



**Achacha v Metropolitan National Sacco Ltd (Tribunal Case E025  
(37) of 2024) [2024] KECPT 1723 (KLR) (31 October 2024) (Judgment)**

Neutral citation: [2024] KECPT 1723 (KLR)

**REPUBLIC OF KENYA  
IN THE COOPERATIVE TRIBUNAL  
TRIBUNAL CASE E025 (37) OF 2024  
BM KIMEMIA, CHAIR, JANET MWATSAMA, VICE CHAIR, B SAWE,  
F LOTUIYA, P. GICHUKI, M CHESIKAW & PO AOL, MEMBERS  
OCTOBER 31, 2024**

**BETWEEN**

**ALBERT OWUOR ACHACHA ..... CLAIMANT**

**AND**

**METROPOLITAN NATIONAL SACCO LTD ..... RESPONDENT**

**JUDGMENT**

1. The matter for determination is a Statement of Claim dated 17<sup>th</sup> January 2024 in which the Claimant claims that he was a member of the Respondent being member number 67485. The Claimant avers that he withdrew from membership in the year 2022 and is yet to receive his savings amounting to Ksh. 164,713.42/-. The claimant therefore prays for :
  - a. The Claimant be paid his total contribution as particularized in paragraph 3 herein above amounting to Kshs. 164,713.42/=
  - 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 Response to Statement of Claim dated 15<sup>th</sup> 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. Both parties filed their submissions. 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. In their submissions, the Respondents submitted that the Claimant has not established that the Respondent is in possession of their shares. They also submit that there was a resolution that was passed suspending all refunds, and that resolution was sent to the Claimant and that the resolution bound all the members of the Sacco since it arose out of an annual meeting. They also submitted that the member statement is not admissible because there is no certificate of electronic evidence produced to warrant its admission.
6. The Respondents further submit that an inquiry report found former directors guilty of embezzling the Respondent's funds, and that the Respondent has lost a lot of money and crucial documents that it cannot now determine who took loans and who guarantees other members.
7. The Respondents pray to this Honourable court to give the new management which is only 7 months in office time to recover critical documents which include member statements.

### **Analysis**

8. This Tribunal has considered the submissions by the parties and the documents filed by the parties. This Tribunal notes that the Respondent, in its Statement of Defence, disputes paragraph 3 of the Statement of Claim. In that paragraph, the Claimant claims that he was a member of the Respondent, that he withdrew his membership and that requested to be refunded his shares. However, in the same statement and even in its submissions, there is an implication that the Claimant was indeed a member of the Respondent. For instance, the Respondent submits that the Claimant could have a loan or could have guaranteed other members loans. This can only happen when one is a member. We are, therefore, inclined to belief that the Claimant was a member of the Respondent.
9. 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.
10. On the issue of certificate of electronic evidence, it is true that the Claimant did not submit it. However, this court is not strictly bound by the rules under the *Evidence Act*.
11. 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.
12. The Claimant has produced a statement dated 12<sup>th</sup> January 2024 and stamped on the same day by the Respondent. The Respondent has not disputed their stamp in the 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 Ksh. 164,713.42/-, and therefore this court will enter judgement on the value on the face of the statement.
13. Flowing from above, we find merit in the Claimants Claim and order as follows-
  - a. Immediate refund of Ksh. 144,713.42/- 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 31<sup>ST</sup> 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**

