



REPUBLIC OF KENYA

IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI

TRIBUNAL CASE NO. 161 OF 2019

MARIA BOSIBORI MOSIORI.....CLAIMANT

VERSUS

N.H.I.F SACCO SOCIETY LTDRESPONDENT

RULING

Matter for determination is Notice of Motion application dated 20/6/2019 seeking the following orders;-

- (a) That this Honourable court be pleased to strike out the respondent's defence herein dated 5/4/2019 and order that judgment be entered in favor of the claimant against the respondent as prayed for in the statement of claim plus costs and interest thereof.*
- (b) That the Respondent to pay the costs of this application.*
- (c) That the Honorable court be pleased to issue any other relief that it may deem fit.*

On the grounds on the face of the application and the supporting affidavit of **MARIA BOSIBORI MOSIORI** The same is opposed vide grounds of opposition filed on 23/7/2019 on the grounds the application is baseless; -

- (1) That, the application is baseless and a gross abuse of the process of this court. It is not grounded on principles of Law and the same is vexatious and brought in bad faith and ought to be dismissed with costs.*
- (2) That, the defense clearly raises a defense and the same is not a Defense in admission.*
- (3) That, the application is not grounded on proper principles of Law. The same lacks merit.*
- (4) The Respondent prays that the same be dismissed with costs.*

Parties filed written submissions to dispense the application. The claimant submits that the grounds of opposition were baseless since no evidence has been attached to discredit the statement of claim on the amount claimed.

That statement of defence is unmerited and a mere waste of the court's time since the defence is not supported by documents to rebut the statement of claim.

That under Order 2 Rule 15 of Civil Procedure Rule, the grounds of opposition are baseless since the defence disclose no triable issues and it delays the fair trial of his claim. They have cited **Margaret Njeri Mbugua .vs. Kirk Mweya Nyega (2016) eKLR.**

That the Respondent has not rebutted it's indebtedness to the claimants. So judgment should be entered for the sum of Kshs. 528,000/ less 20,500/ alleged to be the share capital. That it is also clear from the Society's by-Laws that refunds must and shall be made within 60 days of Notice of withdrawal.

The Respondents submitted that the defence has raised a triable issue saying that the claimant seeks sh.528,000/- less sh. 20,500/- hence the money due to him is Kshs. 507,500/-. That since the defence raises triable issues it should go for trial .

That the defence if struck out will be an infringement on the constitutional right to fair administrative action.

That they will be denied to have their dispute resolved in a fair and public hearing without getting their rightful chance to hearing. They have cited **TRANSEND MEDIA GROUP LTD .Vs. INDEPENDENT ELECTORIAL BOUNDARIES COMMISSION(2015) eKLR.**

We have carefully considered the submission of the parties and the pleadings on record and we note that the claim is a refund of share contribution amounting to Kshs. 528,000/- as per the statement of claim dated 7/3/2019. We have also looked at the statement of defence dated 5/4/2019 which admits that the claimant was a member no. 01177 and withdrew his membership on 15/2/2018.

In paragraph 3, it states " the respondent denies that the claimant shares amount to Kshs.528,000/- as there is a non-refundable share capital and membership fees of Kshs. 20,500/-, that has not been factored. This clearly shows that there is no dispute on the membership of the claimant to the respondent, that indeed the claimants share are Kshs. 528,000/- less share capital and membership fee of ksh.20,500/, which leaves a figure of Kshs. 507,500/-. The claimed amount is also in the payslip for May, 2018. There were no documents or witness statement filed alongside the defence. The issues in the claim are;-

- 1) Whether the claimant was a member of the respondent.*
- 2) If he was a member what was the share contribution.*
- 3) Whether there was notice of withdrawal issued to the respondent.*
- 4) Whether there were any amounts deductible from the share and contributions.*

In this case it is clear that Notice of withdrawal was issued as submitted by the respondent. That the defence of the respondent only refers to deductible share **capital and membership fee amounting to Kshs.20,500/- of which the claimant has submitted as not contested, if deducted from the amount claimed.**

That the amount claimed is supported by the payslip of the claimant for the month of May, 2018 a fact not contested in the defence.

We, therefore find that all the issues as claimed and cited above can be determined in a summary manner, hence, reducing the time for trial for purposes of expeditious determination of matters as enumerated in rule 3 and 4 of the Co-operative Tribunal practice and procedure Rules,

We, therefore allow the application dated 20/6/2019 with costs and accordingly enter judgment in favour of the claimant against the respondent for Kshs.(528,000-20,500), Kshs. 507,500/ plus costs and interest in the suit.

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

In the presence of:

Claimant: Miss Obwori holding brief for Gitonga Muriuki.

Respondent: Non-appearance.

Court Assistant: Leweri and Buluma

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

R.Mwambura – **Member-signed.**

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



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