



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**CIVIL APPEAL NO.1 OF 2020**

**BETWEEN**

**AGNES ACHOLA AMIMO.....APPELLANT**

**AND**

**KENYA WOMEN FINANCE TRUST LTD.....RESPONDENT**

*(Being an Appeal from the judgment and decree in Mbita Senior Resident Magistrate's SRMCC No. 18 of 2018 by*

*Hon. Nicodemus N. Mosei –Senior Resident Magistrate).*

**JUDGMENT**

1. The appellant herein was the plaintiff in Mbita Chief Magistrate's SRMCC No. 18 of 2018. This was a suit seeking a declaration that the appellant had cleared loan repayment and was also seeking the respondent to be directed to issue a statement in respect of her account number xxxx. Her suit was dismissed with costs.
2. The appellant was aggrieved by the said judgment and filed this appeal through the firm of Nyauke & Company Advocates. She raised grounds of appeal as follows:
  - a) That the learned trial magistrate erred in law and fact by failing to appreciate that the appellant had proved her case on a balance of probabilities.
  - b) That the learned trial magistrate erred in law and fact by failing to appreciate that it was only the appellant who adduced evidence.
  - c) That the learned trial magistrate erred in law and fact by make presumptions to arrive at its decision.
  - d) That the learned trial magistrate erred in law and fact by failing to evaluate the evidence against the law of contract.
  - e) That the learned trial magistrate erred in law and fact by failing to address itself to the many gaps in the respondent's case.
  - f) That the learned trial magistrate erred in law and fact by failing to appreciate that there was no accounts offered to support the alleged balance the respondent was demanding from the appellant.
3. The appeal was opposed by the respondent through the firm of Abisai & Company Advocates, on the following grounds:
  - a) That there was no evidence that the appellant had cleared the repayment of her loan.
  - b) That there was no evidence that all deposits made to the Group were by her and for offsetting her loan.
4. This Court is the first appellate court. I am aware of my duty to evaluate the entire evidence on record bearing in mind that I had no advantage of seeing the witnesses testify and watch their demeanor. I will be guided by the pronouncements in the case of **Selle vs. Associated Motor Boat Co. Ltd. [1965] E.A. 123**, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its own conclusions in the matter.
5. The evidence of Charles Oduor Odingo (DW1) is that the appellant was their client by virtue of being a member of Swanga Women Group. He also admitted that the appellant was advanced a loan of Kshs. 200, 000.00 but he claimed she has not repaid the same in full.

6. Had the respondent responded to the letter by the appellant's advocate in respect of the statement of account and the status of the appellant's loan, this case may not have been filed. Why did the respondent find it difficult to supply the information and yet she was a consumer of their loan facility?

7. The learned trial magistrate misapprehended what the appellant was seeking and went ahead to declare that she had not completed repayment of the loan advanced to her without documentary proof.

8. I accordingly quash the judgment of the learned trial magistrate and order the respondent to issue a statement in respect of account number xxxx and show outstanding payment, if any, by the appellant. Certainly the declaration that she had had cleared loan repayment cannot issue.

9. The appeal is allowed with costs in this and the lower court.

**DELIVERED AND SIGNED AT HOMA BAY THIS 13TH DAY OF JULY, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE**