



**Mutuku v Pressfine Sacco (Tribunal Case 39/E034 of 2022)
[2024] KECPT 1845 (KLR) (31 December 2024) (Judgment)**

Neutral citation: [2024] KECPT 1845 (KLR)

**REPUBLIC OF KENYA
IN THE COOPERATIVE TRIBUNAL
TRIBUNAL CASE 39/E034 OF 2022
BM KIMEMIA, CHAIR, JANET MWATSAMA, VICE CHAIR,
B SAWE, F LOTUIYA, M CHESIKAW & PO AOL, MEMBERS
DECEMBER 31, 2024**

BETWEEN

PAUL NGEI MUTUKU CLAIMANT

AND

PRESSFINE SACCO RESPONDENT

JUDGMENT

Claimant's Case

1. The Claimant has moved this Tribunal praying for judgement for among at least the refund of his deposits of Kshs. 152,000/=.

He has filed the following documents in support of his case:-

- a. Statement of claim dated 24/1/2022.
- b. His witness statement dated 24/1/2022.
- c. His list of documents dated 24/1/2022.
- d. Hearing proceedings on 6/0/2023.
- e. Consent order dated 25/9/2023.
- f. Claimant's written submission dated 19/7/2024.

2. In his Statement of Claim the claimant state that he joined the Respondent Sacco in the year 1998 and left in 2018 when he left his job.

He states that at the time of terminating his employment his savings where Kshs. 152,000/= which the Respondent has refused to refund despite the intention to withdraw being issued.



In his witness statement the Claimant restates that he was a member of the Respondent Sacco MNO. 185P and had savings of Kshs. 152,000/= which he claims from the Respondent Sacco.

The Claimant has filed relevant documents in support of his claim.

On 16/5/2024 when the matter came for mention this Tribunal ordered that this case be dispensed through written submissions.

Respondent's Case

3. The Respondent case is based on the Respondents' written submission dated 25/9/2024. In their submission the Respondent state that the sum of Kshs. 65,400/= was repaid as hereunder.

Kshs. 20,000/= Cheque No. 5010 of 10/1/2028 Kshs 27,000/= vide Cheque No 5014 of 10/1/2018.

The Respondent further states that the Claimant had guaranteed one Nicholas Nzola who defaulted in his loans hence the Respondent deducted Kshs. 17,000 to cover the default.

4. The Respondent wants this Tribunal to determine whether the Claimant is entitled to Kshs. 65,000/= claimed and whether the Claimant is entitled to cost with respect.

The Respondent objects to the inclusion of the amended the witness statement of 31/5/2024 since it was amended after the close of the pleadings without leave of the Tribunal.

The Respondent avers that the claimant is not entitled to costs of Kshs.86,600/=.

Analysis

5. We note that this Tribunal adopted an order in consent for Kshs.86,000/= on 17/10/2023.

In effect the amount for consideration by this Court is Kshs.65,000/= as per paragraph 4 of the 17/10/2023 order.

We observe that the Claimant has prosecuted in case against the Respondent for refund of the balance of Kshs.65,400/=.

6. In the Respondent's written submission dated 25/9/2024 the Respondent intend this Court to determine whether the witness statement dated 31/5/2024 which was an amendment done to the original on and without this Court's leave is admissible. This Court agrees with the Respondent and will therefore confine itself to the witness statement dated 24/1/2022. In this witness statement the Claimant has focused his claim on the Kshs. 152,000/=.

Thereafter there was a consent for Kshs. 86,000/= leaving a balance of Kshs.65,400/=. The Kshs. 65,400/= is the now the just of this case.

7. We observe that the Respondent has raised the issue of the Claimant having been refunded Kshs. 47,700/= vide cheque No. 5010 for Kshs.20,000/= and cheque No. 5014 for Kshs. 27,000/=. The documents filed in this Court do not explicitly indicate that these payments were for share refunds. This is denied by the Claimant, instead stating that he had lent the Respondent the said Kshs.47,000/= in 2017.

A perusal of documents in the Court file especially the Claimant's pass book does not show such in entry.

The same Claimant member pass book has a figure of Kshs. 152,000/= as bank balance for the year 2018.



It is observed that the Kshs. 152,000/= as entered in the Statement of Claim is adequately documented. When you deduct the consented amount of Kshs. 86,000/= the Claimant is left with Kshs.65,000/= as his claim.

8. We find that the Claimant's claim of the Kshs. 65,000/= is not properly prosecuted and falls short on defending the Kshs. 20,000/= and Kshs. 27,000/= averments by the Respondent that the deductions were to refund of deposits.

The Respondent has filed evidence showing that indeed the Claimant received Kshs. 47,000/= which unless proved otherwise must have been share refund.

9. We also observe that the averment of the Respondent that the Claimant guaranteed a Mr. Nicholas Nzioka a loan is true indeed a loan agreement form is filed in support of the claim.

However, there is no evidence that this loan was defaulted neither is there a dewed notice to the loanee and the Claimant to prove that there was any loan defaulted and that the Claimant was to pay Kshs.17,000/=.

On the averment of the Claimant vide his written submission paragraph 9 that the Kshs.47,000/= reflected in the bank statement is denied and that the Kshs.47,000/= was a refund in Respect the Claimant had left the Respondent in year 2017 No. evidence was filed to show that there was such a transaction of a member loaning the Respondent such monies.

After considering all the facts by both parties we are of the opinion that the Amended Claimant Statement dated 31/5/2024 is not admissible in determining this case.

10. We have therefore confirmed our judgement to the prayer as contained in the Claimant witness statement dated 24/1/2022.

We also convinced that the Claimant received Kshs. 20,000/= vide cheque 5010 on 10/10/2018 and Kshs. 27,000/= cheque 5014 on 10/1/2018 as evidence by the Co-operative Bank statement filed by the Respondent.

The Claimant has not provided any evidence to prove that this Kshs.47,000/= was for any other purpose apart from what is averred by the Respondent.

11. In view of the above information we enter Judgement in favour of the Clamant against the Respondent for :-
 - a. Refund of deposits of Kshs. 17,000/= to the Claimant plus costs and interest at Tribunal rates from date of the claim.

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

Karue advocate holding brief for Chimei advocate for Respondent

No appearance for Claimant

Karue advocate - I pray for 30 days stay of execution

Order- 30 days stay of execution granted.

Hon. B. Kimemia - Chairperson Signed 31.10.2024

