

REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: KWACH, OMOLO, J.J.A. & BOSIRE, AG.J.A.)
CIVIL APPEAL NO. 168 OF 1995

BETWEEN

NYAGA MUVENA
P/A NYAGA MUVENA & COMPANY ADVOCATESAPPELLANT
AND

KAMETU KILONZIRESPONDENT

(Appeal from a ruling of the High Court of Kenya at
Machakos (Mr. Justice J.L.A. Osiemo) dated the 21st
day of July, 1995

in

H.C.C.C. NO. 469 OF 1994)

JUDGMENT OF THE COURT

This appeal has no merit and must be dismissed. There is irrefutable documentary evidence that the appellant received money from the respondent for which he issued receipts. He did not receive the money as the respondent's advocate. He was supposed to pass it on to the party for whom he was acting (his client) to whom the respondent was indebted. The allegations of forgery and fraud now being raised by the appellant are baseless as there is no evidence that the respondent would have been involved in these.

Although the appellant clearly had no defence to the respondent's claim, it was still incumbent upon the learned judge to give reasons for his decision. We do not think that in the particular circumstances of this case that failure has resulted in any prejudice to the appellant. Behaviour such as this by a practising advocate does not enhance the dignity of the profession and must be deplored. The appeal is dismissed with costs to the respondent.

Dated and delivered at Nairobi this 18th day of March, 1997.

R. O. KWACH

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

S. E. O. BOSIRE

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AG. JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR