



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL SUIT NO. 2 OF 2016

ALEXANDRIAN STELLA.....PLAINTIFF

- V E R S U S -

FRANCIS ELAMACH KOOLI.....DEFENDANT

JUDGEMENT

1. Alexandrian Stella, the plaintiff herein sued Francis Elamach Kooli, the defendant, vide the plaint dated 6th January 2016, whereof she sought for judgement in the sum of 100,000€ (one hundred thousand Euros). Service of the plaint plus summons were effected upon the defendant. The plaintiff successfully obtained an interlocutory judgement in default of appearance and defence on the part of the defendant on 16th February 2016. The hearing of this suit therefore proceeded exparte.
2. The plaintiff (PW1) was the only witness who testified in support of her case. It is her testimony that on 28th November 2013 or thereabouts, the defendant approached the plaintiff to advance him a friendly loan in the sum of kshs.100,000€ which loan was repayable without attracting any interest. PW1 stated that they entered into a formal agreement in which she agreed to transfer in to the defendant two instalments of 50,000€ each. PW1 stated that she eventually did the first transfer of 50,000€ to the defendant on 5.12.2013 and the second transfer of a similar amount was effected on 1st June 2014. By the said agreement the defendant bound himself to repay the loan by monthly instalments of 1,389€ with effect from 1st July 2014. The plaintiff averred that so far, the defendant has only remitted payment of 110€ thus blatantly breaching the loan repayment agreement. PW1 states that despite various demands being made to the defendant, he has failed to meet those demands hence this suit.
3. I have considered the plaintiff's oral and documentary evidence. Three issues have arisen for the determination of this court.

First, whether or not the plaintiff and the defendant executed an agreement in which the defendant was advanced 100,000€ by the plaintiff.

Secondly, whether or not the aforesaid agreement in any was breached by the defendant.

Thirdly, whether or not the plaintiff is entitled to judgement as prayed in the plaint.

4. On the first issue, as to whether or not the parties went into a formal agreement, the plaintiff testified before this court. She adopted her written witness statement. She produced as an exhibit in evidence an agreement she together with the defendant executed on 28th November 2013. She produced both the French and the English translation. It is clear from the aforesaid agreement that the plaintiff was to advance to the defendant 100,000€ in two instalments of 50,000€ each. The plaintiff further produced documentary evidence showing that the plaintiff paid the defendant 50,000 € on 1st June 2014. I am therefore satisfied that the defendant received 100,000€ from the plaintiff pursuant to the written agreement the parties entered on 28.11.2013.
5. On the second issue as to whether or not the defendant breached the aforesaid agreement. The plaintiff has tendered evidence showing that the defendant has so far only made a repayment to the plaintiff of 110€. PW1 also tendered correspondences the defendant wrote to her requesting for accommodation by rescheduling the loan repayment. I am satisfied that the plaintiff has tendered credible evidence to establish that the defendant breached the loan agreement by failing to repay the same as agreed.
6. The third issue to determine is whether or not the plaintiff is entitled to judgement as prayed in the plaint. It is clear from the pleadings and the evidence tendered that the plaintiff is entitled to the sum claimed less the amount already paid of 110€.

7. In the end, I enter judgement in favour of the plaintiff against the defendant in the following terms:

| | |
|-----------------|----------|
| (i) | 100,000€ |
| Less paid | 110€ |
| Net loan unpaid | 99,890€ |

ii. Costs of the suit

iii. Interest of (i) and (ii) above at court rates.

Dated, Signed and Delivered in open court this 1st day of April, 2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant