



**Teleposta Sacco Society Limited v Thuku (Tribunal Case
360 of 2018) [2024] KECPT 1185 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KECPT 1185 (KLR)

**REPUBLIC OF KENYA
IN THE COOPERATIVE TRIBUNAL
TRIBUNAL CASE 360 OF 2018
BM KIMEMIA, CHAIR, JANET MWATSAMA, VICE CHAIR, B SAWE,
F LOTUIYA, P. GICHUKI, M CHESIKAW & PO AOL, MEMBERS
JULY 25, 2024**

BETWEEN
TELEPOSTA SACCO SOCIETY LIMITED CLAIMANT
AND
RICHARD W THUKU RESPONDENT

JUDGMENT

1. The judgement is premised on a Statement of Claim dated 26th July, 2018 filed by the Claimant on 29th July, 2018 which sought orders for:
 - a. A Sum of Kshs 14,883,296/= which was owed by the Respondent.
 - b. Costs and interest of the suit at such rate and for such period as the Honourable Tribunal may deem fit to order.
 - c. Any other and equitable relief as this Honourable Tribunal may deem appropriate.
2. To support the Claim, the Claimant filed a Witness Statement sworn by her Chief Executive Officer, a Verifying Affidavit, Account Statement, Letters of Demand, List of Witnesses and List of Documents. All these documents are dated 26th July 2018 and filed on 2018.
3. On 18/4/2019, during mention, the Claimant's Advocate pointed out that the Respondent had not filed a response to the Claim.



4. Vide an Application for request of Judgement dated 25/1/2019, the Claimants moved the Tribunal under Order 10 Rule 4 and 10 of the [Civil procedure](#) ruled 2010 to enter a Summary Judgement against the Respondent which the Tribunal granted thus;

“Summary judgement entered in favour of the Claimant against the Respondent for Kshs 14,883,206/= together with costs and interest”.

5. An Affidavit of Service dated 23/5/2019 upon the Respondent was returned and filed in the Tribunal on 17/6/2019.
6. A Decree and a Certificate of Cost was extracted on 21/8/2019 which provided the totals as Kshs 17,033,982.44/=.

Thereafter, Warrants of Attachment dated 5th August 2020 was issued by the Tribunal to be served upon the Respondent.

7. The Claimants Vide a letter addressed to the Tribunal dated 18/12/2020, stated that the warrants could not be served upon the Respondent because they were unable to trace his whereabouts.
8. On 11/11/2021 a Notice to Show Cause regarding why the Judgement Debtor should not be committed to civil jail was issued by the Tribunal. In response, the Advocate who appeared for the Respondent informed the Tribunal that for 2 months the Respondent was admitted at Nairobi Hospital and sought for more time to put up a response.
9. On this the Tribunal granted 14 days to the Respondent to file the Response and to provide evidence that the Respondent was indeed hospitalized in Nairobi hospital.
10. On a mention date of 6/12/2022, the Respondent filed his response to the Claimant’s statement of Claim and denied owing the Claimant the amount stated. However, under paragraph 3 of the Response, he admitted that he took a single loan amounting to Kshs 3,570,000/= and state as;

“Save for the averment that the Respondent took a single loan amounting to Kshs 3,570,000/= with the Applicant by virtue of being a member of the Claimant. The Respondent denies in entirety the Claimant’s allegations.”

11. On 6/12/2022, the Tribunal issued the following directions in preparation for hearing of the matter.
- a. That the Claimant has 14 days to file response to the Respondent reply to the Claim.
 - b. That the Respondent is granted 14 days to file and serve Witness Statements and Documents that they wish to within rely on.

Claimant’s Case.

12. The Claimant’s Witness M/s Maryanne Ndekei who is the Chief Executive Officer adopted her Witness Statement and reiterated that the Respondent who was the Claimant’s chair from 2006 to 2016 took loans shown in the account statement as;

Normal Loan 4,795,890.00/=

Salary Advance 7,990,000.00/=

FOSA Overdraft 1,902,906.00/=

Unpaid Interest 194,500.00/=



Total 14, 883,296.00/=

13. It was the testimony of the Witness that according to the Statement of Account, the Respondent paid Kshs 200,000/= in 2018 and that was captured in the Accounts.

Respondent's Case.

14. The Respondent admitted that he was the Chairman of the Claimant from 2012 to 2016 then he resigned but remained a dormant member.

Further, he admitted that he took a Loan of Kshs 3,570,000/= in 2011 and stated that he repaid fully through his sitting entertainment allowances and internal check off system this was Kshs 60,000/= per sitting and entertainment of Kshs 35,000/= which has requested the Sacco to use it to offset the Loan.

15. The Respondent denied ever filling an Application form for the other three (3) loans stated in the Statement of Claim.

Analysis And Determination.

16. Having had the benefit to examine the evidence in the Tribunal's file and the hearing proceedings, we have distilled three (3) issues for determination.
- Whether the Respondent was loaned the three (3) types of loans?
 - Whether the Respondent owed the Claimant Kshs 14,883,296/=?
 - Who should bear the cost of the suit?

Issue One a. Whether the Respondent was loaned the three (3) types of loans.

17. Although the Claimants did not file a copy of their by-laws to show the process of their Loans, it is a common practice in all Co-operative Societies that any member who is desirous of borrowing a loan from a Sacco must fill a Loan Application form and get guarantors to sign for him/ her before it is placed before a Credit Committee who would recommend it to the Board.
18. During the hearing of the suit, the Claimants were at pains to table each of the Application forms which was signed by the Respondent and the list of his guarantors as form of security.
- Similarly, the Claimants failed to produce the Credit Committee approval and the subsequent Board of Directors' approval. The production of member Statement is not enough and does not constitute sufficient proof of advancement of Loans.
19. Save for the Normal Loan amount of Kshs 3,570,000/= which was admitted by the Respondent that he was loanee in 2011 but not 2016, we find that the other two (2) Loans namely Salary Advance and FOSA overdraft were not proved.

Issue Two b. Whether the Respondent owed the Claimant Kshs 14,883,296/=.

20. Under paragraph 10 of the Claimant's Written Submissions, the Claimant state;

"Additionally, the Respondent's member Statement shows that he issued cheques of Kshs 700,000/= each, towards repayment of the Loans advanced but the cheques were dishonoured."



In examining the Respondent's Statement of Account, we note that there were three (3) cheques under the Normal Loan account of Kshs 700,000/= which was added to the opening balance of Kshs 2,795,890/= which gave the total of Kshs 4,895,890/= now claimed one would wonder whether the Kshs 700,000/= was additional Loan or some form of advance.

21. Similarly, on the salary advance column of the Loan Statement, the same calculations is done from an opening Loan balance of Kshs 3,890,000/= plus Kshs 4,200,000/= (700,000×6 cheques) minus repayment of Kshs 100,000/= which gives a total of Kshs 7,990,000/= as claimed.
22. In basic accounting, when a loanee pays his/her loan, an entry is entered on the credit side to reduce the loan and when the cheque is dishonoured, a debit entry is entered to restore back the loan balance to its original amount.

It is evidently clear from the member statement that each time the cheque of Kshs 700,000/= was dishonoured, it was added back to the running balances as if they were new loan advances.
23. Even if the cheques belonged to the Respondent, it would have been prudent for the Claimant to produce a copy or copies of the dishonoured cheques as proof of their claim. In the alternative, the Tribunal would have considered if produced before it an extract of the bank statement relating to the same transactions of the bouncing cheques which were not produced.
24. On the interest part of Kshs 194,500/= we find that we have no reason to analyze because we don't have the by-laws or the Loan Application form which show the rate of interest to be charged and the duration of the loan.
25. On a balance of probability and for the reasons advanced above, we find that the Claimant has not discharged her obligation to produce cogent evidence to demonstrate that the Respondent owe them Kshs 14,883,296/=
26. Consequently, we dismiss the Claimant's claim with costs for want of merits.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 25TH DAY OF JULY, 2024.

HON. B. KIMEMIA CHAIRPERSON SIGNED 25.7.2024

HON. J. MWATSAMA DEPUTY CHAIRPERSON SIGNED 25.7.2024

HON. BEATRICE SAWE MEMBER SIGNED 25.7.2024

HON. FRIDAH LOTUIYA MEMBER SIGNED 25.7.2024

HON. PHILIP GICHUKI MEMBER SIGNED 25.7.2024

HON. MICHAEL CHESIKAW MEMBER SIGNED 25.7.2024

HON. PAUL AOL MEMBER SIGNED 25.7.2024

TRIBUNAL CLERK JEMIMAH

Ms. Odhiambo holding brief for Kinyanjui for Respondent

Kabugu for Claimant- Present

HON. B. KIMEMIA CHAIRPERSON SIGNED 25.7.2024

