



**Invest and Grow Sacco Society Limited v Wasike (Civil Appeal  
E005 of 2024) [2026] KEHC 3832 (KLR) (18 March 2026) (Judgment)**

Neutral citation: [2026] KEHC 3832 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CIVIL APPEAL E005 OF 2024  
S MBUNGI, J  
MARCH 18, 2026**

**BETWEEN**

**INVEST AND GROW SACCO SOCIETY LIMITED ..... APPELLANT**

**AND**

**GERALD NDOMBI WASIKE ..... RESPONDENT**

*(Being an appeal from the judgment of the Honourable Co- operative Tribunal by B. Kimemia- Chairperson, J. Mwatsama- Deputy Chairperson. F. Lutoiya- Member, and P. AOL – Member in Kakamega CTC NO. 373 OF 2022 delivered on 14th December 2023.)*

**JUDGMENT**

1. The respondent herein had filed a claim against the appellant and one Scheel Vodembeke Chamwada, stating that he was a member of the appellant’s Sacco since 1994 and that on or about 6<sup>th</sup> November 2018, he had received a message from the defendant’s Sacco informing him that he had guaranteed Scheel Vodembeke Chamwada, who had defaulted in his loan repayment, for which the applicant defaulted and that he owed them Kshs. 415,032/=
2. He denied the allegation, stating that his signature had been forged as the guarantor and further attaching that the claimant’s salary was unauthorised.
3. The matter was heard by the tribunal, and its judgment held that the appellant was wrong in attaching the respondent’s salaries even though the 2<sup>nd</sup> respondent held that he was not a guarantor; however, declined to award judgment, holding that the money deducted from the claimant had already been refunded and hence he suffered no loss.
4. The appellant, being aggrieved and dissatisfied with the decision of the tribunal delivered on 14<sup>th</sup> December 2023, preferred the appeal based on the following grounds of appeal;



- a. That the learned chairperson, deputy Chairperson and members erred in law and in fact in failing to find that the Respondent was a guarantor for loans taken by the 2<sup>nd</sup> Respondent in claim no 373 of 2022.
  - b. That the learned Chairperson, deputy Chairperson and Members erred in law and in fact in failing to find that the appellant did not act fraudulently in relying on duly filed forms presented by the 2<sup>nd</sup> respondent in claim no 373 of 2022.
  - c. That the learned Chairperson, Deputy Chairperson and Members erred in law and in fact in failing to find that the Respondent has a duty to repay the loan in default in claim no 373 of 2022.
  - d. That the learned chairperson, Deputy Chairperson and Members erred in law and in fact in finding that sufficient notice was not issued to the Respondent before his shares were attached.
  - e. That the learned Chairperson, Deputy Chairperson and Members erred in law and in fact in finding that the loans loaded on the Respondent were fictitious and ought to be struck out.
  - f. That the learned Chairperson, Deputy Chairperson and Members erred in law and in fact in ordering the Appellant to pay costs while they are victims of the Respondent's fraud.
  - g. That the learned Chairperson, Deputy Chairperson and members erred in law and in fact in allowing the Respondents herein and the 2<sup>nd</sup> Respondent in claim no 373 of 2022 to benefit from the fraudulent transactions.
  - h. That the learned Chairperson, Deputy Chairperson and Members erred in law and in fact by occasioning a miscarriage of justice.
5. The appeal was canvassed by way of written submissions.

### **Appellant's submissions**

6. The appellant filed his submission dated 6<sup>th</sup> January 20225, where he raised three issues for determination.
7. On the first issue of whether or not the appellant was a guarantor, he avers that the respondent had alleged that the signature was forged on the loan application form. He avers that they are not to blame for the signature on the loan form, and as such, there was an enforceable contract between the parties. They aver that the respondent is aware of the loan application process and once a loan is to be approved, a text message is sent to the guarantor and that they cannot be blamed for the forged signature and that the alleged officer who forged the signature was not arrested and charged and they had failed to prove forgery and it was their mandate to attach the respondent salary.
8. On whether they were right in recovering the defaulted loan from the respondent, they claim that they advanced a loan of Kshs. 750,000/with a repayment period was 48 months and that the loanee whose loan was advanced to defaulted on the loan repayments and they were not able to recover their monies and in default the appellant had to attach the respondent and relied in the case of Samuel Odhiambo Okope & 2 others vs. Mwalimu National savings and credit c-operative society limited & another (2021) eKLR.
9. They assert that they acted within their mandate in attaching the salary. They attached Kshs. 26,320 as at 10/22/2022, and from the claimant's loan statement dated 10/15/2022, they had to reverse back to her as the respondent was unable to shoulder the liability as a guarantor and claimed that they no



longer attached the loan to the respondent and the only debt the respondent owed them is the personal loan he owes them of Kshs. 1,235,985.73.

10. On whether they are entitled to the orders sought, they aver that the orders sought had been overtaken by events, as they no longer make deduction from the respondent and the earlier deduction was reversed, and since there was no fraud proved, there was no damages against them, and the tribunal should have awarded them relief against the loanee.
11. They claim the decision by the tribunal is against natural justice and faulted them for awarding the respondent any prayers as they acted right by the book in recovering their loan, and they even refunded the deduction to the respondent as he was unable to shoulder the burden.
12. They pray that the court dismisses the claim by the respondent and that the appellant should be awarded the costs of the appeal and tribunal.

### **Evidence in brief**

13. Claimant witness 1 was Gerald Ndombi. He testified that on 6/11/2018, he received an SMS informing him that he had guaranteed Scheel Chamwada, whom he learnt was not a teacher. He claimed that he informed the respondent's ceo that he never guaranteed the lady and claimed that the manager Nixon Sifuna filled the forms and the lady received the money.
14. He testified that he reported the matter to the police and claimed that he never received dividends, and his account was frozen, and they started deducting Kshs. 21,000/= monthly. He denied signing any loan as a guarantor and prays that the respondent stop his monthly deduction.
15. During cross-examination, he acknowledged receiving loans from the Sacco and that the applicants should know the guarantors. He claimed that he had a loan at the re-examination. He confirmed that the deduction began in November 2021 and that he was notified in a letter dated 29/11/2021 about the deduction on behalf of the 1<sup>st</sup> respondent, and that the Sacco started deducting Kshs. 21,000 from his salary. The claimant closed its case.
16. The respondent witness was Joseph Churchill, who was the accounts assistant at IG Sacco. He adopted his witness statement dated 27/10/2022 as his evidence in chief and the list of documents dated 27/10/2022. During cross-examination, he stated that the 2<sup>nd</sup> respondent had applied for a loan of Kshs. 1,000,000/= and was granted Kshs. 700,000/=
17. He claimed that the loan was approved, and that the list of guarantors and that the claimant was a guarantor. He claimed that they confirmed the guarantors and sent him messages before sending the deposit. He denied knowing any way to confirm that the claimant signed the form.
18. The claimant, Gerald Ndombi, was recalled. During cross-examination, he confirmed that he got a notification of the attachment, and he went to the Sacco to verify. He denied ever meeting or knowing the 2<sup>nd</sup> respondent and denied having his details with her and denied that she ever approached him to guarantee him the loan.
19. He claimed that according to the 2<sup>nd</sup> respondent, she had applied for a loan of Kshs. 300,000 /- and was granted Kshs. 750,000/= He claimed that he reported the incident to Kakamega Police Station and later lodged a complaint of forgery and further stated that he gave his signature for examination.
20. The respondent's 2<sup>nd</sup> witness was Scheel Chamwada Vodembeke. He relied on the witness statement, defence and documents dated 17/10/2022. She confirmed that she applied for a loan in December 2015, filled in her personal details and left the other form blank for Nixon Sifuna. She denied filling



out the form or knowing any of the guarantors. She claimed that she had applied for a loan of KShs. 300,000/= and when he went to inform the CEO, she was shocked; she was given a loan of KShs. 1,000,000/= and denied knowing the guarantors

21. During cross-examination, she confirmed applying KShs. 300,000/ and denied knowing the claimant during re-examination, she claimed that she left the form with Nixon and that she accepted the terms of the loan without reading it and that the Sacco issued her KShs. 300,000/= only, although the Sacco gave her KShs. 750,000/=
22. In its judgment dated 14<sup>th</sup> December 2023, the tribunal, upon analysis, the witness testimonies and evidence, stated that although the 2<sup>nd</sup> respondent had obtained a loan from the 1<sup>st</sup> respondent, she denied knowing her guarantors and filling the forms placing the claimant as the guarantor. They ruled in favour of the claimant, ordering a restraining order against attaching the claimant's salaries and denied awarding damages, stating that the sum that was awarded to the claimant was already reversed, hence no need to award damages as they suffered no loss.

### **Analysis And Determination**

23. This being a first appeal, the court is guided by *Selle & Another v Associated Motor Boat Co. Ltd* [1968] EA 123, which requires the appellate court to reconsider, re-evaluate, and analyse the evidence afresh while bearing in mind that it did not see or hear the witnesses.
24. From the grounds and submissions, the issues for determination are;
  - a) Whether the Tribunal erred in finding that the Respondent was not a valid guarantor due to forgery.
  - b) Whether the Appellant acted lawfully and without fraud in relying on the forms and attaching the Respondent's salary.
  - c) Whether the Tribunal's orders on costs and denial of damages occasioned injustice.
25. The appellant avers that the respondent were to be held responsible as a guarantor and was to pay the outstanding loan despite the claim that he never signed the loan forms which was equally corroborated by the person who took the loan where she averred that she never met the guarantor and that she never signed the loan form which she left to the appellant's employee. The appellant opines that they are not to blame for the forged signature and, as such, held that there is an enforceable contract of guarantorship by the respondent.
26. Under section 107 of the *Evidence Act* (Cap 80), the party who asserts the existence of a fact bears the burden of proving it. The evidence before the Tribunal showed that the Respondent denied knowledge of Scheel Vodembeke Chamwada or the loan, and his testimony was corroborated by Chamwada, who admitted leaving the form blank for the Appellant's officer to complete and denied involving guarantors. There were further discrepancies in loan amounts (application for KShs. 300,000/= / 1,000,000/=, approval for KShs. 700,000/= / 750,000/=, disbursement of KShs. 300,000/=) pointing to irregularities within the Appellant's processes. The Appellant further failed to produce evidence of verifying signatures or guarantor consent beyond SMS (which the Respondent denied receiving effectively). There was no enforceable guarantee which existed, nor was there a valid consent.
27. I find no basis to fault the Tribunal's conclusion that the respondent was not a guarantor.
28. The appellant further claims that the tribunal erred in finding that they erred in relying on the alleged fraudulent filled forms which were presented by the guarantee, being the 2<sup>nd</sup> respondent. The Appellant contends it relied innocently on the forms. However, as a financial institution, it owed a



duty of care to verify applications, especially involving its own officer (Nixon Sifuna). According to the 2<sup>nd</sup> respondent's the guarantor's evidence, she had left the form to their officer with the guarantor's space not filled, which implicates internal fraud or negligence, shifting blame from "duly filed forms" to the Appellant's oversight. The appellant placed reliance on the case of Samuel Odhiambo Okope & 2 others v Mwalimu National Savings and Credit Co-operative Society Limited & Another [2021] eKLR, which is misplaced, as that case involved valid guarantees. It is therefore my opinion that there was no miscarriage of justice which occurred, and it is my view that the tribunal balanced equities by refunding deductions and restraining further action. These grounds fail.

29. In their submission, the appellant raises a claim of whether the respondent was entitled to the costs sought as there was no deduction from the respondent's account and that the earlier deduction had been refunded. The general principle under section 27 of the *Civil Procedure Act* is that costs follow the event. The Tribunal rightly awarded costs to the Respondent as the successful party. The Appellant is not a "victim" but bears responsibility for procedural lapses. This ground thus fails.
30. Overall, the appeal lacks merit. The Tribunal's judgment was sound, based on evidence, and occasioned no injustice. The Appeal is dismissed, the tribunals Judgment is upheld. The Respondent is awarded the costs of the Appeal. The Appellant also to pay the costs awarded to the Respondent (claimant) by the tribunal.
31. Right of Appeal 30 days explained.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 18<sup>TH</sup> DAY OF MARCH, 2026 IN OPEN COURT.**

**S.N MBUNGI**

**JUDGE**

In the presence of:-

CA: Zilda/Velma

In the absence of the parties/Advocated though aware of the judgment date. The Court Assistant to upload the Judgment to the CTS forthwith.

Later

Ms Cherono holding brief for Mr. Mango for the Appellant joins the platform and finds the Judgment already read. The court reads the last part to her.

Ms Cherono: I apply for 30 days stay.

Court: Let Ms. Cherono make a formal application. But the court doubts whether there can be a stay of a negative order.

