

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

CIVIL APPEAL NO. 5 OF 2019

(From Original Case No. 35 of 2018 of Urambo Primary Court and Civil Appeal No. 11 of 2018 at Urambo District Court)

DAUDI GERALD KILINDAAPPELLANT

VERSUS

CHAMA CHA MSINGI KALEMELA RESPONDENT

JUDGMENT

KIHWELO, J.

This decision was reserved by my late brother, Bongole, J, who unfortunately passed away a couple of days before composing it. Consequently, the record has been re-assigned to me.

Briefly the background to this appeal is that the appellant sued the respondent before the Urambo Urban Primary Court in Civil Case No. 35 of 2018 for recovery of Tsh. 3,114,180/= . Upon full trial the matter was decided in favour of the appellant and the respondent was accordingly ordered to pay the claimed amount.

Aggrieved, the respondent preferred an appeal to the District Court of Urambo on grounds that the trial magistrate erred in law and fact by entertaining the case that has not been referred to the Conciliation Board of Co-operative Societies and that the case was not proved on balance of probabilities.

Upon hearing the appeal, the appellate District Court Magistrate decided that the appellant ought to have referred the dispute to the Office of Registrar of Co-operative Societies before he could opt for litigation to the court and thus he quashed the proceedings and judgment of the Urambo Primary Court on account that the matter was filed pre-mature and consequently he ordered the same to be referred to the Registrar of cooperative Societies for reconciliation purposes.

Aggrieved with that decision the appellant herein has now come to this court appealing against the decision of the District Court on the following grounds, that;

1. The Appellate District Court erred in law and in fact in failing to evaluate the documentary as well as oral evidence tendered before the trial court thus coming up with a wrong conclusion.
2. The District Court erred in law and in fact for interfering with the finding of facts of the trial court which acted in a right principles(sic).

At the hearing of this appeal both the appellant and the respondent appeared in person; The appellant did not have anything to add but rather he adopted his petition of appeal to be part of submission.

The respondent on his part submitted that, the District Court was right as it observed the regulations and procedures of Co-operative Society, he strenuously argued that the matter has never been referred to the Co-operative Societies as required.

In reply the appellant strongly submitted that they were reconciled by the court then it went on to determine the matter after the respondent's refusal for reconciliation. The appellant went on to contend that if the respondent wanted the matter to be referred to the Co-operative Society's leaders he could have said so before the trial court something which he did not opt to. The appellant finally prayed this court to determine the matter by dispensing justice.

Generally speaking, in my reading, understanding, and appreciation of the appeal before me, I am of the view that it is an attempt to invite this court to revisit the entire case with an ultimate aim of faulting the decision of the first appellate court for the reasons stated in the grounds of appeal filed before this court. With respect, for reasons I will state shortly, I decline the invitation.

Traversing on the records of the trial court it is not in dispute that the appellant is a registered member of the respondent Primary Co-operative Society christened Chama cha Msingi Kalemela.

I find it convenient to begin with the law that governs Co-operative Societies in Tanzania and that is the Co-operative Societies Act, 2013. This law was established to govern the conduct and management of business of co-operative societies in the country as the preamble to this law reads ***"An Act to provide for the establishment of the Tanzania Cooperative Development Commission; for the formation, constitution, registration and operation of cooperative development and for other matters incidental to or connected thereto."***

Furthermore, Section 141 (2) (i) of the Co-operative Societies Act of 2013 states that;

2. Without prejudice to the generality of subsection (1), the Minister may make Regulations.

(i) Providing for procedures for disputes settlement.

In the exercise of power provided under section 141(2) (i) the Minister has promulgated Regulations vide G.N. No. 272 of 2015 namely The Cooperative Societies Regulations. According to Rule 83 (1) of The Co-operative Societies Regulations;

83 (1) *Any dispute concerning the business of cooperative society between the members of the society or persons claiming through them or between a member of or persons so claiming and the Board or any officer, or between one cooperative society and another shall be settled under the First Schedule of this Regulation.*

With the above provision, it is conspicuously clear that the procedure for settlement of disputes in matters that involves the business of a cooperative society is the exclusive jurisdiction of the Registrar of Co-operative Societies and therefore ordinary courts of law are enjoined not to entertain matters of this nature unless parties have exhausted the available remedies provided under the Co-operative Societies Act.

As I have hinted above the procedure of settling disputes of these nature starts with the Office of the Registrar all the way to the Minister as provided for under rule 83 (9) which reads;

(9) A person aggrieved by a decision of the registrar under sub-regulation (3) may within 30 days of the receipt thereof appeal in writing against such decision to the Minister whose decision shall be final.

I think it is instructive to interject a remark, by way of a postscript, that, the rationale behind the requirement for the business of co-operative societies to be settled through the machinery provided by the Co-operative Societies Act and not through ordinary courts is to encourage harmony and piece within co-operative societies and ultimately let business to thrive. This longstanding requirement is meant to avoid paralyzing businesses of co-operative societies through prolonged and protracted litigation that will end up dividing co-operative societies and their members. I am fortified in this view by the principle that disputes relating to co-operative societies should be left to those who are competent to resolve them that is the machinery provided under the law governing co-operative societies and as much as possible through amicable settlement.

I fully subscribe to the position taken by the first appellant court that the trial court erred in law and fact by entertaining a dispute which had to be referred to the registrar for conciliation as required by law.

That said and done, the appeal is devoid of merit; therefore, it is dismissed in its entirety. I make no order as to costs.



P.F. KIHWELO

JUDGE

10/12/2020

Judgment to be delivered by the Deputy Registrar on a date to be fixed.



P. F. KIHWELO

JUDGE

10/12/2020



Date: 17/12/2020

Coram: Hon. B.R. Nyaki, DR

Appellant: Present in person

Respondent: Absent

Bench Clerk: Grace Mkemwa, RMA

Court: Judgment delivered this 17th day of December, 2020 in the presence of the Appellant but in absence of the Respondent Right of appeal explained fully.



B.R. Nyaki



DEPUTY REGISTRAR
HIGH COURT – TABORA
17/12/2020