



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE NO. 1677 OF 1994**

**LYDIA N. WANG'ONDU ..... PLAINTIFF**

**VERSUS**

**KAMERE & CO. ADVOCATES .....DEFENDANT**

**J U D G E M E N T**

By a plaint filed in court on 9th May 1994, the plaintiff, Lydia N. Mang' Ondu, sued Messrs Kamere & Co. Advocates seeking general damages, and costs of the suit.

The plaintiff's claim arose from a suit which the defendant filed against the plaintiff, in the Principal Magistrate's court at Sheria House. The suit demanded a sum of Kshs.51,533/40 which the plaintiff said was not due and payable as the defendant falsely told the court that he acted for the plaintiff and five others, which he knew that he only acted for one client.

The plaintiff further claimed that the defendant falsely claimed a fee of Kshs.51,533/40, for acting for five clients when he only acted for one client and was therefore entitled to a fee of only Kshs.11,909/50.

The plaintiff gave particulars of fraud on behalf of the defendant in para 6A, B,C and D of the plaint.

The Statement of Defence was filed by Messrs Kamere & Co. Advocates. In para 2 thereof,

***“The defendant admitted that it filed a suit on 10th day of September, 1992 on behalf of five plaintiff's demanding Kshs.51,533/40 and obtained judgement in default of appearance as against the plaintiff for the said sum of money, and attempts to set aside the judgement failed”.***

The defendant

***“executed the said judgement which only fetched Kshs.7,552/= whist the claim for each plaintiff was ov er and above Kshs.7,522/=.”***

The defendant denied the particulars of fraud pleaded and stated further that

***“after the 1 st and 3rd plaintiff's realized that execution did not fetch enough money to satisfy their claims, they withdrew their instructions fro m the defendant and received payments directly from the plaintiff and filed notices directly withdrawing their instructions form the defendant”.***

In court during the hearing of the suit, the plaintiff, Mrs. Lydia Njeri Wang' Ondu recalled the year 1992 when she was working with the then Kenya Posts and Telecommunications Co-operation as a telegraphist, sending telegrams. She took a loan of Kshs.99,000/= in Co-operation's loan and she approached five of her fellow employees to guarantee the loan, which they did in 1980. Soon after that the plaintiff left her job with the Post Office, to pursue other interests. She informed the 5 guarantors who approached her for reimbursement and she did re-imburse four of them, except one called Florence Wariure, who owned her money, cash Kshs.20,000/=. The two agreed to write off what the plaintiff was to pay bank to Florence, however, a disagreement arose, and Florence engaged as advocate, Messrs Kamere & Co. Advocate, to recover her money from the plaintiff. This was in 1992, when a suit was filed against her for the recovery of Kshs.51,533/40.

The plaintiff explained that she did not know about the case filed against her in Sheria House. She only discovered that there had been a case against her, when the auctioneers proceeded to attach all her goods in house. They left a note and she went to see them. That is when she discovered that there was a case filed on behalf of Florence and others.

The plaintiff said that she wanted to know whether Kamere & Co. Advocates was instructed by 5 people or only one.

The plaintiff produced a letter written by Jane Nduati, one of the 5 claimants to Messrs Kamere & Co. Advocates and another letter by P.Mbugua to the same advocates, notifying him that they were now acting in person. Alice Odhiambo also gave the same Notice to Kamere & Co. Advocates. The plaintiff conceded that five people filed a case against her and obtained judgement. She stated that it was fraudulent for Kamere & Co. Advocates to act for them because she had paid one of them.

Mr. Kamere advocate clarified that Judgement in the Lower Court was entered against the plaintiff in default of appearance and defence. That the plaintiff's goods were attached and sold. She filed an application to set aside the Lower Court's judgement but this was dismissed, but the court gave her leave apply for a stay of execution pending appeal.

To several questions, the plaintiff answered that she took a loan in January, 1989 which was guaranteed by 5 people. She left employment with Posta in 1992, before repaying the loan. She admitted that she did not continue paying back the loan after she had left employment. This resulted in the guarantors being called upon to repay the loan by having their salaries deducted per month. The plaintiff was not able to say precisely when he paid the 5 guarantor their money, but he maintained that he did pay them.

Simon Kamere, a partner in the firm of Kamere & co. Advocates, did in January 1991 receive instructions from the plaintiff's in a Civil Suit, RMCC No.7476/92.

Following those instructions, his firm wrote a demand letter to the plaintiff. The claimant's were Loise N. Ndungu, Jane W. Nderitu, Alice Odhiambo, Florence Wanjiru and P.M. Mbugua.

The claim by the five was that they had been guarantors to a loan obtained by Lydia, the plaintiff who had left employment before repaying the entire loan.

Messrs Kamere & Co. Advocates wrote the demand letter to the plaintiff on behalf of the 5 claimants on 14th February 1992. It was copied to all the 5.

The plaintiff's lawyers then, Messrs Rumba Kinuthia advocates wrote back and enclosed a cheque of Kshs.8,700/=. After that, no more money was sent to Messrs Kamere & Co. towards the settlement of the claim by the 5 claimants and this resulted in Messrs Kamere & Co. filing a suit on behalf of the 5 on 23.9.92.

Summons to enter appearance were served in Lydia's house in Kariokor flats, on 6th November 1992. No appearance was filed. Judgement in default of appearance and defence was entered and a Decree

issued on 3rd December 1992.

Lydia applied for a stay of execution. Her counsel obtained ex parte orders of stay on 4.2.93, but at the inter parte hearing of the application for stay, of execution the same was dismissed.

Lydia was granted leave to apply for a stay order. She in turn moved the court for accounts stated, of monies due to her.

At this juncture 3 of the claimants filed notices to act in person. By this time, execution had taken place. Mr. Kamere said that when accounts were taken, the plaintiff was ordered to pay a sum of Kshs.5,177/= to clear what was still outstanding. His firm did not pursue the matter after that. He denied having fraudulently acted for the 5. He maintained that he acted for them on their instructions as he showed by evidence in court.

To several questions in court, Mr. Kamere replied that the only sum of money paid by the plaintiff's lawyers on demand was Kshs.8,700/= which was collected by Florence on behalf of the other four claimants. She signed for the money and the note on which she signed was produced as an exhibit.

I have considered the pleadings on record and the oral evidence adduced by both parties. I want to take Judicial Notice of the fact that litigants do not always give their lawyers instructions in writing to act. In the ordinary course of events, it is usual for lawyers to accept verbal instructions to act for clients. For this reason, I will accept evidence by Mr. Kamere that the five gave his firm instructions verbally to recover money from the plaintiff.

I consider that that evidence is corroborated by the evidence of the demand note sent by Kamere & Co. Advocates, on behalf of the 5 to the then lawyer for the plaintiff, Messrs Rumba Kinuthia & Co. Advocates.

The fact of Messrs Rumba Kinuthia advocates writing back and sending a cheque of Kshs.8,700/= was in my opinion, an admission of the claim by the 5.

Unfortunately no further monies were sent to the 5, through Kamere advocates, forcing the Civil Suit to be filed on behalf of the 5.

I did not find any evidence either in the pleadings or orally in court to show that there was fraud in Messrs Kamere & Co. acting for the 5 claimants. Further more, the plaintiff herself admitted that when she left employment she had not repaid the loan in full though she stopped paying and the five had their salaries deducted to repay the loan. I do not find any merit in the plaintiff's case against the defendant. She borrowed money, which the five guarantors were called upon to pay up when she failed to do so.

Obviously they sued her to recover what they paid on her behalf.

The plaintiff's case has failed and I proceed to dismiss it with costs to the defendant.

Dated at Nairobi this 26th day of September, 2002.

**JOYCE ALUOCH**

**HIGH COURT JUDGE**