

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF KIGOMA

AT KIGOMA

(PC) CIVIL APPEAL NO. 2 OF 2020

(Arising from Civil Appeal No. 21/2018 of Kasulu District Court, Originated from Civil Case No. 8/2018 of Manyovu Primary Court)

1. SATIELI S/O DUGUDA

2. AMON S/O BALAVUGA

.....**APPELLANTS**

VERSUS

MANYOVU AMCOS LIMITED.....RESPONDENT

JUDGEMENT

Date of Last Order: 17/06/2020

Date of Judgement: 22/6/2020

Before: Hon. A. Matuma.J

This is a very simple appeal. It is simple because it results from a claim of the appellants against the respondent, the claims of which the respondent does not deny but tries to put forward some reasons as to why she should be exempted from heeding to the claims. Now this Court as it were the two Courts below had only one duty, to determine whether the respondent's averments justifies her to be exempted from heeding to the claims of the appellants.

In the Primary Court of Manyovu the appellants and six others sued the Respondent for recovery of **Tshs 9,987,022/=** being payments of coffee they sold to the respondent during agricultural season of 2016/2017.

The 1st Appellant Satiel s/o Duguda, his claim was **Tshs 1,923,810/=** while the second appellant's claim was **Tshs 800,000/=**.

The two appellants together with their fellow six others who are not part to this appeal testified at the trial Court that they sold their coffee to the respondent as they used to do in previous seasons but this time 2016/2017 agricultural season, their payment were withheld by the respondent on allegation that at a certain time the appellants were members of the defunct Board of the respondent and during their tenureship they had occasioned loss of **Tshs 27,000,000/=**. In that regard therefore, the respondent held their due payments. They however deny causation of any loss to the society.

The appellants had underson Mogulu SM8 as their witness at the trial who testified that he was a cashier of the respondent during 2016/2017 season and that he acknowledges the claims of the appellants but he was ordered and directed not to effect the payment to them. He testified that the new board is the one which directed the holding of the appellants' money.

The respondent's witness Issa Juguta (SU1), Lawi Yakobo (SU2), Antony Moris (SU3), and Thobias Kalimuwabu (SU4) all acknowledged the claims of the appellants but stated that they decided not to pay the claims because the General Assembly had resolved that the appellants' claims be withheld because during their tenureship as members of the defunct board misused the Society's fund **Tshs 27,000,000/=**. The Tshs 27,000,000/= was a money alleged to have been due for payment to Amcos members in the season 2015/2016 but it was no paid and at that time the appellants were part of the board management which is now defunct.

The Primary Court, **Hon. Frank Mtega** (RM), having heard the case and scrutinized the other evidence on record at the end decided in favour of the appellants and ordered the respondent to pay the ~~appellants~~ their dues in 45 days from the date of the judgment i.e ~~23/11~~/2018.

The reasons advanced by the learned trial Magistrate is seen from page 5 to 6 of the trial Court's judgment that;-

"Ni kweli Mahakama inafikiana na upande wa mdaiwa kuwa wanachama wana uwezo wa kuamua jambo lolote linalohusiana na maslahi ya chama. Lakini ikumbukwe kuwa hakuna uhuru usiokuwa na mipaka, uhuru wa wanachama kwenye kuamua jambo lolote kwenye mkutano Mkuu hauwezi kuwa uamuzi sahihi kisheria kama una lengo la kuvunja sheria za nchi na kuvunja haki halali za wana..."

Kitendo cha kushindwa kuwalipa wadai ambao ni wanachama wa Manyovu AMCOS fedha zao kwa sababu za tuhuma za upotevu wa fedha, tuhuma ambazo hazijathibitika, Mahakama hii inaona kuwa hata kama hayo ndiyo yalikuwa maamuzi ya mkutano mkuu wa wanachama, maamuzi hayo yalikuwa ya kuwahukumu wadai kabla tuhuma zao hazijathibitika.

Pia yalikuwa maamuzi ya kibabe, kwa sababu licha ya maagizo ya mara kwa mara kutoka viongozi wa ngazi za juu za vyama vya ushirika, mdaiwa alishindwa kutekeleza maagizo hayo...

Pia hakuna kifungu kwenye sheria inayoongoza vyama vya ushirika inayokipa chama cha ushirika mamlaka ya kuzuia fedha za wanachama kwa sababu ya tuhuma.

Kiufupi Mahakama hii imeshindwa kujua uhusiano wa upotevu wa Tshs 27,000,000/= na kushindwa kuwalipa wanachama fedha zao za mauzo ya kahawa".

The respondent was dissatisfied with such decision and appealed to the District Court of Kasulu and the District Court allowed the appeal by quashing the Primary Court's decision on the ground that the Primary Court had no jurisdiction to entertain the suit.

The appellants are now before me challenging the decision of the District Court on three grounds.

At the hearing of this appeal Mr. Method Kabuguzi the learned senior Advocate represented the appellants while Mr. Michael Mwangati learned advocate represented the Respondent. Mr. Issa Juguta and Mr. Nashoni Hoha the chairman and vice chairman respectively for the respondent also were present while the appellants in person were also present.

Mr. Kabuguzi consolidated the three grounds of appeal and argued them together faulting the three issues relied by the District Court in quashing the decision of the Primary Court.

He argued that it was wrong for the District Court to rule out that only disputes which involves customary Law or Islamic law are determined in the primary Court. That the Primary Court have wider powers under section 18 of the Magistrate Court Act to determine disputes which are beyond applicability of Islamic law or customary law. He pointed out for example section 18 (1) (a) (iii) of the Magistrates Courts Act which confers jurisdiction to Primary Courts to hear and determine dispute for recovery of Civil debt arising from contract.

About jurisdiction of Primary Court where a company is a party, Mr. Kabuguzi learned Senior Advocate argued that Rule 13 of the Primary Court Civil Procedure Rules which the District Court relied on, does not provide that Companies cannot sue or be sued in the Primary Court.

It merely provides for procedures where a firm is a party to the dispute and was therefore wrongly relied.

The learned senior Advocate finally attacked the findings of the District Court that the appellants did not exhaust local remedies. ~~He~~ argued that they did up to the Regional level. Even though, ~~he argued~~, the instant dispute does

not follow into the categories of disputes which must follow the internal channel for dispute resolutions as rule 52 of the cooperative societies Rule 2004 provides that disputes which involves the board as a party are the one which must follow the internal remedies.

He was of the view that since this was a dispute between individual members and the cooperative society in its registered name, it was not subject to such requirement of being referred to the Registrar of Societies and further channel thereof. He called this Court to restore the decision of the Primary Court and quash that of the District Court with costs.

Mr. Michael Mwangati learned advocate on his party disputed this appeal and maintained that the District Court's decision was justified. He argued that the major reason for why the District Court nullified the proceedings and decision of the Primary Court was for the appellants' failure to exhaust the local remedies as mandated by Regulations 83 of the Cooperative Societies Regulations G.N 272. He argued that such disputes are amicably settled up to the level of the Minister who has final decision and that the appellants should have not ended to the Registrar of Societies but to the Minister before turning to Courts of law.

The leaned advocate argued that other reasons advanced by the learned appellate Magistrate were merely supplementary to the first one supra. He was of the view that the appellate Magistrate was also right in his supplementary reasoning that primary Courts have no jurisdiction to determine disputes involving companies.

He was of the view that rule 13 of the Civil Procedure Rules in Primary Courts provides for the parties in the Primary Court but companies are not named there. He cited the case of ***Republic versus Idd Mtengule, Criminal Revision No. 1/1979*** to the effect that anything not listed is excluded.

He thus called this Court to dismiss this appeal with costs.

In his short rejoinder Mr. Kabuguzi argued that rule 13 supra provides for procedures when a firm is a party to the proceedings but does not exclude companies to sue or be sued in the Primary Court

In my view, this was a matter which did not befit to be blasted by technicalities as the District Court did. It ought to have been treated within the spirit of the Constitution of the United Republic of Tanzania, 1977 as amended from time to time and that of the Civil Procedure Code, Cap. 33 R.E 2002 under section 3 A (1) (2), 3B (1) (a) & (e) as amended by section 6 of the Written Laws (Miscellaneous Amendments) Act No.8 of 2018 which requires courts to apply the overriding objective of the law for the purposes of facilitating the just, expeditious, proportionate and affordable resolutions disputes for the interests of justice.

This is because there were the appellants' claims on one hand and admission of the claims by the respondent on the other hand. Between the claim by the Appellants and its admission by the Respondent revolved technicalities to defeat the justice that would otherwise be instantly granted.

The alleged question of jurisdiction arose from the allegedly fact that the appellant did not resort into exhausting the local remedies within the societies Act and its regulations.

In my thorough perusal of the documentary exhibits and as rightly argued by Mr. Kabuguzi learned advocate, the appellants exhausted enough the local remedies.

They referred the matter to the District Societies officer who on 9/2/2017 vide letter with reference No. 3HD C/A. 1/14/24 instructed the chairman of the board to pay the dues of the appellants;

"Nimepokea Malalamiko kutoka bodi ya zamani kwamba mliazimia kutowalipa fedha zao za kahawa ambazo kanuni ya vyama vya ushirika ya mwaka 2015 kifungu Na. 31 (4) kinasisitiza kwamba mwanchama yeyote akiuza mazao yake chamani na kutoa hisa na kiingilio anastahili huduma ya aina yoyote kupewa.

Hivyo kwa maelezo haya unapaswa kuwalipa wanachama hawa. Nawatakia utekelezaji mwema".

The respondent did not however pay the dues as instructed and the matter was referred to the Regional level where as on 14/3/2017 the Assistant Registrar of Cooperative Societies wrote to the respondent a letter DB 53/246/02/129 that;-

"Nimepokea taarifa ya usuluhishi wa mgogoro katika Bodi iliyovunjwa na bodi yako iliyopo sasa baada ya kuagiza Afisa Ushirika wa Wilaya kwa mujibu wa sheria Na. 6 YA 2013 na kanuni za ushirika za mwaka 2016 kanuni Na. 83 inayohusu taratibu za utatuzi wa migogoro Bodi yako ilipohitajika kufika ofisi ya Ushirika Wilaya ilikaidi bila sababu za msingi hii ni kuonyesha bodi yako imeshindwa kutekeleza majukumu yake kama inavyoelekezwa katika kanuni Na. 51 (C) ya kanuni za vyama vya Ushirika 2015 na kutenda kosa chini ya sheria ya Ushirika Na. 6 ya 2013 kifungu 126 kwa mantiki hiyo bodi inaonyesha kushindwa kutenda kazi zake kwa kufuata matakwa ya sheria ya Ushirika na kanuni zake".

The Assistant Registrar then explained to the respondent through the same letter;-

"Aidha wajumbe wa bodi iliyovunjwa wana haki zote za kisheria zinazohusu mwanachama achilia mbali kuwa na kosa kama mjumbe wa Bodi kosa lililotendwa kama mjumbe wa bodi adhabu yake itatolewa kwa kiongozi, na itabainika tu baada ya kufanya ukaquzi na uchunguzi wa shughuli za chama".

Kwa ajili hiyo wajumbe wa Bodi iliyovunjwa kwa kufuata taratibu za kisheria kanuni Na. 31 inayohusu haki za mwanachana na kanuni Na. 32 inayohusu wajibu wa mwanachama katika chama chake. Hao wajumbe bado ni wanachama hivyo haki zao za wanachama wanatakiwa wapewe sawa na wanachama wengine”.

At the end, the Assistant Registrar instructed the chairman of the board:-

"Hivyo kwa barua hii malipo yao yaliyozuliwa ya mauzo ya kahawa naomba walipwe kama stahiki yao ya mkulima na mwanachama wa chama chake. Masuala ya ubadhilifu katika chama kama viongozi yatabainika baada ya ukaguzi kukamilika na hesabu kusomwa kama kuna ubadhilifu hatua za kisheria zitachukuliwa kwa kufuata taratibu za kisheria siyo kama mnavyotaka sasa”.

Under the herein circumstances, the appellants exhausted the local remedies as the decision in the two initial stages at the District level and Regional level ended in their favour. Therefore, any further reference if need be was to be done by the respondent. In the premises I reject the arguments of the respondent's advocate Mr. Michael Mwangati on the issue.

The District Court wrongly interpreted that the appellants ought to have further appealed up to the Minister who has a final decision. The one to appeal both under the relevant law and its regulation is the aggrieved party and not the one in whose decision was given. It was thus the respondent who ought to challenge the decision of the **Afisa ushirika Wilaya** and that of **Mrajisi Msaidizi wa Vyama vya Ushirika Mkoa** who decided against them. Unfortunately, that duty was shifted to the appellants.

What the respondent did was that which the trial Court termed **“Maamuzi ya kibabe”** because they did not challenge the decision of **Afisa Ushirika Wilaya** nor that of **Mrajisi msaidizi wa vyama vya Ushirika Mkoa**.

They thus acted “ **kibabe**” and intending the appellants to further appeal to the superior authorities . Why then! Was there any need for the appellants to do so? I find not. The appellants were only required to find a way of forcing the leaders of the respondent to head to the claims and directives of the officers in the Registrar of Societies office as herein above reflected, and in my view they properly sued them.

Issues of parties who may be sued or sue in the Primary Court were inventions by the District Court upon which the parties were not called upon to address and therefore condemned unheard. That was as well conceded by the Respondent’s advocate. I instantly quash them.

Whether or not Primary Courts have powers to hear and determine disputes which involves disputes whose applicable law is other than Islamic or Customary law, I find it that the same should not detain me much. The law under section 18 supra provides wider power to Primary Courts in their Civil Jurisdiction including suits for recovery of debt arising out of contracts as rightly argued by Mr. Kabuguzi supra.

Having said all these, I reverse the decision of the District Court and set it aside. In lieu thereof, I restore **a well and good reasoned judgment** of the trial Primary Court.

With its good analysis and well-reasoned decision, I need not re-scrutiny the evidence on record.

Instead I purchase and take the decision of the Primary Court as my decision in this appeal and further take the explanation and directives of the two cooperative officers as per their letters (supra) as my explanation in this appeal against the chairman and board members of the ~~respondent~~.

They cannot be left to act "**kibabe**" as termed by the trial Court in violation of the law as stated by both the Primary Court Magistrate and the two cooperative officers.

In fact under the Constitution of the United Republic of Tanzania article 107A (1) *mamlaka ya utoaji haki katika jamhuri ya muungano wa Tanzania yako mikononi mwa mahakama na hakuna chombo kingine chochote kitakachokuwa na kauli ya mwisho ya utoaji haki isipokuwa mahakama*. The question is is the Respondent's board and or its members a dully constituted court to make such a decision of snatching away the appellants' rights? Obvious not. Is there any court decision allowing them to hold such money of the Appellants? In fact, there isn't. Are they protected under any law to do what they have done? The answer is; there is no such law. In what do they stand or rely despite of them being wrong in law? The answer is "**Ni ubabe tu**" as the learned trial magistrate observed. As administrator of justice, I cannot allow oppressive leaders of the Cooperative society to grab the rights of its members in deliberate violation of the laws of the land.

Since during trial the respondent's witnesses and leaders categorically stated that the appellants' money is available only that they withheld them to await some inquiry of the alleged embezzlement, I order the respondent to immediate pay the appellants their respective dues within five days from today.

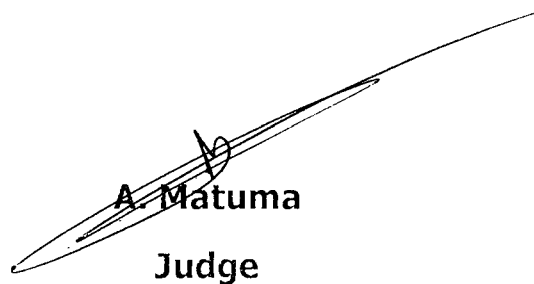
Failure so to do I order all the leaders of the Respondent society namely the Chairman and his vice chairman **Mr. Issa Juguta and Nashoni Hoha** respectively, **Isaya Amon** (Secretary/Treasury), **Juma Hogo** (Member), **Baraka Ibrahim** (Member), **Baraka Simoni** (Member), **Cosmas Diga** (Member) to appear before me and show cause why they should not be held liable to pay a fine of Tshs. 5,000,000/= each or committed to prison for a period of not less than two years under section 126 (1) (c) of the Cooperative

the Cooperative Societies Act No. 6 of 2013 for their disrespect of the law and deliberate withholding of the appellants rights since 2017 to date causing them to suffer economically without any justifiable cause, the rights of which are protected under the Cooperative societies Act supra and its Regulations.

I further order costs of the suit against the Respondent which was incurred in the Primary Court, District Court and in this Court.

I don't order interests as it was claimed in the Primary Court but the appellants are at liberty to commence another suit to establish the loss suffered as a result of unlawful withholding of their money.

It is so ordered.

A handwritten signature in black ink, appearing to be "A. Matuma", is written over the printed name.

A. Matuma
Judge

17/6/2020