



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

**AT NAIROBI (MILIMANI COMMERCIAL  
COURTS)**

**Civil Case 455 of 2003**

**ELIMU SAVINGS AND CREDIT CO-OPERATIVE SOCIETY.....PLAINTIFF**

**VERSUS**

**TEACHERS SERVICE COMMISSION .....DEFENDANT**

**JUDGEMENT**

What is before me is the Notice of Motion under Order 35 Rule 1(1) (a) of the Civil Procedure Rules and Section 35(1) and (2) of the Co-operative Societies (Amendment Act 2004). The Motion is dated 13<sup>th</sup> March, 2007 and seeks that summary judgement be entered against the defendant as prayed in the plaint and costs be provided for.

The case of the plaintiff is that the defendant deducted monies from the plaintiff's members who are its employees, however it has failed and/or refused to remit the same to the plaintiff as required. The amount claimed is for a sum of Kshs.4,726,589/= which remain unpaid. It is alleged that the defendant's defence is aimed at buying time and does not disclose any triable issue to await a full hearing. And that it is in the interest of justice to enter judgement against the defendant.

The applicant's contention is that the defendant's refusal to remit the deductions is causing extensive hardships to the plaintiff and its members. The defendant is also accused of promising to pay without any fruitful results and in the premises the defendant's failure to remit members deductions has caused financial constraints to the plaintiff's members who cannot access their funds through either loan or dividends.

The defendant did not file any reply to the application either by way of a replying affidavit or grounds of objection. The application therefore remained uncontested and the statements of facts contained in the supporting affidavit remained uncontroverted for all purposes.

No doubt the defendant is under an obligation to deduct membership dues at source from the plaintiff's members salary. And to forward and/or remit the same to the plaintiff for the servicing of the said member's membership contribution and/or loan repayments. If the defendant cannot comply with its statutory obligation, the plaintiff's members would be greatly jeopardized. It would be difficult for the plaintiff to discharge its mandate and authority towards its members if no contribution is received from the defendant.

There is no dispute that the defendant is the employer of all the plaintiff's members or would be members. The employer is mandated in law to deduct member's contribution to the employee's co-operative society for all persons who are members to the co-operative society. The giant Teachers Service Commission has the powers to adhere to its mandate in so far as the deduction of dues from members is concerned. It is the responsibility of the defendant to forward all monies deducted from the members of the plaintiff. If no money is received from the defendant, the plaintiff would be unable to discharge its mandate and responsibility towards its vast members. Under Section 35 of the Co-operative Societies Act the defendant is required to make deductions from the plaintiff's members in its employment and remit and/or forward the same to the plaintiff for use and availability to its members. In my view failure to remit sums deducted from the members of the plaintiff is in flagrant contravention of Section 35 of the Co-operative societies Act. I am therefore persuaded that the claim of the plaintiff lies

in law and ought to be paid by the defendant.

It is my position that the plaintiff would not be in a position to discharge its duties and responsibilities towards its members without sufficient financial base. The base cannot be built without the availability of the funds deducted from its members. The members can only be entitled to loan and other facilities when all monies collected from members are within reach of the plaintiff. The money cannot be used if it is held by the employer of the plaintiff's members for no justification.

I therefore enter summary judgement in favour of the plaintiff against the defendant in the sum of Kshs.4,726,589/= plus interest at the rate of 3% per month from the date of judgement until payment in full. I make no order as to costs in order to preserve the cordial relationship between the plaintiff and defendant. The defendant being a public institution should be spared of any payment of costs. For today the application is allowed with no orders as to costs.

Dated and delivered at Nairobi this 7<sup>th</sup> day of June, 2007.

**M. A. WARSAME**

**JUDGE**

**Court:** Judgement delivered in the presence of Mr. Kulecho for the plaintiff/applicant and no appearance for the defendant in open court.

**M. A. WARSAME**

**JUDGE**

**7/6/2007**