



REPUBLIC OF KENYA

IN THE COOPERATIVE TRIBUNAL AT KISUMU
TRIBUNAL CASE NO. 145 OF 2018

SHEME OMOKE.....CLAIMANT

VERSUS

CHAIRMAN KICOMWAMBITRA SAVING AND CREDIT

CO-OPERATIVE SOCIETY LTDRESPONDENT

JUDGMENT

Vide the Statement of Claim dated 23.4.2018, the Claimant has moved the Tribunal seeking for refund of savings amounting to **Kshs.77,459.80/=** with an interest of **20% per annum** until payment in full. He also wants an order compelling the Respondent to refund shares amount to **Kshs.100,000/=**. He also wants to be paid costs of the suit.

It is the Claimant's Case that at the material time Prior to the claim, he was a member of the Respondent. That over time, he contributed shares amounting to **Kshs.100,000/=** and savings amounting to **Kshs.77,459.80/=**. That he wants the Respondents to be compelled to refund the said shares and savings.

The Claimant appeared before us to testify on **9.10.2019**. During his testimony, he reiterated the averments above. He further produced his documents contained in his list and bundle of documents dated **20.6.2018**. **Exhibit (1)** is a bundle of receipts confirming purchase of shares. **Exhibit No. 2** is a bundle of receipts confirming deposits.

Respondent's Case

The Respondent has opposed the suit by filing a statement of Response dated **30.4.2018**. It also called two (2) witnesses to testify. **DW-1 Mr. Wilfred Giseve** testified on **6.12.2020** while **DW-2 Musa Gekone** testified on **10.2.2020**.

Vide the statement of Response, the Respondent has denied the Claimant's computation of shares and instead avers that there is a percentage limit of shares each member can have. That shares are bought by members as a legitimate sustainability to the Sacco and that as per the by-laws, there is a limit on the number of shares to be bought. That the said shares are only bought ones.

During his testimony, **DW-1** stated that in January, 2014, the claimant started depositing 10 shares at the rate of **1000 per market**. That he contributed for **100** markets at the same rate of **Kshs.1000** amounting to **Kshs.100,000/=**.

That at the end of the year, dividends are computed as a percentage of the contribution.

That for the Claimant's contribution of **Kshs.100,000/=**, his dividends became **Kshs.5000/=** thus bringing his total contribution to **Kshs.105,000/=**. That he was to be paid this figure that is **Kshs.105,000/=**.

That they had a problem with too many defaulters. That the Claimant and all the other members were to be paid in December, 2014, but due to liquidity problems, the same was done on 15.3.2015. That all the members were paid except the Claimant who declined to receive his payment.

On his part, **DW-2** stated that in total, the claimant is entitled to a sum of **Kshs.130,500/=**. That he prays the Tribunal to be guided by by-laws 17 and 18 when deciding on figures.

Written Submissions

Upon conclusion of hearing on 10.2.2020, we directed parties to file their respective written submissions. The Claimant filed his on **3.3.2020**. As at the date of writing this judgment, the Respondent had not filed its submissions.

Issues for determination

We have framed the following issues for determination:

- (a) *Whether the Respondent is indebted to the claimant and if so, to what extent;*
- (b) *Who should meet the cost of the suit?*

Indebtedness

The Claimant's Case is one for refund of shares of **Kshs.100,000/=** and savings amounting to **Kshs.77,459.80** plus interest at the rate of 20%.

On its part, the Respondent has disputed the Claimants mode of Computation of his benefits. According to it, the Respondent only owes the Claimant a sum of **Kshs.130,500/=** broken down as follows:- Savings

- (a) *Ten (10) shares at the rate of Kshs.100 per shares = 1000shares*
- (b) *1000 shares x100 markets =100,000/=*
- (c) *5% interest x100,000= Kshs.5000/=*
- (d) *100,000+5000= Kshs.105,000/=*

Shares

On shares, the Respondent computed as follows:-

$$\text{Kshs.16,000}/100 \times 12 = \text{Kshs.1920}/=$$

$$160 \times 12 = \text{Kshs.1920}$$

$$\text{Kshs. 1920} \times 4 = 7,680/=$$

$$\text{Kshs. 16000} + 1920 = \text{Kshs.17,920.}$$

$$\text{Kshs.17,920} + 7680 = \text{Kshs.25,500}/=$$

$$\text{TOTAL KSHS.130,500}/=$$

We have considered the material before us. Whilst the Claimant has given a figure of **Kshs.100,000** as outstanding shares, the evidence before us show that the same was contribution towards deposit and not shares. We thus find as such.

As regards the claim for savings of **Kshs.77,459.80/=**, we have perused the documents produced by the Claimant as well as his evidence and fail to find any proving the said figure. We accordingly find that the said figure is not proved.

As regards the Claimant's total benefits, we have considered the material placed before us by the parties and find that the mode of computation adopted by the Claimant reflects the true benefits of the Claimant.

We do not find any prove of the Respondents justification to apply a penalty deduction of **Kshs.42,624/=**.

Conclusion

The upshot of the foregoing is that we enter judgment against the Respondents for the sum of **Kshs.130,500/=** plus interest and costs at courts rates.

Judgment dated and delivered in line with the directions issued by the Hon. The Chief Justice on 15.3.2020 this **14th** day of **May** 2020.

Prepared by **Hon. B.Kimemia Chairman, Hon. F. Terer Deputy Chairman, P. Gichuki Member.**

With consent of the parties, the final orders to be delivered by email, as accordance to the prevailing measures during the covid-19.

Hon. B. Kimemia Chairman Signed 14.5.2020

Hon. F. Terer Deputy Chairman Signed 14.5.2020

