

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**PC. CIVIL APPEAL NO 33 OF 2019**

*(Arising from Temeke District Court in Civil Appeal no 63/2018).*

**YUSUPH ALLY MTUTUMA.....APPELLANT**

**VERSUS**

**MWENA GROUP (CLEMENCE).....RESPONDENT**

**JUDGMENT**

*Date of last Order: 31/7/2019*

*Date of Ruling: 18/10/2019*

**MLYAMBINA, J.**

The appellant having being aggrieved by the Temeke District Court, in Civil Appeal No. 331/2018 referred the matter in this Court by way of appeal basing on the following grounds:

1. That, the Trial Magistrate erred in law and fact to uphold the decision of Primary Court by basing in the new Constitution which is the source of conflict.
2. That, the Hon. Magistrate erred in law and facts to determine the case basing on the minute of meeting while the minutes have no agenda of amending the Constitution.
3. That, Hon Magistrates erred in law and facts to determine the case without considering the new Constitution is not registered to the register which makes it invalid.

From the above ground's, the appellant prayed for the following orders:

To uphold this appeal, to quash and set aside the decision of lower Courts, costs and any other reliefs this hon. Court deems fit to grant and just and equitable to grant in circumstances of the case.

At the hearing, the appellant argued on the first ground that; the trial Court based on new Constitution. In his view, it was not right because they did not follow the procedures of getting new Constitution as enshrined in the old Constitution. According to the appellant, *Article 2 (23)* requires, if there is a necessity of new Constitution, there must be a general meeting and the proposed amendment must be approved by Registrar of Parties. Thus, the said articles were not complied.

The respondent replied on the first ground and stated that the trial Court was right to base its decision on the new Constitution because the appellant was one of those who signed the new Constitution. The name and signature of the appellant appears in number six therein.

As regards the second ground, the meeting dated 30/10/2016 had no agenda of amending the new Constitution, but on agenda no 3 through the massage of Godfrey Mwambe, the members decided to come up with the new Constitution and the appellant attended that meeting and he supported the idea by signing the minutes. Further appellant argued on the second ground that the trial Court did not consider the minutes. There was no agenda of amending the Constitution.

The third ground is as per *Article 2 (b) (23)*, which requires that, once there is a new Constitution it must be registered. Hence, the appellant prayed before this honourable Court to allow this appeal.

The respondent in reply to the third ground of appeal, argued that even if there is registration, what starts is the Constitution itself. The appellant

was member. He had the duty to make other members responsible for non-registration. The appellant cannot come to Court and complain about non registration of the group. Therefore, the respondent prayed before this honourable Court the appeal be dismissed with cost


Having going through the submission of both parties before this honourable Court, the following issues raised; whether UMOJA WA MWENA GROUP is a legal entity. This Court has visited all proceedings in the Primary Court and the District Court, there is nowhere stated that the said group was legal formed as required by the law of the land. **Section 12 of the Societies Act Cap 337 (R. E. 2002)** require every local society has to be registered. Section 12 (supra) states that;

*"every local society, other than a local society in respect of which an order made or deemed to be made under section 8 and 9, is in force shall in a manner prescribed, make application to the registrar for registration."*

However, Section 9(1) of the same Act states that: *"The Minister may require organizations to registered as societies."*

Since UMOJA MWENA GROUP is an association aimed at social and economic support, as rightly put in their so alleged Constitution: (1) *kujenga na kudumisha ushirikiano katika misingi iliyorisishwa kutoka Mtwara. (2) kusaidiana kwa hali na mali katika Nyanja za kiuchumi na kijamii miongoni mwa wanachama. (3) kuweka pesa kwa Pamoja na kusaidiana na pia kudhaminiana kuchukua mikopo kutoka taasisi mbalimbali za kifedha zilizopo kwenye maeneo ya karibu ili kujikwamua kiuchumi kwa kuendeleza biashara za wanachama wa umoja huu. (4) kuanzisha biashara. (5) kuwa na AC moja inayohifadhi itakayohifadhi*

*michango na ada za wanachama;* to mention a few, as stated in their Constitution of UMOJA WA MWENA GROUP, this association is not legally registered as required by the law. Therefore, the honourable Court finds this association to be null and void in the eyes of law. As such, the appeal is hereby dismissed with no cost. Right of appeal is explained.



**Y. J. MLYAMBINA**  
**JUDGE**  
**18/10/2019**

Ruling delivered and dated this 18<sup>th</sup> October, 2019 in the presence of both parties.



**Y. J. MLYAMBINA**  
**JUDGE**  
**18/10/2019**