



**Joseph v APS Baraka Sacco Society Ltd (Tribunal Case 217 of 2021)
[2023] KECPT 749 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KECPT 749 (KLR)

**REPUBLIC OF KENYA
IN THE COOPERATIVE TRIBUNAL
TRIBUNAL CASE 217 OF 2021
BM KIMEMIA, CHAIR, J. MWATSAMA, VICE CHAIR, B SAWE,
F LOTUIYA, P. GICHUKI, M CHESIKAW & PO AOL, MEMBERS**

SEPTEMBER 21, 2023

BETWEEN

AGNES NDINDA JOSEPH CLAIMANT

AND

APS BARAKA SACCO SOCIETY LTD RESPONDENT

JUDGMENT

Claimant's Case

1. The case is filed vide Claimant's Memorandum of Claim dated 30/4/2021. The Claimant is a member of the Respondent Membership Number 003125 where she holds shares a savings. The Claimant confirms that around September 2019 she was financed by the Respondent to purchase vehicle KCW XXXG.

She was to make ksh 5,000/= as weekly payments but defaulted in March 2020 due to the Covid pandemic. She claims that she resumed repayments in August 2020 but stopped in repayments as the vehicle was involved in an accident in December 2020.

2. The Claimant notified the Respondent on the vehicle situation but the vehicle was repossessed by an auctioneer on 12/2/2021 without any notice. On repossession of the vehicle the Claimant avers that she requested the Respondent to utilize her shares of ksh 184,000/= to defray the loan. She claims that her offer was ignored.
3. The value of the vehicle KCW XXXG as assessed by Respondent's assessors on 25/9/2020 is ksh 580,000/=.

The Claimant's prays to this court for judgment against the Respondent for:



- a. An order for the Respondent to pay the Claimant the value of the motor vehicle totaling to ksh 580,000/=.
- b. Loss of use of the motor vehicle at the rate of ksh 3,000/= per day from 12th February 2021 until determination of the case.
- c. Costs of this suit and interest.
- d. Interest on (a) & (b) above.
- e. Any other award this court sees just and fit to issue.

4. During the trial the Claimant Agnes Ndinda Joseph adopted her Witness Statement dated 30/4/2021 as her Evidence- in- Chief. The Claimant bought vehicle KCW XXXG in September 2019 through a loan from the Respondent.

5. She stated that she was to start repaying the loan from November 2019 and that repayments went on well until February 2020 when Covid-19 affected her vehicle business.

6. She confirms that her vehicle was grounded up to August 2020 and later involved in an accident on 30/12/2020 hence the defaulting. She states that her vehicle was attached by the Auctioneers and that the Respondent notified her of the repossession a day after her motor vehicle was attached.

The Claimant confirms offering her shares of ksh 184,000/= with the Respondent towards clearing the loan.

7. On cross-examination the Claimant confirmed that she was to make ksh 5,000/= weekly repayments. She stated that the Respondent was claiming ksh 116,659.67/= to be repaid in 7 days from 3/2/2021 to 10/2/2021. She confirmed she did not repay this amount.

8. The Claimant also confirmed that her request to offset her loan with her shares of ksh 184,000/= was verbal. She stated that the vehicle bought at ksh 580,000/= was used as a taxi and she was receiving ksh 3,000/= per day. The Claimant stated that there was no Notice of Proclamation nor attachment notice.

9. The vehicle's valuation was done in September 2020 at a value of ksh 580,000/=. The Claimant states that the attachment and sale of the vehicle was malicious, irregular and unlawful and in the gist of this case.

She asserts that her shares were more than the amount in default and wonders why the Respondent did not offset the shares with the loan instead of attaching her vehicle.

10. She claims that the Respondent deliberately failed to notify her of the intended attachment of the vehicle in question. The Auctioneer failed to give the Claimant 7 days' notice to repay the loan. This renders the auction of the vehicle illegal. The Claimant avers that the Respondent and the Auctioneers did not reveal the amount realized from the auction.

Respondent's Case

11. The Respondent's case is contained in their Defence dated 3/6/2021. The Respondent states that they advanced the Claimant a loan to purchase vehicle KCW XXXG. The loan was defaulted resulting to the auction of the vehicle. The Respondent's also states that the Claimant did not make efforts to repay the loan as claimed in the Memorandum of 30/4/2021 Paragraph 9 and 10.

The Respondent confirms that the vehicle KCW XXXG was sold in an auction lawfully held with a notice to the Claimant. The Respondent denies that the Claimant was faithful in her loan repayments.



12. The Claimant's claim on ksh 3,000/= daily earnings from the vehicle is also denied. During the trial, the Respondent witness Thomas Osoro (Chief Executive Officer of Respondent) adopted his undated statement which was filed on 18/1/2023.
13. The witness confirms that the Claimant was loaned ksh 650,000/= loan for the car purchase. The Respondent states that the Claimant was explained on the loan conditions including repayment schedule. He states that when the Claimant defaulted on the loan, the Respondent issued a demand notice to the Claimant and no offer was made by the Claimant.
14. He confirmed that the vehicle forced value was ksh 350,000/= and was sold at ksh 400,000/=. The net of sale value was credited into the Claimant's loan account leaving a balance of ksh 249,777/= and interest of ksh 144,169/=. On the valuation of the car by the claimant, the Respondent states that the valuation was done 7 months to the sale, hence not accurate.

The Respondent avers that the 12/4/2021 valuation by the Respondent is the most accurate. During trial the Respondent witness confirmed that a demand letter was done to the Claimant on 3/2/2021 for ksh 113,000/= but Claimant did not comply compelling Respondent to engage the Auctioneer for recovery of the loan.

15. The Respondent stated that while the Claimant had deposits with the Respondent, the deposit could not be used to offset with the car loan since such deposits may have liabilities elsewhere.

Findings

16. The Claimant has confirmed she was loaned ksh 650,000/= by the respondent in September of 2019. The loan of ksh 650,000/= is also confirmed in the Claimant's Account Statement filed in court.

It has also been confirmed that the Claimant defaulted in loan repayment on varied months a situation that prompted the Respondent to attach Claimant's Motor Vehicle KCW XXXG. It is also on record from the Respondent's List of Documents that the Claimant was served with a demand letter dated 3/2/2021.

The Claimant did not comply to the demand letter's terms, hence the attachment of Motor Vehicle KCW XXXG.

Conclusion

17. The Claimant has not denied defaulting on her loan the reasons advanced notwithstanding. She has not proved that she made deliberate efforts to clear the loan from the Motor Vehicle KCW XXXG.

We note that by the time of auctioning the vehicle, the claimant had a loan balance of ksh 116,659.72/= with the Respondent and shares of ksh 184,000/=.

We fail to understand why the Respondent was reluctant to consider offsetting the outstanding loan with the claimant's shares.

On the other hand, the Respondent has stated that the Claimant's deposits with the Respondent could not have been used to reduce the loan as requested by the Claimant.

As regards the auction process, the Claimant has argued that there was no Proclamation notice nor an Attachment notice, hence alleging that the auction of her vehicle was illegal. We observe that the Respondent did not issue a Proclamation Notice to the Claimant as per the law.

We also observe that the Respondent issued an Auction Notice in a publication that is not clear to this court.



18. In view of the above, the Respondent did not follow the proper channels in auctioning the Claimant's Motor Vehicle KCW XXXG. Since the Claimant has admitted owing the Respondent in defaulted loan and that she expressed willingness to repay the loan, we note that the issue in contention is the auction process of the Claimant's vehicle.
19. In the absence of a proclamation notice to the Claimant, we find that the auction process applied by the Respondent to be illegal.

Upshot

We order judgment in favor of Claimant against Respondent and order as follows:

- a. An order for the Respondent to pay the Claimant the value of the motor vehicle totaling to ksh 580,000/=.
- b. 8 Months compensation at ksh 2,500/= per day amounting to ksh 600,000/=
- c. Cost of this suit and interest.
- d. Interest on (a) & (b) above - Not awarded.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF SEPTEMBER, 2023.

HON. BEATRICE KIMEMIA CHAIRPERSON SIGNED 21.9.2023

HON. J. MWATSAMA DEPUTY CHAIRPERSON SIGNED 21.9.2023

HON. BEATRICE SAWE MEMBER SIGNED 21.9.2023

HON. FRIDAH LOTUIYA MEMBER SIGNED 21.9.2023

HON. PHILIP GICHUKI MEMBER SIGNED 21.9.2023

HON. MICHAEL CHESIKAW MEMBER SIGNED 21.9.2023

HON. PAUL AOL MEMBER SIGNED 21.9.2023

Tribunal Clerk Jemimah

Ms. Chelagat advocate for the Claimant.

R.M. Njiraini advocate for Respondent

Njiraini advocate : We pray for 30 stay of execution and leave to appeal.

Chelagat Advocate – We can grant them 30 days stay.

Tribunal Order:

30 days stay of execution granted.

HON. J. MWATSAMA DEPUTY CHAIRPERSON SIGNED 21.9.2023

