



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 1330 OF 2013**

**ANTHONY WAITITU IGANJO.....CLAIMANT**

**VERSUS**

**NATION MEDIA GROUP LIMITED.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. The Claimant in this case, Anthony Waititu Iganjo, was an employee of Nation Media Group Limited from 2002 until 21<sup>st</sup> May 2008, when he resigned. At the time of his resignation, the Claimant had a loan with Nation Staff Sacco Limited, which he was servicing through check off system.
2. His claim, which is documented by a Statement of Claim dated 17<sup>th</sup> August 2013 and filed in court on 20<sup>th</sup> August 2013, is to the effect that the Respondent failed to apply his final dues towards settling the loan balance thus exposing him to unnecessary interest, charges and penalties.
3. The Respondent did not file any reply to the Claimant's claim. The Court heard the Claimant *ex parte* on 21<sup>st</sup> November 2018, during the Nairobi Station Service Week.

**The Claimant's Case**

4. The Claimant was employed by the Respondent in 2002 in the position of Sales Executive. He rose through the ranks to head the Nation Carriers Division by the time he left employment in the year 2008.
5. On 28<sup>th</sup> April 2008, the Claimant wrote to the Respondent giving a 3 months' notice to resign from employment effective 27<sup>th</sup> July 2008. The Respondent responded on 21<sup>st</sup> May 2008, accepting the Claimant's resignation but requiring him to leave immediately rather than serve his notice period.
6. By virtue of his employment with the Respondent, the Claimant was a member of the Nation Staff Sacco Limited and at the time of leaving employment he had a running loan with the Sacco. He therefore instructed the Respondent to pay all his dues to the Sacco.
7. On 15<sup>th</sup> January 2011, the Claimant received a demand letter from a debt collector by the name Quest Holdings Ltd, seeking to recover a loan on behalf of Nation Staff Sacco Ltd. The Claimant then wrote to the Respondent, through his Advocates asking why the Respondent had not utilized his dues to offset the debt as agreed but he got no response.
8. The Claimant was subsequently sued by Nation Staff Sacco Ltd in Tribunal Case No 248 of 2102, before the Co-operatives

Tribunal. The Claimant's attempt to join the Respondent in the Tribunal matter failed with the Tribunal ruling that the relationship between the Claimant and his former employer was outside the purview of the Tribunal's jurisdiction.

9. The Claimant's case is that any debts outstanding and owing to Nation Staff Sacco together with any accruing interest together with costs arising from the claim at the Co-operatives Tribunal should be settled by the Respondent.

10. At the time of hearing this case, the matter before the Co-operatives Tribunal had been concluded and the Claimant adjudged to pay to Nation Staff Sacco Ltd Kshs.2,752,463.75 plus costs and interest. The surviving claims are therefore the following:

a) An order directing the Respondent to release all the Claimant's dues to Nation Staff Sacco Ltd to be applied to offset the Claimant's loan account with the Sacco;

b) An order that the Respondent do pay all interest, charges and penalties accruing on the Claimant's loan account with Nation Staff Sacco Ltd;

c) An order that the Respondent do settle the Judgment/Decree issued against the Claimant in Co-operatives Tribunal Case No. 248 of 2012;

d) Costs of the claim.

### **Findings and Determination**

11. The issue for determination in this case is whether the Respondent is liable to settle the Claimant's indebtedness, including costs and interest to Nation Staff Sacco Limited. The basis of the Claimant's claim against the Respondent is a check off arrangement by which the Respondent made deductions from the Claimant's salary for onward transmission to Nation Staff Sacco Ltd of which the Claimant was a member.

12. The Claimant told the Court that at the time of leaving the Respondent's employment, he instructed the Respondent to apply his dues towards settling his indebtedness to the Sacco. In this regard, the Claimant produced a letter dated 14<sup>th</sup> December 2008 by which he authorized the Respondent to pay all his dues, excluding pension to the Sacco.

13. Upon receipt of a demand letter dated 5<sup>th</sup> January 2011 from Quest Holdings on behalf of the Sacco, the Claimant's Advocates wrote to the Respondent indicating the Claimant's intention to apply for joinder of the Respondent as a co-defendant in any suit towards recovery of his debt to the Sacco.

14. The Claimant's attempts to join the Respondent in these proceedings as well as those before the Co-operatives Tribunal failed.

15. Assuming that the dues owed by the Respondent to the Claimant were adequate to cover his outstanding loan with the Sacco, the question remains whether by its failure to apply the final dues as requested by the Claimant, the Respondent rendered itself liable for the growing debt.

16. I do not think so. Looking at the applicable loan application form, the Court did not find any such obligation assigned to the Respondent. In my understanding therefore, the obligation to settle the loan lay squarely on the Claimant with his guarantors being the fall back.

17. In the course of trial it emerged that the Claimant did not write a single letter to the Sacco inquiring about his indebtedness. The Court was unable to understand why the Claimant would fail to undertake any formal follow up with his lender. This is a clear case of abdication of responsibility by the Claimant who now wants to shift blame to his former employer.

18. The Court finds no basis for any of the Claimant's prayers. The result is that the Claimant's entire claim fails and is dismissed with no order for costs.

19. Orders accordingly.

DATED AND SIGNED AT MOMBASA THIS 17<sup>TH</sup> DAY OF DECEMBER 2018

LINNET NDOLO

**JUDGE**

DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER 2018

MAUREEN ONYANGO

**JUDGE**

Appearance:

Mr. Njuguna for the Claimant

No appearance for the Respondent



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