

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL APPEAL NO. 28 OF 2012

WELINGTON MOTON MAGOI T/A MOTON MAGOI ASSOCIATES.....APPELLANT

V E R S U S

PATRICK HYTON MATECHERESPONDENT

(Appeal arising from the original Civil Case No. 56 of 2010 in the Chief Magistrate's Court Kakamega, the judgment of [M.I.G. MORANGA, PM] delivered on 13.2.2012)

J U D G M E N T

This appeal emanates from the decision of the Kakamega Principal Magistrate delivered on 13.2.2012. The grounds of appeal are that the plaintiff's evidence was not corroborated, the court relied on documents that were not signed by the appellant, the appellant was not privy to the alleged financial agreement and that the trial court did not consider the appellant's defence.

Parties agreed to determine the appeal by way of written submissions. Only counsel for the respondent complied. I have gone through the submissions by the respondent dated 18.3.2014 and its totality is that the respondent supports the decision of the trial court. Counsel maintains that the appellant entered into a financial agreement with the respondent for KShs.300,000/= and failed to repay the loan.

Before the trial court two witnesses testified for the respondent. The respondent testified that he is a cousin to the appellant. On the 17.10.2007 he entered into a financial arrangement with the appellant whereby he agreed to loan the appellant KShs.300,000/=. The appellant was operating a business in Nairobi and they communicated over the phone. PW2 signed the agreement on behalf of the appellant. In line with the agreement on the 17.10.2007 he deposited **KShs.285,000/=** to the appellant's account at Co-operative Bank Kakamega. The following day 18.10.2007 he deposited the balance of **KShs.15,000/=** at the same bank. The appellant was operating business in the name of **MORTON MAGOI ASSOCIATES** in Nairobi. The appellant paid two installments of **KShs.28,000/=** and **15,000/=** respectively making a total of **KShs.43,000/=** but never paid the balance of the loan. According to the loan agreement it was to attract interest at 10% per month. On 5.1.2008 the appellant wrote to him about the loan. After depositing the money the appellant confirmed to him that he had received the money.

PW2 ESAU IMBOBA LUBODI is a relative of both parties. He testified that the appellant's account was forwarded to him by one EDWARD. He acted as the agent for the appellant. The money was deposited in the appellant's account by the respondent and the appellant confirmed receiving it. He signed the financial agreement on the instructions of the appellant. The respondent showed him the deposit slips.

On his part the appellant testified that he operates under the name of **MORTON MAGOI & ASSOCIATES** in Nairobi. He knows the respondent as well as PW2. He denied entering into the financial agreement. He also denied that he deposited money in the account of the respondent, he also denied that he wrote the letter on 5.1.2008. He denied that the signature appearing on that letter is his but it was on a letter head of his business name.

The trial magistrate evaluated the evidence and concluded that indeed the appellant received the loan and failed to pay. The main issue for determination is whether there was any agreement between the two parties relating to financial arrangement. The respondent produced the financial agreement dated 18.10.2007. It contains the identity card numbers of both parties. The agreement was drawn on the letter

head of Morton Magoi& Associates. The respondent also produced the original banking slips for KShs.285,000/= and 15,000/= respectively. The deposit slips indicate that the money was deposited in the account of the appellant. The appellant never produced his bank statement to show that there was no such deposit in his account. He also did not deny that the alleged account was not his. Even if the appellant did not personally sign the financial agreement the evidence on record shows that he had authorized PW2 to sign on his behalf. He was in Nairobi while the agreement was signed in Kakamega. Other than the agreement there is the evidence that money was deposited in his own account. That proves that the appellant received the money.

Apart from the above evidence there is the letter dated 5.1.2008. During cross-examination the appellant indicated that the signature on that letter appeared to be his although he denied that he wrote that letter. The letter is on the letter head of Morton Magoi& Associates and the contents relates to the financial agreement. It even suggested that the interest was to accrue at the rate of 5% for three months before it reverted to 10%. I am satisfied that it is the appellant who wrote that letter. The defence evidence was considered by the trial court. It was pure denial. Even if the appellant denied that he deposited money in the respondent's account, the fact remains that he received KShs.300,000/= from the respondent.

Given the evidence on record, I do find that the trial court reached the correct conclusion. The appeal lacks merit and same is hereby dismissed with costs.

Delivered, dated and signed at Kakamega this 15th day of October 2014

SAID J. CHITEMBWE

J U D G E