



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL APPEAL NO. 111 OF 2011**

**RANK GLOBAL MANAGEMNT LTD.....APPELLANT**

**VERSUS**

**GRACE NJERI GEORGE.....RESPONDENT**

*(Being an appeal from the ruling of Hon. S.A Okato P.M. dated 9<sup>th</sup> February, 2011 in Milimani CMCC No. 5056 of 2010)*

**JUDGMENT**

This appeal arises from a summary judgment entered in favour of the respondent by the lower court on 9<sup>th</sup> February, 2011. The respondent had sued the appellant claiming a sum of Kshs. 290,000/= being the balance of the sum paid to the appellant as a refund for payment for a parcel of land which was never transferred to her. The respondent had paid the total of Kshs. 355,000/= but the appellant had made a refund of Kshs. 35,000/= leaving the balance claimed.

The appellant had denied the respondent's claim but upon an application by the respondent, the lower court entered summary judgment against the appellant. It is that ruling that triggered the present appeal.

Both learned counsel have filed submissions which I have on record. In entering the said summary judgment in favour of the respondent, the lower had this to say,

**“The receipts marked ‘GNG2’ and annexed to the supporting affidavit are clear evidence that the defendant received the money from the plaintiff vide the letter dated 19<sup>th</sup> May, 2010 the defendant acknowledged its indebtedness to the plaintiff and offered to refund the amount in monthly instalments of Kshs. 30,000/= per month. The defendant cannot be heard to deny its indebtedness to the plaintiff after it made the part payment as clearly stated in the letter marked ‘GNG7’.**

**The replying affidavit is a mere denial. The defence filed is a mere sham. I find and hold that the defendant is truly indebted to the plaintiff. I find therefore that the defence has not raised even a single triable issue and I accordingly allow the application as prayed.”**

In the memorandum of appeal the appellant has faulted the trial magistrate in entering the summary of judgment, without considering that grave injustice would be visited upon the appellant to the extent that, the truth concerning the purported dealings between the parties would never be revealed. The trial magistrate was also faulted for holding that the defence and replying affidavit raised no triable issues yet the annexures revealed the same.

The appellant also alleged that the trial magistrate arrived at an erroneous decision of entering summary judgment, without inquiring into the dealings between the respondent and one Gladys Njeri Nderitu vis-a-vis the appellant.

As the appellate court I have gone through the lower record with a view to arriving at an independent decision. The appellant has submitted that if there was any relationship between the respondent and the appellant, that relationship was facilitated by one Gladys Njeri Nderitu who was a former director of the appellant, and therefore did not have authority to commit the appellant. It is instructive to note that the

appellant in a way admits that Gladys Njeri Nderitu who has featured prominently in this dispute, was a director of the appellant.

What the appellant has not told the court both in the lower court proceedings and this application is when the said Gladys Njeri Nderitu ceased to be a director of the appellant. It is common knowledge that under such circumstances, the minutes of the appellant reflecting the departure of a director should have been displayed. It is also common knowledge that a notice is filed with the registrar of companies to signify that step.

It is telling that the appellant has withheld this crucial information, if at all it exists. All the documents which the respondent annexed to justify her claim had the letter heads of the appellant. The receipts were issued by the appellant, at least going by the copies displayed. The refund of Kshs. 30,000/= was by the appellant and it is also instructive that although the respondent specifically mentioned in her plaint that the appellant had refunded a sum of Kshs. 35,000/=, in its defence the appellant made a general denial. The documents presented by the respondent however, confirmed that position.

I bear in mind that no party should be denied the right to be heard but find the respondent's case a clear and obvious claim, where summary judgment could not be resisted. I note that the appellant pleaded that at some point the said Gladys Njeri Nderitu would be joined as a third party. No steps were taken to that effect and it was not the duty of the respondent to do so.

In my considered view, in seeking to overturn the order of the lower court, the appellant intends to postpone an obvious eventuality. This appeal must therefore fail and the same is hereby dismissed with costs to the respondent. I note that the amount in dispute was ordered to be deposited in a financial institution. The appeal having failed the said sum shall now be released to the respondent.

***Dated, signed and delivered at Nairobi this 6th Day of April, 2017.***

**MBOGHOLI MSAGHA**

**JUDGE**