

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E768 OF 2024

DANSON THEURI KING'ORI.....
APPELLANT

-VERSUS-

MUKI SAVINGS & CREDIT CO-OPERATIVE
SOCIETY LIMITED.....1ST RESPONDENT
SUPERFEW AUCTIONEERS.....2ND RESPONDENT

(Being an appeal from the Cooperative Tribunal at Nairobi in Tribunal case no. 57 of 2020 dated 23/5/2024)

JUDGMENT

- 1) The Appellant was the Claimant in Tribunal Case No. 57 of 2020 where he sued the respondents seeking the following remedies against the 1st and 2nd respondents;
 - i. A declaration that the respondents had no justifiable claim against the appellant***
 - ii. A declaration that the proclamation of attachment dated 7/2/2020 was wrongfully done and tortuous to the appellant***
 - iii. Damages for the tort of attachment.***
 - iv. Costs of the suit and interest.***

- 2) The Appellant's case in summary was that he was a member of the 1st respondent and holder of account no. 01xxxxxxxx89.
- 3) The Appellant entered into a loan agreement with the 1st respondent for ksh.500,000 on 11/11/2014 payable with an interest of Kshs.112,500/=.
- 4) The appellant faced difficulties repaying the loan leading to an outstanding balance of Kshs.173,961/= and an outstanding interest of Kshs.15,650 as at 2/2/2017.
- 5) The appellant stated that he repaid a total of Kshs.173,691 and an interest of Ksh.15,659.
- 6) The 1st respondent demanded arrears of kshs.198,994 and instructed the 2nd respondent to attach the appellant's property to recover the arrears and further that the 1st respondent failed to explain how the said arrears accrued.
- 7) The appellant further stated that as at January 2018, he owed the 1st respondent only ksh.82,000/=.
- 8) That on 23/4/2017, he visited offices of the 1st respondent and requested for a printout which showed that he owed the 1st

respondent kshs.195,433 .70 which he had repaid kshs.193,399.

- 9) On 4/8/2019, the appellant received a letter of intention to report him to the credit reference bureau.
- 10) He received a letter on 6/4/2020 demanding kshs.198,994.
- 11) The 1st respondent filed an amended statement of defence dated 16/3/2022 containing a counter-claim of ksh.198,994.
- 12) The 1st respondent's case was that the appellant was granted a loan of kshs.500,000 guaranteed by the appellant's five freshian cows.
- 13) Further that the loan was to be fully repaid by 1/12/2016 but the appellant defaulted and interest continued to accrue.
- 14) The 1st respondent's credit manager ZIPPORAH WAMBUI CHEGE who testified in the case said several demand letters were sent to the appellant but he failed to honour in obligations and the 1st respondent is now counterclaiming kshs. 198,994/=.
- 15) The tribunal found that he appellant did not prove his case and dismissed the appellant's case.

- 16) The tribunal found that the 1st respondent proved the counterclaim and entered judgment against the appellant in the sum of kshs.198,944.
- 17) Each party was directed to pay its own costs of the case.
- 18) The appellant has appealed against the said judgment to the following grounds;

- i. THAT the learned trial magistrate erred in law and in fact in failing to appreciate that, the 1st respondent counterclaim was not supported by any documentary and factual evidence to sufficiently demonstrates; the original loan contract was varied in accordance with the law.*
- ii. THAT the learned trial magistrate erred in law and in fact in disregarding the evidence tendered by the appellant and/or failing to consider the said evidence that showed the appellant had repaid his loan plus interest in full.*
- iii. THAT the learned trial magistrate erred in law and in fact by failing to appreciate the significance of the documentary evidence tendered in support of the appellant's case showing that; without the knowledge and consent of the appellant: the 1st respondent on 12/30/2016 changed the interest due from the contractual interest balance of ksh.15,650 as at 14/12/2016 to kshs.90,650.*

- iv. THAT the learned trial magistrate erred in law and in fact by failing to properly and exhaustively evaluate the evidence on record that showed the 1st respondent manager agreed and endorsed in writing on a copy of the statement of account the amount due plus interest was ksh.189,349/= which amount the appellant dully repaid in full.**
- v. THAT the learned trial magistrate erred in law and in fact in misapprehending the evidence on record which showed that; the appellant had no outstanding debt before the 1st respondent's systems were changed beginning 2017.**
- vi. THAT the learned trial magistrate erred in law and in fact by failing to properly and exhaustively evaluate the evidence on record that showed the 1st respondent arbitrarily and unlawfully altered the contractual terms by loading additional interest without service a notice to the appellant.**
- vii. THAT by basing her judgment on testimony of (1sr RW 1) without proof of said outstanding debt, the leaned magistrate erred in law and fact in arriving at conclusions and inference which are not supported by evidence and/or based on any documentation.**

19) The parties filed written submissions as follows; the appellant submitted that the 1st Respondent's Counterclaim

for Kshs. 198,994 was a mere compilation of numbers without any contractual anchor.

- 20) Crucially, that the 1st Respondent's List of Documents contained no policy document, addendum, or written notice that contractually authorized the levying of additional interest, penalties, or a debt collection fee.
- 21) The original Loan Agreement which stipulated a flat rate of interest, was the only contract between the parties. A lender cannot unilaterally mutate a contract to the detriment of a borrower. The Tribunal's finding that this unsubstantiated claim was uncontroverted is a profound error, as its very foundation was never proven.
- 22) The appellant submitted that the hand-endorsed statement of 2nd February 2017 was not a mere note; it was a binding accord between the parties, executed by the 1st Respondent's agent with apparent authority.
- 23) It varied the original terms and fixed the debt obligation at Kshs.189,349/-. The Tribunal's dismissal of this evidence, stating it cannot be imputed to mean an agreement is a

serious misdirection in law. The Appellant further proved payment towards this sum via a deposit slip.

- 24) The appellant argued that **Article 46(1)(a) of the Constitution of Kenya** provides that service providers should provide services of reasonable quality. A reasonable quality service is one that is transparent, consistent and fair.
- 25) Changing payment terms by the 1st Respondent after compliance by the Applicant was inherently unreasonable and exploitative. It also showed lack of transparency, consistency and fairness by the 1st Respondent, hence, an infringement to the Applicant's right to goods and services of reasonable quality.
- 26) In light of **Article 46(1)(b) of the Constitution of Kenya**, the 1st Respondent neither informed the Applicant of the claimed system change nor the interests they claimed to have accrued as a result of the system change.
- 27) The failure to inform the Applicant of this misled the Applicant about the true cost of credit. Additionally, the Applicant planned his finances based on the agreed rates, therefore, the imposition of new interest by the 1st

Respondent after payment, undermined the financial stability and predictability of the Applicant, thereby, infringing the Applicant's economic interests under **Article(46)(1)(c) of the Constitution of Kenya.**

- 28) The 1st respondent alternatively submitted that it is the duty of the borrower to lead the Court to the finding that he cleared all his loans for the Respondent and hence the court should give the declarations he is seeking in the Statement of Claim without which the Court ought to dismiss the suit.
- 29) The 1st respondent contended that the Appellant admitted in his pleadings that he had difficulties in repaying his loans.
- 30) That the Appellant has not given any tabulation on how he repaid his loans. The 1st Respondent filed the Appellant's Loan Account Statement which shows that the loan balance was Kshs. 173,691 and interest on loan Kshs.15,650/=.
- 31) The 1st Respondent stated that the Appellant made same payments and at the time of proclamation, the loan balance was Kshs.63,642,/= plus interest of Kshs. 15,650/= . At the time the Respondent engaged the Auctioneer, the Appellant had defaulted loan repayment for ten (10) months and the

loan continued to accrue interest on defaulted sum to Kshs. 75,000 making the total interest owing to Kshs. 90,650.

32) There was further penalty of Kshs. 3,500 and debt collector's charges of Kshs. 41,202. The total sum owing came to Kshs. 198,994/=.

33) It was therefore the 1st respondent's position that the appellant has not raised any issue which may prompt the court to interfere with the decision of the tribunal and consequently this appeal should be dismissed with costs.

34) The issues for determination in this appeal are as follows;

(i) Whether the Cooperative Tribunal erred in law and fact in finding that the 1st Respondent (Muki Sacco) proved its counterclaim for Kshs. 198,994/= against the Appellant.

(ii) Whether the Tribunal erred in law and fact in failing to find that the handwritten endorsement on the loan statement dated 2nd February 2017, prepared by the 1st Respondent's agent, constituted a binding variation of the original loan agreement.

(iii) Whether the Tribunal erred in its evaluation of the evidence by disregarding the Appellant's documentary evidence and submissions on the unilateral and unexplained variation of interest and charges by the 1st Respondent.

(iv) Whether the conduct of the 1st Respondent, in its computation and demand of the disputed sums, violated the Appellant's constitutional rights to reasonable services and information as a consumer.

35) This Court has carefully re-evaluated the entire Record of Appeal, the grounds raised, and the submissions by both parties.

36) The duty of this Court is to determine whether the conclusions of the Tribunal are supported by the evidence and based on sound legal principles.

37) The central contention is the validity of the debt and the subsequent enforcement actions by the 1st Respondent.

38) The Learned Tribunal members had the distinct advantage of hearing and observing the witnesses, including the Appellant and the 1st Respondent's Credit Manager.

- 39) Upon scrutiny, the Tribunal's finding that the Appellant did not discharge the burden of proving his claim for declaratory and tortious relief was correct.
- 40) Crucially, the Tribunal also found the 1st Respondent's counterclaim, supported by witness testimony and loan account statements, to be credible.
- 41) The Appellant's case rested heavily on a single handwritten notation on a statement of account dated 2nd February 2017.
- 42) The Tribunal was entitled, as it did, to find that this notation, absent any formal variation agreement or written acknowledgment from the 1st Respondent's authorized officials, did not conclusively extinguish the underlying loan obligation or permanently vary the contractual terms regarding accruing interest on arrears.
- 43) An appellate court will be slow to interfere with a trial court's findings of fact based on the credibility of witnesses, which is a preserve of the trial court.

- 44) On the issue of the counterclaim, the evidence on record indicates that the Appellant admitted to taking the loan and encountering repayment difficulties.
- 45) The 1st Respondent provided a coherent breakdown of how the outstanding sum of Kshs. 198,994/= was arrived at, comprising principal, contractual and default interest, a penalty, and debt collection charges.
- 46) In commercial loan contracts, it is an implied term that interest continues to accrue on unpaid principal, and lenders are entitled to recover reasonable costs incurred in enforcing the debt.
- 47) The Appellant did not provide a complete and reconciled account of his repayments that would conclusively demonstrate full settlement as per the original or a validly varied agreement.
- 48) He who alleges a fact must prove it. The Appellant's allegation of full repayment was not proved to the required standard.
- 49) Regarding the constitutional arguments on consumer rights under Article 46, these were not pleaded with specificity

before the Tribunal and cannot be raised as an afterthought to bolster a weak evidential case on appeal.

- 50) In any event, the relationship between a Sacco and its member is primarily contractual and regulated by its by-laws.
- 51) The 1st Respondent's act of sending demand letters and eventually instructing auctioneers after a prolonged default constitutes a lawful enforcement mechanism for a debt it genuinely believed was owed, as found by the Tribunal.
- 52) The grounds of appeal essentially invite this Court to substitute its own view of the evidence for that of the Tribunal.
- 53) This is not permissible where, as here, the trial court's findings are grounded on the evidence presented. No palpable error in law or fact has been shown that would justify setting aside the Tribunal's decision.
- 54) For the foregoing reasons, this Appeal lacks merit and is hereby dismissed in its entirety.

55) The judgment and decree of the Cooperative Tribunal in Tribunal Case No. 57 of 2020 delivered on 23rd May 2024 are hereby upheld.

56) However, since the Appellant was a member of the 1s Respondent, the Appellant to be allowed to continue repaying the decretal sum by monthly installments.

57) If the parties fail to agree on reasonable instalments, the case to be referred to mediation for an amicable solution in order to maintain the relationship.

58) Each party shall bear its own costs of this Appeal.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this **22nd day of January, 2026.**

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A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

ORIGINAL