



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**Civil Case 14 of 2005**

**FRANCIS MUCHEMI JOEL.....1<sup>ST</sup> PLAINTIFF**

**JOSEPH GATHUNI WAHU.....2<sup>ND</sup> PLAINTIFF**

**JAMES MURIITHI KAMA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**MWEA RICE FARMERS SACCO SOCIETY LIMITED.....DEFENDANT**

**RULING**

The several persons who filed this suit sought declaration against the defendants and an order that the defendant do allow the plaintiffs access their accounts. The relationship between plaintiffs and defendants is contractual like that exists between bank and its customers. At the time the plaint was filed the plaintiffs held accounts with the defendant. However the Defendant refused to give access to the plaintiffs to their accounts. The defendant has admitted that in the year 2004 its banking services collapsed and society ceased to operate. However they deny and demand proof of the plaintiff's claims. Time has passed since the filing of this suit. On 21/12/2007 the plaintiff's have filed a notice of motion seeking judgment under order 35 rule 1 CPC as prayed in the amended plaint. On the ground the defendant has started re-paying the debt. The application is supported by affidavit of Francis Muchemi Joel with annexures showing that some of the plaintiff's have received payments from the defendant. In reply the Defendant denies these facts and states that there is a defence in this case and the plaintiffs should proof their case.

It is to be noted here that the plaintiffs/Applicants are not claiming their debt. They want to be allowed to access their accounts as in banking business. It is also to be noted that in the statement of defence the Defendant admitted being unable to operate the plaintiffs accounts saying at paragraph 4 thereof "all depositors money and shares went under" This can only mean that the defendant had no money in the accounts of the plaintiffs. And it is for the Defendant to give an account of the plaintiffs' money held in their books before the collapse of the bank.

Upon perusal of the pleadings and affidavits filed by the parties it is clear that the Defendant has not defence to the plaintiffs claim. There is admission that the plaintiffs deposits "went under" The amount was misappropriated by previous management. In the circumstances I find that the Applicants are entitled to judgment there being no triable issues disclosed by the Defendant defence. I allow the application and grant orders as prayed. The applicants are awarded the costs of this suit together with this application.

It is also ordered that the Defendants shall be at liberty to liquidate the decretal amount by installments acceptable to the plaintiffs.

It is so ordered.

Dated this 3<sup>rd</sup> April, 2008.

**J. N. KHAMINWA**

**JUDGE**

**3/4/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Ms A, Thungu for Applicant**

**N/A for Kahiga**

Ruling read in open court.

**J. N. KHAMINWA**

**JUDGE**