



REPUBLIC OF KENYA



**Njiru v Nawiri Sacco Society Limited (Cause E275 of 2021)
[2024] KEELRC 770 (KLR) (21 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 770 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E275 OF 2021
MA ONYANGO, J
MARCH 21, 2024**

BETWEEN

STELLA KAGENDO NJIRU CLAIMANT

AND

NAWIRI SACCO SOCIETY LIMITED RESPONDENT

JUDGMENT

1. The Respondent is a co operative savings and credit society limited established under the [Co-Operative Societies Act](#) laws of Kenya and carries on business in Embu, Kenya (BIFU). The Claimant is a former employee of the Respondent.
2. The Respondent has a recognition agreement with Banking, Insurance & Finance Union (Kenya) and at the time material to this suit the Respondent and the union had negotiated a collective Bargaining agreement (CBA) that was signed on 3rd July 2019 which covered a period of two years from 1st January 2019.
3. The Claimant having been a member of the union, was represented by the union in this suit.
4. The issue in dispute according to the Statement of Claim is refusal by the Respondent to pay terminal dues to the Claimant. In the Statement of Claim dated 1st April 2021 the Claimant seeks the following reliefs:
 - a. An order restraining and/or prohibiting the Respondent from unlawful and illegal salary deductions of Mary Waithira Mugnai and Fred Munene Njeru.
 - b. An order directing the respondent to refund the unlawful and illegal deductions made from the salary of Mary Waithira Mungai (Kes.12,700 and Fred Munene Njeru (Kes.12700) in the month of February and March 2021.
 - c. An order directing the respondent to pay the claimant terminal dues as herein:



- i. Gratuity for four years worked
@ Kes. 30,008 x 14 = 420,112.00
- ii. 10 annual leave days @ 30.008/26 x 10 = 11,542.00
- iii. 17 days worked in January 2020 = 17,005.00
= 448,659.00
Add :Shares 3,804.42
:Dividend 9,000.00
=641,463/42
Less : Notice pay 30,008.00
: Loan balance 433,772.66
Net pay: =177,682.76

d. Costs in favour of the Claimant.

5. Together with the Memorandum of Claim the Claimant filed a notice of motion under certificate of urgency in which she sought the following orders:
 1. THAT the Honourable court be pleased to certify this application as being urgent and the same be heard ex-parte in the 1st instance and service be dispensed with.
 2. THAT this Honourable court do issue an order restraining and/or prohibiting the Respondent themselves and/or by their recognized agents, employees, assignees, and/or principals from unlawful and illegal salary deductions of Mary Waitiira Iviungai And Fred Munenë InjerU until the hearing and determination of the application and claim.
 3. THAT this Honourable court does issue an injunctive order compelling the Respondent to stop the unlawful and illegal deductions from the salary of Mary Waithira Mungai And Fred Munene Njeru until the hearing and determination of the application and claim.
 4. THAT the respondent to refund the unlawful and illegal deductions made from the salary of Mary Waithira Mungai (Res. 12,700) And Fred Munene Njeru (Res. 12,700) in the month of February and March 2021.
 5. THAT this Honourable court do issue an order compelling the Respondent to stop charging interest and reverse interest already loaded on loan to Stella Kagendo Njiru until the claim is heard and determined.
 6. THAT the statement of claim be heard on priority basis as it touches terminal dues payable immediately upon termination of employment.
 7. THAT this Honourable court do award costs in favour of the Applicant.
6. The application was supported by the grounds on the face thereof and the supporting affidavit of the Claimant sworn on 1st April 2021.
7. Upon hearing the Claimant ex parte the court granted orders restraining the Respondent from making salary deductions from the salary of Mary Waithira Mungai and Fred Munene Njeru, guarantors of the Claimant, pending inter partes hearing of the application.



8. The Respondent did not file a reply to the application or a Defence to the Claim.
9. The parties attempted to settle the suit out of court but were not successful. Directions were given that the suit be disposed of by way of pleadings, affidavits and written submissions by consent of the parties. However, the court record shows that none of the parties filed submissions.
10. The issues for determination based on the pleadings and affidavit of the Claimant is whether the Claimant is entitled to the prayers sought being Gratuity annual leave days 17 days worked in January 2020.
11. The Claimant having not filed any submissions to support her prayers, I find that she has not proved that she is owed gratuity, annual leave or 17 days worked in January. Her prayers relating to shares and dividends are related to payment of a SACCO loan by a member of the SACCO who is no longer in the employment of the SACCO. It is my finding that these are matters for determination by the Cooperatives Tribunal. This court therefore does not have jurisdiction to determine the same.
12. The suit is accordingly dismissed. There shall be no orders for costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 21ST DAY OF MARCH 2024

MAUREEN ONYANGO

JUDGE

