



Mambo v Tero (Civil Appeal E033 of 2021) [2023] KEHC 20376 (KLR) (21 July 2023) (Judgment)

Neutral citation: [2023] KEHC 20376 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E033 OF 2021**

WM MUSYOKA, J

JULY 21, 2023

BETWEEN

TITO M. MAMBO APPELLANT

AND

HENRY ACHEHA TERO RESPONDENT

(Appeal from judgment and decree of Hon. Eric Malesi, Principal Magistrate, PM, in Kakamega CMCCC No. 116 of 2018, of 8th June 2021)

JUDGMENT

1. The appellant had been sued by the respondent, at the primary court, for recovery of a debt of Kshs. 300,000.00, interest, a bank charge of Kshs. 16,000.00, and cost. The appellant filed a defence, denying the debt, and explaining that the respondent had bought bricks from him, for which he paid Kshs. 300,000.00, and took the bricks away.
2. A trial was conducted. Both sides presented witnesses. PW1, was the respondent. He testified to have had lent money to the appellant, which he, PW1, had to borrow from a Sacco. The appellant was to pay back with interest. He never repaid the loan. He denied buying bricks from the appellant for Kshs. 300,000.00. DW1, the appellant, conceded to receiving a sum of Kshs. 300,000.00 from the respondent, but said it was the price for bricks sold to the respondent. In the end, the trial court believed the version given by the respondent, and entered judgment in his favour.
3. The appellant was aggrieved, hence the appeal. 6 grounds are listed, around the issue as to whether the money was a loan or not.
4. Directions were given on 19th May 2022, for canvassing of the appeal, by way of written submissions. None of the parties had filed written submissions by 27th October 2022, when the matter was mentioned for allocation of a date for judgment.



5. The dispute was over an oral agreement involving money. The parties were in agreement that the respondent gave out money to the appellant, and the appellant received the money. The disagreement is over whether the money was given out as a loan, or in payment for goods and services. The trial court had the benefit of hearing and seeing the parties testify, and based on that believed the testimony of the respondent and his witness, as against that of the appellant and his witness, for reasons that are given in the judgment. The appellant has not presented any material before me, to persuade me that the trial court came to the wrong conclusion, or was wrong in principle.
6. I find no merit in the appeal herein, and I uphold the judgment of the trial court, in Kakamega CMCCC No. 116 of 2018, of 8th June 2021. The respondent shall have the costs of the appeal.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 21ST DAY OF JULY 2023

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Mr. Getanda, instructed by Onsando Getanda & Company, Advocates for the appellants.

Mr. Shivega, instructed by Victor Shivega & Company, Advocates for the respondent.

