



REPUBLIC OF KENYA



**IG Sacco Limited Kakamega v Endende (Civil Appeal E191 of 2023)
[2025] KEHC 13185 (KLR) (24 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13185 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E191 OF 2023
S MBUNGI, J
SEPTEMBER 24, 2025**

BETWEEN

IG SACCO LIMITED KAKAMEGA APPELLANT

AND

WYCLIFFE AFANDI ENDENDE RESPONDENT

(Being an Appeal arising from the Decision of Hon. Chairperson B. Kimemia, Deputy Chairperson J. Mwastsama, Member F.Lutoiya and Member P.Aol of the Co-Operative Tribunal in Kakamega CO- Operative tribunal claim No. 126 of 2020 Delivered on 30th November, 2023)

JUDGMENT

Background

1. This appeal arises from the judgment of the Co-operative Tribunal at Kakamega delivered on 30th November 2023 in Co-operative Tribunal Claim No. 126 of 2020, Wycliffe Afandi Endende v IG Sacco Ltd, Kakamega & 7 Others.
2. The dispute traces back to Co-operative Tribunal Claim No. 126 of 2020 at Kakamega, in which the Claimant, Wycliffe Afandi Endende, filed an Amended Statement of Claim dated 27th February 2020 against IG Sacco Ltd, Kakamega (1st Respondent), together with the 2nd to 8th Respondents.
3. The Claimant averred that he was a member of the 1st Respondent Sacco, as were the 2nd to 8th Respondents.
4. He contended that although he had taken a loan of Kshs. 1,998,000/- from the 1st Respondent in 2015 and fully repaid it. The 1st Respondent unlawfully and fraudulently loaded fictitious guarantor attachments on his loan account between 2017 and 2019, amounting to Kshs. 14,430,246.72/=. He maintained that he had never guaranteed any loans taken by the 2nd to 8th Respondents.



5. The Claimant pleaded fraud and illegality on the part of all the Respondents and prayed for, inter alia, a declaration that the guarantor attachments of Kshs. 14,430,246.72/= were fictitious and unlawful, a declaration that he had no outstanding loan with the Sacco, payment of unpaid dividends, an order compelling the 2nd to 8th Respondents to settle their respective loans, and costs of the claim.
6. The 2nd to 8th Respondents failed to enter an appearance or file any defense, whereupon interlocutory judgment was entered against them on 29th May 2023. The 1st Respondent filed an Amended Statement of Defence dated 25th April 2022, contending that the Claimant had indeed guaranteed the loans in question and that by a letter dated 2nd January 2019, he confirmed having guaranteed the same.
7. At the hearing, the Claimant adopted his witness statement and documents, insisting that he had not guaranteed the loans attributed to him and that the Sacco's records were fraudulent.
8. The 1st Respondent called its Credit Officer, Joseph Churchill, who testified in support of its defence and produced documents purporting to show the Claimant's guarantee of the loans.
9. Upon evaluation of the evidence, the Tribunal found that the Claimant had proved his case on a balance of probabilities, holding that the guarantor forms relied upon by the Sacco bore inconsistencies and were susceptible to abuse and forgery. The Tribunal struck out the fictitious guarantor attachments, ordered the payment of unpaid dividends to the Claimant, and awarded him costs and interest.
10. Being dissatisfied with the said judgment, the Appellant lodged a Memorandum of Appeal dated 29th December 2023 setting forth the following grounds of appeal:
 - i. That the learned Chairperson, Deputy Chairperson, and Members erred in law and in fact in failing to find that the Respondent was a guarantor for loans taken by the 2nd to 8th Respondents.
 - ii. That the learned Chairperson, Deputy Chairperson, and Members erred in law and in fact in failing to find that the Appellant did not act fraudulently in relying on duly filed forms presented by the 2nd to 8th Respondents.
 - iii. That the learned Chairperson, Deputy Chairperson, and Members erred in law and in fact in failing to find that the Respondent had a duty to repay the 2nd to 8th Respondents' loans in default.
 - iv. That the learned Chairperson, Deputy Chairperson, and Members erred in law and in fact in finding that sufficient notice was not issued to the Respondent before his shares were attached.
 - v. That the learned Chairperson, Deputy Chairperson, and Members erred in law and in fact in finding that the loans loaded on the Respondent's account were fictitious and ought to be struck out.
 - vi. That the learned Chairperson, Deputy Chairperson, and Members erred in law and in fact in failing to hold the 2nd to 8th Respondents liable and in shifting the entire blame to the Appellant.
 - vii. That the learned Chairperson, Deputy Chairperson, and Members erred in law and in fact in making an order that unpaid dividends be paid to the Respondent.
 - viii. That the learned Chairperson, Deputy Chairperson, and Members erred in law and in fact by occasioning a miscarriage of justice.



11. For the foregoing reasons, the Appellant prays that this appeal be allowed, the judgment of the Co-operative Tribunal delivered on 30th November 2023 be set aside and/or varied, and that the Respondent be condemned to pay the costs of both the appeal and the claim at the Tribunal.

Claimant's Case

12. The Claimant, Wycliff Afandi Endende, testified as CW1. He stated that he is a driver guide residing in Sabatia. He adopted his witness statement dated 19th July 2021, together with the documents listed in the amended list dated 19th January 2021, as his evidence in chief.
13. The Claimant's documentary evidence comprised a demand letter (Claimant's Exhibit 1) and a statement of accounts dated 8th October 2019 covering pages 1–4 (Claimant's Exhibit 2). He prayed for the release of his shares and dividends, costs of the claim, and for the reliefs sought in the amended claim.
14. On cross-examination, the Claimant testified that he took a loan on 30th June 2015, which was the only loan he ever obtained from the Sacco. He maintained that he personally filled out the loan application form together with his guarantors. He denied knowledge of the 2nd to 8th Respondents and could not recall his member number. He further stated that several people bear the name "Afandi," including one Eunice Afandi, a relative of his who is also a Respondent.
15. He denied being aware that he had guaranteed loans for person's unknown to him, and reiterated that Eunice did not inform him of any loans.

Respondent's Case

16. Joseph Churchill, a credit manager at IG Sacco, who testified as RW1. He adopted his witness statement dated 7th August 2019 and the bundle of documents dated 16th October 2020 as his evidence in chief.
17. In cross-examination, RW1 admitted that he was not a handwriting expert and could not authenticate signatures appearing on the documents. He acknowledged that some documents in the bundle were undated or unsigned. He further admitted that there were no documents showing that the Claimant's shares had actually been attached, and that although the Sacco wrote a letter to the Claimant, it had not been produced in evidence. He also stated that he did not know the whereabouts of the 2nd to 8th Respondents.
18. On re-examination, RW1 maintained that the loan applications were supported by identification documents and pays lips of the borrowers. He stated that the loans were taken in 2015, and the guarantors' details were verified as members before approval. He asserted that the Claimant was informed at the time of the attachment of his shares.
19. In response to questions from the Tribunal members, RW1 testified that the Sacco usually sends text messages to guarantors once their shares are attached, and does not wait for confirmation unless a dispute arises. He confirmed that the Sacco holds the names, ID numbers, and telephone contacts of the guarantor
20. The appeal was canvassed by way of written submissions.

Appellant's Submissions

21. The Appellant submitted that the Tribunal erred in holding that the loans loaded on the Respondent's account were illegal and in directing payment of dividends. It was argued that the Respondent was a



- member of the Sacco, a qualification for guarantorship, and that he had, in fact, guaranteed the loans advanced to the 2nd to 8th Respondents.
22. It was submitted that the Respondent sought to avoid liability by alleging fraud on the part of the Appellant. The particulars included failure to authenticate signatures and failure to exercise due diligence.
 23. However, the Respondent admitted in cross-examination that the 6th Respondent was his relative and never lodged any police complaint regarding the alleged fraud.
 24. The Appellant's case was that the procedure required a loanee to seek guarantors and return the duly signed forms. Thereafter, text messages were sent to guarantors notifying them of their obligation, and it was at that stage that objections could be raised. The Respondent never denied receiving such notifications and therefore entered into a binding contract of guarantee.
 25. Reliance was placed on *The Law of Guarantees* by Geraldine Andrews & Richard Millet (2nd Edition, p.156), which defines a contract of guarantee as an accessory contract under which a surety undertakes to ensure performance of the principal obligation, liability arising only upon default.
 26. The Appellant further cited *Arthi Highway Developers v West End Butchery Ltd & 6 Others* [2015] eKLR, where the Court held that fraud must be specifically pleaded and strictly proved on a higher standard than a balance of probabilities. It was argued that the Respondent did not prove the pleaded fraud. Section 107 of the *Evidence Act* was also invoked on the burden of proof.
 27. The Appellant submitted that it was impractical to expect the Sacco to authenticate every guarantor's signature and that only a qualified document examiner could verify forgery. The Respondent did not involve the Directorate of Criminal Investigations or call expert evidence; yet, the Tribunal itself assumed the role of a document examiner and found the signatures to be different, which was beyond its mandate.
 28. It was argued that the Appellant acted within its by-laws by sending messages to guarantors, and it was the Respondent who failed to exercise due diligence by not objecting when notified. The Respondent only raised complaints years later, after defaults had occurred, despite being aware of the Sacco procedures as a member and borrower.
 29. It was further submitted that the Appellant could not be held liable for acts it did not participate in, since loan forms were completed by loanees, and the Respondent's personal details could only have been supplied by him. The Tribunal therefore erred in shifting the burden of proving fraud to the Appellant.
 30. The Appellant maintained that the Respondent was a guarantor and remained liable for recovery of defaulted loans. The failure to issue a timely notice could not absolve him. It was further submitted that the Tribunal ought to have directed the Respondent to recover his deducted shares from the 2nd to 8th Respondents as civil debts.
 31. On dividends, it was argued that since the Respondent's shares had been attached to offset the loans, there were no shares upon which dividends could accrue. His claim for dividends was therefore unsustainable.
 32. The Appellant accordingly prayed that the appeal be allowed, the judgment of the Tribunal set aside, and the Respondent be held liable as guarantor.
 33. The respondents did not put in their submissions



Analysis and Determination

34. I have considered the record of appeal. This is a first appeal. The Court of Appeal for East Africa set out the duty of the first appellate court in *Selle v Associated Motor Boat Co.* [1968] EA 123. It was stated as follows:

I accept counsel for the respondent's proposition that this court is not necessarily bound to accept the findings of fact by the court below. An appeal to this court from a trial by the High Court is by way of retrial, and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself, and draw its own conclusions, though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular, this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence, or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally.

35. As provided under Section 81(1) of the *Co-operative Societies Act*, Cap 490, an appeal from the Tribunal lies to the High Court on matters of law or mixed law and fact.

36. The grounds of appeal can be consolidated into:-

- (i) Whether there was legally binding guarantee between the Respondent and the 2nd to 8th Respondents in the tribunal case.
- (ii) If there was, was the attachment of the Respondents shares and Dividends procedurally done by the appellant.
- (iii) Whether the Respondent was entitled to be paid back the unpaid dividends attached by the appellant when it enforced the guarantee.
- (iv) Whether the loans loaded on the respondents account by the appellant were fictitious.
- (v) Did the Appellant Act fraudulently in relying on the dully filed forms presented by the 2nd to 8th Respondent showing that the Respondent had guaranteed loans advanced to 2nd to 8th Respondent.

Determination issue No. 1

Whether the Respondent was a guarantor.

37. The Appellant contends that the Respondent guaranteed the loans of the 2nd to 8th Respondents, as evidenced by loan forms and a letter dated 2nd January 2019 allegedly confirming his guarantorship.

38. The Respondent denied ever guaranting 2nd to 8th Respondent any loan and even denied ever knowing anyone of them apart from Eunice Kabeyeka Afandi who is a relative but avered that she never approached him to guarantee her any loan.

39. The Tribunal held that the Respondent was not liable for the loan forms were suspect for the contents and the signatures might have been forged.

40. I have analysed the evidence of record and submissions filed by the parties.



41. A guarantor's liability arises upon clear evidence of a guarantee agreement and default by the principal debtor.
42. A contract of guarantee is defined in the law of guarantee by Geraldine Andrews and Richard Millet 2nd Edition, at page 156 as follows.

"A contract of guarantee is an accessory contract, by which the surety undertakes to ensure that the principal performs the principal obligations. It has been described as a contract to indemnify the creditor upon the happening of a contingency namely the default of the Principal to perform the principal obligation. The surety is therefore under a secondary obligation which is dependent upon the default of the principal and which does not arise until that point."
43. From the record I have seen 4 loan forms and two replacement /or addition of guarantors forms
 - i. Abigael Andeso Ingati S/No. 25729
 - ii. Peter Madolio Serenge S/No. 33551
 - iii. Eunice Kabeyeka Afandi S/No. 36933
 - iv. Edgar Odali Ngoseywi S/No. 33932
 - v. Replacement and/or Additional guarantors proforma appendix Undated showing Wycliffe Afandi Andende submitted his names as an additional guarantor to Wycliffe Afandi Endende.
 - vi. Replacement and/or Additional guarantors proforma appendix dated 27.7.2015 showing that Wycliffe Afandi Endende submitted his names as an additional guarantor to Mr. Mark M. Shihanji.
44. I have looked at loan application form S/No. 25729 at the guarantors part the Respondent name is inserted as No. 3, the space meant for the shares committed as a guarantee is blank and his P.O Box is given as xx Nairobi.
45. I have also looked at loan Application form S/ No. 33551 the Respondent name is inserted as No. 6, the space meant for the shares committed as a guarantee is blank and his P.O Box is given as xxxxx Nairobi
46. I have also looked at loan Application form S/ No. 36933 the Respondent name is inserted as No. 2 the space meant for the shares committed as a guarantee is blank and is P.O Box is given as xxxxx.
47. I have also looked at loan Application form S/ No. 33932 the Respondent name is inserted as No. 2 the space meant for the shares committed as a guarantee is blank and his P.O Box is given as xx Maragoli.
48. On the replacement forms, the undated one gives address as xx Maragoli the form is not signed, and the dated one gives address as xx Kisumu someone signed on his behalf.
49. I have also looked at the signatures purportedly signed by the Respondent, they differ in all forms.
50. The Appellant faulted the tribunal for finding that the signatures were forgeries for the tribunal was not handwriting and Signature expert so they had no business in comparing the signatures.
51. Section 76 of the *Evidence Act* allows a court faced with such a scenario to make comparisons of signatures placed before it so the tribunal did not err in doing the comparison. It provides:-
 - (1) In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal, admitted or proved to



the satisfaction of the court to have been written or made by that person, may be compared by a witness or by the court with the one which is to be proved, although that signature, writing or seal has not been produced or proved for any other purpose.

- (2) The court may direct any person present in court to write any words or figures for the purpose of enabling the court to compare the words or figures so written with any words or figures alleged to have been written by such person.
52. The absence of the amounts of shares committed, the different postal addresses given in the forms, the different Signatures in the forms, failure to date all the forms, failure to fill all spaces required to be filled in forms, most importantly there is a form where the respondent purportedly gave his name as his own guarantor and the unexplained erasures noted in the spaces where the name of the respondent is stated in all the forms obviously makes the integrity of the contents in the forms questionable.
53. It is the Respondents case that he never signed the forms, ordinarily the legal burden of proof falls on him. Section 107,108 and 109 *Evidence Act* provides:-
107. Burden of proof.
 - (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
 - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
 108. Incidence of burden. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
 109. Proof of particular fact. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
54. The moment the Respondent averred that he never guaranteed the loans the evidential burden of proof shifted to the Appellant. Section 112 of *Evidence Act* provides:-
- In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.
55. The Supreme Court in the case of Presidential Election Petition No. 1 of 2017 between Raila Amolo Odinga & Another – v-V IEBC & 2 Others, (2017) eKLR in distinguishing the legal and evidentiary burden of proof held as follows:-“Though the legal and evidential burden of establishing the facts and contentions which will support a party’s case is static and remains constant through a trial with the plaintiff, however, depending on the effectiveness with which he or she discharges this, the evidential burden keeps shifting and its position at any time is determined by answering the question as to who would lose if no further evidence were introduced. It follows therefore that once the Court is satisfied that the petitioner has adduced sufficient evidence to warrant impugning an election, if not controverted, then the evidentiary burden shifts to the respondent, in most cases the electoral body, to adduce evidence rebutting that assertion and demonstrating that there was compliance with the law or, if the ground is one of irregularities, that they did not affect the results of the election. In other words, while the petitioner bears an evidentiary burden to adduce ‘factual’ evidence to prove his/her allegations of breach, then the burden shifts and it behoves the respondent to adduce evidence to prove compliance with the law.”



56. The court in the case of Ahmed Mohammed Noor – v- Abdi Aziz Osman, [2019] eKLR, similarly held as follows:-“For clarity, the legal burden of proof in a case is always static and rests on the Claimant throughout the trial. It is only the evidential burden of proof which may shift to the Defendant depending on the nature and effect of evidence adduced by the Claimant.”
57. The Appellant did not discharge this burden, the appellant should have called the officials who approved the loans , further the letter dated 2nd January, 2019 through which the respondent allegedly confirmed that he guarantee the loans was not produced as exhibit by the appellant.
58. From the above analysis I cannot fault the finding by the tribunal that the forms appeared a forgery and that is why they arrived to a decision the appellant had not guaranteed the loans.

Issue for determination number 2,

59. Having found that there was no legally binding guarantee whether the attachment was procedural or not, its neither here nor there, the appellant case is that a text message was sent to the respondent notifying him of the guarantee , the respondent denied having received such notification. The Appellant did not produce any prove.
60. In absence of any consent given by the Respondent or prove of notification , the appellant had no basis in attaching the Respondents shares or dividends.
61. In the case of Kenya Commercial Bank Ltd v Osebe [1982] KLR 321 The court held:- The guarantor must be aware of the obligation, typically through signed forms or notification.
62. In Trust Bank Ltd v Nazir Haji & Another [2000] eKLR, the Court held that a guarantor cannot be held liable without proof of a valid contract of guarantee, including consent and due process.
63. Therefore even if the guarantee was valid without requisite notification, the appellant could not lawfully proceed with attachment.

Issue for determination number 3

64. Since there was no valid guarantee it means the attachment of the respondents shares and dividends was unlawful, therefore he is entitled to a refund.

Issue for determination number 4.

65. Whether the loans loaded on the respondents account were fictitious , on this issue I will not say the loans were fictitious for there was no evidence adduced by the respondent to show that the 2nd to 8th Respondents in the tribunal case did not apply for the loans also again there is not evidence to show that the 1st Respondent never advanced the loans to the 2nd and 8th Respondents. The tribunal did not render itself on this issue though raised by the claimant.
66. The bottom line is that even if the loans were fictitious or not, there was no valid guarantee which could have been the basis for the attachment of the Respondents shares and dividends. The 2nd to 8th Respondents never participated in the trial in the tribunal so whether they applied for the loans or not, this court cannot tell.

Issue for determination number 5.

67. Allegations of fraud are quasi criminal in nature , therefore the standard of prove is higher than that on the balance of probabilities but lower than beyond a reasonable doubt.



68. The Court of Appeal in the case of Kuria Kiarie & 2 others v Sammy Magera [2018] eKLR, the court held:-

“The law is clear, and we take it from the case of Vijay Morjaria vs Nansingh Madhusingh Darbar & Another [2000] eKLR, where Tunoi, JA. (as he then was) stated as follows: “It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.

69. Further, the same court in the case of Kinyanjui Kamau vs George Kamau [2015] eKLR expressed itself as follows;

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo vs Ndolo (2008) 1 KLR (G & F) 742 wherein the Court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the respondent was certainly not one beyond a reasonable doubt as in criminal cases...” ...In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

70. Similarly, in its earlier decision in Urmilla w/o Mahendra Shah v Barclays Bank International Ltd and Another [1979] KLR 76; [1976-80] 1 KLR 1168, the Court of Appeal stated that:-“Allegations of fraud must be strictly proved: although the standard of proof may not be so heavy as to require proof beyond a reasonable doubt, something more than a mere balance of probabilities is required. A higher standard of proof is required to establish such findings, proportionate to the gravity of the offence concerned.”

71. I have looked at the evidence of record, I have not seen any evidence to show that the Appellant colluded with the 2nd to 8th Respondents to falsify the contents of the loan forms which showed the Respondent had guaranteed the loans. It is possible that the Appellant acted on forms presented by the 2nd to 8th Respondents and failed to exercise due diligence in verifying whether the contents were true or not. Failure to exercise due diligence cannot be said to be an act of fraud. For an act to be said to be fraudulent, the intent to deceive should be apparent.

72. From the foregoing, and for the reasons stated in the analysis herein above, I find that the tribunal was right to find that the loans loaded on the Respondents loan account were unlawfully loaded therefore liable for being struck out from the Respondents loan account, this also means that the respondent is entitled to be paid all unpaid dividends which remained unpaid as a result of the illegal loading.

73. The Appellant appeal is devoid of merit and the same is dismissed entirely for lack of merit. The Tribunals judgment dated 30.11.2023 is upheld.

74. The Respondent shall have the Cost of this appeal.

75. Right of Appeal 30 days.



DATED SIGNED, and DELIVERED in open court at KAKAMEGA THIS 24TH day OF SEPTEMBER, 2025.

S.N. MBUNGI

JUDGE

In The Presence of;

C/A: Elizabeth Angong'a

Parties Advocates absent though aware of ruling date.

Court Assistant to upload the ruling to CTS.

