



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 42 OF 2012

(Formerly Cause No.1939 of 2012 at Nairobi)

KENYA WOMEN FINANCE TRUST DMT LTD.....CLAIMANT

VERSUS

STEPHEN MWANIKI MURIUKI.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 9th October, 2015)

JUDGMENT

The claimant filed the statement of claim on 27.09.2012 through Magee Wa Magee Advocates. The respondent prayed for judgment against the respondent for:

- a) The repayment of the outstanding loan balance of Kshs.778, 144.00.
- b) Interest at court rates.
- c) The cost of the suit.
- d) Any other relief that the honourable court may deem fit and just to grant.

The respondent filed the response to the statement of claim on 22.03.2013 through Onyoni Opini & Gachuba Advocates. The respondent prayed that the statement of claim be dismissed with costs to the respondent. The respondent filed amended response and counterclaim on 30.04.2013 and the respondent prayed for judgment against the claimant for:

- a) An order that the claimant do calculate and pay to the respondent his terminal dues plus interest thereof.
- b) Mesne profits up to and until when the respondent dues and interest thereof is paid in full.
- c) Costs of the suit.
- d) Interest on a, and b, above.
- e) Any other relief that the honourable court might deem fit and just to grant.

The claimant filed the reply to amended response and counterclaim on 28.05.2013. The claimant prayed

that the counterclaim be dismissed with costs. The respondent filed the reply to reply to counterclaim on 20.06.2013 and prayed that the claim be dismissed and the counterclaim be allowed.

The **1st issue** for determination is whether the claimant is entitled to the prayers as made. The pleadings and evidence are clear. At all material time the respondent was the claimant's employee serving as the regional accountant at the claimant's Mt. Kenya West Region. On 1.11.2010 while in the claimant's employment, the respondent entered an agreement with one Antony Ndungu Karita for sale and purchase of a motor vehicle registration no. KBM 120C, Subaru, TA-BPS, S.A Wagon valued at Kshs.1,000,000.00. The respondent being the claimant's employee applied for a staff loan of Kshs.1,000,000.00 for purpose of purchasing the said motor vehicle. For that purpose the respondent completed the relevant loan application form and the same was approved and the loan advanced as applied for.

The respondent resigned from his employment on 6.10.2011 at a time he owed the claimant Kshs.778,144.00 as claimed. At paragraph 4 of the amended response to the statement of claim and counterclaim, the respondent stated that he admitted paragraph 3, 4, 5, 6, 7, 8, and 11 of the claim. Paragraph 8 of the statement of claim states thus, the respondent has an outstanding loan balance of Kshs.778,144.40. The respondent has admitted that fact and the court finds that the claimant is entitled to the claim and prayer as made in the statement of claim. The claimant's prayers will therefore succeed.

The **2nd issue** for determination is whether the court has jurisdiction to determine the suit. There is no dispute that the claimant's case was based on a staff loan advanced to the respondent while the respondent was an employee. There is no doubt that the dispute was about that staff loan, between an employer and an employee. The court enjoyed the jurisdiction to hear and determine the dispute.

The **3rd issue** is whether the respondent is entitled to the prayers made in the counterclaim. It was a prayer that the claimant computes the respondent's terminal dues consequential to the accepted resignation. The court has considered the material on record and finds that the claimant has already discharged that responsibility in the pleadings and the submissions on record as it would be superfluous to make orders as prayed for. To that extent, the respondent is not entitled to the prayers as made and the same shall fail.

In conclusion, the claimant's suit and the respondent's counterclaim are determined as judgment is entered for the claimant against the respondent for:

- a) The respondent to repay the claimant the outstanding loan balance of Kshs.778,144.00 at the interest rates that applied to the staff loans as advanced to the claimant and as per the staff loan agreement that was concluded between the parties.
- b) The respondent to pay the claimant's costs of the suit including the costs of the failed counterclaim.

Signed, dated and delivered in court at Nyeri this **Friday, 9th October, 2015.**

BYRAM ONGAYA

JUDGE