

IN THE HIGH COURT OF KIRIBATI

CIVIL CASE NO. 122 OF 2010

[KIRIBATI COPRA MILL
[
BETWEEN [AND
[
[BARANIKA RINEAKI
PLAINTIFF
DEFENDANT

Before: The Hon Mr Justice Vincent Zehurikize

Dates of Hearing: 1 October 2014, 16 October 2014,
12 November 2014, 28 November 2014,
29 April 2015, 21 July 2015, 26 November 2015,
29 March 2016 & 26 May 2016

Ms Kiata Kabure-Andrewartha for the Plaintiff
Ms Batitea Tekanito for the Defendant

JUDGMENT

Zehurikize, J: The plaintiff's claim against the defendant is for payment of \$30,836.29 being the money unlawfully advanced to the defendant by the plaintiff's cashier. The defendant worked for the plaintiff as its cleaner.

The evidence adduced by the plaintiff briefly is as follows. That in January 2009 the Cashier's Office was broken into which prompted management to mount an investigation.

The investigations revealed, among other things, that a lot of money had been unlawfully taken by several employees amongst whom was the defendant who had unlawfully borrowed \$30,836.29. The plaintiff started demanding payment from her.

It is the plaintiff's case that by letter of 6 May 2009 the defendant wrote to the Chairman, Board members of the plaintiff admitting having taken the money and indicated her plans on how she was going to pay. The letter is annexed to the affidavit evidence of Katarina Tofinga (PW1) as annexure "KT-3".

The plaintiff further adduced the evidence of Bwebweiti Batava (PW2) who explained in detail how the defendant obtained the advance from her. PW2 was the cashier.

In defence, the defendant admitted signing the letter of 6 May 2009 but that it was on the understanding that the cashier, PW2, would be the one to repay it since she was the one responsible. It is her evidence that she had only borrowed \$3,310. That the whole arrangement was intended to safeguard PW2 from being dismissed. That the arrangement was to make it appear that PW2 had only borrowed the \$3,310 and that the defendant had borrowed the \$30,836.29.

It was further the defendant's case that she got assurance from Katarina the CEO (PW1) that she would not be in any trouble and that it was only to cover up PW2 who would actually pay the money. It was for those assurances that she signed the undertaking – the letter of 6 May 2009 admitting the debt of \$30,836.29.

Ms Kabure for the plaintiff and Ms Tekanito for the defendant made their respective submissions. Ms Kabure's case is hinged on the letter of 6 May 2009 in which the defendant admitted that she had incurred the debt and undertook to repay the money.

On the other hand the gist of Ms Tekanito's submissions is that the defendant signed the letter upon influence exerted on her by the cashier (PW2) and the CEO (PW1) who is the cashier's aunt. She was assured PW2 would repay the money and that she would not be dismissed from her job as a cleaner.

The agreed issues are:

1. Whether the defendant is lawfully indebted to the plaintiff;
2. Whether the defendant was under undue influence at the time of signing the letter acknowledging the debt;
3. Remedies available to the parties.

I have perused the affidavit evidence presented by the parties. I have also noted the evidence adduced during cross examination. I have also considered submissions by both Counsel.

The three issues raised by Counsel will conveniently be considered together. The defendant does not dispute the fact that she undertook to repay the debt of \$30,836, save that she asserts that this debt had been incurred by PW2 the cashier. That she signed the document – letter of 6 May 2009 undertaking to repay the money on the

understanding it was PW2 who would actually pay while for her she was to pay her own debt of \$3,310. That the whole arrangement was intended to protect PW2 from being dismissed.

It would demand more than imagination to believe that the defendant acted under the influence of PW1 and PW2 to sign the letter of 6 May 2009. Though she was a mere cleaner, she was a mature person who knew or ought to have known the consequences of the undertaking. Although the evidence shows that PW2 typed the letter of 6 May 2009 which was signed by the defendant, it also reveals that the defendant dictated its contents. This makes it her document which she endorsed with her signature.

I do not believe that the desire for the defendant to protect PW2's position could reasonably have overridden the need to protect herself, so as to make such an undertaking. I have not been able to find any convincing evidence that could vary or explain away the contents of the letter.

In these circumstances I am inclined to find that the plaintiff has proved its claim on a balance of probabilities that the defendant borrowed the money in issue through PW2.

In the premise judgment is entered for the plaintiff for these orders:

- (a) The plaintiff is entitled to payment of \$30,836.29 from the defendant;
- (b) The above sum of money shall attract interest at the rate of 5% per annum from the date of this judgment till payment in full;

(c) The plaintiff is entitled to the costs of the suit.

Dated the 24th day of June 2016

THE HON MR JUSTICE VINCENT ZEHURIKIZE
Judge