



REPUBLIC OF KENYA

IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI

TRIBUNAL CASE NO. 493 OF 2017

CALEB INGOLO.....CLAIMANT

VERSUS

KIBERA MATATU OWNERS SAVINGS & CREDIT

CO-OPERATIVE SOCIETY LTD.....RESPONDENT

RULING

Matter for determination is Notice of Motion dated 7/12/2018 seeking the following orders;-

- (1) That the application be certified urgent and be heard exparte in the first instance.*
- (2) That the Honourable court be pleased to enter judgment in favour of the claimant upon the respondent admission that a sum of Kshs. 544,372/ is owing to the claimant.*
- (3) That interest on the admitted sum of Kshs. 544,372/ be paid at court rates effective 1/8/2017 until payment in full.*
- (4) That the costs of this application be provided for;-*

Based on the grounds on the face of the application, the same is opposed by the replying affidavit of **Dominic Angile Mbogo**, the chairman of the Respondent filed on 18/2/2019. The claimant filed a further affidavit on 3/6/2019.

Parties filed written submission to dispense the said application on 3/6/2019 and 5/7/2019 respectively.

The Applicant in the written submission submits that they filed the statement of claim on 4/8/2017 seeking judgment for Kshs. 574,395/ comprised of saving/deposits of Kshs. 833,800/ and balance of Ksh.259,405/ as of 26/5/2017. That the document filed by the respondents admits that they owe the claimant Kshs. 544,372/. That Under order 13 Rule 2 Civil Procedure Rule any party may at any stage where admission of facts has been made may apply to the court for judgment on orders upon such admission. That since the defence admits the said sum judgment should be accordingly entered.

The Respondent submitted that no such sum is admitted in the defence to enable the applicant move the tribunal for judgment. That paragraph 4(a) and (b) of the defence is clear of the said terms.

That the applicant is not eligible for refund of his shares as long as he has guaranteed a loan to one Nicholas shares amount to Kshs. 760,000/ still unpaid. That judgment can only be entered on admission in **clear** and **unequivocal** circumstances . That the record statement cannot be relied on isolation of all other documents filed.

The Respondent therefore prays for the application to be dismissed.

We have carefully considered the submissions of both parties and noted the statement of defence dated 8/9/2019 specifically paragraph 3 and 4 which categorically denies the contents of the statement of claim in specifically owing Kshs. 574,395 or any part thereof.

We have also considered the applicant's lengthy submissions on what constitutes an admission under order 13 Rule 2 Civil Procedure Rule. We note the citation of the authority by the applicant **CHOITRAM .VS. NAZARI(1984) e KLR page 4 and GILBERT .VS. SMITH (1876)** on the rationale of entering judgment on admission.

In the matter we have noted the statement of defence and note that the alleged admission are not plain and obvious neither are they clearly written or clearly implied to enable as enter judgment as prayed in the application . We also cannot lock out the parties, without clear evidence on record. Having considered the submission by the parties we find that the application dated 7/12/2018 has no merit and we accordingly dismiss it with costs in the cause.

We order for the parties to fix the matter for hearing and determination on priority basis.

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

In the presence of:

Claimant: Non-appearance.

Respondent: non-appearance.

Court Assistant: Leweri and Buluma.

B.Kimemia - **Chairman-signed.**

R.Mwambura - **Member-signed.**

P.Swanya - **Member-signed.**



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