



**Kiboino v Boresha Sacco Society Limited (Constitutional Petition
12 of 2022) [2023] KEHC 19907 (KLR) (13 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 19907 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CONSTITUTIONAL PETITION 12 OF 2022**

HK CHEMITEI, J

JULY 13, 2023

BETWEEN

NANCY KIBOINO PETITIONER

AND

BORESHA SACCO SOCIETY LIMITED RESPONDENT

JUDGMENT

1. In her petition dated 17th June 2022 the petitioner prayed for several orders or declarations from this court including; that the respondent refusal to release the details of a guarantor by the name of Anne Watito Gichohi violated her constitutional rights, or order compelling the respondent to release documentation in regard to the loan she took in July 2021 and the details of the above mentioned guarantor and that it be compelled to pay the sum of kshs 273000 owed to the petitioner.
2. The petition is supported by the sworn affidavit of the applicant together with the annexures thereto.
3. The respondent vide the replying affidavit sworn by Jacob Mengich dated 5th October 2022 has opposed the said petition.
4. The petitioner filed a further affidavit dated 4th November 2022 and the said Jacob Mengich responded by a further affidavit sworn on 23rd November 2022.
5. The court thereafter directed the parties to file submissions so as to dispose this petition which they have complied.
6. The issues herein are pretty easy to discern and in my view they were simply taken out of proportion by the parties. It is a pure misunderstanding between the two of them.
7. From the affidavit evidence the petitioner was a member of the respondent Sacco. She applied for a loan t facility totalling kshs 1,100,000 and she was advanced the same less kshs273000 which was to



- be held as a security and to be refunded after the repayment in full. The paper trail on record shows as much including the completion of the loan.
8. When she completed and asked for the refund, the petitioner was advised that she had guaranteed one Anne Watito Gichohi and therefore she could not be refunded. This led to frantic efforts including correspondences from the petitioner's counsel to the respondent. It appears that the matter escalated till this suit was filed.
 9. The response by the respondent indicated that the sms which was sent to the petitioner was erroneous as there was no evidence that the petitioner had guaranteed anybody. The respondent then went ahead to pay the said amount and as at the time of filing the petition and the two sets of affidavits it had paid the petitioner the said deposit.
 10. The petitioner while acknowledging this fact argues that it was only paid after undergoing untold mental anguish including withdrawing her membership from the respondent. In the premises she still prayed that the orders be declared against the respondent.
 11. She went on to submit that the payments were done 6 days after she filed the suit. The respondent on the other hand argued that the refund was done before she filed the suit.
 12. Taking the totality of the issues herein I do not think respectfully that this is a matter that qualifies to be termed constitutional. This is purely a matter between a Corporative and its member. I have looked at the attached by laws and regulations and it clearly explains how to resolve their dispute. All that the petitioner would have done is to invoke those provisions including a reference to the Cooperative Tribunal in line with Section 76 thereof and which is generally mandated to arbitrate any dispute like the one at hand.
 13. Further merely quoting the Articles of *the Constitution* does not make a matter constitutional. In any case and as stated above the Cooperative *Societies Act* No 12 of 1997(revised in 2017) clearly gives a road map in such issues and or disputes.
 14. Although the petitioner was frustrated, I have looked at the correspondence indicating that she guaranteed the said Anne Wahito Gichohi No.19714 loan and it goes on to indicate that "if in dispute contact loans office via 0711898242". There is no evidence that the petitioner did so before filing the petition. Had she done so perhaps she would have found it unnecessary to file this suit.
 15. This court is satisfied with the explanation by the respondent in regard to the false sms sent to the petitioner.
 16. Taking the totality of the above facts, the evidence on record that the matter has been settled, this petition is therefore marked as settle and each party shall meet its own costs.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 13TH DAY OF JULY 2023.

H K CHEMITEI

JUDGE

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