



**Wanjiku v Mkutano (Commercial Case E002 of 2023)
[2024] SCC 3 (KLR) (24 January 2024) (Judgment)**

Neutral citation: [2024] SCC 3 (KLR)

**REPUBLIC OF KENYA
IN THE SMALL CLAIMS COURT AT LAMU
COMMERCIAL CASE E002 OF 2023
FM MULAMA, RM
JANUARY 24, 2024**

BETWEEN

MARY WANJIKU CLAIMANT

AND

HADIJA MKUTANO RESPONDENT

JUDGMENT

Introduction.

The claimants' case

1. Mary Wanjiku instituted this claim vide statement of claim dated 15/12/2023 claiming against Hadija Mkutano a total of Kshs.54,000/=. She also prays for costs of the claim.
2. The claimant avers in his testimony that in the year 2020 she joined a chama with the help of the respondent who had several slots and offered to give the claimant one slot called TOM 2.
3. Vide TOM 2 the claimant used to submit to the respondent a weekly contribution of Kshs.500/= and on the 19/12/2023 the claimant made her first contribution.
4. She further averred that the condition to this kind of arrangement was that the claimant does not tell any one she is in that chama as the arrangement she had with the respondent was a "local arrangement" as the chama was not admitting new members and she only volunteered her slot to her.
5. The claimant continued with her contributions until sometimes in 2021 when the claimant requested the respondent to borrow Kshs.5,000/= using her account TOM 2.
6. The respondent advised her that as a condition to the loan, it will attract an interest of Kshs.500/= after every 2 weeks. The claimant was in agreement.



7. The loan was disbursed to the claimant and she repaid it together with interest and thereafter borrowed a further Kshs.10,000/= that attracted an interest of Kshs.1,000/= every two weeks.
8. The claimant avers that she asked the respondent what ordinarily happens to the interest earned and the respondent informed her that the interest is regarded as profit to the borrower and is credited to their account so in this case hers will be in TOM 2 .
9. The claimant further borrowed Kshs.30,000/= but this time round she was not able to repay the amount in good time but she religiously paid the interest and by November, having not paid the principal sum the respondent prevailed upon her to pay the principal so that she is able to get all her profits for the year.
10. The claimant then looked for the principal from another chama and paid with the hope that she will be paid all her profits together with the weekly contributions but that was not to happen as it turned out to be a cat and mouse game between the claimant and the respondent hence this claim.
11. It is the claimant's averment that at some point even the respondent offered to sell one of her cows to repay her but this was not to happen.
12. The claimant now claims from the respondent the weekly contributions of Kshs.500/= each from 19/12/2020 to 18/12/2021.
13. On cross examination, the claimant stated that she joined the chama in 2020 and that she did not have the book that has the records for the chama as they were with the treasurer of the chama(wife to Moha). She further confirmed that the respondent was the one who introduced her to the chama and offered to give her one of her slots since she had 3.
14. CW2 one Lucy Wanjiru of ID No. 36144510 told the court that on 30/11/2021 she was in a chama called Yehu with the Claimant and she helped the claimant obtain a loan of Kshs.30,000/= from it as the claimant had informed her that she needed Kshs.30,000/= to repay another loan so that she could get dividends.
15. The loan was processed and given to the Claimant who in turn gave it to the respondent to clear the loan of Kshs.30,000/= due to TOM 2 account in the other chama so that the claimant could get her contributions as well as dividends.
16. CW 2 confirms that this was not done as expected because the claimant informed her that the respondent is yet to pay her the contributions together with the dividends and that marked the close of the claimant's case.

Respondent's case.

17. The respondent denies the claim vide a response to statement of claim dated 29/12/2023 In his defence she seems to raise a counterclaim for Kshs.100 on account of fish supplied to the claimant.
18. Sadly, during the further hearing of the case, the respondent was absent despite the date being taken by consent and in her presence and as a consequence her case was closed and the matter set for judgement.



Issue for Determination.

a. Whether the claimant proved his claim.

Analysis and Determination.

b. Whether the claimant proved his claim.

19. It is also well settled that pleadings are the bedrock upon which all the proceedings derive from. it therefore follows that any evidence adduced in a matter must be in consonance with the pleadings. Any evidence, however cogent but tends to be at variance with the pleadings must be disregarded in toto.
20. The evidence so adduced by a party to any proceedings should support the pleadings filed. It is not enough to just file pleadings with the hope that the court will rely on those pleadings and averments in court. There must be evidence (documentary) to support the pleadings and the averments/testimony.
21. This settled position was reaffirmed by the Court of appeal in the case of IEBC & Another vs Stephen Mutinda Mule & 3 others (2014)eKLR which cited with approval the decision of the supreme court of Nigeria in Adetoun Oladeji(NIG) vs Nigeria Breweries PLC SC 91/2002 where Adereji JSC expressed himself on the importance and place of pleadings;-

“...it is now trite principle in law that parties are bound by their pleadings and any evidence led by any of the parties which does not support the averments in the pleadings or put in another way, which is at variance with the averments of the pleadings goes to no issue and must be disregarded...

...infact, that parties are not allowed to depart from their pleadings is on the authorities basic as this enables parties to prepare their evidence on the issues as joined and avoid any surprises by which no opportunity is given to the other party to meet the new situation.”
22. At the hearing of this claim, it became apparent to the detriment of the claimant that she joined a chama that she was not a direct member but a member through proxy who was the respondent herein.
23. The claimant was not aware of what was going on in that chama and she used to rely on the information given to her by the respondent.
24. The claimant claims Kshs.54,000/= from the respondent but at the hearing she was not able to state with particularity how she arrived at that figure. No records from the chama to which she was a member albeit through proxy were ever produced in evidence to show that indeed she contributed to the said chama.
25. This failure has had the sole effect of the claim not being proved to the required standards.
26. A week for instance has 4 weeks. The claimant claims she used to contribute Kshs.500/= and she did so for 1 year to wit 19/12/2020 to 18/12/2021. Quick mathematics demonstrate that her contributions for the year were Kshs.24,000/=(12 months x 4 weeks x Kshs.500).
27. This is not the figure the claimant is claiming. Furthermore there is no evidence that she indeed made these contributions. Even CW 2 who witnessed the repayment of Kshs.30,000/= loan did not in her evidence state that she is aware of the claimant's weekly contributions to that chama and whether she ever witnessed any such contributions being paid.



28. The claimant appears to have added the Kshs.30,000/= to give a total of Kshs.54,000/=. I do not understand why this is so for the reason that it cannot be any money accruing to her as she took out a loan from the respondent and repaid it back to the respondent in the presence of CW 2 hence it cannot be a debt that she is claiming from the respondent.
29. Without going into so much detail than I have already given, I have demonstrated enough that the claim is one that is devoid of any merit.

Conclusion and Disposition.

30. The upshot of the foregoing I make the following final orders;
- a. The claim contained in the statement of claim dated 15th December 2023 is devoid of any merit and it is accordingly dismissed.
 - b. Let each party bear their own costs of the claim.
 - c. Let the file be closed forthwith.
31. Orders accordingly.

DATED, SIGNED AND DELIVERED AT LAMU SMALL CLAIMS COURT THIS 24TH DAY OF JANUARY, 2024.

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HON. FLAVIAN.M. MULAMA

ADJUDICATOR/RESIDENT MAGISTRATE

In the presence of:

Court Assistant:- Vivian Wambui.

Mary Wanjiku ---Present

Hadija Mkutano--Absent

