

**IN THE HIGH COURT OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**PC CIVIL APPEAL NO. 7 OF 2020**

(Arising from Civil Appeal No. 51 of 2019 of Dodoma District Court Originated  
from Civil case No. 63 of 2019 of Dodoma Urban Primary Court)

**MANAGER MAJENGO SACCOS..... APPELLANT**

**VERSUS**

**MEDRAD PROSPER NYAKULIMA..... RESPONDENT**

*10/6/2020 & 14/7/2020*

**JUDGMENT**

**MASAJU, J**

The Respondent, Medrad Prosper Nyakulima successfully sued the Appellant, Manager, Majengo Saccos in the Dodoma Urban Primary Court for the recovery of his unlawfully attached motor vehicle with registration No. T 722 DHM make Suzuki Carry together with 3,000,000/= TZS compensation thereto.

The Appellant was aggrieved and therefore he unsuccessfully appealed to the District Court of Dodoma at Dodoma.

Aggrieved by the decision, the Appellant came to the Court by way of an appeal. The Appellant's Memorandum of Appeal is made up of three (3) grounds of appeal, thus;

*"1. That, the Honourable Resident Magistrate grossly erred in law and fact in upholding the decision of the trial Court on the wrong parties to the case thereto.*

*2. That, the Resident Magistrate erroneously dismissed the Civil Appeal No. 51 of whilst the trial Court had no jurisdiction to entertain the matter and reach its finality.*

*3. That, the Resident Magistrate erred in law and fact by dismissing the Civil Appeal No. 51 of 2019 basing on unmandatorily legal requirement in drawing up Petition of Appeals."*

The Respondent contests the appeal and filed his Reply to the Memorandum of appeal which is made up of three (3) grounds against the appeal. In the said Reply the Respondent essentially takes issues with the Appellant's grounds of appeal putting him to strict proof thereof. The Respondent prays the Court to dismiss the appeal with costs.

When the appeal was heard in the Court on the 10<sup>th</sup> day of June, 2020 both parties appeared in person, Mr. Jonathan Ntamkundo being the Manager, Majengo Saccos.

Submitting in support of the Appeal, the Appellant argued on the 1<sup>st</sup> ground of appeal that, the Resident Magistrate acted on wrong parties. That, by virtue of section 35 of the Cooperative Societies Act, 2013 the

registered SACCOS shall be sued and sue on its own. That, in the instead of Majengo Saccos. That, by virtue of section 68, the Respondent ought to have sued the Board since the manager is not member of the SACCOS.

On the 2<sup>nd</sup> ground, the Appellant submitted that, by virtue of regulation 83 of the Cooperatives Regulations, 2015 all the Cooperative disputes shall be mediated by the Registrar of Cooperatives, failure thereof the dispute shall be referred to the minister for final decision. That, the dispute therefore should have been dealt with by the Registrar of societies and in case of non-settlement, to the Minister for final decision.

The Appellant then prayed the Court to allow the appeal accordingly.

On his part, the Respondent contested the appeal in its entirety by submitting that, he sued the Appellant because he is the one who attached his car in pursuit of recovery of the loan advanced to his wife. That, the said car was not part of the loan security for the loan agreement entered by the Appellant and his wife.

That the 1<sup>st</sup> appellate Court summoned the SACCOS Board, the said board informed the said Court that it did not sanction the impounding or attachment of the car. That, the Respondent is not a member of SACCOS, therefore he could not have gone to the Registrar of Cooperative Societies for mediation that is why he complained before the trial Court.

The Respondent prayed the Court to dismiss the appeal with costs.

In his Rejoinder, the Appellant submitted that, there was an agreement between the SACCOS and Victoria Shio, the Respondent's wife

where the Respondent signed to the effect that, in the event his wife defaults service of the loan, his own property would be subject to attachment.

That is what was shared by the parties in support of, and against the appeal in the Court.

It is not disputed that the Appellant entered into a Loan agreement with the Respondent's wife on the 20<sup>th</sup> day of June, 2014. The Respondent only gave his consent to the Loan Agreement as a spouse to Victoria Shio. The guarantors to the loan agreement were Merisiana Lucas Massawe and Julius Peter Mushi as it can be reflected in the Loan Agreement.

Regulation 83 of the Cooperative Societies Regulation, 2015 provides for the procedure for disputes settlement, whereas, the disputes are to be settled amicably within thirty days then the dispute shall be referred to the Registrar for arbitration. When a person is aggrieved by the decision of the Registrar then he may within thirty days appeal to the minister.

The decision by the Minister may only be challenged in the High Court through Judicial Review.

In the instant case, the Respondent, ought to have exhausted the remedies provided for under Regulation 83 of the Cooperative Societies Regulations, 2015 before taking the matter to Court.

Therefore, the matter/dispute was taken prematurely to the Court with no competent jurisdiction to entertain the same. In that case the

Dodoma Urban Primary Court together with the District Court of Dodoma at Dodoma had no jurisdiction to entertain the dispute.

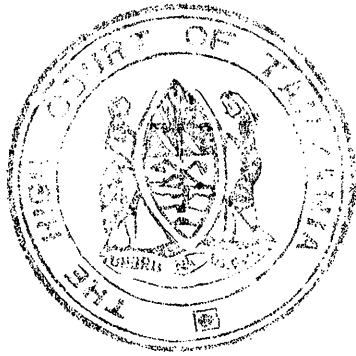
The Court therefore invokes its revisionary power under section 79 of the Civil Procedure code, [cap 33] to nullify the proceedings, decisions and orders of the trial Court and the 1<sup>st</sup> appellate Court which are hereby quashed and set aside accordingly.


Notwithstanding the procedural irregularity, the Loan Agreement at the part titled "*MAELEZO YA DHAMANA ZA MKOPO*" shows clearly the collaterals to the loan advanced to the Respondent's wife. The collaterals are, thus, shop, Motorcycle Sanya TV, Soffer set, Stand, radio fridge, closet, cupboard, seeming machine and a Plot at Nala. The attached motor vehicle is not mentioned as one of the Respondent's wife collateral.

The Court is aware of the fact that a SACCOS is a body corporate as so rightly submitted by the Appellant, but the manager had also no authority to attach the Respondent's property which was not even part of the collateral and thereafter transfer liability to the board.

In that case the Motorvehicle with Registration No. T 722 DHM make Suzuki lorry was unlawfully attached and the same shall therefore be as soon as possible handled over back to the Respondent in the same good condition it had at the time it was unlawfully attached. The Respondent can not be held responsible for any fees by the Garage where it is being kept. In the event the Respondent has any claim against the Respondent, he may follow the dispute settlement procedure provided for under

Regulation 83 of the Cooperative Societies Regulations 2015 accordingly  
The parties shall bear their own costs.



  
GEORGE M. MASAJU

**JUDGE**

14/7/2020