



**Njeru v Nawiri Sacco Society Limited (Cause E274 of 2021)
[2024] KEELRC 667 (KLR) (21 March 2024) (Judgment)**

Neutral citation: [2024] KEELRC 667 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E274 OF 2021
MA ONYANGO, J
MARCH 21, 2024**

BETWEEN

BIBIANNE NJERI NJERU 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. The Claimant is a former employee of the Respondent.
2. The Respondent has a recognition agreement with Banking, Insurance & Finance Union (BIFU) (Kenya). 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 and covered the 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:
 - i. An order restraining and/or prohibiting the Respondents themselves and/or by their recognized agents and/or principals from selling or attempting to sell or auction the property L.R No GARURI/WERU/6212 in the name of CHARLES NJERU NJUE guarantor and father to BIBIANNE NJERI NJERU, situated at Embu County
 - ii. An order directing the respondent to pay the Claimant terminal dues as herein;
 - a. Gratuity for four years worked @Kes. 31,827 x 4 127,308.00



- b. One (1) months notice 31,827.00
 - c. 18 annual leave days @ 31,827/26 x 18 22,034.00
 - d. 5 days worked in October, 2020 5,304.50
 - e. Overtime 2,500.00
 - f. Allowances paid for working out of office 7,200.00
- Total 196,173.00
- iii. An order directing the respondent to pay the claimant her shares amounting to Ksh.130,000/ =.
 - iv. 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 Respondents themselves and/or by their recognized agents, assignees, and/or principals from selling or attempting to sell or auction the property L.R NO GATUR1/WERU/6212 in the name of CHARLES NJERU NJUF, guarantor and father to BIBIANNE NJERI NJERU, situated at Embu County until the hearing and determination of the application and claim.
 3. That this Honourable court does issue an injunctive order compelling the Respondents to Stop the already envisaged sale scheduled for 9th April 2021 of the property or L.R NO GATUR1/WERU/6212 in the name of CHARLES NJERU NJUE guarantor and father to BIBIANNE NJERI NJERU, situated at Embu County by public/public auction until the hearing and determination or the application and claim.
 4. That this Honourable court Issue an order compelling the Respondents/Chargee to stop charging interest and reverse interest already loaded on loan to 131 BIBIANNE NJERI NJERU until the claim is heard and determined.
 5. That this Honourable Court do issue restraining orders to the Respondent/Chargee from demanding loans repayments by the Applicant until the claim is heard and determined.
 6. THAT the statement of claim be heard on priority basis.
 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 of temporary stay of sale of LR. NO. GATURI/WERU/6212 registered in the name of Charles Njeru Njue as guarantor of Bibianne Nejri Njeru situated in Embu County pending inter partes hearing of the application.
 8. The Claimant filed a further affidavit dated 7th September, 2022.



9. The Respondent filed a Memorandum of Defence dated 24th October, 2022 in which it stated that the Claimant having been summarily dismissed and having not challenged the summary dismissal, was not entitled to the prayer for pay in lieu of notice.
10. The Respondent further avers that there are no terminal benefits owed to the Claimant the same having been paid in full by the Respondent and further that no evidence had been adduced by the Claimant to prove that she was owed the allowances that she had claimed.
11. The parties attempted to settle the suit out of court but were not successful. The suit was eventually disposed of by way of pleadings, affidavits and written submissions by consent of the parties.

Claimant's submissions

12. It was submitted for the Claimant that the Claimant was advanced a Staff Development Loan facility of Kes.700,000 which was secured by property L.R.NO. GATURA/WERU/6212 in the name of CHARLES NJERU NJUE, the claimant's father. The Claimant was to repay the loan at the rate of Kes. 15,600/= per month from her monthly salary. The Claimant was dismissed from employment on 5th October, 2020 and was never paid her terminal dues and share deposits held by the respondent as is the norm and best practice after dismissal/termination of employment.
13. It was submitted that during the pendency of this suit the Claimant repaid the loan and redeemed her title as evidenced by the discharge of charge annexed in the supplementary documents marked BNN-S-I at page 1 to 2. That the principal loan balance as at the time of dismissal on 9th September, 2020 was Kes. 674,200.90. That the shares deposits amounting to Kes.130,100 and Dividend amounting to Kes. 18,111.75 were used to off-set the loan.
14. According to the Claimant her issue was that the Respondent charged her interest for a loan which the Respondent had recalled earlier than the expected repayment period of five (5) years. That the Claimant had not gained or utilized the funds she was being charged interest on. That the Respondent therefore, cannot be allowed to charge interest for the loan redeemed. The Claimant prayed for refund and/or payment of interest charged amounting to Kes.188,738/= as per supplementary documents marked BNN-S-3 at page 5 to 6 as follows:

03/12/2020 -Loan Repayment — interest component Kes.6,622/=

18/02/2021 -Loan Repayment — interest component Kes. 9,052/=

19/02/2021 -Loan Repayment — interest component Kes.698/=

23/04/2021 -Loan Repayment — interest component Kes22,413/=

06/05/2021 -Loan Repayment — interest component Kes 3,099

27/05/2021 -Loan Repayment — interest component Kes 7,232

24/06/2021 -Loan Repayment — interest component Kes2,002/=

24/06/2021 -Prepaid Interest — "Pre-paid Interest Kes 137,535/=

06/09/2021 -Loan Repayment — interest component Kes. 85/=

15. It was further the Claimant's averment that the Respondent, actuated by malice, ill intentions and acting in bad faith, proceeded to engage surveys and auctioneers to auction the property before payment of terminal dues and shares which could have been used to off-set the principal loan balance as at the time of dismissal and the balance, if any, demanded from the Claimant and/or the guarantor



who was her father. That the Respondent did not even inform the guarantor that the claimant had defaulted (if at all) on loan repayment before proceeding to engage auctioneers.

16. It was further the Claimant's position that she cannot be condemned to pay surveyors fees, valuation fees and auctioneers fees incurred and loaded on to the principal loan amounting to Kes. 8,000 while the Respondent was holding her terminal dues and share deposits. She submitted that it was reckless for the Respondent to incur such costs and the same should be refunded and/or paid to the Claimant.

20/02/2021 — Loan Charge Debit "Njeru" — Kes 18,000/=

29/03/2021 -Loan Charge Debit "Njeru" — Kes. 25,000/=

15/04/2021 -Loan Charge Debit "Valuation" -Kes.35,000/=

Respondent's submissions

17. For the Respondent it was submitted that the Claimant was a member of the union and was dismissed in accordance with the provisions of clause 4 of the CBA which provides for summary dismissal. That the Claimant having been summarily dismissed, the suit does not disclose any cause of action against the Respondent and should be dismissed.

Analysis and determination

18. I have considered the pleadings and submissions by the parties. The Claimant having not contested her summary dismissal, the only issue for determination is whether the Claimant is entitled to the prayers sought.
19. In her further supporting affidavit sworn on 7th September, 2022, the Claimant deponed that her husband who was poached by the Respondent from SMEP Microfinance was given three different loans because of his credit worthiness. That the loans were processed, appraised, authorized by the Branch Manager, Chief Executive Officer, Credit Committee and all other officers at the Respondent's head office and the cheques were signed by the Board of Directors. She states that her husband was a member of the SACCO in his own right. That she was not a guarantor to any of the three loans advanced to her husband.
20. The Claimant deponed that the Respondent tabulated her terminal benefits being gratuity and leave days being Kshs. 107,104. That the Respondent used the said terminal benefits to clear her husband's loan in April, 2022 even though the husband had no arrears and was not in default. That one of the loans was cleared in July 2022 and another in November, 2022 while the last one was to be paid up to March 2023. That she accepted the application of her terminal dues to clear her husband's loan for the sake of peace and harmonious separation from the Respondent, even though the Respondent acted with malice, hatred, personal vendetta and jealousy towards her.
21. The Claimant submitted that she had not been paid one month's salary in lieu of notice Kshs. 31,827.00, 5 days worked in October, 2020, Kshs. 6,120.00 and allowances for working out of office being Kshs. 1,440.00 all adding up to Kshs. 39,387.00.
22. The Claimant further deponed that she was advanced a Staff Development Loan of Kshs. 700,000.00 which was guaranteed by property L.R. No. GATURA/WERU/6212 in the name of CHARLES NJERU NJUE, her father. That she was to repay the loan at Kshs. 15,600 per month from her salary.
23. She deponed that the interest charged amounting to Kshs. 188,738.00 and surveyor's fees, valuation fees and auctioneer's fees incurred and loaded on the principal loan amounting to Kshs. 78,000.00 was unlawful.



24. The claims made in respect of interest on the loan, auctioneers fees and survey fees are not related to the Claimant's employment or terminal benefits and therefore are not within the jurisdiction of this court but for the Cooperatives Tribunal. The only prayers that are within the jurisdiction of this court are those related to the Claimant's terminal benefits.
25. On gratuity, the Claimant produced only pages 1, 4, 5, 7, 10 and 15 of the CBA which do not contain any provision for gratuity. Specifically, the Claimant did not produce the clause of the CBA that provides that an employee who has been summarily dismissed from service is entitled to gratuity.
26. I find that the Claimant has not proved that she is entitled to gratuity.
27. The same applies to pay in lieu of notice. The Claimant did not produce any provision of the CBA that provides that an employee who is summarily dismissed is entitled to notice. Ordinarily an employee who is dismissed is not entitled to notice.
28. On the prayer for 5 days worked in October, 2020 I have noted that the letter of dismissal is dated 5th October, 2020. The Claimant is therefore entitled to salary for days worked up to 5th October, 2020. The Respondent did not prove that the same was paid. I therefore award the Claimant Kshs. 5,304.50 as claimed.
29. On the prayer for annual leave days the Respondent did not produce any proof that the Claimant had exhausted all her annual leave days or that she was paid for any leave days earned but not taken. I award the Claimant the leave days as prayed in the sum of Kshs. 22,034.
30. The Respondent did not deny that the Claimant is entitled to overtime and allowances for working out of office as prayed. I award the Claimant the same at Kshs. 2,500 and 7,200 respectively as prayed.
31. The prayer for shares is for determination by the Cooperative tribunal and is therefore outside the jurisdiction of this court.
32. Having been partially successful in the claim, the court awards the Claimant costs of Kshs. 50,000.

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

MAUREEN ONYANGO

JUDGE

