As a consequence of that intimacy the Second Respondent who was an unmarried girl became pregnant. It is further averred in that Plaint that the First Respondent was the surviving parent of the Second Respondent who was entitled to receive that pregnancy compensation. In the evidence in the lower court the First Respondent stated that the Second Respondent had been admitted to undertake a Nursing course in a college. However after undergoing a medical examination she was found to be pregnant. The Second Respondent informed her that the Appellant was responsible for that pregnancy. She accordingly sent two elders to the Appellant. She said that on being confronted by the said elders the Appellant admitted having impregnated Second Respondent. He promised the elders to visit the Respondent's home on 24<sup>th</sup> November, 2001. First Respondent stated that he did indeed visit their home in the company of his friends. On that visit the Appellant promised to take the Second Respondent to his parents. This he did not do and the First Respondent reported the matter to the Chief. The Appellant was summoned before the Chief together with the Respondent. The Appellant attended that meeting together with his parents. It was agreed that there would be a subsequent meeting but the Appellant failed to attend it. On cross examination this witness stated that she was claiming 20 goats and 3 rams valued at Kshs. 2000.

The Second Respondent stated that she visited the Appellant on 19<sup>th</sup> May 2001. He had invited her to his house. After that visit she informed the Appellant that she had conceived. The Appellant responded by saying that he needed time since he had recently been employed. This witness said that her mother, the First Respondent sent elders to the Appellant. The Appellant promised to visit their home which he

indeed did in the company of two friends. The Appellant promised the First Respondent to again visit their home on 10<sup>th</sup> December, 2001. Before that date the Appellant informed the Second Respondent that he did not want anything to do with her. He however promised to support the child. This witness confirmed that the matter was referred to the Chief. At that meeting the Appellant attended together with his parents. The matter was discussed between the families and it was agreed that both the Appellant and the Second Respondent would write a letter confirming their relationship. She exhibited both those letters. On being cross examined this witness denied that on 19<sup>th</sup> May 2001 she found another lady in the Appellant's home. She confirmed that she spent the night in the Appellant's house on that day.

PW 1 another witness of the Respondent said he was a neighbour to the Respondent. He was one of the elders that were sent by the First Respondent to the Appellant. On going to the Appellant he confirmed that the Appellant accepted responsibility of the pregnancy. That he promised to visit the Respondent's home which he did and on that occasion promised to visit again but never did. PW 2 was also another elder that was sent by the First Respondent. He also confirmed that the Appellant admitted in his presence that he had impregnated the Second Respondent. He stated that under the Kikuyu Customary Law pregnancy compensation is in the form of 3 rams and 20 goats. PW 3 was a witness to the fact that the Appellant was summoned before the Chief and on that occasion both the Appellant and the Second Respondent were requested to write about their relationship.

In his defence the Appellant stated that he is a teacher at Kiriaini. He said that he first knew the Second Respondent in February 2001. Their friendship between February and May 2001 was not intimate. That on 19<sup>th</sup> May 2001 the Second Respondent arrived at his home by means of hired taxi. At the Appellant's home she found the Appellant's sister Ruth Wangui. That although the Appellant tried to introduce her to his sister, the Second Respondent accused him of having another girlfriend, got angry and left with the same taxi. He denied that the Second Respondent slept in his house on that day. That it was not until 21<sup>st</sup> July 2001 that they became intimate with the Second Respondent. The Second Respondent in October 2001 informed him that she was expectant. He did not dispute her claim but later he found out that she wanted to use him as scapegoat since she was having relationship with her employer. He admitted that he was visited by the two elders but denied admitting responsibility for the Second Respondent pregnancy. He also admitted visiting the home of the Respondent when he noted that the pregnancy of the Second Respondent was far much more advanced than the period within which they were intimate.

DW 1 was Ruth Wambui Muraya. She said that the Appellant was her brother. She recalled that on 19<sup>th</sup> May 2001 at about 7 p.m. whilst she was in her brother's house the Second Respondent arrived by means of a taxi. That the Appellant tried to introduce her to the Second Respondent but the Second Respondent alleged she was the Appellant's girlfriend. She thereafter left the house with the same taxi being very angry. This witness confirmed that the Second Respondent did not sleep in the Appellant's house on that night. DW 2 was the taxi driver who on 19<sup>th</sup> May 2001 recalled at about 6 p.m. being hired by the Second Respondent at Kiriaini township. That the Second Respondent hired him to take her to Wahundura secondary school. He said that they went there looking for Muraya the appellant herein. They went and found Muraya with another girl. He waited in the vehicle for five minutes when the Second Respondent returned to the vehicle and took her back to Kiriani. He stated that he did not know the Appellant or the Second Respondent prior to that incident.

In considering the appeal and the grounds that have been presented by the Appellant I would begin by considering one of the limbs of ground number 1. The Appellant in that ground stated that there was no sufficient evidence to prove that he was responsible for the Second Respondent's pregnancy. In response to that ground I find that the Respondent pleaded in the plaint that the Appellant impregnated her on 19<sup>th</sup> May 2001. In his defence the Appellant denied having sexual intercourse with the Second Respondent. Apart from the evidence given by the two Respondents there was the evidence of the two elders who stated that the Appellant admitted responsibility. In turn the Appellant although denied admitting liability said that he disputed the pregnancy because it was too advanced in relation to the period of intimacy. He said that it was on 17<sup>th</sup> October 2001 that he noticed that the pregnancy could not have been his responsibility because it was advanced. The Appellant and also the Second Respondent did on request

write about their relationship on 21<sup>st</sup> January 2002. What is interesting in that write up is that Appellant did not state that the pregnancy was not his. He also did not state that he noted that the pregnancy was too advanced in relation to their in time of intimacy. It will be noted that in his evidence he said he noted the pregnancy was advanced in October 2001 whereas he did not mention it when he wrote the letter in January 2002. Having considered the evidence tendered in the lower court in totality, I find that the Respondent did on a balance of probability prove that the Appellant was responsible for impregnating the Second Respondent. Hereafter I will consider the other limb of ground one in conjunction with grounds 2, 3, 4, and 5. These refer to the finding by the lower court. That the Appellant was liable to compensate the Respondent under the Kikuyu Customary Law for the pregnancy of the Second Respondent. It ought to be noted that the Appellant did not adduce evidence or contradict the evidence of the Respondent in respect of the Kikuyu Customary Law in pregnancy compensation. In the book of **RESTATEMENT OF AFRICAN LAW** by **Eugene Cotran** it is provided that a male who impregnates an unmarried girl is liable to give compensation to her parents. To quote part of that book is as follows:-

**“Causing pregnancy of an unmarried girl**

***Any person who makes an unmarried girl pregnant is liable to pay the girl’s father a fixed amount by way of compensation under the Kikuyu law. The present compensation differs in various Kikuyu districts as follows:-***

***Kiambu: eighteen goats, eight rams (30/- each), two rams (40/- each)***

***Muranga: twenty goats, four rams (50/- each)***

***Nyeri: twenty goats, one bull, one ram (60/),***

***one ram (50/-) and 30/- for beer***

***Embu: twenty goats, four rams***

As can be seen the rate of compensation in that quoted portion corresponds with the finding of the lower court except that the court did not award one bull. I therefore find that the finding of the lower court was not in excess. It was argued by the Appellant’s counsel that the Respondent’s claim was in the nature of special damages and ought to have been specifically pleaded and proved. I beg to differ. This is a claim under Kikuyu Customary Law. As can be seen from the book of **Cotran** the Respondent’s claim conformed to the amount of animals one was expected to give. The Respondent and particularly the elder DW 2 confirmed the same. The Respondent gave the market value of the animals. That was not contradicted by the Appellant. On the whole having re-examined the evidence I am of the view this appeal cannot succeed. The same is dismissed with costs to the Respondent.

***DATED AND DELIVERED THIS 3RD DAY OF MARCH, 2008.***

**MARY KASANGO**

**JUDGE**