

REPUBLIC OF KENYA
IN THE COOPERATIVE TRIBUNAL AT NAIROBI
TRIBUNAL CASE NO. 10 OF 2021

PETER MUSYOKI & 2 OTHERSCLAIMANTS

VERSUS

CONCORDE SAVINGS & CREDIT SOCIETY LTD. RESPONDENT

ORDER

The **matter** dated **21.01.2021** and filed on **21.01.2021** coming up under **Certificate of Urgency** before Hon. B. Kimemia, Chairperson, **UPON READING** the said application,

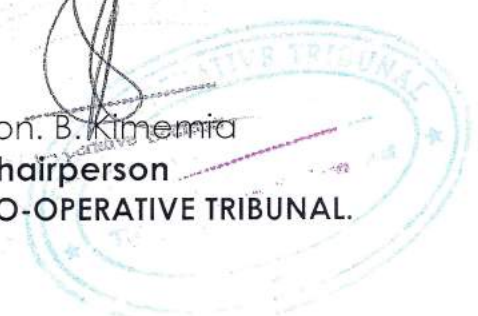
IT'S HEREBY ORDERED:

1. **THAT:** The Applicants to serve and come back for mention on **28.1.2021 at 9.am.**

Given under my **Hand** and **the Seal** of this Honourable Tribunal this **27th** day of **January, 2021.**

Issued at **Nairobi** this.....*27th*.....day of *Jan*.....2021.


Hon. B. Kimemia
Chairperson
CO-OPERATIVE TRIBUNAL.



REPUBLIC OF KENYA



IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI
TRIBUNAL CASE NO. 10 OF _____.

PETER MUSYOKI.....1ST CLAIMANT
AUGUSTINE SULUMENT.....2ND CLAIMANT
PETER MAINA NGUGI.....3RD CLAIMANT

-VERSUS-

CONCORDE SAVINGS & CREDIT SOCIETY LTD.....RESPONDENT

SUMMONS TO ENTER APPEARANCE AND FILE DEFENCE

TO:

CONCORDE SAVINGS & CREDIT SOCIETY LTD

Whereas the above named Claimant has insituted a claim against you as shown on the Statement of claim a copy of which is annexed to this summons; **YOU ARE HEREBY REQUIRED** Within15..... days from the date of service to enter appearance in the claim.

Should you fail to do so within the time mentioned above, the Claimant may proceed with the case and an award may be made in your absence.

Given and issued under my hand this...25th.....day of...Jan.....2021.

.....
CHAIRMAN/SECRETARY TO THE
TRIBUNAL

IMPORTANT NOTICE

You may enter appearance either personally or by a duly appointed Advocate. A copy of the memorandum of appearance should also be sent to the Claimant/Advocate.

This summon is valid for 12 months from the date of issue.

I have received copies of the summons and the Statement of claim this day of 20.....at.....o'clock.

-----Print/Signature and Name of
the Recipient

M Pesa
PALBUOYKSA
2670K

REPUBLIC OF KENYA
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CONCORDE SAVINGS & CREDIT SOCIETY LTD.....RESPONDENT

THE CO-OPERATIVE TRIBUNAL
21 JAN 2021
Received
27/1/2021

CERTIFICATE OF URGENCY

I, PETER MUSYOKI, the 1st Claimant, do certify that the matter herein is of extreme urgency and should be dispensed with in the first instance for the following reasons:-

1. That the defendant/respondent have sent out a unsigned notice for virtual special general meeting due on 30th January, 2021.
2. That the said notice offends the Society Bylaws and Cooperative Societies Act, CAP 490 on Special General Meeting.
3. That the defendant/respondent has assigned themselves with powers which are not vested upon them by statute.
4. That its prudent to deliberate issues raised in an AGM which by practice/norm ought to be before end of March 2021.
5. That as members, we want a thorough audit to be conducted on the financial and management affairs of the society and the same be represented in the coming AGM.
6. That the defendants/respondents are abdicating their power for prudence application of law and efficiency use of society limited resources.

DATED AT NAIROBI this... 21st..... day of JANUARY..... 2021

PETER MUSYOKI
FOR THE CLAIMANTS/APPLICANTS

DRAWN AND FILED BY:-
PETER MUSYOKI,
P. O. BOX 10690-00100,
NAIROBI.

TO BE SERVED UPON:-

1. CORCORDE SACCO SOCIETY LTD
P. O. BOX 10690-00100,
NAIROBI.

LTD 90/=

Total 2,670/=

CSU 50/=

N.M 300/=

S-A 50/=

Annex 50/=

2 prayers 2,000/=

V-A 50/=

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CONCORDE SAVINGS & CREDIT SOCIETY LTD.....RESPONDENT

NOTICE OF MOTION

(UNDER Order 10 rule 11 and Order 51 rule 15, Order 21 Rule 22(1), 22(2) of Civil Procedure Rules 2010 & Section 1A, 1B and 3A of the Civil Procedure Act, and All Other Enabling Provision of the Law)

TAKE NOTICE that this Honorable Court shall be moved on theday of **2021 at 9.00 o'clock** in the forenoon or so soon thereafter as counsel for the plaintiff/applicant may be heard for Orders;

1. That this application be certified as urgent and be heard ex-parte at the first instance.
2. That this Court be pleased to grant the Claimants/Applicants herein temporary Injunction restraining the defendants/Respondents either by themselves, their agents, servants and/or any other person whatsoever from convening, calling, conducting and/or in any other way whatsoever from deliberating matters concerning the respondent in a Special General meeting (SGM), pending the hearing and determination of this application.
3. That this Court be pleased to compel the Respondent to conduct a special audit for the affairs of the Respondent and present its findings in Annual General Meeting (AGM) which by practice has always been before end of March 2021.
4. That this Court be pleased to grant the Claimants/Applicants herein temporary Injunction restraining the defendants/Respondents either by themselves, their agents, servants and/or any other person whatsoever from convening, calling, conducting and/or in any other way whatsoever from deliberating matters concerning the respondent in a Special General meeting (SGM), pending the hearing and determination of this suit.
5. That cost of this Application be in the cause.

WHICH APPLICATION is based on the following grounds and is supported by the annexed affidavit of **PETER MUSYOKI** and further grounds to be adduced at the hearing hereof.

DATED AT NAIROBI this... 2^{1st} day of JANUARY 2021

PETER MUSYOKI
FOR THE CLAIMANTS/APPLICANTS



DRAWN AND FILED BY:-
PETER MUSYOKI,
P. O. BOX 10690-00100,
NAIROBI.

TO BE SERVED UPON:-
1. CORCORDE SACCO SOCIETY LTD
P. O. BOX 10690-00100,
NAIROBI.

REPUBLIC OF KENYA
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PETER MAINA NGUGI.....3RD CLAIMANT

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CONCORDE SAVINGS & CREDIT SOCIETY LTD.....RESPONDENT

SUPPORTING AFFIDAVIT

I, **PETER MUSYOKI**, a resident of Nairobi and of Post Office Box 1069, Nairobi in the Republic of Kenya do hereby make oath and state as follows:-

1. **THAT** I am the 1st Claimant /applicant herein with fully authority from other claimants, well conversant with the issues in dispute therefore competent to make and swear this affidavit.
1. **THAT** the plaintiff/applicant is the member vide member No. 744.and has powers from the other claimants to swear this application and affidavits
2. **THAT** the *defendant/respondent* is has issued unsigned notice for a special general meeting for 30th January 2021(*Annexed is copy of the unsigned notice marked PM 1*).
3. **THAT** Respondent has given out their powers to Chief Executive Officer who is mismanaging the society by calling unlawful meetings (*Annexed is copy of the CEO email marked PM 2*).
4. **THAT** the respondent's by laws provides for the circumstances and an authorized entity that will occasion the a call for special general meeting (*Annexed is copy of the Responded caption of By-laws marked PM 3*).
5. **THAT** the said meeting does not meet any grounds provided in the bylaw
6. **THAT** the management board has not shown any petition filed to them requiring a special general meeting.
7. **THAT** the Respondent's actions does not meet the prudence operation since the matters they wish to discuss can be done at the same time in an AGM.

8. **THAT** the Respondent has not conducted an audit as required in the Act and on the Bylaws and the same is supposed to be read and adopted in an AGM meeting.
9. **THAT** members feel the Respondent's management and the CEO have not conducted this exercise in accordance with the law.
10. **THAT** the Commissioner for Cooperatives Development in a letter dated 21st December 2020 informed the Respondent that an inquiry report was ready but due Covid,-19 protocols the same was to be read later *(Annexed is copy of the commissioner's letter dated 21st December,2020 marked PM 5).*
11. **THAT** we approached the Commissioner for Cooperative on the matter and has since advised that the process is illegal but the Respondent seems adamant to continue with exercise *(Annexed is copy of the commissioner's directive marked PM 5).*
12. **THAT** it is therefore in the interest of justice that this application is certified as urgent to safe guard the interests and/or rights of the Claimants/Applicants herein and the court do issue the orders sought herein.

SWORN by the said **PETER MUSYOKI**
AT NAIROBI
BEFORE ME



On the 21st day of JAN 2021



COMMISSIONER FOR OATHS

DEPONENT

DRAWN AND FILED BY:-
PETER MUSYOKI,
P. O. BOX 10690-00100,
NAIROBI.

TO BE SERVED UPON:-

1. **CORCORDE SACCO SOCIETY LTD**
P. O. BOX 10690-00100,
NAIROBI.

REPUBLIC OF KENYA
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CONCORDE SAVINGS & CREDIT SOCIETY LTD.....RESPONDENT

AUTHORITY TO SUE.

We, the undersigned, do hereby give authority to **PETER MUSYOKI**, 1st Claimant to sue and sign any affidavits in the suit against **CONCORDE SAVINGS & CREDIT SOCIETY LTD.**

NAME	ID. NUMBER	SIGN
1. PETER MUSYOKI	9938814	
2. AUGUSTINE SULUMENT	21936671	
3. PETER MAINA NGUGI	13060857	

DATED AT NAIROBI this.. 21st..... day of .. JANUARY 2021

PETER MUSYOKI
FOR THE CLAIMANTS/APPLICANTS



DRAWN AND FILED BY:-
PETER MUSYOKI,
P. O. BOX 10690-00100,
NAIROBI.

TO BE SERVED UPON:-

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P. O. BOX 10690-00100,
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STATEMENT OF CLAIM

1. The Claimants are male adults of sound mind and working for gain in Nairobi County within the Republic of Kenya. Their address for purpose of this suit shall be care of **PETER MUSYOKI, P.o Box 10960, Nairobi.**
2. The Respondent is Limited co-operative Society under the Co-operative Society Act CAP 490 laws of Kenya, situated within Nairobi County and with powers to sue whose address for purposes of this suit shall be through the claimants' address.
3. The 1st Claimant, 2nd Claimant and 3rd Claimant aver that indeed they are all members of CORCODE SAVINGS & CREDIT COOPERATIVE SOCIETY LIMITED.
4. The Respondent in unsigned Notice purported to call for an Special General Meeting for 30th January 2021 which is barely a month away from designated Annual General Meeting.
5. The Claimants aver that Corcode Sacco Society Ltd has not prudently followed provisions of Sacco Bylaws in calling for the SGM.
6. The Claimants aver that the Respondent's By laws provide that for a Special General Meeting to be held, if convened by the Board, Commissioner, Board 15 days of receipt of written request by at least 50 members or one quarter of the members whichever is less.
7. The Respondent convened the above meeting without following any provision in 6 above whether is initiative of the Board or Member's request.

8. The Respondent could have been candid to mention grounds under which the Special Meeting was called and under the Bylaws, only the Hon. Secretary is mandated to call for a meeting not Chief Executive Officer (Employee).
9. The Claimants contends the Respondent's action violating both the Bylaws but also prudence application of Society funds.
10. The Respondent ought to condense both Agendas in AGM and in SGM to salvage the Sacco for incurring double costs for the meetings.
11. The Claimants aver that despite the Commissioner giving direction on how the Sacco ought to conduct its affairs, the Respondent has deliberately refused to adhere and vow to continue with the unlawful meeting on 30th January 2021.
12. The Respondent has not facilitated and occasioned preparation of Audited accounts which by practice and statute, are supposed to be read and adopted by members in AGM.
13. Despite demand made and notice of intention to sue given, the Respondent has failed to make Audited Accounts available and stop the illegal meeting.
14. The cause of action arose within the jurisdiction of this Honourable Tribunal Court.
10. There is no other suit pending and there has been no previous proceedings in any court between the Claimant and the Respondent on the same matter.

Reasons wherefore: - the Claimants prays for orders against the Respondent for -

- (a) That this Court be pleased to compel the Respondent to conduct a special audit for the affairs of the Respondent and present its findings in Annual General Meeting (AGM) as provided by statute.
- (b) That this Court be pleased to grant the Claimants/Applicants herein permanent Injunction restraining the defendants/Respondents either by themselves, their agents, servants and/or any other person whatsoever from convening, calling, conducting and/or in any other way whatsoever

from deliberating matters concerning the respondent in a Special General meeting (SGM) unless provisions of 33.3 of Society Bylaws are complied with.

(c) Any other relief the Honourable Court may deem fit.

DATED AT NAIROBI this...^{21st}... day of JANUARY..... 2021

PETER MUSYOKI
FOR THE CLAIMANTS/APPLICANTS



DRAWN AND FILED BY:-
PETER MUSYOKI,
P. O. BOX 10690-00100,
NAIROBI.

TO BE SERVED UPON:-

1. CORCORDE SACCO SOCIETY LTD
P. O. BOX 10690-00100,
NAIROBI

REPUBLIC OF KENYA
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AUGUSTINE SULUMENT.....2ND CLAIMANT
PETER MAINA NGUGI.....3RD CLAIMANT

-VERSUS-

CONCORDE SAVINGS & CREDIT SOCIETY LTD.....RESPONDENT

VERIFYING AFFIDAVIT

I, **PETER MUSYOKI**, of P.O BOX 10690, Nairobi in the Republic of Kenya make oath and state as follows:-

1. **THAT** I am 1st Claimant male adult of sound mind the 1st Claimant herein and therefore competent to swear this affidavit.
2. **THAT** I am well familiar with the facts of this matter and hence competent to verify the correctness of the averments contained in the statement of claim.
3. **THAT** I verify the contents of the annexed statement of claim as correct.
4. **THAT** what is stated herein is true and correct to the best of my knowledge information and believe.

Sworn at Nairobi by the said **PETER MUSYOKI**

This 21st day of JANUARY 2021

BEFORE ME



DRAWN AND FILED BY:-
PETER MUSYOKI,
P. O. BOX 10690-00100,
NAIROBI.

)
)
)
)
)

DEPONENT

REPUBLIC OF KENYA
IN THE COOPERATIVE TRIBUNAL AT NAIROBI
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Claimant's list of Witnesses.

The Claimant herein shall rely on the following witnesses in this suit.

1. Peter Musyoki
2. Augustine Sulument
3. Peter Maina Ngugi
4. Any other witness.

DATED AT NAIROBI this...^{21st}..... day of JANUARY..... 2021

PETER MUSYOKI
FOR THE CLAIMANTS/APPLICANTS



DRAWN AND FILED BY:-
PETER MUSYOKI,
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Claimant's list of Documents.

The Claimant herein shall rely on the following documents in this suit.

1. Notice of meeting
2. Commissioner's letter dated 21st December, 2020.
3. Commissioner's letter dated 18th January 2021.
4. Respondent's By laws
- 5.

DATED AT NAIROBI this...21st..... day of ...JANUARY..... 2021

PETER MUSYOKI
FOR THE CLAIMANTS/APPLICANTS



DRAWN AND FILED BY:-
PETER MUSYOKI,
P. O. BOX 10690-00100,
NAIROBI.

TO BE SERVED UPON:-

1. CORCORDE SACCO SOCIETY LTD
P. O. BOX 10690-00100,
NAIROBI



Concorde Savings & Credit Co-operative Society Ltd

Centenary House
3rd Floor Off Ring Road Westlands
P.O.Box 10690 - 00100 -Nairobi, Kenya
Office Cell: 0700 552 588 / 0725 800328
info@concordesacco.com
www.concordesacco.com

DATE: Friday, 15th January 2021

TO: Members of Concorde Sacco Society Ltd. CS/3061

RE: Notice of Special General Meeting (SGM) of the Members of Concorde Sacco Society Limited

Following the directive by the Commissioner for Co-operative Development, Notice is hereby given of a Special General Meeting of the members of Concorde Sacco Society Limited, to be held on **Saturday, 30th January 2021**.

The meeting will be virtual and will start at 12:00 pm with **online registration**. Each member will log in using their smart phone or laptops from their respective remote location.

Date: Saturday, 30th January 2021
Time: 01:00 pm to 04:00 pm

AGENDA

1. Presentation of the Commissioner's Inquiry Report

CONCORDE SACCO SOCIETY LTD.

At 11:19am

CONCORDE SACCO LOGO

Saturday, 16th January 2021

Dear Member,

Please find the notice of SGM to be held on Saturday,30th January 2021 by clicking on the link below

Notice of SGM January 2021 or you can read it directly on our website via <https://concordesacco.com/notice-of-sgm-january-30th-2021/>

Notifications via SMS and WhatsApp text with an attachment(SGM NOTICE) were sent to you regarding the same on 15th January 2021.Kindly refer to them.

CONCORDE SACCO MANAGEMENT



REPUBLIC OF KENYA

MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES & CO-OPERATIVES
State Department for Co-operatives
Office of the Commissioner

Email: cooperativecommissioner@agmca.com

Telephone: 020-2731531-9

Fax: 2731520

When replying please quote

Ref: CS/3061

Social Security House,

Block A

Bishops Road, Capitol Hill

P.O. Box 30547-00100

NAIROBI

Date: 21st December, 2020

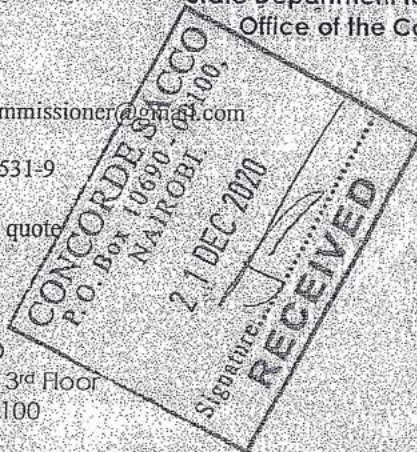
The Chairperson

Concorde SACCO

Centenary House- 3rd Floor

PO BOX 10690-00100

Nairobi



REF: CONCORDE INQUIRY REPORT

Reference is made to the Inquiry into the Society's affairs which was ordered vide order dated 16th September 2020 and published in Kenya Gazette Notice No. 7490 on 25th September 2020.

The Inquiry report is ready but due to Covid - 19 protocols; it will not be possible to organize Special General meeting to present the report to the whole membership as required by the Cooperative Societies Act (CSA) CAP 490 laws of Kenya Section 58 (3). In this regards this office is recommending the following until the report is presented to the members or otherwise advised by the same office:

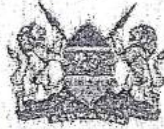
1. The core business of the SACCO (savings and credit administration) to continue uninterrupted.
2. All the Board Sub - committees and Supervisory Committee to continue undertaking their responsibilities as prescribed in the SACCO By-laws.
3. SACCO to suspend from undertaking any Capital expenditures
4. No staff changes to be done until the Inquiry report is presented to members. This include new recruitment, hiring or termination of service.
5. All senior management staff members: CEO, Senior Accountant, Marketing Executive and ICT officer and Accountants contracts that are due to expire to be extended/renewed until the report is presented to the members.
6. Other statutory activities including audit to continue as per the law.

Geoffrey N. Njeng'ombe

Ag: COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

Cc County Director of Co-operatives - Nairobi

Sub - County Co-operative Officer - Westlands



REPUBLIC OF KENYA

MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND
CO-OPERATIVES
STATE DEPARTMENT FOR CO-OPERATIVES

Office of the Commissioner of Co-operative Development

Email ps.ushirika@gmail.com

Telex:

Telephone: 020-2731531 FAX 2731520

When replying please quote

SOCIAL SECURITY BUILDING

BISHOPS ROAD

P. O. Box 40811-GPO 00100

NAIROBI

Ref: CS/3061

Date: 18th January, 2021

The Chairman
Concorde Sacco Society Ltd.
P. O. Box 10690 - 00100
NAIROBI

RE: SPECIAL GENERAL MEETING OF CONCORDE SACCO

Reference is made to a letter by your CEO on the above subject matter dated 15th January, 2021.

The action by the CEO to call a Special General Meeting without authority of the Board usurps the authority of the board and is ultra vires his mandate.

I would also want to clear the air on the issue of termination of contract for the CEO. This is the prerogative of the Board in accordance with the terms and conditions of service.


Geoffrey N. Njang'ombe

Ag. COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT

Copy to: County Director of Co-operatives
NAIROBI

Sub-County Co-operative Officer
WESTLANDS

SACCO BY LAWS

31. **RESERVE FUND**
31.1 The society shall maintain a Reserve Fund as required by the Co-operative Societies Act and Rules. Unless otherwise resolved by the General Meeting the Reserve Fund shall be credited with 25% of the net surplus of each financial year.
32. **PAYMENT AND DISBURSEMENT**
32.1 Payments made by the Sacco society shall be recorded and evidenced as provided for in the approved policy and procedure manual.
33. **GENERAL MEETING**
✓ 33.1 The supreme authority of the Sacco society shall be vested in the General meeting of members.
✓ 33.2 An Annual General meeting shall be convened within four months after the end of the Sacco society's financial year.
33.3 A special general meeting of the Sacco society may be held when convened by the:-
(i) Board.
(ii) Commissioner.
(iii) Board within 15 days of receipt of a written request by at least 50 members or one quarter of the members whichever is less. Provided the request is deposited by registered mail at the Sacco society's address or delivered to the Chief Executive Officer at the Sacco society's offices within normal working hours.
33.4 Under (33.3) if the Board fails to convene a meeting within fifteen days of receiving the request under the Co-operative Act. The Members shall give notice to the other Members of the Sacco society, stating the object and reasons for the meeting and the fact that the board has failed to convene the meeting.
33.5 Any business not completed at the annual General meeting may be taken up at a subsequent special General meeting of the Sacco society.
34. **NOTICE OF MEETINGS**
34.1 At least fifteen clear days notice shall be given in the case of an annual General Meeting.
✓ 34.2 The Honorary Secretary shall take all usual steps to publish the notice of the meeting in public places, on the Sacco society's notice board(s), in local newspapers or news-sheets, including the media or any other mode decided by the members.
34.3 All notices shall include a statement of the business to be dealt with.
34.4 For a special General Meeting requested by the members, the request must state the object of the meeting and be signed or thumb-marked by the requestors. The request shall be deposited in the registered office of the society.
35. **QUORUM**
35.1 Except when convened by the Commissioner, the presence of 50 members or one quarter of total number of members, whichever is less, shall constitute a quorum for the conduct of business at the General meeting. When a quorum is not attained the chairman shall adjourn the meeting and fix a date for another