



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**CIVIL SUIT NO. 15 OF 2014**

**THE REGISTERED TRUSTEES OF MICRO ENTERPRISES  
SUPPORT PROGRAMME TRUST (MESPT).....PLAINTIFF**

**VERSUS**

**TANA TEACHERS SAVINGS AND CREDIT**

**CO-OPERATIVE SOCIETY LTD.....1<sup>ST</sup> DEFENDANT**

**ABUDAKAR HOMA DIBO.....2<sup>ND</sup> DEFENDANT**

**WALAB HASSAN.....3<sup>RD</sup> DEFENDANT**

**MUSTAFA KUYO BIDHACHI.....4<sup>TH</sup> DEFENDANT**

**MATHIAS ASSEER BENJAMIN.....5<sup>TH</sup> DEFENDANT**

**MOHAMMED ALI KOFA.....6<sup>TH</sup> DEFENDANT**

**BAHOLA S. MARO.....7<sup>TH</sup> DEFENDANT**

**HUSSEIN O. HIRIBAE.....8<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1. By a plaint filed on 3<sup>rd</sup> July, 2014 the Plaintiff, the Registered Trustees of Micro Enterprises Support Programme Trust (MESPT) seeks judgement against the defendants in the sum of Kshs. 7,231,916.80 together with interest at court rates and costs of the suit.

2. The Plaintiff's case as disclosed in the plaint is that through a loan agreement dated 14<sup>th</sup> October, 2010 it advanced the 1<sup>st</sup> Defendant, Tana Teachers Savings and Credit Co-operative Society Limited a loan of Kshs. 10,000,000 for purposes of on-lending the same to small-holder farmers and agri-business primarily in the Agricultural Business Development (ADB) rural finance component in target districts in the former Coast Province specifically Tana River, Lamu and Malindi districts. The loan which was repayable within three years was secured by an already existing debenture dated 24<sup>th</sup> June, 2009 and guaranteed by Abudakar Homa Dibo, Walab Hassan, Mustafa Kuyo Bidhachi, Mathias Asseer Benjamin, Mohamed Ali Kofa, Bahola S. Maro and Hussein O. Hiribae the 2<sup>nd</sup> to 8<sup>th</sup> defendants respectively who were members of the 1<sup>st</sup> Defendant's Management Committee. The loan was advanced at an interest rate of 10% per annum on a reducing balance basis and attracting a late repayment penalty of 5% per month on any amount in arrears.

3. It is the Plaintiff's case that the 1<sup>st</sup> Defendant initially serviced the loan but later defaulted and as at 11<sup>th</sup> March, 2013 the outstanding debt being made up of the principal, interest and penalties stood at Kshs. 7,231,916.80. This is the amount the Plaintiff demands and despite demand and notice of intention to sue the defendants have not been responsive.

4. The defendants though acknowledging the debt sought the dismissal of the Plaintiff's claim through a statement of defence filed on 29<sup>th</sup> September, 2014. The grounds upon which the defendants seek the dismissal of the suit are: lack of locus by the Plaintiff to institute these proceedings; failure of the beneficiaries of the loan to service the same; failure by the Plaintiff to provide accounts and contradictions as to

the amount owed by the defendants to the Plaintiff.

5. Raphael Kuria, the head of credit and business at MESPT testified as PW1. He reiterated the contents of the plaint and produced as exhibits the documents in the Plaintiff's list of documents dated 26<sup>th</sup> June, 2014 filed in court on 3<sup>rd</sup> July, 2014.

6. The exhibits produced confirmed the Plaintiff's unrebutted narrative that it advanced a loan of Kshs. 10,000,000 to the 1<sup>st</sup> Defendant which was payable within three years. There is evidence that the Plaintiff later demanded for the payment of the outstanding principal, interest and penalty after the 1<sup>st</sup> Defendant defaulted in making payment.

7. The defendants' claim that there was variance in the figures demanded by the Plaintiff was not supported by any evidence as the defendants did not call any witness. The claim that is before this court is the one in the plaint and the evidence that was placed before the court through the testimony of PW1 is that the amount owing is as stated in the plaint.

8. In their submissions filed on 10<sup>th</sup> May, 2018 the defendants contend that the loan agreement did not state which amount was to be charged interest and penalty. This is an attempt to repudiate the agreement entered between them and the Plaintiff. The terms of the loan agreement are clear and this court cannot rewrite the contract for the parties.

9. The defendants also assert that the Plaintiff did not provide a statement of the accounts. This is a civil matter in which the standard of proof is on a balance of probabilities. It was upon the defendants to demonstrate that the Plaintiff was not entitled to the amount claimed. They have not done so.

10. The defendants took issue with the testimony of PW1 Raphael Kuria and submitted that since his statement was not filed together with the plaint it did not meet the requirements of Order 11 of the Civil Procedure Rules, 2010. It is indeed true that PW1's witness statement was filed on 4<sup>th</sup> April, 2018. However, the defendants have not specifically pointed out the rule breached by this late filing. It is noted that PW1 specified his credentials in court when he testified. He also produced exhibits that were filed together with the plaint. There is no reason why the evidence of PW1 should be rejected.

11. The issue of the locus of the Plaintiff to institute the proceedings was not taken up by the defendants in their submissions. According to the statement of defence it is stated the Plaintiff being a trust was not capable of instituting proceedings on its own but could only do so through the names of the individual registered trustees. As already stated the defendants did not expand on this issue in their submissions and neither did the Plaintiff take up the matter. I therefore conclude that this line of defence was abandoned and I need not make any comment on the same.

12. In short, I find that the Plaintiff has approved that it is owed the sum of Kshs. 7,231,916.80 by the defendants. Judgement is therefore entered against the defendants jointly and severally in the sum of Kshs. 7,231,916.80 plus interest at court rates from the date of judgement till payment in full. The Plaintiff will also have the costs of the suit from the defendants.

**Dated, signed and delivered at Malindi this 26<sup>th</sup> day of July, 2018.**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**