

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 15 OF 2005

MARCY MUNJIRU WAIGURU.....APPELLANT

VERSUS

NATIONAL BANK OF KENYA LIMITED.....RESPONDENT

JUDGMENT

This appeal raises one simple issue: whether or not one is liable for the liabilities incurred by one's partner which one is unaware of.

The facts of the case are simple and straight forward. The Appellant and one Isabella Kathule Mbaabu (Isabella) were partners in the business of a school known as St. Joseph Daycare Nursery School in Savannah Estate Nairobi. By her letter dated 28th August 1989 Isabella applied for a loan of Kshs.127,800/= to purchase equipment for the school. In its letter of offer dated 30th August 1989, the Respondent approved a sum of Kshs.70,000/= against the security of a personal guarantee by one John Kamau Mwaniki and a charge of that sum against his piece of land known as **Title No. Kabete/Nyathuna/1002.**

Although Isabella did not formally accept the offer by signing or returning a copy of the Respondent's said letter, the Respondent nevertheless advanced the sum of Kshs.70,000/= to the school. When the school defaulted in the repayment the Respondent recovered the sum of Kshs.70,000/= from the said John Kamau Mwaniki that he had guaranteed and upon failure to get the balance from the school it filed Nairobi RMCC No. 2958 of 1996 and obtained judgment against the partners for Kshs.70,000/=. This appeal is by Mercy Munjiru Waiguru, one of the partners, against that judgment.

In his submissions, before me, counsel for the Appellant faulted the trial court for holding the Appellant liable for a loan she did not know anything about. He argued that Isabella having not even accepted the offer the trial court should have dismissed the Respondent's claim. For the Respondent it was argued that on the law of partnership, the Appellant was bound by the acts of her partner.

I have considered these submissions. Partnership is an association of two or more people carrying on business with the aim of making a profit. Because it is an unincorporated company the law views a partnership as being one and the same as its owners. One of the major characteristics of a partnership is each partner's personal liability for any legal actions and debts of the partnership.

In this case Isabella applied for a loan to purchase equipment for the school. That she did not formally accept the Respondent's offer of the loan is, in my view, immaterial bearing in mind the fact that the loan was actually advanced and utilized by the school. In the circumstances I agree with counsel for the Respondent that on the law of partnership as summarized herein above the Appellant was clearly liable to the Respondent. I therefore find no merit in this appeal and I accordingly dismiss it with costs.

DATED and delivered this 29th day of June 2011.

**D.K. MARAGA
JUDGE**