



REPUBLIC OF KENYA



**Marindich v Vogg & 11 others (Miscellaneous Application E102 of 2023)  
[2025] KEHC 15568 (KLR) (Commercial and Tax) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15568 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX**

**MISCELLANEOUS APPLICATION E102 OF 2023**

**AA VISRAM, J**

**OCTOBER 30, 2025**

**BETWEEN**

**EDISON KIBIWOT MARINDICH ..... APPLICANT**

**AND**

**CYRUS ONKEO VOGG ..... 1<sup>ST</sup> RESPONDENT**

**CHAI SACCO LIMITED & 10 OTHERS & 10 OTHERS & 10**

**OTHERS ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**Introduction and Background**

1. The Claimants, who were the Applicant's loan guarantors, sued both the Applicant and the 1<sup>st</sup> Respondent ("the Sacco") in Tribunal Case No. CTC 203 of 2019 seeking to recover Kshs. 2,301,335.28/-, which the Sacco had deducted from them after the Applicant defaulted on a Kshs. 3,900,000/- loan. On 31<sup>st</sup> October, 2022, the Co-operative Tribunal delivered a judgment stating that the Applicant must repay his "outstanding loans" to the Sacco by having his salary attached at his workplace, Kenya Pipeline Corporation.
2. By an application brought by way of a Notice of Motion dated 9<sup>th</sup> February, 2023, and under Article 159(2)(a)(d) &(e) and 165(6) & (7) of *the Constitution* and Section 1A, 1B 3, 3A, 6, 22, 25, 28 and 80 of the *Civil Procedure Act* and Order 22, rule 25 Order 51, rule 1, 3, 4, 10, 11, 13 and 16 of the Civil Procedure Rules, ("the Rules") the Applicant contends that the Tribunal made this order without any certified statements of account to prove what, if anything, was still owed. He asserts that the loan had already been fully repaid through his direct payments and the recoveries from the guarantors and therefore, the alleged outstanding loan arrears mentioned in the judgment do not exist.



3. The Applicant contends that after the judgment, the Sacco demanded Kshs. 5,674,898.84/- from his employer via a garnishee order and that the Claimants also independently obtained warrants of attachment and sale for Kshs. 5,417,754.00/- to recover the amount they lost, despite the Applicant only admitting to Kshs. 2,301,335.28/-.
4. The Applicant stated that he filed applications at the Tribunal seeking a review of the judgment and a stay of execution, but that the same were unsuccessful, and the auctioneers have since issued a proclamation notice, threatening to attach and sell his property. As such, the Applicant seeks to invoke the Court's supervisory powers, call for the Tribunal's record, and review its judgment, decree, and subsequent execution documents, and that the Sacco be ordered to produce certified statements of account to prove what loan arrears, if any, are truly owed. He further seeks declarations that the amounts claimed by the Sacco and the Claimants, namely, the sum of Kshs. 5,670,000/- and Kshs. 5,410,000/- are irregular and an abuse of court process; that the execution processes be declared illegal and unconstitutional for violating his rights; and that he be discharged from all liability. Alternatively, he seeks to be allowed to pay the admitted amount of Kshs. 2,301,335.28/- in monthly installments of Kshs. 20,000/- each month.
5. The Applicant's application is supported by his affidavits sworn on 9<sup>th</sup> February, 2023, and 2<sup>nd</sup> December, 2024, and it is opposed by the Sacco through the replying affidavit of its Loan Recovery Manager, Joshua Muthomi, sworn on 10<sup>th</sup> February, 2025, and the Notice of Preliminary Objection of even date. ("the Objection"). The Claimants also responded to the application through the replying affidavit of Cyrus Onkeo Vogg, sworn on 13<sup>th</sup> March, 2023. As per the court's direction, the Application and the Objection were to be heard together by way of written submissions, which have been duly filed and served, and to which I shall make relevant reference to as part of my analysis and determination below.

### **Analysis and determination**

6. I will deal with the Objection first. The same is premised on the grounds that this Court lacks the jurisdiction to hear the Applicant's application for review because the suit was instituted contrary to the principles set out under Order 45 and Order 46, rule 6 of the Rules; and further, on the basis that the Applicant failed to exhaust other available mechanisms prior to filing the present Application, rendering the suit fatally defective.
7. It submitted that a dissatisfied litigant ought to move the trial court/tribunal to review its own order/decree pursuant to the principles set out under Order 45, rule 1 of the Rules, and the alternative available is to appeal against the entire judgment and order of the Tribunal to this Court. Further, that the application is misconceived, economical in its facts, and aimed at derailing recovery efforts. In particular, the Applicant did not provide the Court with the full record and proceedings of the lower court.
8. In response, the Applicant submitted that his application is not a traditional review under Order 45, which must be lodged before the same court that passed the decree, instead, he moved the Court under Article 165(6) and (7) of *the Constitution*, which grants this Court supervisory jurisdiction over subordinate courts and bodies exercising quasi-judicial functions like the Cooperative Tribunal. He submitted that the Court is invited to invoke its supervisory powers to call for the entire file before the Tribunal, review the entire record, including the proceedings, warrants of attachment, and proclamation notice, with the view of rectifying records to avoid injustice. The Applicant argued that sufficient material has been placed before the court to demonstrate that his rights were violated by the Respondents, and that his application does not offend the sections of law quoted in the Objection.



9. I have considered the grounds set out in the Objection together with the rival submission of the parties. The Application is anchored in Article 165(6) & (7) of *the Constitution*. The same provides as follows:-

(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

(7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration.

10. The Court of Appeal in *Muzoka & another (Practicing as Omulama E. M. & Company Advocates) v Kirima & 4 others* [2025] KECA 1293 (KLR) elaborated on the purpose of such an application in the following terms: -

“....Article 165(6) and (7) endows the High Court and, by extension, the courts of equal status, with supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court. Essentially, the provisions empower superior courts to invoke their supervisory jurisdiction to ensure that subordinate courts remain within the bounds of their jurisdiction as by law prescribed and adhere to the fundamental principles of law. In cases where the subordinate court has assumed a jurisdiction which it does not have, the High Court and courts of equal status may exercise their supervisory jurisdiction to correct errors that pertain to the court’s jurisdiction.” (Emphasis mine)

11. Guided by the above, the supervisory jurisdiction of this Court to review a decision of a subordinate court is triggered by the occurrence of a certain events as stated above. The subordinate court has to have made a decision that is beyond the scope of its jurisdiction; and has failed to adhere to fundamental principles of law. In such a scenario, this Court may invoke its supervisory jurisdiction to correct such errors arising. The question therefore, is whether the Tribunal acted within its jurisdiction in respect of the matters complained of?

12. Section 76 of the *Co-operative Societies Act* (Chapter 490 of the Laws of Kenya) outlines the scope of the disputes that can be referred to the Tribunal as follows: -

76. Disputes

(1) If any dispute concerning the business of a co-operative society arises:—

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between members, past members or deceased members, and the society, its Committee or any officer of the society; or

(c) between the society and any other co-operative Society; it shall be referred to the Tribunal.

(2) A dispute for the purpose of this section shall include—

(a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or



- (b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not.
  - (c) a claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority. (Emphasis mine)
- 13. Based on a plain reading of the claim, it is clear that the dispute involved members of the Sacco against the Sacco, and that the Applicant is also a member of the Sacco. The dispute therefore falls squarely within the jurisdiction of the Tribunal. Moreover, the Applicant is not challenging the jurisdiction of the Tribunal, but rather, the orders issued by the Tribunal, terming the same as “vague” and complaining that the same do not specify the exact sum owed by the Applicant.
- 14. The challenge is based on the merits of the decision and therefore ought to have been the basis of its grounds of appeal and made pursuant to Section 81 of the *Co-operative Societies Act* rather than a review under Article 165(6) and (7) of *the Constitution*. Parliament, has provided for a specific statutory mechanism under the law to challenge such decisions of the Tribunal and the Applicant has not explained why or shown that the same is inadequate to address his grievance. Where a specific, adequate, and efficacious statutory remedy exists, such as an avenue for appeal, (which I have found exists in the present case), this Court ought not unnecessarily invoke its supervisory jurisdiction under Article 165(6) & (7) of *the Constitution*. Nor should the same be invoked as a substitute.
- 15. The jurisdiction sought to be invoked is residual and exceptional, not an alternative for a party who has failed to utilize his right of appeal. The Applicant ought to have first exhausted the various remedies available under statute before moving under this Court under provisions of *the Constitution* in what is a plain and obvious appeal on the merits of a commercial dispute.
- 16. While this Court has the power to supervise subordinate courts and tribunals to ensure they act within the law, the same relates to situations that involve question of jurisdiction of the subordinate court; procedural irregularity; or denial of natural justice that may not be adequately addressed under the appellate mechanism. This is not the case here.
- 17. Based on the reasons set out above, I find and hold that the Applicant has not demonstrated a sufficient basis upon which this Court ought to exercise its supervisory jurisdiction over the subordinate court in the manner prayed for by the Applicant.

### **Conclusion and Disposition**

- 18. The orders of this court are as follows:
  - a. Preliminary Objection dated 10<sup>th</sup> March, 2023, is hereby upheld with costs payable by the Applicant.
  - b. The Application dated 9<sup>th</sup> February, 2023, is without merit. The same is dismissed with costs to the Respondent.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025**

**ALEEM VISRAM, FCIArb**

**JUDGE**

In the presence of;



Court Assistant: Lispa

.....for Applicant

.....for 1<sup>st</sup> Respondent

.....for 2<sup>nd</sup> Respondents/Claimants

