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HOW SACCOS RECOVER LOANS FROM BORROWERS

Understanding the Debt Recovery Process

Saccos have long been championed as key drivers of the Kenyan economy. They eased access to credit at lower rates compared to banks. They serve as investment vehicles for members, offer housing solutions and employment opportunities. However, the success of most Saccos is pegged on their ability to recover monies lent to members. The debt recovery process, if not done correctly, can result in a host of issues arising out of what should be a rather straightforward process. Further, with an ever-expanding corpus of law on data protection and the use of credit reference bureaus, it is important for Saccos to adhere to the highest standards of transparency and legality, balancing cooperative values with financial discipline.

This article looks at the recovery process from both sides of the table: the tools available to a Sacco against a defaulting borrower especially negative financial reporting, and, just as importantly, the avenues open to a borrower who believes that process has been carried out

unfairly, prematurely, or in breach of the Sacco's own rules. It draws on decisions of the Cooperative Tribunal and the courts to show where things have gone wrong in practice, and what both Saccos and borrowers can do about it.

LENDING BY A SACCO

The operation of Saccos in Kenya is governed by the Co-operative Societies Act Cap 490 of the Laws of Kenya (CSA); the Sacco Societies Act Cap 490B of the Laws of Kenya (SSA); and their subsidiary legislations, the Sacco's by-laws and policies.

A Sacco operating as a non-deposit taking business has its lending operations governed by the Sacco Societies (Non-Deposit-Taking Business) Regulations (NDT Regulations) and the Sacco's credit policy as mandated by Regulation 28(2) of the NDT Regulations, while the lending operations of Saccos operating as deposit-taking businesses are

governed by the Sacco Societies (Deposit-Taking Sacco Business) Regulations (DT Regulations) and their own credit policies, also mandated by Regulation 28(2) of the DT Regulations. The Sacco's credit policy must be in writing and dictates, among others:

- the loaning procedures and documentation needed;
- eligibility requirements;
- terms and conditions of the loans;
- appraisal of the borrower's repayment ability;
- guarantor requirements; and
- procedure for the disposal of foreclosed assets, and other recovery mechanisms.

Further, the Sacco is required to provide a borrower with an annual statement on outstanding loan facilities and, additionally, upon request by the member, ensure that the member has the most current statement of outstanding obligations.

Disputes between a Sacco and its members, including disputes over a debt or demand said to be due, whether admitted or not, fall within the "business of a co-operative society" and are referred to the Co-operative Tribunal under Section 76 of CSA. This is the same forum a Sacco uses to pursue a defaulting member, and it is the forum a borrower uses to challenge a recovery action they believe was wrongly taken against them. A party dissatisfied with the Tribunal's award may appeal to the High Court under Section 81 of CSA.

WHAT ARE THE KEY DISPUTES ON THE DEBT RECOVERY PROCESS?

Key disputes on the recovery of debts from borrowers arise from the failure to render accounts, give notices, and attach illiquid assets before exhausting liquid assets. The failure to issue notices to a borrower as prescribed by law before reporting has resulted in Saccos being directed to monetarily compensate such borrowers, as has the practice of pressing on with recovery

while a genuine complaint from the borrower remains unanswered.

a) Recovery Steps and How to Challenge Them

While a borrower is required to repay their debt to the Sacco within the timelines indicated in the loan agreement and as governed by their Sacco's credit policy, it is not unheard of for a borrower to default. Saccos thereafter are at liberty to exercise various tools permitted in their credit policies, typically escalating in this order: demand letters and structured reminders; restructuring or rescheduling where the default arises from genuine hardship; offsetting the member's own savings, deposits and share capital; realising any charged collateral; calling upon guarantors; reporting the account to a Credit Reference Bureau; and, ultimately, filing a claim before the Cooperative Tribunal.

A recurring theme before the Tribunal is that a Sacco's credit policy and by-laws are not merely internal housekeeping, they bind the Sacco to the sequence it has itself set out. In ***Tribunal Case No. 577 (E397) of 2021 Dickson v. Pressfine Savings & Credit Cooperative Society Limited [2024] KECPT 244 (KLR)***, the Tribunal declined to accept a Sacco's account of its own internal procedure because it had not filed a certified copy of its by-laws to support its position, and cautioned Saccos generally against relying on "complex technicalities of procedure" that they cannot substantiate with documentary proof. The lesson for a member is a practical one: a Sacco that cannot produce the by-law or policy clause it relies on to justify a recovery step is vulnerable to challenge on that basis alone.

What a borrower can do

- Request, in writing, a current statement of the outstanding facility and a copy of the credit policy or by-law provisions the Sacco relies on for the recovery step being taken.

- Where the Sacco has skipped a step in its own documented recovery sequence, raise it in writing and, if unresolved, file a claim before the Cooperative Tribunal.
- Where the default arises from genuine hardship, request restructuring in writing before the account is escalated. This creates a record that can support a later argument that the Sacco moved to harsher recovery measures prematurely.
- If dissatisfied with the Tribunal's decision, an appeal lies to the High Court under Section 81 of CSA.

b) Reporting to Credit Reference Bureaus (CRBs)

Saccos are permitted to share both positive and negative credit information with licensed CRBs as third-party credit information providers. A facility is generally reportable once it is non-performing, with principal or interest unpaid past the threshold set in the applicable regulations.

Three safeguards sit at the centre of most disputes in this area. First, Regulation 26 of the Banking (Credit Reference Bureau) Regulations, 2020 requires a lender to give a customer 30 days' written notice of its intention to submit negative information to a CRB before doing so, setting out the loan particulars being the amount, interest, payments made, arrears and penalties, so the member has a real opportunity to regularise or dispute the account first. Second, it requires the reporting institution to notify its client that they have forwarded the report to a CRB within thirty (30) days of such reporting. Lastly, Regulation 29(2) of the Banking (Credit Reference Bureau) Regulations, 2020, gives a customer the right to formally dispute information already listed, including by escalating to alternative dispute resolution, a court of law, or the Central Bank of Kenya, where a dispute lodged with the bureau or lender is not resolved satisfactorily.

It is worth noting that the 2020 Regulations have themselves been the subject of litigation. The High Court declared them null and void in ***Bogongo v Cabinet Secretary National Treasury and Planning & another [2023] KEHC 22253 (KLR)*** for failure to table them before the National Assembly. However, the Court of Appeal suspended the High Court's declaration pending the hearing and determination of the Appeal in Nairobi COACA E782 of 2023. They therefore remain effective and binding on Saccos.

Courts have not hesitated to hold lenders liable for negligence and for breach of statutory duty where they list a member without the required notice, or on inaccurate information. In ***Mburu v Co-operative Bank of Kenya Limited & another [2024] KEHC 10303***, the High Court found that listing a customer as a defaulter without notice, on information that was itself inaccurate, amounted to negligence and breach of statutory duty, and awarded damages accordingly. Similarly, in ***Gichungu v Stima Sacco Society Limited [2025] KECOPT 471 (KLR)*** the Tribunal having found that the Sacco failed to undertake due diligence before listing the claimant proceeded to award the claimant Kshs. 200,000 despite the Sacco having promptly corrected the record as the claimant had been denied access to a loan facility due to the listing. The harm such listings cause is therefore not abstract justifying the need for notification to a defaulter.

What can a member do about a CRB listing?

- Obtain a free credit report from the relevant bureau to confirm what has actually been recorded, and check whether any pre-listing notice was given.
- Where no notice was given, or the reported information is inaccurate, lodge a formal dispute in writing with

the bureau; the bureau must investigate within 7 days and may notify the reporting institution of the dispute. The reporting institution must respond then within twenty-one (21) days.

- If the dispute is not resolved satisfactorily, escalate to alternative dispute resolution mechanisms, the Central Bank of Kenya, or file a claim in court or before the Cooperative Tribunal for damages, as in Gichungu above.
- Keep every piece of correspondence with the Sacco and the bureau on the same.

c) Saccos Ignoring Complaints Raised After Notice

Giving notice is only half of the natural justice equation. The audi alteram partem principle has two limbs: notice, and a genuine opportunity to be heard. A Sacco that serves a demand letter, a pre-listing notice or an attachment notice, then proceeds regardless of a substantive complaint the borrower or guarantor raises in response, has only completed the first limb. In practice this happens often: a member disputes the figures, asks for a statement of account that is never furnished, or points out that the loan was already settled through a third party such as an employer, and the Sacco lists, attaches or sues anyway without engaging with what was said.

This is precisely the fact pattern in ***Joseph Muriuki Mwaniki v Fortune Sacco Society Limited [2021] KECPT 552 (KLR)***, where a member who had requested a statement of account, which was never availed to him, and who contended that his loan had already been cleared through deductions made by KTDA, nonetheless had his property attached and was listed with a CRB over the same debt. Whether or not a complaint of this kind ultimately succeeds turns on the evidence, in the case, the Claimant ultimately succeeded and got his prayers, but a Sacco that cannot show it

actually looked into a member's dispute before escalating is inviting exactly this kind of claim.

By contrast, ***Kingori v Kenya Bankers Sacco (Cooperative Tribunal Case No. 970 (E914) of 2023) [2025] KECPT 191*** shows the other side of the coin. The Sacco's manager gave evidence that the member's complaint letters regarding debt collection had in fact been received and responded to alongside the requisite pre-listing notices, and it was that documented engagement, not just the fact that a notice had once been sent, which persuaded the Tribunal to dismiss the member's claim.

Where the complaint concerns information already submitted to a CRB, the position is reinforced by hard regulatory deadlines rather than general principle alone. Once a customer disputes an entry, the bureau must flag it as under investigation and issue the reporting institution a notice of dispute; the institution is then required to complete its investigation and respond within a prescribed period. Where the institution fails to respond in time, the bureau is required to delete the disputed entry outright. A Sacco that simply sits on a customer's dispute therefore risks losing the listing by default, on top of the negligence exposure discussed above.

What this means in practice

- **For borrowers:** put every complaint in writing, keep proof it was delivered, and set a clear, reasonable deadline for a response. If the Sacco proceeds, lists, attaches, or sues, without ever answering that complaint, the silence itself becomes useful evidence in a claim before the Cooperative Tribunal or a dispute lodged with the CRB.
- **For Saccos:** treat a live, unresolved complaint about the underlying debt as a reason to pause the next recovery step, not a formality to note and move past. Log complaints, respond to them in writing within a defined period

mirroring the CRB regulatory timelines, and be able to show that a dispute was actually investigated before escalation continued.

RECOMMENDATIONS

a) For Saccos: Avoiding Awards for Faults in the Recovery Process

Much of the litigation risk in Sacco loan recovery is self-inflicted, arising from process shortcuts rather than genuine disputes over whether a debt is owed. Saccos can materially reduce this exposure by:

- Maintaining a written, compliant credit policy under the appropriate regulations. It should set out the full recovery ladder and following that sequence consistently, in the same order, in every file.
- Issuing and retaining proof of a pre-listing CRB notice, complete with the loan particulars, and building in a genuine window for the member to respond before any listing is made.
- Adhere to the hierarchy of recovery as set out in the loan agreement and credit policy.
- Keeping by-laws and credit policies current, properly filed and readily producible. Saccos have lost tribunal findings simply for failing to produce the by-laws they relied on.
- Tightening due diligence at loan origination. Verify the borrower's identity, documentation and repayment capacity, and confirming that the product and terms actually disbursed match what was applied for. Due diligence failures at this stage are increasingly scrutinised by tribunals and courts.
- Training credit and recovery staff on statutory notice periods and keeping a complete correspondence trail, which has repeatedly been the deciding factor between a claim being dismissed and an award being made.

- Providing borrowers with an accessible internal dispute-resolution channel before an adverse step such as CRB listing or attachment, reducing both litigation and reputational fallout.
- Treating a complaint received after a notice has been served as a trigger to pause and investigate, not a formality. Keep a written record of that investigation and response, since it is that engagement, not the earlier notice alone, that has been decisive in reported decisions.

b) For Saccos: Managing the Risk of Loans Becoming Non-Performing

Recovery is a last resort; the more durable protection for a Sacco's loan book lies in managing risk before default occurs:

- Rigorous credit appraisal at origination, genuinely testing a borrower's repayment capacity and existing exposure, as Regulation 28(2) of the NDT Regulations and the DT Regulations require, rather than treating appraisal as a formality.
- Sensible exposure limits per borrower and per sector relative to a member's savings and security cover, to avoid concentration risk within the loan book.
- Active portfolio monitoring, with early-warning triggers at 30, 60 and 90 days so that genuinely distressed members can be engaged and restructured before the account hardens into full default.
- Adequate provisioning for non-performing loans in line with the Sacco Societies Regulatory Authority's prudential guidelines, so that a rising non-performing loans ratio does not translate directly into a liquidity or solvency problem for the Sacco.
- Making fuller use of reciprocal CRB data sharing at the appraisal stage, to flag over-borrowing and multiple concurrent facilities before a new loan is advanced.

c) For Borrowers: Protecting Yourself in the Recovery Process

- Keep copies of your loan agreement and any correspondence with the Sacco from the outset. These are the documents that decide most disputes.
- Request written confirmation of the recovery step the Sacco intends to take, and the specific by-law or policy clause authorising it, before funds are deducted.
- Act promptly, raise a dispute or file a claim before the Cooperative Tribunal as soon as a questionable step is taken.
- Where a CRB listing is involved, check for the 30-day notice and dispute inaccurate or premature listings directly with the bureau before the matter escalates.
- If you raise a complaint and the Sacco proceeds anyway without responding to it, do not treat that as the end of the matter, an unanswered, documented complaint is itself evidence that can support a claim before the Cooperative Tribunal or a CRB dispute.

CONCLUSION

Ultimately, a Sacco that recovers loans strictly in line with its own credit policy, gives the notices the law requires, and manages its book proactively is far less likely to see a defaulting member's claim succeed on procedure. Equally, a borrower who understands these safeguards, and insists on them, has real and tested avenues to challenge recovery action that has been carried out unfairly. A companion article will turn to the guarantor's side of the relationship, when a guarantor's obligation actually matures.

This publication is provided for general information purposes only and does not constitute legal advice. Specific legal advice should be obtained for individual matters. If you need any further clarifications, please do not hesitate to contact us via mombasaoffice@cmadvocates.com or your usual contact at our firm for legal advice.

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