



REPUBLIC OF KENYA

IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI

TRIBUNAL CASE NO. 252 OF 2020

LOISE NAISIMOI MATIPEL.....CLAIMANT

-VERSUS-

METROPOLITAN NATIONAL SOCIETY SACCO.....RESPONDENT

JUDGMENT

1. This Claim was instituted by way of a Statement of Claim dated **29th July 2020**. The Claimant alleges that she issued a Notice of withdrawal of membership to the Respondent, and further sought a refund of her savings, totalling to **Kshs. 538,953/=**, together with costs and interests. Annexed thereto is a letter dated **7th September 2019**, from the Claimant to the Respondent, wherein the Claimant was applying for a refund of all her shares in full. There is also a demand letter dated **25th June 2020**. The Claimant contends that the Respondent has refused to refund her share contributions, even after issuing proper notice.

2. The Respondents filed a Statement of Defence, dated **9th September 2020**, where they admitted to owing the Claimant **Kshs. 483,953/=**, arguing that share capital is non-refundable. The Respondent further avers that, via a letter dated 20th July 2020, they have promised to refund the Claimant on **19th November 2021**. The Respondent further posits that there was an Annual General Meeting in 2019 wherein the members of the Respondent resolved to schedule the funds on a *first-come-first-served* basis, and the Claimant's refund was behind other repayments. No copy of the minutes of the said meeting has been furnished to this Tribunal.

3. The parties proceeded by way of written Submissions, which we have carefully considered. We find that the following are the issues needful of determination:

ISSUES FOR DETERMINATION:

The following are the issues that this Tribunal finds necessary for Determination:

- (a) Whether the Claimant issued a proper Notice of withdrawal from the SACCO;
- (b) Whether the Respondent is entitled to a refund of **538,953/=**;
- (c) Whether the timeframe for refund issued by the Respondent is reasonable; and
- (d) Who bears the costs of the suit?

We shall hereafter analyse the issues as follows:

4. ANALYSIS OF ISSUES

(i) Whether the Claimant issued a proper Notice of withdrawal from the SACCO

From the evidence on record, we note that the Claimant did properly withdraw from the Respondent, and issued a letter for a refund of her savings formally. This has been admitted by the Respondent in Paragraph 4 of the Statement of Defence. We shall say no more.

(ii) Whether the Respondent is entitled to a refund of 538,953/=

The Respondent has admitted to owing the Claimant **Kshs. 483,953/=**. On this premise, we first invoke the provisions of **Order 13 Rule 2** of the **Civil Procedure Rules 2010**, and accordingly enter a partial judgment on the admitted sum of **Kshs. 483,953/=**.

The balance of **Kshs. 55,000/=** is the contested amount, that forms the crux of this part. On their part, the Respondents argue that this amount consist of share capital, which is non-refundable. This Tribunal has been invited to assume this fact, as there was no proof of this provision in the SACCO's bylaws.

Section 107(1) of the **Evidence Act Cap 80 of the Laws of Kenya** casts the burden of proving a fact on the one that alleges. This burden has not been discharged by the Respondent in view of the disputed amount, and it must thus fail. We therefore find and do hold in favour of the Claimant that she is entitled to her full deposit of **Kshs. 538,953/=**.

(iii) Whether the timeframe for refund issued by the Respondent is reasonable

The Respondent further avers that, via a letter dated 20th July 2020, they have promised to refund the Claimant on 19th November 2021. The Respondent further posits that there was an AGM in 2019 wherein the members of the Respondent resolved to schedule the funds on a *first-come-first-served* basis, and the Claimant's refund was behind other repayments.

The timeframe of more than one year to refund a member of her savings is unreasonable. No justification has been given for this extended period. Again, the Respondent has refused to furnish proof of the said 2019 Annual General Meeting, and as such, this argument is unsubstantiated. This Tribunal shall not be invited to determine cases on the basis of conjecture and rumours. This argument thus fails.

(iv) Who bears the costs of the suit?

The position of the law, and this Tribunal is bound therewith, is that costs follow the event. **Section 27(1)** of the Civil Procedure Act bestows this Tribunal with discretion to apportion costs, and on the basis of the foregoing, we find that the Claimant is entitled thereto, and we thus so order.

We therefore proceed to issue the following Orders:

ORDERS

- a. The Claimant's Statement of Claim dated 29th July 2020 succeeds;
- b. Judgment be and is hereby entered for the Claimant, for **Kshs. 538,953/=** together with costs and interest at Tribunal rates;

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 4TH DAY OF NOVEMBER, 2021.

Hon. B. Kimemia Chairperson Signed 4.11.2021

Hon. J. Mwatsama Deputy Chairperson Signed 4.11.2021

Mr. Gitonga Kamiti Member Signed 4.11.2021

Mr. B. Akusala Member Signed 4.11.2021

Mr. P. Gichuki Member Signed 4.11.2021

Tribunal Clerk R. Leweri

Kivuva for the Claimant

Ochieng holding brief for Mr. Thimba for the Respondent.

Hon. J. Mwatsama Deputy Chairperson Signed 4.11.2021