

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Appeal 43 of 2007

SHADRACK GICHERU WAIRIMU.....APPELLANT

VERSUS

LUCY WANJA KINYUA.....RESPONDENT

J U D G M E N T

Shadrack Gicheru Wairimu (hereinafter referred to as the appellant) is dissatisfied with the judgment delivered by Ms. Mutuku Resident Magistrate on the 29th December, 2006 in Othaya RMCC No. 35 of 2006. He has filed a memorandum of appeal raising 13 grounds urging the court to quash the judgment of the lower court.

The suit in the lower court was initiated by Lucy Wanja Kinyua (hereinafter referred to as the respondent), who claimed Kshs.28,000 from the appellant, being a friendly loan advanced to the appellant at his request. The appellant filed a defence denying the respondent's claim, contending that the loan given to him by the respondent, was from a sum of money advanced to the respondent by Vintage Management, and that since the respondent failed to repay the money to Vintage Management, the appellant directly repaid the loan to Vintage Management and was therefore no longer indebted to the respondent.

During the hearing of the suit in the lower court, the respondent testified that she obtained a sum of Kshs.50,000/= from Vintage Management, she then gave a sum of Kshs.25,000/= to one Mwai who gave the money to the appellant. It was later agreed that the appellant would repay the money to the respondent with interest of Kshs.3,000/= which was to be repaid to the group. The appellant did not however repay the money. The appellant promised to repay the money to Vintage Management. However, when the respondent applied for a loan, she could not be given as the appellant had only paid 7,000/=.

In his evidence the appellant admitted having received the money from the respondent, but claimed that Vintage Management claimed the money directly from him as the respondent failed to repay it. The appellant testified that he paid the money to Vintage Management and was therefore not indebted to the respondent. The appellant called one witness Godfrey Mwai Kingori. The witness explained that through his intervention, the respondent agreed to lend the appellant Kshs.28,000/= which the respondent had been advanced by Vintage Management. The witness claimed that he thought the appellant repaid the money but later learnt that the appellant had not repaid the money.

In her judgment, the trial magistrate found that the loan between the respondent and the appellant was well documented. She further found that the respondent was unable to get a loan from Vintage Management, or refund of her savings, because she was still deemed to be owing the amount which she loaned to the appellant. The trial magistrate found that the appellant had only repaid Kshs.7,000/= and therefore, there was a sum of Kshs.21,000/= due and owing. The trial magistrate therefore gave judgment in favour of the respondent.

Having carefully reconsidered and evaluated the evidence which was adduced in the lower court, I am satisfied that there was clear evidence that the appellant received the loan of Kshs.25,000/= from the

respondent and that it was agreed that that money would be refunded with interest of Kshs.3,000/=. It is also not disputed that this money was an advance to the respondent from Vintage Management, and that the respondent was liable to refund the money to Vintage Management. The appellant's defence was that he repaid the money directly to Vintage Management. The appellant did not however provide any substantive proof of the payment of the full amount. The appellant's own witness Godfrey Mwai Kingori, was unable to support the appellant's allegation that he repaid the money. The witness claimed that he learnt that appellant was repaying the money but he did not reveal the source of his information. He further contradicted that evidence when he again testified that he learnt that the appellant had not repaid the money. In the circumstances, the appellant's defence was never substantiated and the trial magistrate was right in rejecting the same. Accordingly, I find no merit in this appeal as the respondent's case was proved to the required standard. Accordingly I dismiss the appeal with costs.

Dated and delivered this 19th day of May, 2008

H. M. OKWENGU

JUDGE