



REPUBLIC OF KENYA

IN THE MICRO AND SMALL ENTERPRISES TRIBUNAL AT KISII

CLAIM NUMBER 17 OF 2019

1. JOYCE RASUGU

2. ABEL KEBASO OTOTO

[SUING AS THE LEGAL REPRESENTATIVES

OF MOSIABANO SELF HELP GROUP].....CLAIMANTS

VERSUS

1. JANE MAGOMA CHEBIANA.....RESPONDENT

JUDGEMENT

1. The Claimants herein commenced this claim on behalf of **Mosiabano Self Help Group**. The two are members and officials of the group. According to the Claimants the Respondent was at all material times a member of the group.

2. Through a statement of claim dated 10th July 2019, the claimants on behalf of their afore-stated group claims against the Respondent for a **liquidated sum of Kshs. 30,000/- interest and costs**. As can be discerned from the affidavit of service filed herein by the Claimants, a notice of claim, statement of claim, list of exhibits and witness statement were served upon the Respondent. The claimants also filed an affidavit of service evidencing the service of the hearing notice on the respondent.

3. The Respondent did not enter appearance and or file a response to the claim. The Claimants took a decision to set this matter down for formal proof instead of requesting for final judgement in default of appearance since the claim herein was a liquidated claim. When the matter came up for hearing before us on the 20th December 2019, we allowed the formal proof proceedings to be undertaken instead of allowing the Claimant to request us to enter a final judgement in default of appearance. We had noted something in the Claimant's pleadings that pricked our conscience. The Claimants are seeking for an award of interest at the rate of **10 percent per a month** translating to **120 percent per annum**. We needed to take evidence on this, reason why we thought a formal proof was necessary. On this interest rate, we shall make a comment shortly hereunder.

4. The first Claimant testified in fortification of the claim. His witness statement dated 10th July 2019 was deemed his evidence in chief. According to this witness, on or about the **2nd August 2018** the group at the instance of the Respondent lent the latter a sum of **Kshs. 30,000/-**. The Loan Agreements were executed to this effect by the parties. The Loan Agreement dated 2nd August 2018 was produced as **Exhibit 1**, in evidence before the Tribunal.

5. The witness stated in their statement of claim that they had sought for interest for the period **2nd August 2018 to 2nd October 2019 at a rate of 10% per a month, an amount that totals to Kshs. 76,215/- for the loan**. The calculation for interest though is erroneous. The claim was prompted by the fact that the Respondent failed to repay the amount that she had borrowed plus the agreed interest as per the Loan Agreements.

6. The Respondent did not challenge the Claimants' claim by entering appearance and filing a response nor did she challenge the Claimants' testimony by cross-examining the Claimants' witness to test credibility of his evidence, and adduce his evidence in defense to rebut the Claimants'. We have considered the evidence before us and have come to a conclusion that the Claimants' have proved their case on a balance of probabilities, on the principal figure as prayed for in the statement of claim.

7. Yes, the Claimant's case was unchallenged. However, that does not mean that the Claimant should be awarded each relief sought; even those that appear to be unconscionable, unreasonable and against public policy. This is the very reason why we would not award interest at the rate of **10% per month** as this would in our view be unconscionable and against public policy.

8. We are glad that counsel for the Claimant saw this, and made a submission that we award interest at the ordinary court rates.

9. In the upshot we are inclined to enter judgement in favor of the claimant in relation to the total loan amount of Kshs. **30,000/-** with interest at the **rate of 14% per annum**. Interest is to be charged from the date of borrowing till full payment. The Respondent shall bear the costs of this claim.

10. We assess the party and party costs at Kshs. **10,000/-**.

11. Orders accordingly.

Dated at Kisii this 7th day of January, 2020.

Joseph M. Were.....

Chairperson

Ocharo Kebira.....

Member

Annette Gikuya.....

Member