

REPUBLIC OF KENYA



IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI

CTC. NO.245 OF 2014

THERESA LOKO MUINDI.....CLAIMANT

VERSUS

MASAKU TEACHERS SOCIETY LIMITED.....RESPONDENT

JUDGEMENT

This is a claim for refund of share contributions. The Statement of Claim is dated 27/5/2014 and filed in court on 10/06/2014. The Claimant avers that he was a member with the Respondent, Masaku Teachers Sacco Society Limited. His cumulative share contributions amounted to Kshs.248,000/-. He withdrew membership on 18/2/2014. The Respondent has since failed or refused to refund the monies. He seeks judgment for the sum of Kshs.248,000/=, interest and costs.

In its statement of defence dated 23/6/2014 and filed on the same date, the Respondent denies all the averments in the Statement of Claim except for the description of parties. The Respondent further avers, without prejudice to the denial, that the

claim is contrary to its By-laws hence incompetent and nonstarter. That the Claimants liable to a fine of Kshs.20,000/- in view of the breach and deduction of 5% being processing fees. He is also subject to a further deduction with respect of all losses incurred by the Respondent on apportioned to the entire membership. In addition, the Respondent denies the jurisdiction of the Tribunal and avers that the claim is time barred, frivolous, vexatious and an abuse of the court process.

When the case came for hearing on 3/3/2016 the claimant testified. The Respondent closed their case without calling any witness. Parties then took directions to file written submission. The submissions have since been filed.

We have considered the pleadings and evidence adduced availed as well as the rival submissions. The issues for determination are;-

- (1) Whether the Tribunal has jurisdiction to entertain and determine the dispute.
- (2) Whether the Claimant was a member of the Respondent Society
- (3) The amount of share contributions if any.

- (4) Whether the Claimant formally withdrew his membership
- (5) Whether there is any debt or demand due to the Claimant

On the issue of jurisdiction, it is trite law that this is that should be raised at the earliest possible opportunity. Except of the statement in the Response and the submission that the dispute is premature as it ought to have been handled by the committee or the general meeting before being brought to the tribunal, the issue was not argued as a preliminary point. This follows the decision in Owners of Motor vessel 'Lillian S' Vs Caltex Oil Kenya Limited 1989 KLR 1. The Respondent participated in the proceedings.

This is clearly a dispute between a society and its member on refund of share contribution. This is a matter within the jurisdiction of the tribunal under section 76 of the Co-operative Societies Act, cap 490 laws of Kenya. I see nothing to oust the jurisdiction of the Tribunal. The Jurisdiction of the Tribunal having been clearly provided for under the Act cannot be ousted by provisions in the society's By-laws. The jurisdiction is exclusive on matter co-operative societies as far as the dispute concern the business of a society. Alternative forms of dispute resolution

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between parties would be encouraged but will not limit or oust the jurisdiction of the tribunal. In any case, the Respondent has not demonstrated that they have on their part explored Article 61 of their By-laws.

The Claimant tendered in evidence his passbook, resignation letters, payslip, membership card and demand letter.

The membership card show the membership number and bears the name of the claimant. The letter of 1/12/2008 is addressed to the secretary Teachers Service Commission. The letter requests the commission to cease monthly deductions on the claimants salary for sacco shares in the Respondent's society indicating that he has decided to cease being a member of the sacco. The claimant's payslip for the month of January 2009 indicates net shares at Kshs. 248,100/-. The monthly contribution is Kshs.1000/-. The letter dated 28/9/2009 is addressed to the chairman of the Respondent. This letter directs the sacco to move her shares to Mwalimu Co-operative Savings and Credit Society Limited. It enumerates reasons why the claimant has decided to leave the respondent Sacco. The 3rd letter dated 18/2/2014 is a reminder to the 28/9/2009 letter. There is a further

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demand from the firm of P.M Mutuku & Company advocates dated 18/2/2014.

The claimant submits that she has proven his case and is entitled to judgment.

The respondent on their part submits in line with its statement of defence. The respondent closed its case without calling any witness.

On the issue of membership, we find that the issue has been proven. On whether the claimant formally withdrew his membership, there is the letter of 28/9/2009 and the subsequent demand letter. The claimant has clearly indicated her intention to leave the sacco. The Respondent did not act.

On the amount in share contribution, the claimant claim is for the sum of Kshs.248,000/- form. His payslip as at January 2009 reflects this sum. It thus follows that the sum is also proven.

The penalty the counsel for the respondent submits to accrue is not chargeable. The claimant is not in breach. The respondent should have acted in view of its by-laws. This as well applies to the processing fees.

Further, there is no evidence of a resolution amending minimum share capital allegedly passed on 1/11/2013 tendered. In any case such resolution would not affect the claimant as she had by then withdrawn her membership.

We enter judgment for the Claimant to the sum of Kshs.248,000/= plus interest and costs. The interest shall accrue at Court rate from the date of filing and the Respondent shall bear the costs of the suit.

Orders accordingly.

_____ **CHAIRMAN/D-CHAIR**

_____ **MEMBER**

_____ **MEMBER**