

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Suit 655 of 2007

**EDWARD MWANIKI GATUKU1ST PLAINTIFF
HELLEN NYAMBURA MWANIKI 2ND PLAINTIFF**

VERSUS

SASANET INVESTMENT COOPERATIVE SOCIETY DEFENDANT

JUDGMENT

1. The 1st and the 2nd plaintiffs are husband and wife. They have sued the defendant for a sum of Ksh.5.600,000/- made up of a deposit of Ksh.2 million which the plaintiffs deposited with the defendant as an investment for a period of 12 months with effect from 29th January 2007. According to an agreement entered into between the plaintiffs and the defendants that sum was supposed to mature on 29th January 2008 as a result of which the plaintiffs were to earn a profit of Ksh.3.600,000/- together with the entire deposit of 2 million.
2. In their statement of defence, the defendant denied having entered into an agreement with the plaintiff dated 29th January 2007 and also denied having ever received the sum of Ksh.2 million from the plaintiffs and also challenged the jurisdiction of this court and contended that the matter should be heard before the Cooperative Tribunal or be determined by an Arbitrator. The plaintiff in their reply to the defence denied having been members of the society and contended that they only invested their money as per the written agreement.
3. Both plaintiffs gave evidence in support of their claim. They gave evidence on how they were introduced to the defendant by a lady called **Janet Karanja**. The plaintiffs visited the premises of the defendant which was located at Teleposta. They met the chairman of the defendant who explained to them how the defendant company invests money with the ICT. The investment was not to be less than 500,000/- which was supposed to earn interest at the rate of 15% calculated monthly per year. The plaintiffs were convinced that was a good investment.
4. The plaintiffs went home and decided to invest a sum of Ksh.2 million. They were also charged a sum of Ksh.8,000/- for administrative costs. They signed an agreement dated 29th January 2008, which was also signed by **Michael Chege** as the Chairman of the defendant. It is clearly indicated in that agreement that they were investing the sum of 2 million for a period of one year and they were supposed to earn a profit on the 29th January 2008 of the sum of Ksh.3.600,000. They obtained bankers cheque in favor of the defendant for the said sum of 2million.
5. Sometimes in August 2008, they saw a notice in the newspapers by the defendant notifying the members of the defendant that they had suspended their operations for the period of 45 days. The plaintiffs visited the premises of the defendant several times and tried to make telephone contacts. The telephone calls went unanswered and they were not allowed access to the offices of the defendant which were closed down. The plaintiffs filed this suit to recover the principal sum and the profits which

they were supposed to earn as per the agreement as well as the costs and interest of the sum.

6. The defendant did not offer any evidence although they had been notified of the hearing date. Thus the plaintiffs' evidence is not controverted. The plaintiffs testified and produced documents to support their claim. These documents are the agreement which was signed between them and the defendant, the copy of the banker's cheque that was paid to the defendant and a copy of the Daily Nation of 26th August 2007 in which the defendant published a notice informing their members that they had suspended the operations for 45 days.
7. Going by the plaintiff's evidence, I am satisfied that the plaintiffs have established their claim on a balance of probability. The plaintiffs invested their money to earn a profit but they have lost everything. Accordingly judgment is entered for the plaintiffs as prayed in the plaint. The plaintiffs are also entitled to interest at court rates together with the costs of this suit.

JUDGMENT READ AND SIGNED ON 26TH MARCH 2010 AT NAIROBI.

M.K. KOOME
JUDGE