Platinum Credit Limited v Mwagogo (Civil Appeal E028 of 2022)
[2024] KEHC 2760 (KLR) (14 March 2024) (Judgment)

Neutral citation: [2024] KEHC 2760 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT VOI

CIVIL APPEAL E028 OF 2022

GMA DULU, J

MARCH 14, 2024

BETWEEN

PLATINUM CREDIT LIMITED ..... APPELLANT

AND

MISHI WAKIO MWAGOGO ..... RESPONDENT

(From the Judgment in Civil Case No. 55 of 2020 delivered on 15{{^th}} June 2022 by Hon. F. M. Nyakundi (SRM) at Voi Law Courts)

JUDGMENT

1. This appeal arises out of a Magistrate's court determination made on 15th June 2022 by F. M. Nyakundi (SRM) and delivered by C. K. Kithinji (PM). Though the decision or determination is clearly headed as a judgment in Voi Principal Magistrate's Court Civil Case No. 55 of 2020, both sides of counsel for the parties in this appeal have erroneously referred to the Magistrate's court decision as a ruling.

2. In the decision in contest, the learned Magistrate concluded as follows:-

> " I have carefully looked at Clause 10 of the said loan agreement (exhibit 1) states that for loan settled in a period less than two months, full original costs and interest will be recovered. This clause is not clear whether it is interest within the period that he has taken of two months to pay the loan or interest of the period of time when the loan was due. The law is very clear that the agreement must be clear in simple language and can easily be understood by a common man and not be ambiguous. My conclusion on this clause, is that the same is ambiguous and not clear. My finding is therefore clear that after considering under the *Constitution* Article 158 Section 1, 1A, 3, 3A of *CPA* it is my finding that though she had a written and verbal loan agreements, on a balance of probability, the plaintiff never defaulted to her verbal contract,

court therefore makes an order that the logbook in issue in this case KBY 273X be returned to the plaintiff being registered in her name within 30 days after delivery of this judgment".

3. It is from the above decision of the trial court, that the appellant Platinum Credit Ltd, who was the defendant, has come to this court on appeal through counsel Mulanya & Maondo on the following grounds:-

    1. That the learned trial Magistrate erred in law and fact by allowing the respondent's suit yet the said suit did not meet the requirements for grant of the orders sought therein including the prayer for a permanent injunction to restrain the appellant from repossessing and selling motor vehicle registration number KBY 272X (hereinafter "the Motor Vehicle").

    2. That the learned trial Magistrate erred in law and fact by declaring that the respondent had fully repaid her loan and ordering the release of the log book for the Motor Vehicle to the respondent yet the material presented before the trial court showed that the respondent's loan account was in arrears and that the respondent was therefore in breach of the loan agreement dated 27th August 2019 (hereinafter "the Loan Agreement") and was therefore not entitled to the equitable remedy of injunction and the other consequential orders granted.

    3. That the learned trial Magistrate erred in law and fact by finding that the respondent and an employee of the appellant entered into a separate verbal loan repayment agreement which superseded the existing Loan Agreement of the parties which in effect meant that the trial court stepped into the arena of re-writing the Loan Agreement for the parties yet there was already an existing, scrupulously valid and binding loan agreement between the parties.

    4. That the learned trial Magistrate erred in law and in fact by finding that the respondent had fully repaid her loan yet the court notes at paragraph one of page 7 of its judgment that the respondent had defaulted to pay interest for the month of October 2019.

    5. That the learned trial Magistrate erred in law and in fact by assuming, when there was no basis for such assumption, that the respondent never read and understood the terms of the Loan Agreement and that it was the duty of the appellant to explain the said terms to the respondent yet the respondent signed the loan agreement which was a confirmation of her knowledge and understanding of the contents of the Loan Agreement.

    6. That the learned trial Magistrate erred in law and in fact by descending into the arena of litigation by assuming at paragraph 2 of page 8 of the judgment that by the respondent paying to the appellant Kshs. 300,000/= which the court calls the principal sum, the appellant in essence lost nothing yet the Loan Agreement is clear on the returns to be recovered by the appellant.

    7. That the trial Magistrate erred in law and in fact by finding at paragraph 2 of page 7 of the judgment that the loan agreement was never signed and attested by the Defendant's lawyer as required by the law yet failed to reproduce or quote the said law.

    8. That the trial Magistrate erred in law and in fact by failing to scrupulously and wholesomely consider the evidence placed before it by the appellant by way of both witness testimony and exhibits produced in the matter thereby making an erroneous and injudicious determination of the matter.

    9. That the trial Magistrate erred in law and in fact in finding that by failing to call Mr. Bernard Makori to testify for it, the appellant could not disprove and dispel the testimony of the respondent.

10. The learned trial Magistrate erred in law and in fact by directing the appellant to return the log book of the motor vehicle to the respondent yet the loan agreement and the provisions of the Moveable Property Security Rights Act were clear with regards to the appellant's repossession and disposal remedy upon default by the respondent.

11. That the learned trial Magistrate erred in law by disregarding the doctrine of precedent by failing to uphold and apply the binding/mandatory principles in the celebrated decisions of the superior courts that were cited in the appellant's submissions on the grant of permanent injunctions.

12. That the learned trial Magistrate erred in law and fact by finding that the respondent entered into another verbal loan agreement with an employee of the appellant which superseded the loan agreement, by finding that the respondent had fully repaid the loan and by directing the appellant to return the log book of the motor vehicle which act was a desecration of the sacrosanct and age long principle of freedom of contract especially in a case like this where the loan agreement dated 27th August 2019 was freely, willingly and consciously entered into by the parties.

4. The appeal was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Mulanya & Maondo Advocates for the appellant, as well as the submissions filed by Mwanyumba & Company Advocates for the respondent. Each side relied upon decided court cases.

5. This is a first appeal, and I am required to evaluate all the evidence on record afresh and come to my own independent conclusions – see *Selle v Associated Motor Boat Company Ltd* (1973) EA 123.

6. In the present case before the Magistrate, on the plaintiff's side, only Mishi Mwakio Mwangogo testified as plaintiff. On their part, the appellants called one witness DW1 Richard Simbala their Legal Officer.

7. From the evidence on record, the respondent took a loan of Kshs. 300,000/= which was to be repaid in 9 months. She signed a loan agreement.

8. The respondent however initially fell into arrears because of illness, but shortly later repaid the whole Kshs. 300,000/= by 9th October 2019. She paid the amount in a short period of slightly more than 2 months.

9. However, the lender (appellant) maintains that per the loan agreement, the respondent was to pay full interest even if she paid in less than 2 months, and that as at the time she repaid the principal sum, she had interest owing of Kshs. 143,000/= which was due and owing from her. They thus could not release her vehicle logbook.

10. The issue thus turns on the interpretation of the loan agreement especially clause 10 thereof, which states as follows:-

> " 10. For loans settled in a period of less than two months full origination costs and interest will be recovered."

11. I note that the agreement itself and even the evidence of DW1 Richard Simbala a Legal Officer does not explain what constitutes the interest, and the trial court was not informed what constituted this interest amount and whether the amount, was communicated to the respondent at the time of signing

the agreement. There is thus lack of clarity in the written agreed terms of what constitutes the amount of interest and how it is determined or calculated.

12. In legal interpretation and in fairness, since the appellant was the designer of the loan agreement form, the ambiguity or lack of clarity on the interest amount has to be determined against them, and on that I agree with the trial court.

13. The Legal Officer DW1 makes it more mysterious when he relied on the loan agreement and stated in examination in chief as follows:-

> " The loan agreement exhibit 1. The sample form for the loan was not the real amount for Kshs. 300,000/= and accrued costs was Kshs. 135,000/= (interest)"

14. The reference to a sample form is not clear even to this court on appeal. In my view, the respondent could only be bound by the terms of the signed contract documents not secret costs or interest she did not sign for. The figure of Kshs. 135,000/= interest does not appear anywhere in the signed loan agreement nor is the method of arriving at that figure provided.

15. I thus find no merits in the appeal. I dismiss the appeal with costs to the respondent.

DATED, SIGNED AND DELIVERED THIS 14TH DAY OF MARCH 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Ms. Njoki Chege holding brief for Mr. Wafula for appellant

Mr. Mwanyumba for respondent