



**Muli v Kenya Agricultural Research Institute (KARI) Sacco Limited (Civil Appeal E246 of 2021) [2024] KEHC 500 (KLR) (Civ) (31 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 500 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E246 OF 2021**

**DAS MAJANJA, J**

**JANUARY 31, 2024**

**BETWEEN**

**HENRY MBATHI MULI ..... APPELLANT**

**AND**

**KENYA AGRICULTURAL RESEARCH INSTITUTE (KARI) SACCO  
LIMITED ..... RESPONDENT**

*(Being an appeal against the Judgment and Decree of the Co-operative Tribunal at Nairobi dated 25th March 2021 in Tribunal Case No. 60 of 2015)*

**JUDGMENT**

**Introduction and Background**

1. This is an appeal by the Appellant against part of the judgment of the Co-operative Tribunal (“the Tribunal”) delivered on 25.03.2021. The Tribunal held that the Respondent (“the Sacco”) has an obligation to issue a statement of account to the Appellant and ordered the Respondent to provide the Appellant with the statement of account for his loan, that the Appellant took up a loan of Kshs. 785,300.00 that was not disputed, a loan of Kshs. 60,000.00 that was paid up, a loan of Kshs. 400,000.00 that was taken in September 2011 and one of Kshs. 250,000.00 that was taken in September 2012. It further held that the interest rate chargeable and applicable is 1% on a reducing balance, that the amount owing to the Sacco is Kshs. 1,042,300.00 in terms of the loan taken and that the guarantors for the loan outstanding can be held accountable for the loan they guaranteed to the extent of Kshs. 250,000.00.
2. The Appellant anchors his appeal on 5 grounds as set out in the Memorandum of Appeal dated 07.05.2021. The appeal has been canvassed by way of written submissions filed by both parties. The Appellant contends that the Tribunal misdirected itself by finding that he was issued with a loan of



Kshs. 400,000.00 despite there being no evidence to that effect, that it erred by wrongly finding he owes the Sacco Kshs. 1,042,300.00 and/or failing to state the basis of this finding and that the Tribunal erred in fact and in law by failing to take into account settled principles of law in reaching its judgement. The Appellant accuses the Tribunal of failing to take into consideration his submissions. He urges this court to allow the appeal, set aside the Tribunal's judgment, evaluate and assess the evidence on record and make a determination thereon including a determination on the Statement of Account between the parties and the other incidental issues.

3. Before delving into the appeal, a brief background of the facts presented before the Tribunal is apposite. At the material time, the Appellant was a member of the Sacco. He stated that he had borrowed loans from the Sacco previously and as at February 2011 he owed the Sacco about Kshs. 719,300.00 being the total consolidated outstanding loans. That the Appellant requested the Sacco's management to split the loan into two so that he could settle one half as a lump sum from a loan which the Appellant had obtained from Co-operative Bank and the other half was deductible from his pay slip. The Sacco agreed with the proposal and the Appellant settled the one half and remained with the other half. The Appellant averred that he never applied for nor took a loan of 400,000.00 from the Respondent.
4. The Appellant further averred that sometime in 2012, he was granted a loan of Kshs. 250,000.00 to be secured by his shares and four guarantors and that from the period commencing February 2011 to September 2016 he had made repayments to the Sacco in respect of the loans amounting to Kshs. 305,560.00. That the loan was to be repaid through the usual payslip deductions and that his employer had as per the instructions of the Sacco dutifully deducted the repayments. The Appellant claimed that the loan repayments deductions had, at the sole instructions of the Sacco to his employer, been erratic and inconsistent with respect to the amount being deducted. That in light of this, he sought an explanation and statement of account from the management of the Sacco which declined to issue it on the ground that he ought to have known as a former Chairman. The Appellant contended that the Sacco violated his rights as a member by disregarding best practices and by failing to give him his statement of account on the loan status. That its actions were motivated by ill will and that his position as former Chairman was not relevant to the issue of erratic and inconsistent deductions. The Appellant further complained that the notices of default issued to the guarantors were motivated by malice and were intended to embarrass him and lower his standing amongst the Sacco members.
5. The Appellant sought several reliefs. A declaration that the Sacco's failure to issue a statement of account is a breach his entitlement as a member of the Sacco, an order that the Sacco furnish him with the statement of account on his loan and that an order restraining the Sacco from attaching the salaries of his guarantors purporting to recover loan arrears. He further prayed for a declaration of the legitimate loans he took from the Sacco, a declaration that the interest rate chargeable is 1% on a reducing balance and that a declaration on the amounts owing to the Sacco from him.
6. The Sacco filed a defence and counterclaim in response to the claim. It denied that the Appellant was denied any of his rights as the member of the Sacco. It stated that the Appellant had taken out a loan of Kshs. 250,000.00 which was guaranteed by Sacco members. However, the Sacco claimed the Appellant had several outstanding loans, some of which were top-ups such as the loans of Kshs. 550,000.00, Kshs. 250,000.00 and 400,000.00 which had been running and which the Appellant had taken when he was the Sacco chairman. It denied any ill-feelings, malice, bad faith, ill-motive or bad intentions as claimed but instead averred that the Appellant was mischievous, malicious and with bad motives had purposed to malign the name of the Sacco and its officials. The Sacco avers that when the Appellant was its chairman, he requested and caused the Sacco to suspend his monthly loan repayments in his handwriting contrary to the averments he had made before the Tribunal.



7. According to the Sacco, the Appellant's pay slip could not accommodate his salary and out of respect of its Chairman and due to his concealed, convincing and unsuspected dishonesty manner, the Appellant used his office to get suspended payments and top ups to which he was not entitled. In its counterclaim, the Sacco averred that the Appellant's claim had no reasonable cause of action and he owed the Sacco Kshs. 1,308,865.00 as at 31.12.2014 with additional interest for the months of January, February and March 2015 at rates between 1%, 1.25% and 1.5% in the case of the respective loans as per the contract. Therefore, the Sacco prayed for the dismissal of the Appellant's claim and judgment for Kshs. 1,334,248.00 as at 31.03.2015 with costs and interest at 1.5% per month as per the loan agreement.
8. At the hearing, the Appellant testified on his own behalf (CW 1) and called Jackson Maina Gachari, a Certified Public Accounts (CPA) (CW 2). The Sacco called its General Manager, John Malanga Ochomba (RW 1), the Service Manager Co-operative Bank Thika Branch, Susan Mureithi (RW 2) and the Sacco's Accountant, Simon Kiplagat (RW 3).
9. The Tribunal rendered its judgment issuing the dispositive orders I have outlined above. It found that it was not disputed that the Appellant received Kshs. 400,000.00. It was however not persuaded that the said amount was for the Sacco's administrative duties as averred by the Appellant. The Tribunal found that the Appellant had no problem when the loan repayments for this sum was being deducted and only brought it at the time of the claim and that he did not explain how he dispensed the said Kshs. 400,000.00. The Tribunal thus held that the Kshs. 400,000.00 was advanced as a loan despite it lacking a loan form.
10. On whether the Sacco's counterclaim of Kshs. 1,334,248.00 was valid, the Tribunal found that the Appellant was advanced four loans tabulated as Kshs. 785,300.00 as at December, 2010 which was not disputed and half of which was paid up using a bank loan leaving a balance of Kshs. 392,300.00; Kshs. 400,000.00 as at September, 2011 that was taken before the Appellant completed payment of the previous loan; Kshs. 60,000.00 which was paid off; and Kshs. 250,000.00 taken in the year 2012 and which had 4 guarantors. The Tribunal therefore held that the accumulated loan amount owed by the Appellant to the Sacco is Kshs. 1,042,300.00
11. The Appellant now appeals against the judgment. The parties' positions, set out in their written submissions, are basically those outlined in the pleadings. I do not find it necessary to highlight the same but I will only make relevant references in my analysis and determination below.

### **Analysis and Determination**

12. In determining this appeal, I am cognizant that the court derives its appellate jurisdiction from section 81 of the *Co-operative Societies Act* (Chapter 490 of the Laws of Kenya) which empowers the High Court to, inter alia, exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought or to make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal. Thus, this court as the first appellate court is reminded of its duty to re-evaluate the evidence on the record and then determine whether the conclusions reached by the Tribunal are to stand or be disturbed and give reasons explaining why it has arrived at a particular conclusion while at all times making an allowance that it neither heard or saw the witnesses testify (see *Kenya Ports Authority v Kuston (Kenya) Limited* [2009] 2EA 212 and *Peter Mwangi Chege & 13 others v Joseph Wanyoike & 7 others* ML HCCA No.8 of 2011 [2018] eKLR)
13. The Appellant faults the Tribunal's conclusions that he had taken up a loan of Kshs. 400,000.00 and that he is indebted to the Sacco in the sum of Kshs. 1,042,300.00. In his reply to the Kshs. 400,000.00 loan as claimed by the Sacco, the Appellant claimed that this was a withdrawal he made on behalf of



the Sacco on 12.09.2011 and that it was remitted to the Sacco for its intended use. The Sacco, through RW 3, was adamant that the Kshs. 400,000.00 was a loan as captured in the Sacco's cash schedule and the Appellant's loan statement. Section 107 (1) and (2) of the *Evidence Act* (Chapter 80 of the Laws of Kenya) provides that, "whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist," and that, "When a person is bound to prove the existence of any fact it is said that he burden of proof lies on that person". Section 109 therein goes further to stipulate that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence.

14. The Appellant had the burden of proving that the Kshs. 400,000.00 was not a loan but money collected on behalf and for the use of the Sacco and remitted to it for use for the intended purpose. I agree with the Tribunal that the Appellant did not show how this money was either remitted to the Sacco or used by it as claimed. By failing to support this averment, the Appellant's averments remained threadbare and mere claims. The Sacco's position was supported by the fact that the amount was a loan as captured in its Cash Book and the Appellant's loan statement which remained uncontroverted. I cannot therefore fault the Tribunal for concluding that the Kshs. 400,000.00 was a loan to the Appellant.
15. As to whether the Tribunal erred in finding that the Appellant owed the Sacco Kshs. 1,042,300.00, the Appellant had stated in his reply to the counterclaim that the loan summaries indicated therein are a misrepresentation and also fall short of relevant particulars necessary to determine a true and accurate status of accounts with respect to the Appellant's loans particularly date of loans, date of commencement of deductions, agreed repayment amount, applicable interest reducing balance calculations on interest in view of the repayments made so far and other information. In any case, the Appellant admitted that it owed the sums of Kshs. 392,650.00 for the 1<sup>st</sup> loan and Kshs. 250,000.00 for the 2<sup>nd</sup> loan.
16. I have already found that the Kshs. 400,000.00 was a loan and thus, the Appellant is indebted to the Sacco in respect of this sum. Therefore, in total the Appellant owes the Sacco around Kshs. 1,042,650.00. The Tribunal was therefore not at fault to hold that the Appellant owed the Sacco the sum of Kshs. 1,042,300.00.

### **Disposition**

17. Having reviewed the findings of the Tribunal, I hold that the appeal lacks merit. It is dismissed. The Appellant shall pay the Respondent's costs assessed at Kshs. 60,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 31<sup>ST</sup> DAY OF JANUARY 2024.**

**D. S. MAJANJA**

**JUDGE**

Mr Meso instructed by Caroline Oduor and Associates Advocates for the Appellant.

Mr Muriuki instructed by Gitonga Muriuki and Company Advocates for the Respondent.

