

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL APPEAL NO. 398 OF 2003

JULIUS MWOVA KYONDO PLAINTIFF

V E R S U S

WILLIAM KEA KASHURUDEFENDANT

**(Appeal from Original Judgment and Conviction in Principal Magistrate's Court
Criminal Case No. 2380 of 2003 dated 7th
November 2003 by Mr. J. N. Onyiego –R.M.
–Kerugoya**

J U D G M E N T

The plaintiff filed this suit on 10.11.2000 against defendant. The cause of action arose from an agreement as pleaded in the plaint. Special damage arising of breach of the agreement are pleaded at shs. 1,459,629.75. A statement of defence was filed which is a general denial. On 23.8.2002 on application this court entered judgment in the sum of shs. 120,000/- in favour of the plaintiff. The remainder of the suit was heard on 6.10.04. When plaintiff attended and the counsel for defendant said the defendant was not in court although hearing notice was served. Mr. Hare did not press the matter further.

Mr. Tindika for plaintiff requested to proceed and called first witness the plaintiff who testified in support of his plaint. He said the damaged goods caused by defendant was valued shs. 14,659.75 and that he had spent shs. 150,000/- in compliance of his part of agreement. The defendant was taken to Criminal court and the defendant was fined. The plaintiff produced exhibits including agreements, pleadings and order from lower court (Achode SRM) paragraph (1) where the defendant was restrained from committing the breach of agreement. The plaintiff claimed shs. 1,295,000/- plus interest from 1998 March. The witness was not cross –examined by defendant counsel who just left court.

After considering the evidence led by plaintiff and seeing it is not controverted I now enter judgment for plaintiff against the defendant in the sum of shs. 1,295,000/- with interest from March 1998 at court rates. Costs shall be to the plaintiff. The sum of shs. 120,000/- is to be deducted from this sum.

Dated this 19th day of November, 2004.

J.KHAMINWA

JUDGE

19.11.04

Khaminwa Judge

Jason – Court clerk

Mr. Tindika

Non appearance for defendant

Judgment read in court.