



**Sheracco Co-operative Savings & Credit Society Limited v Karituri Limited (Under Receivership)  
& another (Cause E006 of 2021) [2022] KEELRC 1324 (KLR) (13 July 2022) (Judgment)**

Neutral citation: [2022] KEELRC 1324 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE E006 OF 2021  
DN NDERITU, J  
JULY 13, 2022**

**BETWEEN**

**SHERACCO CO-OPERATIVE SAVINGS & CREDIT SOCIETY  
LIMITED ..... CLAIMANT**

**AND**

**KARITURI LIMITED (UNDER RECEIVERSHIP) ..... 1<sup>ST</sup> RESPONDENT  
C.F.C. STANBIC BANK LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**I. Background**

1. In a plaint dated March 19, 2016 filed in court on March 21, 2016 the Plaintiff (Claimant) through Karanja Mbugua & Company Advocates filed civil case Nakuru High Court No.14 of 2016 against Karituri Limited (under receivership) as 1<sup>st</sup> Defendant and CFC Stanbic Bank Limited as the 2<sup>nd</sup> Defendant seeking judgment against the Defendants jointly and severally for:-
  - (a) Kshs.24,936,647.97 as at 7<sup>th</sup> February, 2016 plus interest thereof at 5% per annum on a compound basis from 7<sup>th</sup> February, 2016 to the date of full payment.
  - (b) Costs of this suit and interest thereon at court rates be borne by the Defendants.
2. As expected, the plaint was accompanied with a verifying affidavit, list of witnesses, and statement of Ferdinand Juma, a list of document and copies thereof.
3. In a ruling dated May 20, 2020 the Court (Mulwa J) found that this matter is in the jurisdiction of the Employment and Labour Relations Court (ELRC) and hence the matter was transferred to ELRC and allocated reference ELRC Cause No. E006 of 2021, as per the header hereof.



4. In a ruling dated June 29, 2021 this Court (ELRC, Wasilwa J) ruled that the 2<sup>nd</sup> Respondent was improperly joined in this cause and struck out the name of the 2<sup>nd</sup> Respondent from the proceedings herein.
5. Notwithstanding that the 1<sup>st</sup> Respondent was properly served the 1<sup>st</sup> Respondent did not enter appearance or file defence.
6. This cause came up in Court for formal proof, as against the 1<sup>st</sup> Respondent alone, on March 23, 2022. There is an affidavit of service on record that the 1<sup>st</sup> Respondent was served with a hearing notice for the said date notwithstanding that it had failed to enter appearance or file defence.

## II. Claimant's Case

7. The Claimant's case, as can be distilled from the pleadings filed, the oral and documentary evidence adduced, as well as from its Counsel's written submissions is as follows.
8. The Claimant is a Co-operative Society registered under the *Co-operative Societies Act* and its members were at all material times employees of the 1<sup>st</sup> Respondent.
9. The 1<sup>st</sup> Respondent is a Limited Liability Company incorporated under the *Companies Act* and at all material times under receivership. The Claimant sought and obtained leave to file the claim against the 1<sup>st</sup> Respondent, under receivership, *vide* Nakuru HC Misc. Application No. 103 of 2016.
10. Members of the Claimant, totaling not less than 2,500 were deducted from their salaries a minimum of Kshs.1.000/= per month, depending on the ability of each individual member, and the 1<sup>st</sup> Respondent was supposed to remit the said monthly deductions to the Claimant.
11. As at February 7, 2016 the 1<sup>st</sup> Respondent had failed to remit, and was in arrears in the sum of Kshs.24,936,647.97.
12. The said employees, who were making contributions by way of deductions from their monthly salaries were working at 1<sup>st</sup> Respondent's farm known as Twiga Roses.
13. This matter came up in court for formal proof on March 23, 2022 when the Claimant called one witness, Ferdinand Juma (CW1), and closed its case. The 1<sup>st</sup> Respondent was duly served with a hearing notice as per the affidavit of service on record, but it did not turn up for the hearing.
14. CW1 testified that he is the chair of the Claimant. He relied on his witness statement on record which is very much in line with the summary given above of the Claimant's case. He produced as exhibit the order for leave sought and obtained by the Claimant to file the cause against the 1<sup>st</sup> Respondent under receivership.
15. CW1 testified that the 1<sup>st</sup> Respondent failed, refused, and or neglected to remit Claimant's members monthly contribution as agreed totaling to Kshs.24,936,647.97 as at February 7, 2016 notwithstanding that the 1<sup>st</sup> Respondent had made deductions from the members' monthly salaries.
16. CW1 testified that the Claimant took all reasonable steps to convince the 1<sup>st</sup> Respondent to make the remittance, including calling for meetings and reporting the matter to the Ministry of Co-operatives, but the said efforts were fruitless.
17. CW1 produced a variety of exhibits in form of letters exchanged between the Claimant and the receiver-manager of the 1st Respondent wherein the debt standing at Kshs.24,936,647.97 as at 7th February,



2016 was acknowledged. He also produced a resolution by the Claimant dated 27th February, 2016 authorizing the filing of this cause in court by members and officials of the Claimant.

18. It is on the basis of the foregoing that the Claimant has prayed as per the claim in the prayers set out in Part I of this judgment.

### III. Disposal

19. The Claimant's claim against the 1<sup>st</sup> Respondent is for a liquidated sum of Kshs.24,936,647.97 together with interest thereon. It is the view and holding of this court that through the oral and documentary evidence adduced the Claimant has proved its case on a balance of probability as required by law.
20. In a letter dated July 14, 2016 the Respondent admitted owing the Claimant in the sum of Kshs.22,156,313/=. The Claimant has ably demonstrated that the difference between this sum and the Kshs.24,936,647.97 as claimed in the claim is made up of interest accrued at 5% per month in accordance with Section 35 of the *Co-operatives Societies Act*. In any event, the 1<sup>st</sup> Respondent opted not to defend this cause notwithstanding that it was always served with all the court process.
21. In the circumstances judgment is hereby entered against the 1<sup>st</sup> Respondent in the principal sum of Kshs.24,936,647.97 with costs to the Claimant.

### IV. Interest

22. From the foregoing there are only three issues for determination in this cause:-
- a) Is the Claimant entitled to the prayer for judgment against the 1<sup>st</sup> Respondent in the principal sum of Kshs.24,936,647.97?
  - b) What is the rate of interest applicable to the said principal sum and for what period?
  - c) Costs.
23. In respect of issue (a) above this Court has already found in favour of the Claimant in the said sum of Kshs.24,936,647.97.
24. Issue (b) is on interest and this Court takes the view that as at the time of filing the cause the Claimant ought to have included, and indeed did take into account, all the amount that was due and payable by the 1st Respondent as at that time, including the accrued interest that was due and payable.
25. Once the matter was filed in Court it became subject to the laws and rules applicable on interest and hence Section 25 of the *Civil Procedure Act* is applicable. This Court has to decide on what is reasonable rate of interest considering the practicability of recovery of the total amounts due to avoid the court making an award or orders in futility.
26. In the circumstances, this Court orders that the said awarded principal sum of Kshs.24,936, 647.97 shall earn interest at court rates from the date of filing of the claim, March, 2016 till payment in full.

### V. Costs

27. The Claimant is awarded costs of this cause, to be agreed or taxed.

### VI. Orders

28. This court makes the following orders in final disposal of this cause:-



- a. Judgment be and is hereby entered for the Claimant against the 1<sup>st</sup> Respondent in the sum of Kshs.24,936,647.97.
- b. The said principal sum shall attract interest at court rates from the date of filing the cause till payment in full.
- c. Costs to the Claimant.

**DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS 13<sup>TH</sup> DAY OF JULY, 2022.**

**DAVID NDERITU**

**JUDGE**

