

REPUBLIC OF KENYA

IN THE HIGH COURT, AT NAIROBI

CIVIL CASE NO. 1214 OF 1970

GORDHANBHAI G PATELPLAINTIFF

VERSUS

RAVINDER SINGH S/O BIJAY SINGH NAUL.....DEFENDANT

JUDGMENT

The plaintiff filed a suit against the defendant to claim from him a sum of Kshs.38,000 being equivalent to 40,000 Indian Rupee which the plaintiff alleged he had advanced to the defendant during 1966. According to him he had met the defendant in December, 1966 and that the defendant had asked him, the plaintiff, for some money to pay for the property he, the defendant, had purchased in India. That both were then going to India. While in India, the plaintiff lent the defendant the amount in dispute on 29th December, 1966. The defendant acknowledged receipt of the money in ex.3 . He has never refunded it either in India or Kenya since then. So the case was brought to court.

The defendant did not appear and no evidence was led on the defence side although Mr Kapila appeared for him. Submissions were then advanced for and against the claim.

This case was filed in Kenya mainly because as the plaintiff prior, the agreement was entered into in Kenya (see section 15) explanation 3(1) of the Civil Procedure Act. But apart from the evidence of the plaintiff, there was no other evidence to support that while the plaintiff was going to India he met the defendant who asked him for some money in the form of a loan. The plaintiff did not tell the court where in Kenya he met the defendant, what date, what time and what actual discussions took place.

What he only told the court was that

“the defendant approached me while I was going to India. He told me he had purchased property in India. He wanted some money to make payments for the transactions. I told him I did not have much money but could help him to a certain extent”.

Did these words constitute a contract between the plaintiff and the defendant, if they were uttered at all? How much money, for example, did the defendant want to borrow from the plaintiff? What were the terms of that advance, say as regards repayment? Plaintiff’s evidence, I am afraid, did not establish on a balance of probabilities that there was any contract entered into between the plaintiff and the defendant in Kenya.

The plaintiff then proceeded to India and the defendant followed him there. Then while there he advanced the defendant Kshs.38,000 an equivalent of Indian Rupees 40,000 in Indian currency which the defendant acknowledged receipt of in ex.3. The plaintiff had used a number of cheques in exh. 1 showing his savings in India in the 1950s. Exhibit 2 is a letter showing a number of withdrawals, all on 29th December, 1966, but not all were withdrawn by the plaintiff.

Some of the money was withdrawn by a Mrs Lalitaben some by Nathabhai, and some by a Mrs Kamlaben. But the plaintiff was infact telling this court that he withdrew 45,000 – Indian Rupees and advanced the defendant Kshs.40,000 rupees keeping a balance of 5,000 rupees for himself. Was there any need for such money to be withdrawn by different people when it was only the plaintiff who needed it to

lend to the defendant? The plaintiff did not explain this.

And if, as observed earlier, this contract was not entered into in Kenya, then no Kenyan court has nay jurisdiction to entertain in any event, this transaction seems to be tainted with illegality, hence unenforceable in law, as two Kenya residents entered into an agreement to its advance of Kenya money in Indian currency in Indian country to section 3(1) of the Exchange Control Act.

This suit is dismissed with costs.

Dated and Delivered at Nairobi on this 23rd day of September, 1983

D.K.S AGANYANYA

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JUDGE