

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 64 of 2002

WILLIE MWANIKI NJUE.....APPELLANT

VERSUS

STEPHEN NJIRU MBOGO.....RESPONDENT

JUDGMENT ON APPEAL

The appellant was a defendant in the RMCC No. 24 of 2002. By application dated 14/11/2002 by the defendant the Respondent obtained orders from the court of the Resident Magistrate orders striking out the appellant/Defendant defence and proceeded to enter judgment for the plaintiff/Respondent as prayed in the plaint in the sum of Shs.112,500/= plus interest and costs.

The Respondent had pleaded that the Appellant was his employee as storekeeper and on various dates the defendant caused loss of 225 bags of cement valued at Shs.112,500/=. The Appellant admitted the claim in writing and made an offer to pay within a month. The Respondent was given security **Kagaari/Nthagaiya/T374**. However the Appellant failed to pay and was sued by the Respondent.

In his defence the Appellant denied the Respondent's claim. He alleged that on several occasions he was in police cells at the behest of Respondent where he was severely beaten and tortured by police officers to admit the claim and was forced to sign a document without knowing what was written therein. Further he said that the Respondent/Plaintiff obtained illegally a Title Deed **Kagaari/Nthagaiya/T374** without defendant's consent. At the hearing of the application the Appellant submitted that the note dated 14/6/2002 was written by him before he was arrested and that the wife gave out Title Deed as security and that the agreement was prepared by advocate and was brought to him at police station to sign. It is to be noted that what the Appellant had done amounted to a criminal offence as well as civil claim.

I have perused the ruling of Trial Magistrate, the pleadings, the applications and affidavits sworn by the parties. There was express admission by Appellant/defendant of the debt and he agreed to reply the money as a result of which he was not prosecuted. His wife was anxious that her husband should be released hence her part. There is no evidence of torture or beating was exhibited or a complaint to any authority that he was tortured by the police. Therefore I find his allegation not proved. I agree with the finding of the Trial Magistrate that the Appellant defence was frivolous and vexatious calculated to delay the trial. I do not find any merit on this appeal the same is dismissed with costs to the Respondent.

Orders accordingly.

Dated this 9th July, 2007.

9/7/2007

Khaminwa – Judge

Njue – Clerk

Respondent present in person.

Read in open court.

J. N. KHAMINWA

JUDGE