



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI**

**MILIMANI LAW COURTS**

**Civil Case 1965 of 2000**

**RICHARD KIRAGU MWANGI.....PLAINTIFF**

**VERSUS**

**MUTHAURA KIOME AND**

**MWRANIA ADVOCATES.....DEFENDANTS**

**JUDGMENT**

The plaintiff is a business man dealing with spare parts of motor vehicles. In 1991 police went to his business premises and arrested him claiming that he was selling motor vehicles spare parts which were suspected to have been stolen and further that he had no licence. He was taken to Central Police Station where he was charged with a criminal offence.

The police collected all the spare parts from his business premises as exhibits. He instructed the defendant to defend him in that criminal case. He was tried and was acquitted for lack of evidence and the court ordered that his spare parts be returned to him. But when he went to collect them from the police station they could not be traced. They had disappeared. He decided to sue the Government for their value. He filed a civil suit being HCCC NO. 2048 OF 1991 against the Attorney General on behalf of the Government. He retained the defendant as his lawyer to deal with the said civil suit. He successfully prosecuted the suit and he was paid Shs.3,226,000/= by the Government through the defendant for the value of this lost goods. The payment was made through a payment voucher dated 20<sup>th</sup> April 1994 which was produced as Exh.2.

The plaintiff in his evidence told the court that they had agreed with the defendant that the defendant could deduct the amount due to him as legal fees and release the balance to him. But when he went to collect his money from the defendant the defendant released only Shs.1,400,000/= out of the total sum.

The defendant alleged that he had paid a debt of Shs.1,633,000/= to East African Marketing Ltd which sum the plaintiff owed that company which fact he denied.

He decided to file this suit for the recovery of the said sum less the legal fees of the defendant. The defendant in his defence denied the claim but concedes that he was instructed by the plaintiff to represent him in the criminal case in which the plaintiff was acquitted. He also admits that he was instructed by the plaintiff to file a civil suit being HCCC NO.2048 OF 1991 against the Attorney General in which the plaintiff was paid Shs.3,226,000/= out of the decretal sum the plaintiff had authorized him in writing to make a payment of Shs.1,633,000/= to East African Marketing Ltd to which the plaintiff owned the same. The plaintiff had gone to his offices and signed the letter of authority dated 18<sup>th</sup> May 1993. He then released the sum of Shs.1,400,000/= to the plaintiff after deducting his legal fees as agreed which payment was acknowledged by the plaintiff. The defendant called a witness from the East African Marketing Ltd, one Solomon Kiragu Thande who in his evidence told the court that he had supplied building materials to the plaintiff between 1990 and 1991 and the plaintiff owned his company a sum of Shs.1,633,000/=. On cross examination by the plaintiff he admitted that he usually dealt with one Kimotho who was a business partner of the plaintiff who is now deceased and that he never dealt with the plaintiff directly.

The plaintiff denied that he had any business dealings with the said East African Marketing Ltd which fact has been admitted by DW2 Mr. Kiragu. The letter authorizing the defendant to pay the said company Shs.1,633,000/= on his behalf is also denied. To prove that he never signed the purported letter of authority the plaintiff called a document examiner PW2 NO.217401 EMMANNEL KENGA who told the court that he is an Assistant Commissioner of Police and is A Document Examiner in charge of Forensic Documents with 15 years experience.

He received an order from the High Court dated 3<sup>rd</sup> March 2006 requesting him to examine and confirm whether or not the signature appearing on the letter of authority dated 7<sup>th</sup> October 1993 belongs to the plaintiff. The plaintiff was taken to his office by one Ndegwa. The plaintiff gave his specimen signatures which he compared with the known Standard Signatures of the plaintiff. After comparing the questioned signature on the letter dated 7<sup>th</sup> October 1993 with the known Signatures and the Specimen Signatures of the plaintiff, he found no agreement between the signatures. In the course of examination he took into consideration individual characteristics of all the questioned signatures, specimen signatures and the known signatures.

In order for the advocate to make payment on behalf of his client to a third party, the debt must be proved and there must be authority in writing to make such payment.

The defendant having failed to prove that he had written authority from the plaintiff to make the alleged payment to the East African Marketing Ltd and the East African Marketing Ltd having failed to prove that the plaintiff owed them any money the defendants defence has no legal basis and must fail.

Consequently judgment is entered in favour of the plaintiff as prayed in the Originating Summons dated 23<sup>rd</sup> November 2000 less the advocates fees which should be agreed upon between the parties and if not to be taxed by the taxing master.

The plaintiff is also entitled to costs of this suit plus interest and it is ordered.

Dated and delivered at Nairobi this 30<sup>th</sup> day of October 2006.

**J.L.A. OSIEMO**

**JUDGE**