



**REPUBLIC OF KENYA**

**IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI**

**TRIBUNAL CASE NO.216 OF 2019**

**GRACE WANGUI MUNDIA.....1<sup>ST</sup> CLAIMANT**

**EUNICE NGAI NYAGA.....2<sup>ND</sup> CLAIMANT**

**VERSUS**

**STIMA SACCO SOCIETY LIMITED.....1<sup>ST</sup> RESPONDENT**

**JOASH MUMO NDANGI.....2<sup>ND</sup> RESPONDENT**

**RULING**

The Matter for determination is a Notice of Motion application dated 15.4.19 filed on 16.4.19 seeking the following orders:-

- 1. That this application be certified as urgent and be heard ex parte in the 1<sup>st</sup> instance and service be dispensed with.*
- 2. That pending hearing and determination of this application this honorable court be pleased to grant temporary injunctive orders restraining and or prohibiting the 1<sup>st</sup> respondent by themselves and or through its agents/servants/representatives from in any way whatsoever deducting the claimants' salaries Kenya shillings sixty seven thousand five hundred thirty two (Kshs.67,532.00) from each of them any part thereof or any other amounts or from attaching any of the claimants' deposits in the sacco or any other of their property whatsoever to recover the loan amount due from the 2<sup>nd</sup> respondent.*
- 3. That the 1<sup>st</sup> respondent do immediately refund the 1<sup>st</sup> claimant Kshs.69,088.33 deducted from her march 2019 salary.*
- 4. That pending hearing and determination of the main suit this honourable court be pleased to grant temporary injunctive orders restraining and or prohibiting the 1<sup>st</sup> respondent by themselves and or through its agents/servants/representatives from in any way whatsoever deducting the claimants' salaries Kenya shillings sixty seven thousand five hundred thirty two (Kshs.67,532.00) from each of them any part thereof or any other amounts or from attaching any of the claimants' deposits in the sacco or any other of their property whatsoever to recover the loan amount due from the 2<sup>nd</sup> respondent.*
- 5. That this honorable court be pleased to order that any monies that the 1<sup>st</sup> respondent may have deducted from the claimant's salaries or sacco deposits or from any other of their assets towards recovery of the loan due from the 2<sup>nd</sup> respondent be refunded forthwith.*

Based on the grounds on the face of the application and supported by an affidavit of *GRACE WANGUI MUNDIA*. The said application is opposed by the replying affidavit of *SUSAN MUTALI* legal officer of the 1<sup>st</sup> respondent.

The application was canvassed by way of written submission as ordered 6.6.2019 and 20.8.2019 and 1<sup>st</sup> .10.19.

As at the time of writing this ruling, only the claimant had submitted their written submissions on 10.9.19 despite orders of 1.10.19 of the parties to ensure strict compliance of the timelines issued on 1.10.19 on the ruling date as issued.

The claimant has submitted as follows:

- 1. That they agreed to guarantee a loan for the 2<sup>nd</sup> respondent who defaulted in paying and later sought a further loan which was approved and disbursed.*
- 2. That they are being held responsible for the default owing to the guarantor's status in the 1<sup>st</sup> loan.*
- 3. That the 1<sup>st</sup> respondent has deducted the claimants salary a sum of Kshs.67,532 to recover the loan amount due from the 2<sup>nd</sup> respondent.*

The claimants have sought injunction orders to restrain and/or prohibit the 1<sup>st</sup> respondent from deducting their salaries or any other amounts or from attaching their deposits in the sacco or any other property. They have also a refund of Kshs.69,088.33/= deducted from the March 2019 salary of the 1<sup>st</sup> claimant.

They have also sought refund of any monies deducted by the 1<sup>st</sup> respondent from their salaries or sacco deposits or of their assets towards the recovery of the loan due from the 2<sup>nd</sup> respondent.

The prayers sought by the claimants are of injunctive nature, therefore have to meet the standards as set out in **GIELLA VERSUS CASSMAN BROWN & COMPANY LIMITED (1973) E.A 358** as follows:

- (i) The Application must show a prima facie case until the probability of success.*
- (ii) An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which will not be adequately compensated by an award of damages.*
- (iii) If the court is in doubt, it will decide an application on the balance of convenience.*

The applicants have submitted that the 2<sup>nd</sup> respondent applied for a loan of Kshs.3million of the 1<sup>st</sup> respondent and they were all members of the 1<sup>st</sup> respondent.

They aver that the 1<sup>st</sup> respondent approved the said loan without carrying out due diligence or any proper appraisal of the 2<sup>nd</sup> respondent's eligibility .

That the 2<sup>nd</sup> respondent defaulted and on the loan repayment when the balance was Kshs.805,224/= and he applied for another loan Kshs.6million which was approved and advanced.

That the 2<sup>nd</sup> respondent defaulted again and his security title No. **KIAMBA/KANUNGA/2680** was sold.

That the sale process was irregular and unlawful since the amount realized was below 75% of the forced market value and the proceeds from the sale were used to offset both loans instead of the 2<sup>nd</sup> loan for which

the title had been used for security.

That the 1<sup>st</sup> respondent did not issue the demand to recover the loan amount from the 2<sup>nd</sup> respondent but instead informed the claimants of the intention to deduct Kshs. 67,532/= per month with effect from 20.3.2019 and proceeded with instructions to the 1<sup>st</sup> claimants employer to deduct Kshs.69,088.33 leaving her with a net salary of Kshs.0.00.

That this resulted in great hardship to the 1<sup>st</sup> claimant.

That the applicants have raised the issues of fraud, negligence and recklessness on the part of the 1<sup>st</sup> respondent who without any justification targeted them both yet they were not the only guarantors.

That they did not guarantee the 2<sup>nd</sup> loan yet were held responsible for its default.

That due to this, their legal rights to receive their salaries were infringed upon and this creates a prima facie case. The claimants also submitted that if the injunction is not granted they will continue to pay for the 2<sup>nd</sup> respondents loan in monthly instalment Kshs.67,253 which will mean that the net salary will be 0(zero) hence subjecting them to great hardship in fending for their families.

The claimants also submitted the balance of convenience tilts in their favour since they stand to suffer extreme irreparable loss in the event that the 2<sup>nd</sup> respondent is not stopped from deducting the amount from their salary which is the sole means of their livelihood. They therefore pray for a temporary injunction pending the hearing and determination of the matter.

The respondents on the other hand did not file their written submission but we have noted the replying affidavit and annexures therein.

That the two applicants guaranteed both loans as per annexures SMI and SM4.

That they conducted the appraisal SM2 and compliance was confirmed as per SM 3A, 3B and 3C which are copies of Cooperative Bank standing orders, confirmation of employment status and employees payslip.

That after the said due diligence, they requested the 2<sup>nd</sup> respondent for further security for which he gave title number **KIAMBA/KANUNGA/2618**.

That thereafter the 2<sup>nd</sup> respondent defaulted and the 1<sup>st</sup> respondent issued the first notice and the second notice was copied to all the guarantors.

That thereafter the security parcel of land was sold after issuance of notice to sale SM7.

That the land parcel was valued at Kshs.7million with a forced sale value of Kshs.5,250,000/= and the land parcel was sold at Kshs.5.3million of which 1.2million was utilized to offset the first loan of 3million and the balance of 3,597,239/= was credited to the loan of 6million.

That all the other guarantors made payment plans for the guaranteed sum except the two claimants herein who allege of victimization in settling their portion of the outstanding debt.

We have carefully considered the arguments and submissions of both parties and we note that there are interim orders issued in terms prayer 2.

In determining whether to issue the injunctive reliefs sought, we find that there is some evidence by the claimants which shows that there can only be an infringement of a right and which requires further evidence /rebuttal from the respondents. This is the standard which established a *prima facie* case at the first instance. The claimants have also established that they are likely to suffer irreparable injury owing to the deductions resulting to the nil salary and we find that such suffering may not be adequately compensated by an award of damages in the first instance herein.

We note that in the first instance the balance of convenience tilts in favour of the claimants owing to the fact that the respondents failed to file their written submissions within the timelines issued on several occasions.

We therefore order as follows:

1. *Prayer one – spent*
2. *Prayer one – spent*
3. *Prayer three*

In this prayer we find that we require further evidence from both parties in the main suit since the final prayers are for orders of declaration of the illegality of the decision to deduct from the claimant's salary. We therefore deny this prayer in the first instance. This also applies to prayer 5.

For prayer 4, *we grant the same, pending the hearing and determination of the main suit.*

Prayer 6, *costs in the cause.*

*We further order the parties to fix the matter for pre-trial directions.*

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

In the presence of:

**Claimant:** Miss Nzioka for the Claimant.

**Respondent:** Mbuthia holding brief for Kimani for Respondent.

**Court Assistant:** Leweri and Buluma.

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

**R. Mwambura** – **Member-signed.**

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



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