



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 1337 of 1991

GULZAR SINGH KALSI.....PLAINTIFF

VERSUS

JAGJIVAN SINGH DADHALEY.....DEFENDANT

JUDGMENT

This claim arises out of a friendly loan advanced to the defendant by the plaintiff on diverse dates during the years 1978, 1979 and 1980. The plaintiff is related to the defendant through marriage. The plaintiff is married to the defendant's sister. Both of them were doing business in Nairobi. The defendant was doing construction work and during those years his business was having problems. He approached the plaintiff for financial assistance. The plaintiff obliged and agreed to advance him a friendly loan amounting to Shs.200,000/=.

The defendant did not repay the said loan in time as agreed and this forced the plaintiff to file this suit claiming Shs.652,982.85 which included the principal amount plus interest.

The plaintiff in his evidence told the court that the defendant is his brother in law and on diverse dates between the years 1978, 1979 and 1980, the defendant was experiencing financial problems and he approached him for financial assistance. He agreed and gave him Sh.60,000/=, Shs.40,000/=, Shs.20,000/= and Shs.20,000/= on various dates totaling Shs.200,000/= between the years 1978, 1979 and 1980. He further told the court that this was a friendly loan and that he did not want to charge interest on the principal amount. But later when the defendant failed to repay the money as agreed, friends advised him that he could lose his money unless the agreement was in writing and that the limitation period to recover his money was 6 years. After that advise, he immediately called the defendant to his place of work. He drafted the agreement which the defendant signed in his presence.

The defendant agreed to repay the loan with interest at varied rates. He conceded that he is not a money lender and that the defendant had repaid the total amount of Shs.200,000/= the principal sum he had advanced to him.

The defendant in his evidence admitted that between the years 1978, 1979 and 1980 his business had experienced financial problems and he approached the plaintiff for financial assistance. The plaintiff gave him Shs.60,000/=, Shs.40,000/=, Shs.20,000/= and Shs.20,000/= at various dates between 1978, 1979 and 1980. The total loan was Shs.200,000/=. He said further that this was a friendly loan and it was agreed that it was not going to attract any interest.

But he was not able to repay the money immediately. This angered the plaintiff who called him to his office and threatened to send away his sister unless he agreed to repay this money advanced to him plus interest. The plaintiff had drafted an agreement which included interest and the mode of repayment.

Mr. Kapila for the plaintiff submitted that the defendant has admitted that he received Shs.200,000/= from the plaintiff on various dates between 1978, 1979 and 1980 and that although at the initial stages the plaintiff did not want to charge interest, the defendant did not make the repayment as agreed and that he later decided to charge interest on the money advanced to the defendant. This was reduced into writing and the defendant had signed the agreement which included interest.

Mr. Goswami for the defendant submitted that what the plaintiff advanced to the defendant was a friendly loan and there was no agreement that the same could attract interest. The issue of interest came about after the plaintiff had been influenced and advised by his friends and he used undue influence to make the defendant sign the alleged document which included payment of interest.

He concluded that the defendant had repaid all the monies advanced to him as agreed and that plaintiff's suit should be dismissed with interest. The plaintiff concedes that he is not a money lender and that he does not operate financial business. What he advanced to the defendant was a personal loan and due to being very close friends and in addition to being relatives all that he wanted back was his principal amount and that interest was not his concern at the time.

The idea of interest came in when the defendant delayed in repayment and the defendant says that he was advanced the said personal loan by the plaintiff without interest. That being so, and the plaintiff having conceded that when he advanced the loan it was without interest and the defendant having repaid all the money advanced to him, the plaintiff's claim remains bare and has no merit and is not therefore sustainable.

The plaintiff's suit is therefore dismissed. Because of the relationship between the parties and the circumstances of this suit, I order that each party bears his own costs.

Delivered and dated at Nairobi this 5th day of July 2005.

J.L.A. OSIEMO

JUDGE