

**IN THE HIGH COURT OF TANZANIA**

**AT SONGEA**

**PC. CIVIL CASE NO. 2 OF 2006**

**PATRICK KITINDILA ..... APPELLANT**

**VERSUS:**

**JOHN YAPESA ..... RESPONDENT**

**11/10/2007 HEARING CONCLUDED**

**28/2/2008 JUDGMENT DELIVERED**

**J U D G M E N T:**

**KAGANDA, J.**

This is a second appeal, the matter originate from Mbinga Primary Court  
The dispute was over a debt which was half unpaid. The loan agreement  
was as follows:-

“ Patrick Katindila  
S.L.P. 62, Mbinga,  
21.4.2000.

Mtajwa hapo juu nimekopa mahindi gunia  
11 nilipe kahawa gunia 5. Ifikapo tarehe  
30/9/2000 kama sitalipa likamatwe shamba  
langu la kahawa lenye miti 1,500 pamoja  
na nyumba ninayoishi yenye urefu wa meta  
92 kwa 52. Nyumba hiyo ni ya tofali  
nimeezeka bati.

Mbele ya mashahidi

Antoni Patric & Katimwa.

Mahindi hayo ni ya ndugu Epaphara S.

Mwanga wa Mbinga Mjini.

There is no dispute that the appellant received the said maize on loan which was valued at Tshs. 525,000/=. Patrik Mwanga stood as surety to the loan by surrendering his certificate of occupancy No. 20996 which was marked exhibit P.2 for Plot "D" 218 situated at Mbinga (Urban) township. Thereafter he settled Tshs. 165,000/= leaving a balance of 420,000/= up to this date I am writing this judgment.

The appellants' ground of appeal is that the respondent is a stranger to the agreement, but I find his argument baseless. That is because, there is evidence documented by letter authorizing the respondent to claim all debts. That letter is dated 2<sup>nd</sup> September, 2000 showing a list of seven debtors. The appellant appears third on the list. Now that there is concrete evidence that the appellant has not yet discharged his obligation, he can not get away just because the respondent's name does not appear on the agreement letter.

The decision of the trial court and that of the first appellant court must be respected. The fact that the appellant was not summoned before the district court does not injure ends of justice. The Magistrates Courts Act No. 2 of 1984 Section 20(5) has so far not been implemented by the Minister. That Law provides that:-

"The Minister may make regulations prescribing procedure for appeals from Primary Courts by a complainant other than the Director of Public Prosecutions".

As much as I know the Minister has not yet made those regulations as such the district Magistrate can not be faulted by hearing the appeal in the absence of the appellant. Even if he were to be present with the grounds filed, the verdict would have remained the same.

In the event this appeal must fail and it is hereby dismissed with costs. The appellant has to settle the unpaid amount Tshs. 420,000/= plus 7% court rate interest from the date it was due for payment which was 15/10/2002 a date when the trial courts judgment was delivered. It is so ordered.

  
S.S. KAGANDA

JUDGE

4/1/2008

**Order:** Orders issued by the Primary Court are hereby upheld  
And must be enforced. Right to appeal explained.



  
S.S. KAGANDA

JUDGE

4/1/2008

SSK/PJL.

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