

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF BUKOBA  
AT BUKOBA**

**(PC) CIVIL APPEAL NO. 41 OF 2020**

*(Originating from (PC) Civil Appeal No. 42/2018 of Muleba District Court and Civil Case No. 64/2018 of Muleba Urban Primary Court)*

**DEONISIA JOSIA.....APPELLANT**

***VERSUS***

**ANASTELIA SPRIAN.....RESPONDENT**

**JUDGMENT**

*17<sup>th</sup> May & 28<sup>th</sup> May 2021*

***Kilekamajenga, J.***

The parties were members of a group called Muungano. The group was meant to assist every member who gets a funeral. The appellant filed a case against the respondent complaining that, group members and especially the group leaders refused her contribution to the group. The appellant lost the case at the trial Primary Court. Being dissatisfied with the decision of the Primary Court the appellant appealed to the District Court where she also lost the case hence this appeal. Before this court, the appellant advanced three grounds of appeal thus:-

- 1. That, the appellate court erred in law and facts by deciding the case against the weight of the evidence, whereby the court failed to consider evidence by the appellant's husband who denied to have ever defamed the group chairman one Anasteria Sprian and that being the case the group chairman also on her evidence declared that she was not present where the conflict occurred.*

- 2. That, the court declare that there was no any evidence to show that the appellant was previously fined amount of Tshs. 10,000/= as the fine for defamation, hence allegation for defamation is fabricated.*
- 3. That, the appellate court erred in law and fact by reaching into the decision while there was no foundation of claims as the appellant has not breached any principle under the group constitution.*

The parties finally appeared in person and without representation. As they were laywomen, their submissions were just brief. During the oral submission, the appellant argued that the group rejected her contribution on the reason that her husband defamed group members. Her husband was not a group member but when the constitution was tendered before the trial court, it showed that her husband was her guarantor. She alleged that the constitution was amended for the purposes of this case. She finally urged the court to allow the appeal in order to realize her claim of Tshs. 993,000/=. The appellant further submitted that she sued the respondent because she was the group leader.

When the respondent was prompted to respond, she informed the court that the group had a tradition of contributing for members after getting a funeral. Initially, group members contributed half a kilo of rice and Tshs. 200/=; later they agreed to establish a fund and every member was required to contribute Tshs. 2,500/= every month. Thereafter, the appellant contributed for two months before her husband objected and defamed group leaders-and thereafter

the conflict arose. The appellant's husband abused group leaders by calling them prostitutes. The appellant's contribution was therefore rejected.

When rejoining, the appellant submitted she contributed Tshs. 2,500/= for about six months.

In disposing of this appeal, there are two issues for determination. **First**, the appellant claimed Tshs. 993,000/= from Kikundi cha Muungano. It is evident and undisputed that the group was established to assist members whenever there was a funeral. As stated by the respondent and supported by the appellant that every member contributed half a kilo of rice and Tshs. 200/=. The rice and money was given to a group member as assistance during the funeral. The group had no money to save in the fund. The respondent further argued that the appellant also benefited from this system when she lost her mother in law. Later, members agreed to establish a fund by contributing Tshs. 2,500/= every month. The appellant contributed for only six months before the dispute arose. Based on this fact, then the appellant's claim against the group is only Tshs. 15,000/=. This is the only money contributed by the appellant after the establishment of the fund. In my view, the claim of Tshs. 993,000/= has no base and unsubstantiated and not proved by the appellant during the trial.

**Second**, the suit was filed against Anastelia Sprian (respondent). She was the chairman of the group. Before this court, the appellant confirmed that she decided to sue the respondent because she (respondent) was the group chairman. In my view, the appellant had no cause of action against the respondent; the appellant's claim was against the group and not the respondent. Therefore, the appellant proceeded against a wrong party. The right party in this case was "Kikundi cha Muungano" and not the respondent. It is very unfortunate that the appellant has been claiming against a person who cannot satisfy the decree if awarded. It may be grave injustice if the respondent is ordered to pay the claim on behalf of the group.

Generally, despite the dearth of genuine claim, the appellant had no cause of action against the respondent. For the reasons alluded above, I hereby dismiss the appeal for lack of merit. The respondent has been attending to this court since 2018. She has incurred costs to this case which, in my view, should be paid by the appellant. I further order the appellant to pay the cost of the case to the respondent. Order accordingly.

**DATED** at **BUKOB**A this 28<sup>th</sup> Day of May, 2021.

  
**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**28/05/2021**

**Court:**

Judgment delivered this 28<sup>th</sup> May 2021 in the presence of the parties. Right of appeal explained.



**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**28/05/2021**