



Nyamari v Metropolitan National Sacco Limited (Tribunal Case E026 of 2024) [2024] KECPT 1698 (KLR) (31 October 2024) (Judgment)

Neutral citation: [2024] KECPT 1698 (KLR)

**REPUBLIC OF KENYA
IN THE COOPERATIVE TRIBUNAL
TRIBUNAL CASE E026 OF 2024**

**BM KIMEMIA, CHAIR, J. MWATSAMA, VICE CHAIR, B SAWE,
F LOTUIYA, P. GICHUKI, M CHESIKAW & PO AOL, MEMBERS**

OCTOBER 31, 2024

BETWEEN

ALEXANDER NYAMARI CLAIMANT

AND

METROPOLITAN NATIONAL SACCO LIMITED RESPONDENT

(Coram: Hon. B. Kimemia- chairperson, Hon. J. Mwatsama- Deputy chairperson, Hon. B. Sawe- Member, Hon. F. Lotuiya- Member, Hon.P. Gichuki- Member, Hon. M. Chesikaw- Member and Hon. P. Aol- Member.)

JUDGMENT

1. The matter for determination is a Statement of Claim dated 17th January 2024 in which the Claimant claims that he was a member of the Respondent being member number 103216. The Claimant avers that he withdrew from membership in the year 2022 and is yet to receive his savings amounting to Ksh. 179,206.25/-. The claimant therefore prays for:
 - a. The Claimant be paid his total contribution as particularized in paragraph 3 herein above amounting to Kshs. 179,206.25/=
 - b. The Honourable court do issue such orders and give such directions as it may deem fit to meet the ends of justice.
 - c. The Respondent to pay the costs of this claim.
 - d. Interest on the above at court rates

The Claim is accompanied by a witness statement, and documents in support of the claim.



2. The Respondent filed a Statement of Defence dated 15th February 2024 in which they contend that the Claimant has not sufficiently established that the Respondent is in possession of her shares and or deposits. They further aver that the Respondent has been through so much financial turmoil, and is overwhelmed by various applicants seeking to withdraw from the society.
3. The matter was canvassed by way of submissions and hence there was no hearing.
4. In their submissions, the Claimants submitted that they have proven their case on a balance of probabilities and that judgement should be entered in their favour.
5. Respondents did not file submissions.

Analysis

6. This Tribunal has considered the submissions of the Respondent and the documents filed by the parties.
7. This Tribunal sympathizes with the Respondent's financial situation. However, on the other hand, in matters of refunds, is a member's right to his deposits. The *Co-operative Societies Act* is clear on the concept of voluntary membership to a Co-operative Tribunal. As long as the Co-operative society is in operation, and has not gone into liquidation, it is expected to honor its obligation to its members. The good thing is that refund claims are liquidated sums, and the Respondent can go after, when it has regularized its books and brought order into operations.
8. The question, that this Tribunal now asks itself is whether the Claimant has sufficiently proved his claim on a balance of probabilities and if he is entitled to a refund.
9. The Claimant has produced a statement dated 17th January 2024 and stamped on the same day by the Respondent. The Respondent has not disputed this statement, and this Tribunal is inclined to belief that it was extracted from the Claimant's account with the Respondent. The Claimant has not provided us with the calculations of how it came up with the claim amount of Ksh. 179,206.25/-, and therefore this court will enter judgement on the value on the face of the statement.
10. Flowing from above, we find merit in the Claimants Claim and order as follows-
 - a. Immediate refund of Ksh. 159,206.25/- to the Claimant
 - b. The Claimant is awarded costs of this suit together with interest from date of filing suit at Tribunal rates until payment in full.

JUDGMENT SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF OCTOBER, 2024.

Hon. B. Kimemia Chairperson Signed 31.10.2024

Hon. J. Mwatsama Deputy Chairperson Signed 31.10.2024

Hon. Beatrice Sawe Member Signed 31.10.2024

Hon. Fridah Lotuiya Member Signed 31.10.2024

Hon. Philip Gichuki Member Signed 31.10.2024

Hon. Michael Chesikaw Member Signed 31.10.2024

Hon. Paul Aol Member Signed 31.10.2024

Tribunal Clerk Jemimah



Orango advocate for Claimant

Ms. Benson holding brief for Muriuki advocate for Respondent

Ms. Benson advocate- I pray for 30 days stay of execution

Orango advocate – No objection

Order- 30 days stay of execution granted.

Hon. B. Kimemia Chairperson Signed 31.10.2024

