CM ADVOCATES LLP



LAST RESORT, NOT FIRST PORT OF CALL

How Saccos recover loans from guarantors?

As captured in the first article in this series, Saccos have greatly eased access to credit for their members, part of the mechanism easing access is the use of guarantees. While there is some reliance on traditional credit-check systems, guarantees remain a unique feature of Sacco lending. Guarantors are members who commit to repay a loan should the principal debtor fail to settle it. A guarantee is an accessory contract to the primary loan agreement. It does not stand on its own, and the obligation it creates depends entirely on the borrower's default. As with recovery against the borrower, when a guarantor's obligation actually kicks in, and how recovery may be undertaken against them, is governed primarily by the Sacco's by-laws, its credit policy, the loan agreement and the instrument of guarantee itself.

Disputes arise when Saccos attempt to recover debts from guarantors instead of borrowers, chiefly because of a Sacco's failure to undertake due diligence when advancing credit, failure to adhere to their own by-laws and credit policies, recovery of sums exceeding what the guarantee covers, premature recovery against guarantors before the borrower's own means are exhausted, and disregard of complaints raised by aggrieved guarantors. This article addresses the major issues, drawing on decisions of the Co-operative Tribunal and the courts.

GUARANTEES IN SACCO LENDING

A guarantee is a promise to answer for the debt of another. Kenyan courts have long treated it as an accessory contract; one whose obligations arise only upon default of the principal debtor. It acts as a

fallback, securing a financier's recovery of sums disbursed. This accessory character is the lens through which every subsequent dispute in this area is decided.

As with lending generally, a Sacco's credit policy must set out its guarantor requirements as a core component, alongside the loaning procedures, eligibility requirements, appraisal of repayment ability and recovery mechanisms discussed in our first article. Disputes over a guarantor's obligation are disputes over a debt or demand said to be due between a Sacco and its members. They fall within the "business of a co-operative society" and are referred to the Co-operative Tribunal under Section 76 of the Co-operative Societies Act, Cap 490(the Act), with a right of appeal to the High Court under Section 81 of the Act for a party dissatisfied with the Tribunal's award.

WHEN DOES A GUARANTOR'S OBLIGATION MATURE?

Because a guarantee is an accessory to the principal loan, the guarantor's liability is secondary, not primary. This was the Tribunal's view in ***Atemba & 4 others v Trans-National Times Sacco Society Limited & another [2024] KECPT 974 (KLR)***. The Tribunal noted that a guarantor's duty is not merely to settle the debt on the borrower's behalf but also to encourage the borrower to settle it. The borrower bears the principal responsibility to repay, and a guarantor cannot ordinarily be called upon until that obligation has actually matured, typically after a defined period of continuing default and a demand made on the borrower. Saccos sometimes move to attach a guarantor's savings, shares or salary the moment a borrower falls into arrears, without first pursuing the borrower or exhausting the security the borrower has pledged. The Tribunal has consistently discouraged this practice.

A recurring theme before the Tribunal is that a guarantor is the last resort in the recovery ladder, not a convenient shortcut around a difficult borrower. A guarantor's obligation kicks in only when the borrower is incapable of repaying the debt or recovery against them has become impossible. In ***Njoroge v Mhasibu Sacco Society Limited & another [2024] KECPT 1396 (KLR)***, the Tribunal faulted a Sacco for choosing the easier route of deducting a guarantor's savings without making any real effort to pursue the defaulting borrower. It cautioned Saccos against rushing to deduct a guarantor's savings, shares or deposits before exhausting the available avenues of recovery against the borrower.

Similarly, in Atemba, the guarantors, on notice of the borrower's default and the intention to recover against them, helped locate the borrower, who committed to repaying the loan. The Sacco still proceeded against the guarantors. They argued that the Sacco's first recourse should have been a claim against the borrower rather than an immediate attachment of their salaries. The Sacco maintained that the guarantors had undertaken, jointly and severally, to settle the loan on default. The Tribunal cautioned against pursuing guarantors while a borrower was reachable and capable of repaying and no steps had yet been taken against him. It ordered the Sacco to refund the sums deducted from the guarantors, to cease deductions against them and to attach the borrower's salary, finding the Sacco's conduct unconscionable.

Read together, these decisions show that maturity of a guarantor's obligation is not a formality. A Sacco must be able to show that the borrower was given a genuine opportunity to settle, or that the borrower's own security was exhausted, before the guarantor's secondary liability is triggered.

RECOVERING FROM A GUARANTOR'S SAVINGS, DEPOSITS AND OTHER ASSETS

Where a guarantor's obligation has genuinely matured, Saccos typically recover through one or more of the following channels, each of which remains subject to scrutiny by the Tribunal:

i) Set-off against the guarantor's own savings, deposits and share capital held with the Sacco.
ii) Deduction at source from the guarantor's salary, through check-off arrangements with the guarantor's employer.

Whichever channel is used, the consistent theme in the Tribunal's decisions is that recovery from a guarantor must be proportionate to, and preceded by, a genuine attempt at recovery from the borrower or the borrower's own security. Before recovering from a guarantor, most Saccos issue a notice of default and intention to recover. Whether such notice is required, however, is determined on a case-by-case basis, depending on the Sacco's by-laws, credit policy and the loan agreement.

CHALLENGING RECOVERY AS A GUARANTOR

A guarantor aggrieved by recovery action may, on being served with the Sacco's notice of default and intention to recover, request a copy of the executed guarantee and then lodge a complaint against the notice. The guarantor may also help locate the borrower and urge them to settle, which discharges the guarantor from their obligation. The major issues arising in these disputes centre on the Sacco's failure to undertake due diligence on the guarantee and its failure to pursue the borrower before the guarantors.

a) Due diligence when lending

A guarantor facing recovery is entitled to interrogate whether the Sacco exercised reasonable care before advancing the loan, including whether they ever guaranteed the loan in question. The integrity of guarantee documents was called into question in ***Kimaiyo v Stima Sacco Society Ltd, Tribunal Case No. 379/E007 of 2023 [2025] KECOPT 528 (KLR)***. The Sacco had noted anomalies on the guarantee form during verification: the ID number did not match the Claimant's, and the Claimant's staff number had been erased. It nonetheless issued the loan and recovered the sum from the Claimant's savings despite his protests. The Tribunal found fault with the Sacco, ordered a refund of the deducted sums and awarded Kshs. 70,000 as aggravated damages.

b) Failure to pursue the borrower first

At the risk of repetition, a guarantor's liability is secondary to that of the borrower. The Sacco is required to exhaust recovery against the borrower before turning to the guarantor. Only when recovery against the borrower becomes impossible, or is insufficient to settle the debt, does the guarantor's obligation crystallise.

c) Complaining early and pursuing legal action

On receiving a notice of the borrower's default and the intention to recover, a guarantor who disputes their obligation, or the recovery steps taken against the borrower before the guarantee was enforced, should promptly raise a complaint, request information from the Sacco and, where necessary, move the Co-operative Tribunal for relief.

This preserves their assets where they have a genuine complaint. Delay has in some cases left guarantors with only a right to pursue the borrower for the settled debt. That was the position in ***Njunge & 2 others v Asili Sacco Society Limited & another [2025] KECOPT 601 (KLR)***, where the Claimants sought a refund of sums recovered from them under their guarantees. The Tribunal noted that, having failed to challenge the recovery process earlier, they could not seek discharge once their guarantee obligations had been enforced. Their only right was to pursue the borrower through subrogation to the Sacco's rights against the borrower.

WHEN SACCOS IGNORE GUARANTORS' COMPLAINTS

A guarantor may dispute that they guaranteed the borrower's loan and, on being served with the notice of default and intention to recover, lodge a protest with the Sacco. As with a borrower disputing their obligations, the Sacco should, on receiving such a protest, pause the process and adequately address the issue raised.

The Sacco's lackadaisical handling of the guarantor's complaint about the genuineness of his guarantee in Kimaiyo resulted in an order for refund of the recovered sums, plus aggravated damages. The award of damages, distinct from the refund itself, underscores a point Saccos would do well to internalize: liability for an unlawful deduction and liability for ignoring the complaint about it are assessed separately, and a Sacco can lose on both counts through a lax attitude.

RECOMMENDATIONS

How do Saccos safeguard the recovery process against guarantors?

As with recovery from borrowers, much of the litigation risk in recovering from guarantors is self-inflicted, arising from process shortcuts rather than genuine disputes over whether a debt is owed. Saccos can materially reduce this exposure by:

- Conducting rigorous due diligence at the point of lending, on the borrower's means and on the authenticity and viability of every guarantor listed, rather than treating guarantor verification as a formality. Whenever in doubt, pause and verify.
- Verifying every guarantor form against the specimen signature, ID particulars and any other identifying details on the member's file, and confirming a guarantor's willingness before a loan is disbursed, not after a default occurs. A missed mismatch of this kind is exactly the failure the Tribunal penalised in Kimaiyo.
- Stipulating clearly, in the loan agreement, the guarantee and the by-laws, when a guarantor's obligation matures and the sequence of recovery steps that follows.
- Exhausting recovery against the borrower, including any security or deposits the borrower holds, and keeping clear, producible records of the resulting outstanding balance before proceeding against a guarantor's savings, deposits or salary.
- Notifying a guarantor promptly once listed on a loan, and again once the borrower defaults and recovery against the guarantor is contemplated, giving the guarantor a genuine opportunity to respond before deductions begin.

- Investigating and responding in writing to any complaint a guarantor raises, and documenting that investigation. It is this engagement, and not the earlier notice alone, that has repeatedly proved decisive before the Tribunal.

How do guarantors protect themselves from recovery?

- Keep a copy of every guarantee form you sign, together with the loan agreement, from the outset.
- Request written confirmation whenever you are listed as a guarantor on a member's loan, and verify promptly with the Sacco if you did not consent.
- Act promptly: raise a dispute in writing, and file a claim before the Co-operative Tribunal as soon as a questionable deduction or recovery step is taken against you.
- Where you raise a complaint and the Sacco proceeds without responding, do not treat that as the end of the matter. An unanswered, documented complaint is itself evidence that can support a claim.
- Request a clear breakdown of how any sum recovered from you was calculated, and confirm it does not exceed the amount you actually guaranteed.
- Where your obligation has genuinely matured and sums have been recovered from you, you may sue the borrower for a refund of the sums deducted. Settlement of the debt extinguishes only the Sacco's right to claim; a guarantor's suit against the borrower survives enforcement of the guarantee.

COMMON PITFALLS: ISSUES TO ADDRESS BEFORE THEY BECOME PROBLEMS

Most disputes between Saccos and guarantors come down to process failures that could have been caught early. The most common are:

1. Treating guarantor verification as a formality. Accepting guarantee forms without checking the ID number, staff number and signature against the member's file invites a challenge to the guarantee itself. In Kimaiyo, anomalies were noted at verification, the loan was advanced anyway, and the Sacco was ordered to refund the deducted sums and pay Kshs. 70,000 in aggravated damages.
2. Going after the guarantor first. Deducting a guarantor's savings, shares or salary as soon as a borrower falls into arrears reverses the recovery ladder. In Njoroge and Atemba, the Tribunal faulted Saccos for taking the easier route against guarantors; in Atemba it ordered refunds and a stop to deductions after the guarantors had helped trace a borrower willing to pay.
3. Unclear contract terms. If the loan agreement, guarantee and by-laws do not say when a guarantor's obligation matures and what recovery steps follow, the Sacco will struggle to justify its conduct before the Tribunal.
4. Exceeding the guaranteed amount. Recovering more than the guarantee covers, or being unable to explain how the sum was calculated, exposes a Sacco to refunds and a finding of unconscionable conduct.
5. Ignoring guarantor complaints. A protest after a notice of default should pause the process. Liability for the deduction and liability for ignoring the complaint are assessed separately, so a Sacco can lose on both counts.

6. Poor record keeping. Saccos that cannot produce evidence of the borrower's outstanding balance, the steps taken against the borrower, and the notices and responses issued to the guarantor are hard pressed to defend their position.
7. Guarantors who sign casually. Guarantees carry real legal consequences. Signing without keeping copies of the guarantee and loan agreement, or without confirming the loan's terms, weakens a guarantor's position later.
8. Guarantors who delay. In Njunge, claimants who failed to challenge recovery early could not seek discharge once the guarantee had been enforced, and their only remedy was to pursue the borrower through subrogation. Raising a written complaint promptly, and moving the Co-operative Tribunal where necessary, preserves a guarantor's assets and options.

Addressing these issues early, through sound credit policies, disciplined verification, clear documentation and prompt, documented engagement with complaints, is far cheaper than defending an adverse award.

CONCLUSION

Guarantees remain central to Sacco lending in Kenya, giving members without conventional collateral access to affordable credit. But a guarantee is an accessory obligation: it matures only on the borrower's default and the exhaustion of primary recovery avenues. Saccos that move too quickly or carelessly against guarantors risk reversals, refunds and damages before the Co-operative Tribunal.

The Tribunal's message is consistent. Recovery from a guarantor is a last resort, to be taken only after diligent lending, clear contractual terms, genuine efforts against the borrower, proper notice and fair handling of complaints.

Guarantors should not give guarantees lightly, as they carry real legal consequences. Where a genuine issue arises, they should act promptly to protect their savings. And even where recovery has been made against them, they may still pursue the borrower.

How Saccos and guarantors manage the lending relationship can make or break a Sacco. Poor handling erodes member confidence, and the resulting exits can strain the Sacco's stability.

HOW CM ADVOCATES LLP CAN HELP

Our team advises Saccos, guarantors and members on every stage of the lending and recovery cycle, helping clients avoid disputes where possible and resolve them efficiently where not. We can assist with:

i) **Credit policies, by-laws and lending documents:** reviewing and drafting credit policies, loan agreements and guarantee instruments so that guarantor requirements, the point at which liability matures, and the sequence of recovery steps are clear and enforceable.
ii) **Due diligence and verification procedures:** designing guarantor verification and consent processes that reduce the risk of defective or disputed guarantees.
iii) **Recovery strategy:** advising on lawful, proportionate recovery, including preparing notices of default and intention to recover, and sequencing action against borrowers and guarantors.

CM ADVOCATES LLP

iv) **Complaint handling:** helping Saccos set up and document complaint-handling processes that stand up to scrutiny.
v) **Dispute resolution:** representing Saccos, guarantors and borrowers before the Co-operative Tribunal under Section 76 of the Co-operative Societies Act, and in appeals to the High Court under Section 81.
vi) **Advice to guarantors:** reviewing guarantees, responding to notices and recovery action, and pursuing claims against borrowers following subrogation.
vii) **Training:** workshops for boards, credit committees, and recovery and compliance teams on current Tribunal and court decisions and best practice.

This publication is intended for general information purposes only and does not constitute legal advice or a legal opinion. It is not a substitute for legal advice tailored to the facts and circumstances of a specific matter. The application of the law may vary depending on the circumstances of each case.

If you require advice specific to your circumstances, please contact our contributor below or reach out to your usual contact at CM Advocates LLP through mombasaoffice@cmadvocates.com

Contact our Practice Unit

Dispute Resolution & Appellate Practice Group
E: disputeresolution@cmadvocates.com

Contributor:

David Muthukia
Associate Advocate
dmuthukia@cmadvocates.com

CM Advocates LLP – Contact Details

Head Office Nairobi
I&M Bank House, 7th Floor, 2nd Ngong Avenue
T: +254 20 2210978 or +254 716 209673
P.O. Box 22588 – 00505, Nairobi Kenya
E: law@cmadvocates.com

Mombasa Office
Links Plaza, 3rd Floor, Links Road, Nyali
T: +254 041 447 0758 / +254 41 447 0548
P.O. Box 90056 – 80100, Mombasa Kenya
E: mombasaoffice@cmadvocates.com

Regional Presence
Uganda | Tanzania | Rwanda | Zambia | Ethiopia | South Sudan

www.cmadvocates.com

Disclaimer: *This publication is for informational purposes only and does not constitute legal advice. For tailored legal support, please consult our team.*

©2026, CM Advocates LLP, All Rights Reserved