



Mwai v United Nations Savings & Credit Cooperative Society Limited & another (Constitutional Petition 404 of 2014) [2024] KEHC 15821 (KLR) (Constitutional and Human Rights) (6 December 2024) (Judgment)

Neutral citation: [2024] KEHC 15821 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
CONSTITUTIONAL PETITION 404 OF 2014**

**EC MWITA, J
DECEMBER 6, 2024**

BETWEEN

ANGELA MWAI PETITIONER

AND

**UNITED NATIONS SAVINGS & CREDIT COOPERATIVE SOCIETY
LIMITED 1ST RESPONDENT**

COMMISSIONER OF CO-OPERATIVE DEVELOPMENT 2ND RESPONDENT

JUDGMENT

1. The petitioner filed this petition which was later amended claiming that the respondents had violated her rights and fundamental freedoms guaranteed under articles 27(1), 36(1) and (2), 40 and 47 of [the constitution](#) and sought declarations and orders to that effect, including an order for compensation.
2. The petitioner is a member of the 1st respondent, a saving and credit co-operative society registered under the provisions of the [Co-operative Societies Act](#). In April 2011, the petitioner took a loan of Kshs. 13.5 million from the 1st respondent to be paid within 72 months and was guaranteed by 5 guarantors. In December 2013, she informed the 1st respondent of her intention to withdraw her membership and requested to offset her loan of Kshs. 8,150,533.86 with her deposit which at the time was Kshs. 8,257,794.25.
3. The petitioner also informed the 1st respondent's Chief Executive Officer regarding her intention and sent copy of the letter by to the 1st respondent's chairperson informing that her request was yet to be responded to.



4. On 27th February 2014, the petitioner again submitted another formal request to withdraw her membership but got no response. On 5th May 2014 she wrote a reminder inquiring about the status of her request. Through email of the same day, the chairman informed the petitioner that her request could not be finalized because of an inquiry report of 28th March 2014 which had been adopted by the 1st respondent's members the Annual General Meeting.
5. The petitioner took the view, that the report was actuated by malice, vendetta and unfairness and its contents did not affect her rights as a member. According to the petitioner the report was not correct in purporting to blame her for loss of money as the persons to whom the money was paid had admitted to being capable of refunding it and indeed did make part payment of almost Kshs. 6 million and indeed the debtor only stopped paying after her removal and other board members from the board. The 1st respondent's attempt to blame her and threaten to surcharge her was unlawful and violated her right to property.
6. In any case, the asserted they challenged the decision to surcharge them in Judicial Review Application Number 400 of 2014 and that decision was quashed for failing to meet the impartiality test. The failure to process her request to withdraw affected her for her withdrawal as interest on her loan continues to accrue. She is also not able to access or withdraw her savings from the 1st respondent.
7. The petitioner stated that she again requested to withdraw her membership and use her deposits of Kshs. 9,112, 794.25 to offset her loan of Kshs. 3,462,406. 80 and her guarantor to be released, but without success. She applied for a loan of Kshs. 2,000,000 in September 2015 which was declined on the basis that her indemnity of Kshs. 5 million had been recalled following the Special General Meeting of 23rd August 2015 and only qualified for a loan of Kshs. 562,424.04 and each time she sought to withdraw her membership she was informed verbally of a pending indemnity which has never been recalled. She was also denied access to her money in the 1st respondent.

1st respondent's case

8. The 1st respondent opposed the petition through a replying affidavit sworn by Moses Amolo, The 1st respondent contended that the petitioner was not only its member but also a director of the board until 24th May 2013.
9. The petitioner applied for and was given a loan of Kshs. 13.5 million to be repaid within 60 months but was repaid outside the period. The 1st respondent stated that it was not possible to offset the petitioner's loan with her deposit as this was the by-laws 21 and Regulations
10. The petitioner's email of 6th December 2013 was addressed to the manager and not the CEO. The petitioner did not submit a formal request in the prescribed form that was capable of being acted upon. The 1st respondent maintained that the petitioner submitted a proper withdrawal form on 27th February 2014 which was promptly responded.
11. The petitioner's application could not be processed because the indemnity she had executed as a board member had been recalled because while serving as the chairperson of the Business Development Committee, the petitioner breached her duty of care by causing the 1st respondent to irregularly pay Kshs. 32, 416,033 to IRES/ Fintax Group Ltd/ Fintax Consultants resulting in loss of that money together with interest. Kshs. 6 million was refunded leaving a balance of Kshs. 27,416,033 thus, the reason why the indemnity was recalled. Due to the outstanding Kshs. 27, 416,033 the petitioner could neither be allowed to withdraw from 1st respondent nor have her deposits paid to her.



12. The 1st respondent asserted that it was the 2nd respondent who by dint of section 58 of the *Co-operative Societies Act* initiated an inquiry into its (1st respondent's) financial condition and surcharged the petitioner and others for the lost amount.
13. The petitioner's loan application of 1st September 2015 was processed and a lower amount approved and she was given feedback through email of 2nd September 2015 that the loan application of Kshs. 4 million had been declined due to maximum loan amount available to her in respect to her outstanding loan.
14. The 1st respondent denied violating the petitioner's rights. She had access to her 3 accounts; any information sought was given; her loan requests are processed and funds availed to her and she had all along accessed all her interest on deposits and dividends on share capital earnings. Even after filing this petition the petitioner still had accessed to loans.
15. According to the 1st respondent, the other directors just like the petitioner, under similar circumstances were formally asked to comply with the terms of the indemnity they had executed. The petitioner has yet to comply with the requisite conditions for processing withdrawal of membership under the law. There has thus, been no violation of constitutional provisions or fundamental rights and freedoms alleged.

2nd respondent's case

16. The 2nd respondent, the commissioner of cooperative development did not file a response to the petition and did not take part in the proceedings.

Oral Evidence

17. The petitioner testified as PW1 and told the court that she still enjoys the facilities of the 1st respondent but at a limited level. She took a loan in 2011 which was guaranteed by members. One of her guarantors, Felistas Ondari, opted out but the 1st respondent declined to release her on account of the guarantee. She (petitioner) then applied to withdraw from the 1st respondent because her savings surpassed her liabilities but application was declined on the basis of a complaint against her during her tenure as a director. The request to withdraw had been declined on several occasions which has made her incur interests which would have been avoided. She is also being victimized yet she was not the only director and she is not aware of the issue of indemnity of Kshs. 5million.
18. The petitioner however, admitted that she was conversant with the by—laws; that she was a director of the 1st respondent at one time and that she also served as chairperson of the Business Development Committee together with two other members. She further admitted that the letter she wrote for withdrawal was not in the prescribed form and that she received a response to her letter of withdrawal dated 27th February 2014 on the same date.
19. The petitioner further admitted that when she applied to withdraw she had not cleared the loan she had taken in 2011 which was contrary to by- laws 28 (c); that a decision to recall indemnity by all the directors who approved payment of the money was made in an Special General Meeting on 24th May 2013 and that she did not dispute the recall of the indemnity or challenge it.
20. The petitioner admitted that she was chair of the Business Development Committee and that the 1st respondent paid Kshs. 32, 416,033 to IRES during her tenure, though the letter authorizing the transfer of funds was signed on her behalf by someone else. She admitted that the 1st respondent recalled the money but only Kshs. 5 million was returned leaving a balance of Kshs. 27 million still outstanding.



21. According to the petitioner, the Business Development Committee only made a recommendation to the Board which was accepted and acted upon by the Board, thus the payment of Kshs. 32 million was the board's decision on request by the members.
22. The petitioner also admitted she still had access to loans, dividends and interest on her shares. Her grievance was however that the loans she accessed were less than the Kshs. 5 million held by the 1st respondent.
23. The 1st respondent called Moses Amolo (Mr. Amolo) as its witness. He testified that 1st respondent keeps members savings and gives credit to members. Membership is voluntary and a member may join and exit at will on application.
24. The 1st respondent has a board which transacts through 4 committee, namely, credit, audit, Business Development and Education and Finance and Administration committees. The petitioner was a board member and a chair of the Business Development committee.
25. Mr. Amolo testified that at the time the petitioner wanted to exit she had a loan of Kshs 13.5 million which was still running. Although the petitioner had deposits with the 1st respondent, she could not use the deposits to clear the loan. She cleared the loan on 29th July 2016 while the application to cease membership was made on 27th February 2014. She had also signed an indemnity which had been recalled by the 1st respondent.
26. Mr. Amolo further testified that the 1st respondent lost over 32 million when the petitioner was a board member and chair of the Business Development and Education Committees. only Kshs. 5 million was recovered leaving Kshs. 27 million outstanding. The Business Development and Education Committees comprised of the petitioner, Richard Opiyo and James Ndali and a marketing executive who represented the CEO. The petitioner was at the heart of the loss since it was their committee caused the 1st respondent lose Kshs. 32 million.
27. As a result of the loss, the 1st respondent recalled the indemnity signed by the board members including the petitioner. The petitioner has not raised any issue with the cooperative tribunal regarding the recall of the indemnity. An inquiry carried out on the matter by the Commissioner recommended surcharging of the 7 members but this was challenged in court. The court found that the 1st respondent had lost money but quashed the surcharge on basis that it was premature. The commissioner of cooperatives instituted a second inquiry on 7th February 2017 and issued summons to the petitioner but the petitioner declined to participate and has not attended the inquiry to date.
28. Mr. Amolo denied that the petitioner had been discriminated against and maintained that she receives dividends and interest and continues to get loans even after filing this petition. All board members who were to be surcharged had their indemnity recalled and not the petitioner alone.
29. In cross examination, Mr. Amolo told court that as at 31st January 2020, the petitioner's deposits with the 1st respondent stood at Kshs. 11,539,782.30 which has since increased but that deposit is different from savings. Unlike savings deposits cannot be withdrawn.
30. Mr. Amolo confirmed that the petitioner had applied for a loan, but they could not touch the Kshs. 5 million in the deposit account which had Kshs. 11,539,782.30. Although a member can borrow three times the amounts of deposits, due to the indemnity of Kshs. 5 million, the petitioner can only borrow three times of the balance of the deposits less the Kshs. 5 million since by- Law 15(i) allows the 1st respondent to freeze the indemnity amount until the same is fully repaid or recovered. However, despite the freeze on the Kshs. 5 million, the petitioner earns interest on the deposit.



Petitioner's submissions

31. The petitioner argued through written submissions that the 1st respondent's decision to bar her from accessing the entire amount in her account was discriminatory; that by dint of by-law 80(1) she was entitled to borrow up to three times her deposits which stood at Kshs. 11 million, which means she was able to borrow Kshs. 33 million. However, she was barred from withdrawing or borrowing against Kshs. 5 million out of the total amount she had.
32. The petitioner further submitted that the 1st respondent surcharged some of its directors and exonerated the CEO a decision that was also quashed through the Judicial Review application. This was discriminatory and she placed reliance on article 27 of *the Constitution*, by-laws 6.2, 51 and 80(i) of the 1st respondent, sections 28(6) of the *Co-operative Societies Act* and the decisions in Jacqueline Okeyo Manani & 5 others v Attorney General & another [2018] eKLR and Peter K Waweru v R [2006] eKLR.
33. The petitioner placed further reliance on article 40 of *the constitution*, section 21 of the *Co-operative Societies Act* and Halsbury's Laws of England, 4th Edition (Re-issue) Vol. 8(2) at paragraph 265 for the contention that the 1st respondent infringed on and threatens to violate her right to property.
34. The petitioner argued that contrary to the 1st respondent's allegations that money was lost during her tenure as director and that she did not exercise due diligence, upon being informed of the recall IRES expressed willingness to return the money and did refund Kshs. 5million. Therefore, by denying her access to the Kshs. 5 million the 1st respondent was in effect infringing on her right to property.
35. The petitioner argued that the 1st respondent's refusal to act on her application to withdrawal was without proper reasons and violated her right to fair administrative action. The decision was unreasonable for being based on an inquiry that is yet to crystallize. The petitioner relied on article 47 of *the Constitution*, and the decisions in Civil appeal No. 52 of 2014 Judicial Service Commissioner v Hon. Mr. Justice Mbalu Mutava & another [2015] eKLR and Kenya Human Rights Commission v Non-Governmental Organizations Co-ordination Board [2016] eKLR and Hassan Adan Bare v Kenya Revenue Authority & another [2021] eKLR.
36. The petitioner again relied on article 36 of *the Constitution*; by-law 22 of the 1st respondent and the decision in Kenya Scientific Research International Technical and Allied Institutions Workers Union v Kenya Agricultural Research Institute & another [2013] eKLR for the contention that by refusing to act on her application to withdraw, the 1st respondent violated her freedom to associate and dissociate.
37. The implication of such inaction, the petitioner argued, is that the 1st respondent continued charging interest on her loan which would not have been the case. The petitioner urged the court to find that she was wrongfully charged for any interest accruing in the loan from the date she expressed her interest to cease being a member of the 1st respondent.
38. The petitioner again relied on the decisions in Godfrey Julius Mbogori & another v Nairobi City County [2018] eKLR and Michael Rubia v Attorney General [2020] eKLR and urged the court to award her Kshs. 7,000,000 for violation of her rights.

1st respondent's submissions

39. The 1st respondent argued through written submissions that its decisions were lawful, justified and constitutional. The 1st respondent maintained that when the petitioner joined as a member, she agreed to be bound by its by-laws and the provisions of the Cooperative *Societies Act*. Under sections 21 and 22 of the Act, the petitioner had a right to attend, participate and vote on the decisions taken at all its



- meetings. She did not, however object to the resolutions passed on 28th March 2013 and 23rd August 2013 which adopted the inquiry report and recalled the affected board members' indemnities.
40. The 1st respondent submitted that under section 28(1) of the Act, the petitioner being a board member owed a higher duty of care above the rest of its members. She was required to conduct the affairs of the 1st respondent with prudence and the diligence of an ordinary businessperson and would be jointly and severally liable for any losses sustained through her actions that were contrary to the Act, rules, by laws or the directions of any general meeting of the 1st respondent.
 41. The 1st respondent argued that the CEO was not surcharged because he was not a board member. The petitioner had further failed to outline any of his actions that caused loss of money or that was contrary to the law.
 42. The 1st respondent maintained that while the petitioner claimed that she was victimized as other Sacco board members were not blamed, the other two board members, (Washington Wanjau and Pauline Nderi) did not participate in any activity that led to the loss of money.
 43. The 1st respondent cited section 58 of the Act and argued that the appointment of Kennedy B. Otachi and Peter Wanjohi by the 2nd respondent to inquire into its affairs and the adoption of the inquiry report was done in accordance with the law. This is because Resolution No. 4 of the 1st respondent's Special General Meeting held on 24th May 2013 permitted the Board to pursue an inquiry and present a report to the members in the event that the missing funds were not recovered within 90.
 44. Regarding withdrawal, the 1st respondent argued that the petitioner applied to withdraw membership on 27th February 2014 while the inquiry report was adopted by the Annual General Meeting on 28th March 2014. The inquiry report was quashed on 8th June 2015, but had been in force and binding on the petitioner. The petitioner's applications were also responded to expeditiously.
 45. The 1st respondent took the position that the petitioner had misrepresented the finding in the JR case by implying that she was exonerated of any wrong doing yet the judgment did not deal with merits; did not involve it and is not binding on this court.
 46. The 1st respondent further relied on section 27(1) of the Act and argued that as a board member, the petitioner knew and ought to have known that it was only during General meetings that the meeting considered and approved estimates of income and expenditure for the ensuing year or part thereof. By paying out Kshs. 32, 416,033 whilst the same had not been presented to the members for approval was in breach of the law.
 47. The 1st respondent placed reliance on rule 29(1) of the Cooperative Societies Rules 2004 and section 112 of the *Evidence Act*, for the argument that the petitioner was estopped from denying that she signed the indemnity form. It acted lawfully in withholding the Kshs. 5 million which the membership had approved to be applicable in respect of the Indemnity.
 48. The 1st respondent again cited by laws 3, 15, 20, 21, 28, 42, 45, 50, 51, 52, 56, 66, 67 and 79 to assert that the petitioner violated these provisions because being the chairperson she failed to conduct due diligence in the matter leading to the loss of Kshs. 27,413,033.
 49. The 1st respondent urged that as long as the money remains unrefunded the affected board members cannot withdraw their membership. Further, that it has lien over the petitioner's property to the extent of among others the Kshs. 5 million in accordance with the indemnity; a requirement that has been visited upon all the board member who played a role in the loss of the money. If the petitioner's application to withdraw was allowed she would remove herself out of its reach to hold her accountable for the loss of the money.



50. The 1st respondent contended therefore, that it was justified in taking the steps which did not amount to constitutional breaches of the petitioner's rights as alleged.
51. The 1st respondent placed reliance on the decisions in *Wakenya Pamoja Sacco Society Limited v Stephen Ogamba* [2008] eKLR; *Daniel Kaloki Kioko & Another v Willy Muasya Kioko* [2004] eKLR; *Ol'Kalou Farmers Sacco Savings & Credit Co-operative Society & Another v Pius Njoroge* [2006] eKLR and *Githunguri Dairy Farmers Co-operative Society Ltd vs Attorney General & 2 others* (2016) eKLR. The court was urged to dismiss the petition with costs.

Determination

52. I have considered the petition, responses and arguments by parties. I have also considered the decisions relied on by both sides. The issue for determination is whether the petitioner's rights were violated.
53. The petitioner is a member of the 1st respondent, a co-operative society and at one time she served as a director and chairperson of one of the 1st respondent's committees. The petitioner applied to withdraw her membership from the 1st respondent but her application was declined. She then filed this petition contending that her rights, including the right to association and non-discrimination had been violated.
54. The 1st respondent denied violating the petitioner's rights and argued that first; the request to withdraw had not been made in the manner required; second, that at the time, the petitioner had an outstanding loan which could not allow her to withdraw without clearing it and third; the petitioner had signed an indemnity in favour of the 1st respondent and therefore she could not withdraw before clearing any outstanding issues.

Violations

55. The core issue in this petition as I understand it based on the averments in the pleadings as well as testimonies from both sides, is whether the 1st respondent's decision not to allow the petitioner to withdraw her membership was violative of the petitioner's rights.
56. As is clear from the facts of this petition, the 1st respondent is a co-operative society and the petitioner is its member. The 1st respondent operates under certain rules and regulations which govern the conduct of co-operative societies. Membership is voluntary but once a member, one is bound by the rules and regulations governing the 1st respondent. As a co-operative society, the 1st respondent is also subject to the Co-operatives *Societies Act* as it relates to *the constitution*, registration and regulation of co-operative societies. Withdrawal of one's membership from a co-operative society is to be done in accordance with the regulations and procedures allowed by the laws governing co-operative societies.
57. The 1st respondent argued which was not controverted, that the petitioner's request to withdraw was not made as required. The request made on 27th February 2014 was also promptly responded to on the same day. The petitioner was also informed that an application to withdraw had to be done through a form and not by letter as the petitioner had done thus, answering why the petitioner's application to withdraw could not be processed.
58. The 1st respondent also argued that the petitioner had an outstanding loan this she could not be allowed withdraw her membership until the loan had been repaid. The petitioner's argument that she had sufficient deposits or savings to take care of the outstanding loan was also contested by the 1st respondent to the effect that the petitioner had executed an indemnity of Kshs. 5 million in favour of the 1st respondent while she served as an official and due to loss of money during the petitioner's tenure,



- the indemnity had been recalled leaving the petitioner with insufficient funds to clear the outstanding loan.
59. The averments in the petition, affidavits as well as oral testimonies revealed that there were quite a number of outstanding issues between the petitioner and the 1st respondent. At one time the 2nd respondent who did not take part in these proceedings, ordered an inquiry into the conduct of the 1st respondent's affairs. The inquiry concluded that the 1st respondent had lost money and a resolution was passed that some of the 1st respondent's officials including the petitioner, be surcharged. The petitioner challenged that decision through a Judicial Review Application and it was quashed. The issue of loss of money however remained unresolved.
60. This court was not asked to determine the veracity of the claims between the petitioner and the 1st respondent on the loss of money or otherwise. The issue here is on violation of fundamental rights and freedoms. Article 22(1) of *the constitution* grants every person the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or threatened.
61. Once that is done, the court then exercises its jurisdiction under article 23(1) as read with article 165, to hear and determine any claims of denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights and redress the violations where proved. In this respect, the petitioner had to establish to the satisfaction of the court that her rights and fundamental freedoms had been infringed, denied or threatened for the court to respond appropriately and redress the violations.- See *Tinyefuze v Attorney General of Uganda* (Constitutional Petition No. 1 of 1996) [1997] UGCC 3, that "if a petitioner succeeds in establishing breach of a fundamental right, he is entitled to the relief in exercise of constitutional jurisdiction as a matter of course."
62. As already alluded to, the issue of withdrawal of membership is governed by rules, regulations and established procedures within the 1st respondent. A member who wishes to withdraw has to comply with those requirements which are binding on him or her upon joining the 1st respondent. That is a contractual arrangement between the parties whose terms have to be complied with.
63. This court has not been called upon to inquire into the constitutionality or validity of any of such rules or regulations and would not be quick to adjudge the 1st respondent as having violated the petitioner's rights where the petitioner had not complied with those rules or regulations.
64. The 1st respondent also argued that the petitioner had outstanding loans at the time she wanted to withdraw and she still had loans when the petition was filed. The loans were only cleared much later during the pendency of this petition. The petitioner was bound by the rules governing withdrawal of membership and as such, this court will not interfere in the arrangements between the petitioner and the 1st respondent. Requiring a member to comply with rules and regulation of an organisation is not prima facie a violation of one's rights and fundamental freedoms unless it is clearly demonstrated to be a violation and only if the rules are challenged and found to be inconsistent with constitutional or the law.

Discrimination

65. The petitioner again argued that she was subjected to discrimination in violation of article 27 of *the constitution*. According to the petitioner, she was differentially treated and victimised yet she was not the only director in that other directors were not asked of the indemnity. In the petitioner's view, other directors were not treated the way she was which was differential treatment and discriminatory.



66. The 1st respondent denied discriminating against the petitioner in any way. The 1st respondent maintained that all members including former officials were treated equally and that although the petitioner was not allowed to withdraw, she continued to access loans and earned interest from her shares. The 1st respondent argued that as long as the lost money remained unrefunded the affected board members could not be allowed to withdraw their membership which means all board members were being treated equally.
67. Article 27 of *the constitution* prohibits all forms of discrimination. Article 27(1) is clear that every person is equal before the law and has the right to equal protection and equal benefit of the law. Article 27 requires that all persons be treated equally and the law must be applied equally to all persons without distinction. All persons must also have full and equal enjoyment of all rights and fundamental freedoms.
68. *The constitution* further prohibits direct or indirect discrimination on any grounds, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
69. In Peter K. Waweru v Republic [2006] eKLR, the court correctly captured the meaning of discrimination thus-
- [A]ffording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin or residence or other local connection, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.
70. In Jacqueline Okeyo Manani & 5 others v Attorney General & another [2018] eKLR, this court stated:
- [28]. [D]iscrimination simply put, is any distinction, exclusion or preference made on the basis of differences to persons or group of persons based on such considerations as race, colour, sex, religious beliefs political persuasion or any such attributes that has real or potential effect of nullifying or impairing equality of opportunity or treatment between two persons or groups.
- [29.] *The Constitution* advocates for non-discrimination as a fundamental right which guarantees that people in equal circumstances be treated or dealt with equally both in law and practice without unreasonable distinction or differentiation. It must however be borne in mind that it is not every distinction or differentiation in treatment that amounts to discrimination. Discrimination as seen from the definitions, will be deemed to arise where equal classes of people are subjected to different treatment, without objective or reasonable justification or proportionality between the aim sought and the means employed to achieve that aim.
71. In Nyarangi & 3 Others v Attorney General [2008] KLR, the court held that “discrimination that is forbidden by *the constitution* involves an element of un favourable bias. Thus, firstly un favourable bias must be shown by the complainant; and secondly, the bias must be based on the grounds set in the constitutional definition of the word “discriminatory” in section 82 of *the Constitution*.”



72. In this petition, the petitioner's argument is that she was subjected to differential treatment from other directors which was discriminatory. The 1st respondent however argued that all those directors who were involved were not allowed to withdraw membership unless the money that was lost was recovered.
73. For the allegation of discrimination to succeed, the petitioner had to show through demonstrable evidence that she had been subjected to differential treatment from others in her situation in violation of *the constitution*. She had to show that she was not subjected to equal protection and equal benefit of the law, that she was not equally treated like her colleagues and that the treatment she was subjected to violated the tenets in article 27 of *the constitution*.
74. In this petition, the petitioner merely alleged discrimination which the 1st respondent denied. The petitioner did not lead evidence of any probative value on the issue and did not call those she said were treated differently from her to demonstrate discrimination. It was not enough for the petitioner to assert that she was discriminated against. She had an obligation to go an extra mile and adduce credible evidence to prove discrimination. This, she failed to do.

Conclusion

75. Having considered the petition, the response and arguments by the parties, the conclusion I come to, is that the petitioner has failed to prove any of the violations she pleaded. The petitioner did not prove that the 1st respondent's decision not to allow her to withdraw violated *the constitution* or the law. The allegation of discrimination was also not proved.

Disposal

The petition is declined and dismissed. As the dispute was by a member against the institution she is a member of and costs being discretionary, each party shall bear own costs.

DATED AND DELIVERED AT NAIROBI THIS 6TH DAY OF DECEMBER 2024.

E C MWITA

JUDGE

