



REPUBLIC OF KENYA

IN THE CO-OPERATIVE TRIBUNAL

AT NAIROBI

TRIBUNAL CASE NO. 134 OF 2018

STEPHEN MUNYOKI NYAMAI.....CLAIMANT

VERSUS

REGENCY SACCO SOCIETY LIMITED.....RESPONDENT

RULING

Matter for determination is a notice to show cause dated 19.6.2019 seeking for the respondent to show cause why *JOSEPH KIBANGENDI, MARY ONDIEKI, SAMMY SAMBU* and *CLEMENT ONYANGO* should not be arrested and committed to civil jail for failing to pay the decretal amount of Kshs. 268,194.40. The same was opposed vide a replying affidavit of *JOSEPH KIBANGENDI* the vice chair of the respondent indicating that there was no declaration that the said mentioned persons are personally liable to pay the judgment amount which is against the Cooperative Society as a distinct separate legal entity.

That the said officials have not in any way delayed or frustrated the execution of the decree issued.

That the respondent is facing financial constraints due to failure by RAYCO REYENT HOTEL LTD to remit members contributions to the respondent as demonstrated in **CTC 431 of 2016 REGENCY COOPERATIVE SAVINGS & CREDIT VERSUS CO-OP HOLDINGS COOPERATIVE SOCIETY LIMITED AND 6 OTHERS.**

That the respondent is willing and ready to satisfy the decretal sum if the remittances from the employer of the members is received.

We have carefully considered the application and the replying affidavit. We note that this suit was filed on 17.4.18 for refund of share contributions to the claimants amounting to 231,040/=. Judgment was entered on 24.1.2019.

The respondent filed an application dated 2.4.19 seeking to set aside the stay of execution; the application was dismissed with costs on 6.6.2019 paving way for execution proceedings.

Section 28 (3) of Cooperative Societies Act, is clear on the duties of the management committee in the governing authority of the society hence they are mandated to direct the affairs of the Society with powers to 3 (b) to institute and defend suits and other legal proceedings brought in the name of or against the society, and 3(c) do all other things necessary to achieve the society's objectives.

In the circumstances therefore, the management committee as per section 28 of Cooperative Society Act are the governing body and

SHALL institute and defend suits and other legal proceedings brought in the name of or against the Cooperative Society. It therefore goes without saying that they are capable of being arrested and committed to civil jail for the debts of the society.

In the circumstances thereof, the said *JOSEPH KIBANGENDI, MARY ONDIEKI, SAMMY SAMBU* and *CLEMENT ONYANGO* being the officials of the respondent must ensure that they do all other things necessary to achieve the objectives of the Cooperative Society in accordance with its by Laws, payment of decretal amounts being one of the duties/obligation enumerated under section 28 (3). We therefore find that the replying affidavit does not properly reflect this position. On the issue of CTC 431 OF 2016 we note that the judgment is not binding in this matter. The claimant gave his contributions to the Respondent hence the respondent is obligated to satisfy the decretal amount in full without any conditions unless otherwise ordered.

The Respondent has not filed any affidavit of means to show inability or lack of ability to settle the decretal amount. The claimant is entitled to the fruits of the judgment issued on 24.1.19. in the circumstances we find that the objections /oppositions of the notice to show cause dated 19.6.2019 has no merits and we accordingly dismiss the same with costs.

Consequently warrant of arrest to issue against **JOSEPH KIBANGENDI, MARY ONDIEKI, SAMMY SAMBU and CLEMENT ONYANGO**

Read and delivered in open court, this 7th November, 2019.

In the presence of:

Claimant: Stephen Nyamai

Respondent: Miss Muthuri holding brief for Nyarango

Court Assistant: Leweri and Buluma

B.Kimemia - **Chairman-signed**

R.Mwambura - **Member-Signed**

P.Swanya - **Member-signed**



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