

KENYA / JUDGMENT

Murambi & 3 others v Kariuki [2022] KECPT 894 (KLR)

[2022] KECPT 894 (KLR)

COURT

Cooperative Tribunal

BEFORE

M Mwatsama, B. Akusala, P. Gichuki

CASE / FILE NUMBER

Tribunal Case 183 of 2021

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Murambi & 3 others v Kariuki (Tribunal Case 183 of 2021) [2022] KECPT 894 (KLR) (Civ) (22 September 2022) (Judgment)

Neutral citation:

[2022] KECPT 894 (KLR)

Republic of Kenya

In the Cooperative Tribunal

Civil

Tribunal Case 183 of 2021

M Mwatsama, Vice Chair, B. Akusala & P. Gichuki, Members

September 22, 2022

Between

David Nyongesa Murambi & 3 others

Claimant

and

Gakuo Joseph Kariuki

Respondent

Judgment

1. The claimant's filed an amended statement of claim dated May 9, 2022 on May 16, 2022. The claimant and respondent were members of Mwalimu Sacco and in August, 2014 claimant at the request of the respondent entered into an agreement to guarantor the respondent's loan application of Ksh 2,431,000 but only Ksh 1,989, 6000 was approved by the sacco.The respondent however breached the loan agreement and claimant's salaries, dividends and savings and shares held by the sacco.The 1st claimant paid Kshs 405,739 .00The 2nd claimant paid Ksh 78,923 . 00The 3rd claimant paid Ksh 417,223 . 00The 4th claimant paid Ksh 450, 887 . 00The claimant pray for;a.Reimbursement of the total deductions of Ksh 701,025. 00 made from the claimant's respective salaries, dividends, savings and/or shares held with Mwalimu National Savings and Credit Co-operative Society Limited as at October, 2020 and any further deductions towards settlement of the outstanding loan owed by the respondent.b.Ksh 1, 989, 600 against the respondent being the amount of the loan guaranteed by the claimantsc.Release of 1st claimant's pension amounting to Ksh 405,739 .00. d.General damages for pain and suffering.e.Costs.f.Interest on (a), (b) and (c) above at court rates.g.Such other or further relief as this honourable court may deem just to grant.
2. The claimant also filed list of documents in support of the claim dated February 3, 2021 filed on April 13, 2021 to which included;a.Demand letter dated January 29, 2019 - page 1-3b.Letter dated February 9, 2020 from Gakuo Joseph Kariuki – page 4-6. c.Letter dated February 13, 2019 – page 7-8d.Email dated February 19, 2019 together with the attachment thereof ; Letter dated February 19, 2019 from Gakuo Joseph Kariuki to Mwalimu National Savings & Credit Co-operative Society Limited;

Copy of official BOSA receipt for Ksh 237,150. 00 dated February 19, 2019;

Copy of undated letter from Gakuo Joseph Kariuki.e.Email dated March 22, 2019 together with the attachment thereof; Letter dated March 22, 2019 from Gakuo Joseph Kariuki

Copy of official BOSA receipts dated March 4, 2019.
3. The respondent's failed to enter appearance and interlocutory judgment entered in favour of claimant against respondent.Matter came up for formal proof hearing on May 16, 2022 where the claimant's gave evidence that is CW 1- David Nyongesa Mwambi gave evidence whose evidence was adopted for all other claimant's.His witness statement has adopted as his evidence in chief. He further stated the deductions have affected their families, 2nd, 3rd and 4th claimant are still in service.They have been denied their dividends from the sacco.
4. We take into account the written statement of all other claimants together with pleadings before the tribunal and evidence adduced and the issue to be addressed is just one.

Issue One

5. Whether the claimant's are entitled to their refund upon deductions by Mwalimu National Savings and Credits for the loan they guaranteed the respondent's.
6. A guarantor is a person or organization that provides a guarantee.
7. A guarantor ordinarily becomes a debtor's creditor and can pursue him for payment.
8. A guarantor who has settled a debts the claimant's did can file a suit against the principal debtor to recover their monies.
9. Law ofGuarantorsby Geraldine Andrews & Richard Millet 2nd Edition, at page 156 provides as follows;-“A contract of guarantee is an accessory contract, by which the surety undertakes to ensure that the principal performs the principal obligations. It has been described as a contract to indemnify the creditor upon the happening of a contingency namely the default of the principal to perform the principal obligation. The surety is therefore under a secondary obligation which is dependent upon the default of the principal and which does not arise until that point.”
10. To this end we find that indeed the claimant's discharged their duties as guarantor and thus the respondent is obligated to them to repay all monies deducted from them.
11. The respondent cannot sit pretty and not pay up because the guarantors did what he neglected to do.

Upshot

12. We thus find in favour of claimant against the respondent for-1st claimant - Ksh 405,739 .002nd claimant - Ksh 58,913 .003rd claimant – Ksh 558,940 . 004th claimant – Ksh 278,525 . 00
13. Prayer No 2 -Ksh 1, 989, 600 against the respondent being the amount of the loan guaranteed by the claimants- fails
14. Plus cost and interest of the suit.

JUDGMENT, READ AND DELIVERED VIRTUALLY ON 22ND SEPTEMBER 2022. Hon. Mjeni Mwatsama D/Chairperson Signed 22. 9.2022B. Akusala Member Signed 22. 9.2022Philip Gichuki Member Signed 22. 9.2022In the presenceNo Appearance by partiesSignedHon. Mjeni MwatsamaDeputy Chairperson22/9/2022

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