

**IN THE HIGH COURT OF TANZANIA  
IN THE DISTRICT REGISTRY  
AT MWANZA**

**PC. CIVIL APPEAL NO. 22 OF 2019**

(Originating from Nyamagana District Court Mwanza Civil Appeal No. 57 of 2018 and  
Urban Court Civil Case No. 216 of 2018)

**JAPHARY GASTO GWIKOZE.....APPELLANT**

**VERSUS**

**WAMUHILA FUTURE GROUP..... RESPONDENT**

**JUDGEMENT**

19.3.2020 & 29.5.2020

**U. E.Madeha, J.**

The appellant, Jafary Gasto Gwikonze, was the defendant and losing party in the Nyamagana District Court Civil Appeal No. 57 of 2018 arising from the judgment of Mwanza Urban Primary Court Civil Case No. 216 of 2018. Aggrieved by the decision of the trial court, the appellant duly lodged his second appeal to this Court.

Briefly, the evidence on the whole facts, presents the following narrative. Wamuhila Future Group, the respondent herein, filed claims of Tshs. 6,182,000/= against Jafary Gasto Gwikonze who joined the Wamuhila Future Group and borrowed Tshs 13,200,000. He repaid Tshs 7,018,000 and owed the Group Tshs. 6,182,000. Wamuhila

Future Group requested Jafary Gasto Gwikonze to repay the remaining debt. The case consisted of five witnesses. There was also the group constitution that was admitted in evidence as exhibit PE1, the loan form exhibit PE2, the form which the respondent filled out the debt exhibit PE3, the form which the respondent used to receive the borrowed money exhibit PE4, and Loan payment receipt exhibit PE6. The defence evidence presented the loan receipt which was received as Exhibit DE1.

It is alleged that the appellant borrowed money from the respondent. When he was supposed to finish the remaining debt of Tshs 6,182, 000, he began to avoid payment of the money claiming that he was in difficult financial situation. Wamuhila Future Group struggled to pursue the claim without success. Although the appellant used his house as a security, he did not surrender the title deed to the group. The house was registered, but it was not known where the house was situated. The group filed the claim against the appellant at Mwanza Urban Primary Court in Civil Case No. 216 of 2018. The Urban Primary Court held that the appellant should pay the respondent Tshs

6,182,000 as he borrowed the money from the respondent. The District Court upheld the decision of the Primary court. Still dissatisfied the appellant appealed to this Court on four grounds. **One**, that the appellate Court erred in law by holding that the respondent has the locus to sue Primary Court. **Two**, the appellate Court erred in law by holding that the respondent can lend money and charge interest. **Three**, the Primary Court did not have the jurisdiction to entertain the matter. Finally, that the appellant borrowed Tshs. 13,200,000/= from the respondent while standard of proof in determining the disbursement of the loan was not met.

At the hearing of Appeal the appellant was represented by Mr. Davis Mzahura, the learned advocate, whereas, the respondent appeared in person.

Mr. Davis argued that, the District Court erred in law by failing to reason that Tshs 13,000,000/= was not the loan, but it was the contribution of each day by the group members. The group was not registered under the law. It does not have a legal personality. It is only a company which is registered by the Company Act that can be sued.

The group, in this case, sued by using the name of the group that is, Wamuhila Future Group, which is not a trusteeship. It was argued that the group does not therefore have locus to sue. The execution was done by Wamuhila Future Group which cannot own property. The resident Court referred to Order I, rule 8 of the Civil Procedure Code Cap 33. The group has no locus to sue in the name of the group.

The second ground that the appellant owes money to the group without considering that the granting was not issued by the bank as required by the Banking and Financial Institution Act, 2006. The contract which was entered is therefore void. On top of that the group did not pay tax.

The respondent submitted that the appellant borrowed the sum of Tsh 13,200,000/=. He signed and put his finger print impression on the contract. He repaid Tsh 7,180,000/=. The remaining balance was Tsh 6,000,000/=. It was further argued that it is not every member of the group can sue by using his own name. It is only in partnership that people can sue by using their own name. The Wamuhila Future Group does not have a legal personality. The CPC is not used in Primary Court.

The Primary Court erred in law in the hearing of the case. He prayed for the judgment to be quashed.

From the above submissions by the advocates, this court is of the opinion that visiting the grounds of appeal will be a total wastage of time on the following grounds;

Firstly, on the first issue, I was called upon to determine whether the group is legally allowed to issue loans. In solving this issue, I will combine all the grounds of appeal. I see that the group was not licenced and not legally registered. Yet, it has gone a long way in lending and accepting mortgaging of a house of the appellant as if it was a financial institution allowed to conduct the business of mortgage. Section 6(1) of the **Banking and Financial Institutor Act No. 5 of 2006** states that;

*"A person may not engage in the banking business or otherwise accept deposits from the general public unless that person has a licence issued by the Bank in accordance with the provisions of this Part".*

Even if the Banking and Financial Institutions Act did not exist, the transaction under which the loan was issued would still be illegal because the respondent had no license to carry out that business. For the business to be lawful the one conducting it must comply with the provisions of section 3 of the Business Licensing At, Cap 208 R.E 2002, which provides: -

*"3 (1) No person shall carry on Tanzania whether he as a principal or an agent, business unless-*

*(a) Is the holder of a valid business license issued to him in relation to such business..."*

From the above cited provision, the respondent contravened a mandatory requirement of the law that any person conducting a business must have a valid license to conduct such business, but the respondent had no such license.

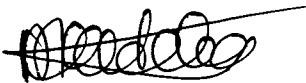
I have noted that both counsels have argued the appeal obviously without taking into consideration that the loan was advanced and was received in contravention of the law, hence it cannot be enforced. By reasons of illegality, and since the loan agreement is unenforceable in law, there is nothing said in the appeal and in the defence, which can give life into it. Therefore, the relief sought in this case might be impossible to execute.

The appeal is hereby allowed, each party to bear its own costs.

Order accordingly.

**DATED and DELIVERED in MWANZA this 29<sup>th</sup> day of MAY 2020.**



  
**U. E. MADEHA**  
Judge  
**29/5/2020**