

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

CIVIL APPEAL NO. 9 OF 2017.

CATHERINE KUTETE LUSENO.....APPELLANT

VERSUS.

BUNGOMA TEACHERS SACCO LTD.....RESPONDENT

RULING.

This is applicant's application dated 16.10.2017 under Order 40 rule 1,2,3, Order 51 rule 1 of Civil Procedure Rules. Section 1A, A and 3A of the Civil Procedure Act seeking;

a) **THAT** a temporary injunction do issue restraining the Respondent from making any further deductions from the applicant's salary pending the hearing and determination of this application.

b) **THAT** a temporary injunction do issue restraining the Respondent from making any further deductions from the applicant's salary pending the hearing and determination of this appeal.

c) **THAT** the order be served upon the Teachers Service Commission applicant's employers for the purpose of compliance.

The grounds for the application is that the applicant was a claimant in

Co-op Tribunal Cause No. 9/2008 where she sued the Respondent for a refund of Kshs.720,000/= and other deductions made from her salary.

The tribunal by Judgment dated 21.3.3017 dismissed her claim and made a finding that she took a loan from the Respondent of Kshs.120,000/=. Aggrieved by that finding she presented this appeal. She now prays for the stay of execution pending the hearing of the appeal.

Mr. Kraido for the Respondent filed grounds of opposition. He urged the Court not to grant the prayers sought as the applicant has not satisfied the grounds of a temporary injunction and that she has not shown that Respondent has received excess money.

I have considered the application, grounds in support and opposition to the application. The applicant has filed this appeal which is due for hearing. It has not been demonstrated that if the Respondent recovered the money they will be unable to repay it if this appeal succeeds. The Respondent Bungoma Teachers SACCO Society Ltd being a Teachers Sacco will be able to refund any money deducted if the appeal application succeeds.

I therefore find no merit in this application and dismiss the same with costs.

Dated and Delivered at Bungoma this 7th day of November, 2018.

S.N. RIECHI

JUDGE