



**Njagi v Yetu Sacco Society Limited (Tribunal Case 52/E080 of 2023)
[2024] KECPT 1835 (KLR) (21 November 2024) (Judgment)**

Neutral citation: [2024] KECPT 1835 (KLR)

**REPUBLIC OF KENYA
IN THE COOPERATIVE TRIBUNAL
TRIBUNAL CASE 52/E080 OF 2023
BM KIMEMIA, CHAIR, JANET MWATSAMA, VICE CHAIR, B SAWE,
M CHESIKAW, P. GICHUKI, F LOTUIYA & PO AOL, MEMBERS
NOVEMBER 21, 2024**

BETWEEN

MOSES MUTHOMI NJAGI CLAIMANT

AND

YETU SACCO SOCIETY LIMITED RESPONDENT

JUDGMENT

1. The genesis of this Judgement emanates from a Notice of Motion Application dated 10th February 2023 which was filed under a Certificate of Urgency on 16th February 2023. The Notice of Motion was anchored under Section 76 of The [Co-operative Societies Act](#) Rule 6 and 11 of the Co-operative Tribunal (Practice and Procedure Rules, 2009) and Order 51 of the Civil Procedure Rules, 2010) and other enabling provisions of the Law.
2. That while the suit was under pre-trial stages, The Respondent appointed a Motor Vehicle Auctioneers to recover the Claimant's Motor Vehicle Registration Number KCU 011D and KCU 011J in July and August 2023.

To foster the Respondent's actions, The Claimant filed a Notice of Motion dated 7th August 2023 under a Certificate of Urgency and sought for the following orders:

- a. An order do issue compelling the Respondent either by itself, its servants, agents or howsoever to unconditionally stop levying and monthly payments, charges or penalties on the Claimant's asset finance facility dated 21/12/2021.
- b. An order do issue permanently restraining the Respondent either by itself, its servants, agents or howsoever from harassing the Claimant and purporting to repossess motor Vehicles Registration No.s KCU 011D and KCU 011J.



- c. Costs and Interests
 - d. Any other Relief that this Honourable Tribunal may deem just and fit.
3. In support of The Notice of Motion dated 7th August 2023 the Claimant provided a chronology of how The Respondent went about to attach his Motor Vehicle through a detailed Supporting Affidavit Application dated 7th August 2023.
- Further, he attached a photocopy of a notification of sale of movable property and photocopies of the Motor Vehicle.
4. The Tribunal disposed the above Notice of Motion Application dated 7th August 2023 by delivering a Ruling dated 31st August 2023 and made the following orders:
- a. That the Notice of Motion Application dated 7th August 2023 is merited.
 - b. That the Respondents are hereby ordered to unconditionally release Motor Vehicles Number KCU011D and KCU011J to the Claimant with immediate effect.
 - c. The Respondent to bear the cost of this application.
5. Another Notice of Motion dated 28th September 2023 was filed by The Claimant for contempt and states that the Respondent had disobeyed The Tribunal's Orders. The advocate of the Respondent confirmed to the Tribunal that he had advised his clients to release the Motor Vehicles as ordered.
6. The matter was fixed for Hearing on 12th June 2024

The Claimant's Case

7. That he is a member of The Respondent and he applied for a loan of Kshs. 2,000,000/= on 11th December 2021 from the Respondent in order to enable him to purchase a Motor Vehicle (Matatu). That I had identified the Motor Vehicle and informed the Respondents before I connected them to the owner. The Respondents asked for payment of Kshs. 200,000/= which was done.
- He further stated that The Respondents went ahead to fit a tracking device in the said Motor Vehicle before paying the Kshs. 2,000,000/= through RTGS to the vendor's Account.
- In conclusion, The Claimant stated that when he went to collect the Motor Vehicle he was not given. Precisely, he stated this:

” when I went to the Motor Vehicle yard to pick the Motor Vehicle, I was informed that the Motor Vehicle had not been paid”

It was his testimony that earlier on, he had showed the Bank Details of the vendor who was identified as Mr. Mohammed as follows:

Equity Bank LTD

Kilimani Branch

A/C No. 1690281151643

A/C Name: Bitigue Motors & Imports

Instead the Kshs. 2,000,000/= was wired to the below bank on instructions of the vendor/ Mohammed

Gulf African Bank



Kenyatta Avenue

A/C No. 1520047801

A/C Name: Vigo Auto Importers & Salers.

When he missed the Motor Vehicle and he had been told that the money was paid by The Respondent, he stated that he reported to The Respondent and went to report to the police in Company of Martin who is an employee of The Respondent:

“the police said that I was not the one who paid the money and that The Respondents are the correct complainants”

The Respondent's Case

8. M/S Diana Karuine who is the recovery manager of the Respondent stated that the Kshs. 200,000/= paid by the Claimant was processing fees which included the cost of valuation, appraisal fees and several other costs which was done by The Respondents on behalf of their member.

It was her testimony that the purchaser is the one who provide where the money is to be paid.

According to her, the Motor Vehicle was fitted with a tracking certificate and could not be able to get the last coordinates.

She further stated that the same Motor Vehicle was the security of the loan given.

9. At the conclusion of The Hearing, the Tribunal directed the parties to file Written Submissions which was promptly filed as directed.
10. The Claimant still maintained that according to the Asset Finance Facility Agreement, the Respondent was obligated to undertake due diligence to secure the Motor Vehicle before valuing and installation of a tracker.
11. In agreement, Under Paragraph 5 of The Respondents Written Submissions, The Respondent stated that:

“upon the Respondent conducting due diligence the loan facility was approved by the Respondent and the Claimant offered his two Motor Vehicle Registration Number KCU 011D and KCU 011J as security for the said loan facility”

12. Further, The Claimant stated that he shared the Equity Bank details and the contacts of the seller with Joy who is The Respondent's officer in-charge of asset financing for payment of the Kshs. 2,000,000/=.
- According to The Claimant, he learnt later that the vendor contacted Joy and instructed her to pay the money to Gulf African Bank, Kenyatta Avenue Branch.
13. In disagreement, The Respondents stated under Paragraph 17 of their Written Submissions that The Claimant provided the account details:

“The Claimant himself filled the Electronic Funds Transfer form on 21st December 2021 and that is the SWIFT/RTGS Application form by himself and in all he provided clearly that the correct bank account is Vendors A/C No. 1520047801, Gulf African Bank, Kenyatta Avenue Branch is the name of Vego Auto Importers and Sales”



14. It is this disagreement that informs the basis of this Judgement. First, it is not in doubt that The Claimant did not get the Motor Vehicle that he had asked the Respondents to finance for him. Secondly, it is believed that the Respondents paid Kshs. 2,000,000 and attached unclear dark/faded copies of Electrical Funds Transfer Forms to The Gulf African Bank A/C No. 1520047801.
15. When the funds had been transferred, the Respondent states that the Claimant returned days later to report to them the Kshs. 2,000,000 had been disbursed to a wrong account.
16. We have analyzed the evidence on record, the documents and the Written Submissions filed by the Claimant and the Respondent specifically on the payment by Electronic Funds Transfer EFT/RTGS and draw the actual practice of payment of EFT/RTGS to the instant case.

In asset financing, we know that the funds are transferred direct from the financier to the seller which is perfectly in order in this case.

17. In common practice, when an EFT/RTGS form is presented to the bank, the bank always asks for a cheque to be drawn in its favor. We believe that The Respondents wrote and signed a cheque for the Kshs. 2,000,000/= in favor of the bank which effected the transfer to the seller.
18. Given that The Respondent had financed the Claimant for two (2) of his other motor vehicles and registered in joint names, we believe that these must have been a sale agreement between the seller and the Claimant/Respondent.

No sale agreement has been filed in The Tribunal by The Respondent provided by the Claimant to show the details of the seller and his/her bank details.

At the same time during Hearing, we note that Joy did not attend the Tribunal to give evidence for a simple reason that she was in another branch.

19. It is our finding that the Respondent cannot be believed that, it is The Claimant who provided the Vendors Account Number 1520047801, Gulf African Bank because even when the Claimant reported to them that they had wired the money to a wrong account, they did not take any action.

Notwithstanding this, the respondents are the ones who fitted the tracking device in the motor vehicle and failed to track the motor vehicle. Similarly, they failed to report to the police and instead kept their hands off.

20. According on a balance of probability, we enter judgement in favor of The Claimant against the Respondent and order the Respondent to refund the deducted amount relating to the motor vehicle which was not given to him.

It is so delivered.

orders:

- a. Judgement is entered in favor of The Claimant against The Respondent. We order The Respondent to refund all money deducted from Claimant for the purchase of motor vehicle in question.
- b. Plus, costs and Interest.

JUDGEMENT SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF NOVEMBER, 2024.

HON. B. KIMEMIA - CHAIRPERSON SIGNED 21.11.2024

HON. J. MWATSAMA - D. CHAIRPERSON SIGNED 21.11.2024



HON. BEATRICE SAWE - MEMBER SIGNED 21.11.2024

HON. MICHAEL CHESIKAW - MEMBER SIGNED 21.11.2024

HON. PHILIP GICHUKI - MEMBER SIGNED 21.11.2024

HON. FRIDAH LOTUIYA - MEMBER SIGNED 21.11.2024

HON. PAUL AOL - MEMBER SIGNED 21.11.2024

Tribunal Clerk

Mutai

Kyalo advocates for the Claimant

Wambua advocates for the Respondent

Wambua advocate- We pray for 30 days stay of execution

Kyalo advocate- We are not opposed to the 30 days stay.

Tribunal orders

30 days stay of execution granted.

Formal request for copy of Judgement to be made.

