

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MOSHI DISTRICT REGISTRY
AT MOSHI
LAND CASE APPEAL NO. 16 OF 2018

(C/F Land Application No. 200 of 2017 District Land and Housing Tribunal of Moshi
District at Moshi)

LADISLAUS MASHAURI MSANA APPELLANT

Versus

MASHIMA SACCOS LIMITED 1ST RESPONDENT

TANFIN CONSULTANT LIMITED..... 2ND RESPONDENT

Date of Last Order: 21th FEB, 2020

Date of Judgment: 26th MAR, 2020

JUDGMENT

MKAPA, J:

The Appellant, Ladislaus Mashauri Msana aggrieved by the decision of the District Land and Housing Tribunal of Moshi (trial tribunal) in Land Application No. 200 of 2017 dated 14th June, 2018 has appealed against the decision and orders listing the following grounds;

1. That, the Tribunal grossly erred both in law and fact in concluding that the appellant did his business with the first respondent without proof thereof.

2. That, the Tribunal erred in trial regularities in reaching the decision dated 14th June 2018.
3. That, the trial Chairman failed to take into consideration the facts adduced by the appellant that he is not a member of Mashina Saccos.
4. That, the trial Chairman wrongly concluded that Mashina Saccoss and Tanfin Consultant Limited are cooperative societies without proof thereof.

Brief history leading leading up to this appeal is to the effect that, appellant was an applicant at the trial tribunal through Application No. 200 of 2017 where the applicant sought for an order of temporary injunction restraining the respondents from selling the suit premises or evicting the applicant from the suit premises. The respondents raised a preliminary point of objection on point of law that the tribunal lacked jurisdiction to entertain the matter secondly, the application disclosed no cause of action and thirdly, that the whole application was defective and incompetent in law. The trial tribunal ruled in favor of the respondents by sustaining the objection on the first point that the tribunal had no jurisdiction and the application was struck out hence this appeal.

Both parties prayed for the matter to be disposed of by way of written submissions and the court ordered as prayed. Appellant's

submission was filed by learned advocate Juliana Mushi while the respondents' submission was to be filed by Samwel Welwel also a learned advocate. However the same was not filed as ordered.

In the case of **Godfrey Kimbe V. Peter Ngonyani**, Civil Appeal No. 41 of 2014 CAT at Dar es salaam (unreported), the Court of Appeal referring to its decision in **National Insurance Corporation of (T) Ltd & another V. Shengena Limited**, Civil Application No. 20 of 2007 and **Patson Matonya V. The Registrar Industrial Court of Tanzania & another**, Civil Application No. 90 of 2011 (both unreported), held that:

"...failure by a party to lodge written submissions after the Court has ordered a hearing by written submissions is tantamount to being absent without notice on the date of hearing."

Since the respondents did not bother to file written submissions as ordered, they prejudiced themselves a right to be heard hence this application is determined by relying on the parties affidavits and appellant's submission only. Having thoroughly gone through the proceedings of the trial tribunal, grounds of appeal as well as the submissions made by the counsel for the appellant, the records reveal that the objection was sustained basing on the

point of jurisdiction. I will begin by determining this matter since its findings may have impact on other grounds of appeal.

The term '**Jurisdiction**' is defined in **Halsbury's Laws of England**, Vol. 10, para. 314 to mean:

"... the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decision. The limits of this authority are imposed by the statute; charter or commission under which the court is constituted, and may be extended or restrained by similar means. A limitation may be either as to the kind and nature of the claim, or as to the area which jurisdiction.

Jurisdiction is the first thing the court has to consider before entertaining any matter before it, therefore if it is proved that the court has no jurisdiction the case ends. During the trial the first respondent did prove that they are cooperative society, also through their pleadings on page 2 of the joint written statement of defense the same is also proved by attaching a certificate of registration to that effect.

Regulation **83 of the Cooperative Societies Regulations, 2015, GN No. 272 of 2015** and **Regulation 130 of the Saving and Cooperative Society Regulations, 2014** strictly

applies to the business conducted by members not non-members to settle their disputes through negotiations or reconciliation. I have read the provisions and for the purpose of clarity I better quote in full the relevant Regulations. **Regulation 83 of Cooperative Societies Regulations, 2015;**

"Any dispute concerning the business of the cooperative society or person claiming through them or between a member or person claiming and the board or officer or between one cooperative society and another shall be amicably settled through negotiation or reconciliation."

Regulation **130 of the Saving and Cooperative Society Regulations, 2014** provides;

"Any dispute concerning the business of the SACCOS, the member of the SACCOS or a person claiming through them or between a member or a person so claiming the board or any officer or between one SACCOS and other shall be settled amicably through negotiations."

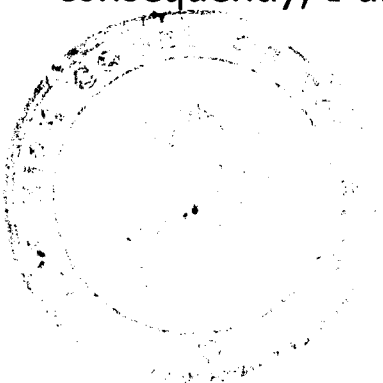
From the foregoing, it is crystal clear that any dispute by any person through a cooperative society not necessarily a member shall be settled through negotiations or reconciliation. There is no proof whatsoever that either negotiations ~~or~~ reconciliation

were conducted and failed thus the applicant had to refer the matter to the trial tribunal. Through her submission Ms. Mushi for the applicant challenged the trial tribunal to the effect that the applicant never did business with the first respondent as he was never a member of the said cooperative society.

However, by virtue of the requirement of the above cited regulations, whether the appellant did his business with the first respondent or not is irrelevant at this stage. The law is settled to the effect that, any dispute between a cooperative society and any other person to be settled through negotiations. Therefore appellant's contention that, the provision applies strictly to members is a misconception.

Since it has been proved, that the first respondent is a registered cooperative society, I find no reason to fault the tribunal's decision.

In the event, this dispose of the other grounds of appeal, consequently, I dismiss the appeal in its entirety.




S.B. MKAPA
JUDGE