



REPUBLIC OF KENYA



**Maina v Kagendo (Civil Appeal E157 of 2023)
[2024] KEHC 16108 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 16108 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E157 OF 2023
HM NYAGA, J
DECEMBER 20, 2024**

BETWEEN

NICHOLAS MACHARIA MAINA APPELLANT

AND

FRIDAH MUGUONGO KAGENDO RESPONDENT

(Being an appeal from the Judgement of Hon. Dominic Macharia Resident Magistrate (Adjudicator) delivered on 29th June, 2023 in Nakuru SCCCOMM NO. E041 of 2023)

JUDGMENT

1. The Respondent herein instituted a suit before the lower court in the aforesaid suit vide a statement of claim dated 30th January, 2023 seeking for: -
 - a. Kenya Shillings two hundred and eighty-eight thousand eight hundred and thirty-four (Ksh. 288,834/=) being the principal sum.
 - b. The costs and interest of suit.
 - c. Any other relief that the Honourable Court may deem fit to grant.
2. The respondent pleaded that she and the Appellant were members of Sheria Sacco and she held shares in the said Sacco.
3. That in 2018 she guaranteed the Appellant a loan of Ksh. 2,000,000/= which he had taken from the aforesaid sacco and she did so alongside other members of the Sheria Sacco.
4. The Respondent averred that the Appellant partly serviced and partly defaulted in the repayment of the loan and as a result of the default, she and other guarantors were obligated to pay the defaulted amount.



5. She averred that the defaulted loan sum was divided amongst all the guarantors and on her part, she paid Ksh. 288,834/=.
6. She pleaded that her shares at the said sacco and small part of her salary was deducted in order to service the above amount and as a result of that deduction, she incurred loss and cannot get dividends.
7. On 21st February,2023, the Appellant raised a preliminary objection against the Respondent's claim on grounds that: the small claims court lacked jurisdiction to hear and determine the claim on account that it was based on a debtor-guarantor relationship between the parties herein arising from a loan issued by Sheria Sacco Limited; that the *Co-operative Societies Act* provides that such disputes shall be referred to the Co-operative Tribunal for hearing and determination; & that the claim offended Section 12(1) of the *Small Claims Court Act*,2016.
8. The trial court directed that the Preliminary Objection be canvassed through written submissions. In a ruling dated 10th March,2023, the subordinate court held that it had jurisdiction to determine the Respondent's claim.
9. The Appellant thereafter filed a response to the claim dated 3rd April,2023. He denied the Respondent's claim in toto and additionally, averred that at no point did the Respondent approached him to enquire on the clearance of the loan.
10. Without prejudice, the Appellant averred that he was never suspended from work by his employer and that he informed the Sacco on various occasions on this position and relied on his income from his employer to finance the loans through the monthly instalment's payments.
11. He asserted that if any funds were deducted from the Respondent's account, the same was irregular and/or illegal. He enumerated the particulars of illegality as follows: -
 - i. Sheria Sacco failed to serve the required notices to him in strict conformity with the Applicable laws.
 - ii. That from the foregoing having failed to abide by the set procedure, the realization commenced by Sheria Sacco is a nullity in law.
12. He thus decried that it was prudent for the said Sacco to be enjoined in the proceedings and the realization process scrutinized and prayed that the Respondent's claim be dismissed with costs.
13. Upon considering the evidence adduced by both parties, the trial court in a judgement dated 29th June, 2023 found that the Respondent had proved her case against the Appellant on a balance of probabilities and entered judgement in her favour as follows: -
 - a. A sum of Ksh. 288,834/-
 - b. Costs of the suit.
 - c. Interests on (a) and (b) from the date of Judgement until settlement in full at court rates.

The Appeal

14. Aggrieved by the lower court's decision, the Appellant lodged the instant Appeal premised on ground that the learned adjudicator erred in law in failing to find that the Small Claims Court lacked jurisdiction to hear and determine the claim on account of the fact that the claim was based on a debtor-guarantor relationship between the parties arising from a loan issued by Sheria Sacco Limited.
15. The Appellant thus prays: -



- I. That the Judgement and decree of the Adjudicator dated 29th June,2023 be quashed and/or set aside.
 - II. That this Honourable Court be pleased to find that the Small Claims Court does not have jurisdiction to hear matters emanating from the Debtor-Guarantor relationship between parties who are members of a Sacco.
 - III. That cost of this appeal be provided for.
16. The Appeal was disposed off via written submissions.

Appellant's Submissions

17. The Appellant submitted that the relationship between parties is that of Debtor-guarantor, therefore, the small claims court lacked jurisdiction to hear and determine such disputes. To buttress his submissions, the Appellant placed reliance on the case of Republic vs Cooperative Tribunal and 2 others [2019] eKLR

Respondent's Submissions

18. The Respondent submitted that the Sacco having recovered its money from the Guarantor, ended the binding relationship amongst the three parties i.e. the guarantor, borrower and Sacco and as such the only subsisting relationship is between the guarantor and the borrower for recovery of money owed which falls within the scope of Section 12 of the Small Claim's Court.
19. In light of the above, the Respondent submitted that this court should dismiss the Appellant's Appeal with costs to her.

Analysis & Determination

20. After careful analysis of the Appeal, the record of Appeal and the parties' submissions, in my view the singular issue for determination is Whether the Small Claims Court had jurisdiction to entertain the suit before it.
21. Section 76 of the Cooperative *Societies Act* provides as follows;

“Disputes

- (1) If any dispute concerning the business of a co-operative society arises—
 - (a) among members, past members and persons claiming through members, past members and deceased members; or
 - (b) between members, past members or deceased members, and the society, its committee or any officer of the society; or
 - (c) between the society and any other co-operative society, it shall be referred to the Tribunal.
- (2) A dispute for the purpose of this section shall include—
 - (a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or



- (b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not;
- (c) a claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.”

22. In *Robert Gathigani Njagi vs John Mutual Manda* [2020] eKLR the court was faced with a matter similar to this one. It held as follows;

“The plaint clearly reflects that the Plaintiff’s case is based on a Sacco loan at a time when both the Plaintiff and the Defendant have pleaded to have been members of the Sacco. The Defendant was sued as the one advanced the loan wherein the Plaintiff is reflected as one of the guarantors. The Plaintiff further pleaded that upon default in the repayment of the loan, the sum of Ksh.410,027.37 was deducted from his Sacco Account. It is therefore evident that the dispute herein involves a Sacco loan and in my view falls within the business of the society and therefore falls within the ambit of Section 76 of the *Sacco Societies Act*.”

23. Similarly, in *Joyce Muthoni Njoroge & 2 others vs Joshua Gachie & another* [2021] eKLR the court held as follows;

“The applicant indeed invoked Sections 76 and 77 of the *Co-operative Societies Act*. Section 76 on settlement of disputes, which provides:

- “(1) If any dispute concerning the business of a co-operative society arises-
- a. among members, past members and persons claiming through members, past members and deceased members; or
 - b. between members, past members or deceased members, and the society, its committee or any officer of the society; or
 - c. between the society and any other co-operative society, it shall be referred to the Tribunal.” (Emphasis added)

The provision is a mandatory provision that obligates members of co-operative societies to resolve their disputes through that forum and no other.

By Section 75 (5) of that Act, that Tribunal has unlimited geographical and pecuniary jurisdiction in matters of co-operatives disputes. Further, recourse during proceedings or in respect of orders and awards of the Tribunal can only be appealed to the High Court.”

24. Also, in *Republic vs Cooperative Tribunal and 2 others* 2019 eKLR the court held the following in regard to section 76 of the Act;

“A literal and ordinary interpretation of the section is that where the parties to a dispute are current or past members of a co-operative society, or members of a cooperative society and the society, or between two co-operative societies; and the subject matter of the dispute is the business of a co-operative society, then the dispute shall be referred to the Tribunal. Section 76(2) proceeds to give examples of such disputes and is not exhaustive in this respect. In the present application it is not in dispute that the Applicant and Interested Parties are members



of the Law Society of Kenya Sacco, which is a co-operative society. It is also not in dispute that the Interested Parties guaranteed a loan which was advanced to the Applicant by the Law Society of Kenya Sacco. The specific relief sought by the Interested Parties in their claim before the Respondent in Co-operative Tribunal Case No 149 of 2018 was a refund by the Applicant of Kshs 400,000/= and Kshs 150,000/= to be paid to their respective Law Society of Kenya Sacco Accounts. Their dispute thus concerned the refund by the Applicant of monies they paid to settle his loan obligations with the Law Society of Kenya SACCO. It is thus my finding that the Respondent was properly seized of the claim filed before it by the Interested Parties in in Co-operative Tribunal Case No 149 of 2018, as it involved the business of refund of a loan payment to the Law Society of Kenya Sacco by the Interested Parties on behalf of the Applicant, who are both members of the said Sacco.”

25. From the pleadings and evidence adduced, it is decipherable that the issues involved a Sacco loan which was advanced to the Appellant and on defaulting in its repayment, the Respondent in her capacity as the guarantor paid Ksh. 288,234/- through deductions.
26. My reading of the Section 76 of the Act is that the dispute concerning the business of a Cooperative Society and involving past members, persons claiming through members, past members, deceased members must be referred to the Tribunal.
27. However, the circumstances herein are different. The dispute herein does not concern the business of a Sacco but rather it is a dispute specifically between the Respondent and the Appellant whereby the respondent is demanding for reimbursement from the borrower/Appellant for the aforesaid amount paid to the Sacco.
28. The Sacco's primary interest is to recover the loan amount owed by the borrower. Once the guarantor pays on behalf of the borrower, the Sacco's involvement in the loan effectively ceases. Therefore, upon repayment by the guarantor, Sacco cannot make any further claims against either the borrower or the guarantor for the same loan.
29. In view of the foregoing, I agree with the lower court position that the legal and financial ties binding the three parties i.e. the Sacco, borrower and the guarantor dissolves when the loan obligation is fully settled.
30. The only recourse available to the guarantor if the borrower is non-compliant is to seek recovery of the paid sums through a legal action.
31. The jurisdiction of the Small Claims Court is provided in Section 12(1) of the [Small Claims Court Act 2016](#) which provides as follows:-

Subject to this Act, the rules and any other law, the court has jurisdiction to determine any civil claim relating to-

- a. A contract for sale and supply of goods or services;
- b. A contract to money held and received;
- c. Liability in tort in respect of loss or damage cause to any property or for the delivery or recovery of moveable property;
- d. Compensation for personal injuries; and
- e. Set off and counterclaim under any contract.



32. In view of the foregoing and based on the dispute between the parties, I opine that the said court, pursuant to the above section, had jurisdiction to hear and determine the matter.
33. The Appeal is thus bereft of merit and I dismiss it with costs to the Respondent

DATED, SIGNED AND DELIVERED AT NAKURU THIS 20TH DAY OF DECEMBER, 2024.

H. M. NYAGA,

JUDGE.

In the presence of:

