

IN THE HIGH COURT OF TANZANIA

MWANZA DISTRICT REGISTRY

AT MWANZA

HC. CIVIL APPEAL No. 58 OF 2020

(Arising from the judgment of the District Court of Ilemela in Civil Case No.01 of 2018)

WADOKI SACCOS LTDAPPELLANT

VERSUS

DAVID MSETI.....1ST RESPONDENT

MAKAMA INV. COMPANY LTD.....2ND RESPONDENT

KIBOKO AUCTION MART COMPANY LTD.....3RD RESPONDENT

JUDGMENT

6th May & 17th June, 2021

TIGANGA, J

This judgment is in respect of an appeal filed by WADOKI SACCOS LTD, the appellant, challenging the decision of the District Court of Ilemela Civil Case No. 01 of 2018, in which David Mseti, the 1st respondent, was the plaintiff suing the WADOKI SACCOS LTD, Makama Inv. Company Ltd, and Kiboko Auction Mart Company Ltd, in which he was suing for the following orders;

1. Payment of Tshs 106,955,000/= being the value of the confiscated properties or return of the properties in their better condition,
2. An order for declaring auctioning illegal,
3. Payment of general damages as granted by the Court
4. Payment of costs for the maintenance of the suit,
5. Any other reliefs which may be just under the circumstance of the suit.

After full trial which was conducted before the trial court, Hon. Kalegeya – RM, the trial court decreed and ordered that;

- (i) The attached home utensils which were sold be returned to the admitted to the plaintiff including those other items which have not be sold but they are still under the care of the defendant.
- (ii) He was awarded the plaintiff was awarded generals of Tshs. 5,000,000/=
- (iii) No cost is awarded to the parties.

The decision aggrieved the appellant; she decided to appeal to this to court against that decision. In such endeavor the appellant, through the service of Mr. Denis Kahangwa, learned Advocate, filed four ground of appeal as hereunder stipulated;

- (a) That the learned Resident Magistrate having found that the decision of the Registrar of the Societies has force of law, and on the strength of the tendered decision thereto she was in error in law and fact in proceeding to determine the matter on the same subject matter while the registrars decision was still in force and not overturned on the appeal under the relevant governing laws.
- (b) That the trial Court erred in law and facts in overturning the decision of the Registrar of Societies in a passing way while it has no authority and or mandate to do so.
- (c) That the trial learned Magistrate erred in law by departing from the proper pleadings as well as annextures attached thereto while determining the preliminary objection and encountered fact which required ascertainment by way of

evidence and went on to decide it without giving the parties an opportunity to be heard on it.

- (d) That had the trial Magistrates considered all the surrounding circumstances of the case she could not have arrived to decision at issue.

Wherefore he prayed for this court to reverse the decision, order for costs and any other relief as the court may deem fit and just to grant.

Hearing of the appeal was conducted orally, whereby the appellant was represented by Mr. Denis Kahangwa, learned Counsel, while the respondent was represented by Mr. Mathias Mashauri, also learned Counsel.

In his submission in chief Mr. Denis Kahangwa, learned counsel submitted that, although he raised four grounds of appeal, but upon reflection, he dropped the 3rd and 4th grounds but remained and argued he 1st and 2nd grounds of appeal together.

Arguing the two grounds, he submitted that the lower court erred to continue to hear the case after it had ordered that the decision of the Registrar of Societies had force of law.

He submitted that under the Societies Act or Corporative Societies Act, parties had their disputes decided on 25/06/2015 by the Registrar of the societies. It is his contention that the respondent was not satisfied by the decision; he lodged an appeal to the Minister responsible who has not yet decided the matter on appeal, therefore since the law, that is Regulation 83 (1) of the Cooperative Societies Regulations of 2015 provides for the procedures of settling the dispute between the society and its member. That procedure which mandates the Registrar to resolve the dispute must be complied. It is the position of the law under this rule that, whoever dissatisfied by the decision of the Registrar of the Society should appeal to the Minister concerned.

Mr. Kahangwa submitted further that, in this case the remedy of appeal was utilised by the respondent, as he appealed to the Minister, the matter which is still pending to date. According to him, what the respondent was required to do, was to make follow up to the Minister not to lodge this case before the trial District Court.

To support his contention, he cited the decision in the case **Uzinza Saccos Limited vs Emmanuel Shigongo and Others**, Misc. Civil Appeal No. 1 of 2010 in which it was held that dispute regarding the

SACCOs and its members are resolved under the law regulating the SACCOs the Court has no jurisdiction. He submitted that in **Uzinza SACCOS Limited vs Emmanuel Shigongo and Others** (supra), the court held that the court had jurisdiction because there was no proof that the said society was registered under the law, but the general rule is that where it has been proved that the SACCOS is registered, then the court has no jurisdiction.

He insisted that after the court had found that the decision of the Registrar had force of law, then it was not proper for the same court to proceed to hear the matter which had already been decided by a competent body as had there been any error in the decision of the Registrar, it was the Minister who had powers to correct and reverse the error committed by the Registrar, the court had no power to do that.

Further to that, he submitted that the fact that the respondent admitted to be indebted did not mean that the respondent ceased to be a member. The other reason he gave is that, the decision of the trial court is tainted because when the trial court decided the Preliminary Objection, it looked at the annexure. That, according to him, is against the principle of

law which provides that in deciding the Preliminary Objection the court is not required to look at the annexure.

He in the end, submitted by way of insistency that, the respondent was required to make follow up to the Minister not to file a fresh case in the trial court.

In reply Mr. Mathias Mashauri, submitted that their complaint before the Registrar was the confiscation of the properties made by the appellant, which was not backed by any law.

He submitted that the Registrar did not direct the appellant to attach the properties of the respondent, therefore the appellant had no legal powers to attach the properties of the respondent and sell them without a valid order.

He submitted that the law which establishes the cooperative societies requires that, if a person fails to pay loan, the first thing to proceed with is a security which was pledged by the borrower. According to Mr. Mashauri, in this case, the appellant was supposed to proceed against the motor vehicle with Reg. No. T420 ACA make Nissan civilian and un surveyed plot located at Nyasaka Mwanza, but to the contrary, the appellant attached

two cars which were not pledged as securities, that is Toyota Land Cruiser and Double Cabin Dutsun as well as the household equipment, which were not pledged as securities. He said the Registrar of society did not make an order directing or allowing the appellant to attach the said properties.

He submitted that the constitution of the appellant is clear that failure to pay a loan disqualifies a person from being a member. Since it is on record that the respondent failed to pay a loan, then, the respondent was no longer a member, therefore the ordinary court had jurisdiction to deal with the matter as the dispute did not involve a person who is a member, as required by the Cooperative Societies Rules, GN. No. 280 of 2004. He therefore submitted that the Registrar had no power to deal with the dispute. He submitted that even in the case of **Uzinza SACCOS Limited vs Emmanuel Shigongo** (supra) the High Court held that, the District Court had jurisdiction.

In the end, he submitted that the confiscation of the property was illegal and the Registrar had no powers to deal with the case. He prayed the appeal to be dismissed with costs.

In rejoinder Mr. Denis Kahangwa, submitted that in his submission in chief he confined himself on the point of law. He reminded the court that the issue as to whether the decision of the Registrar was right or wrong was not within the mandate of the District Court to decide; it was the Minister who had that capacity. He insisted that the trial court had no powers to reverse the decision of the Registrar.

That marked the submissions and arguments by the parties. Now looking at the grounds of appeal (the first and second which were argued), the arguments made in support and against the appeal, two main issues can be framed for determination, namely.

One, whether District Court had jurisdiction to entertain the case between the parties? **Two**, whether the order made by the court was justified and legal?

From the materials before me, there is no dispute that the respondent was a member of the appellant, and that in that capacity he took a loan which was repayable, the said loan was secured by the Motor vehicle Nissan Civilian with Reg. No. T420 ACA together with an unsurveyed plot at Nyasaka, Ilemela, in Mwanza.

It is also a fact that, the respondent failed to pay a loan as per agreement consequence of which, the appellant attached the respondent's properties (but which were not pledged as security) on the ground that, the ones which were pledged as security were not in good conditions as they could not have recouped the debts once sold or auctioned.

Following that attachment, the respondent lodged the complaint before the Registrar of Societies via a letter with reference No. WADOKI/SACCOS/COR/2014/29 dated 30/09/2014. The Registrar heard the parties and thereafter via a letter with reference No. FA.64/242/01/40 dated 25/06/2015, decided the disputes between the parties and gave various directives to be complied by the respondent mostly insisting that it was made under Rule 52 (2) of the Cooperative Societies Rules of 2004.

Through M.N.M. Advocate, the respondent lodged an appeal to the Minister, through a letter with reference No. M.N.M/ADV/GEN/Vol. II/375 dated on 23/07/2015 directed to Hon. Minister for Agriculture, Food and Cooperatives Societies of P.O Box 201 Dodoma. Their main complaint was contained in the first and second paragraphs which for the purpose of easy reference, it is hereby quoted.

"we are writing on behalf of David E. Msetti, the plaintiff in the said case and in compliance with the Acting Registrar of the Cooperative Societies decision of 25th June 2015, when this dispute was referred to him under Reg. 52 (2) of the Cooperative Societies Rules, 2004, GN No. 280 of 2004.

On 25/06/2015, the Acting Registrar of the Cooperative Societies in his decision totally disregarded the plaintiff's complaint in respect of the plaintiff's complaint in respect of the attachment and seizure of his properties which was illegally done."

The Respondent raised three grounds of appeal which he wanted the Honourable Minister to address, all were complaining about the Registrar's disregard or failure to address the complaint. The appeal did not challenge the powers of the Registrar to do what he did. There was no complaint that, the Registrar had no jurisdiction either on the ground that the respondent had already ceased to be a member of the appellant or otherwise.

From the record, Rule 52 (1) of the GN No. 280/2004 provides that;

"any dispute concerning the business of the cooperative society between the members of the society or person so claims through them or between a member or a person so claiming

and the Board, or any officer or between one society and another shall be referred to the Registrar. Reference may be made by the Board or the Society by resolution in general meeting or any party to the dispute or if the disputes a sum due from a member of the Board to the society any member of the society"

This was quoted with approval in the case of **Ulyankulu Cooperative Society vs Horupende Gerald**, HC Civil Application No. 9/1997 which was quoted with approval by this court in the case of **Uzinza SACCOS Limited vs Emmanuel Shigongo and Another** (supra). That being the position then, it goes without saying that, the jurisdiction of the District Court is ousted by the provision of the law.

It is also a law that the decision of the Registrar of the Cooperative Societies, is appealable to the Minister, under Rule 52 (3) of the Rules. This means, when the decision of the Minister is given, whoever is dissatisfied must as a matter of general principle, approach the High Court by way of Judicial Review.

In **Fanuel Mantiri Ng'unda vs Herman Mantiri Ng'unda & 2 others** [1995] TLR 155 CAT - it was held *inter alia* that;

"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature. In our considered view the question of jurisdiction is so fundamental that the court must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.

....The reason for this is that, it is risky and unsafe for the court to proceed with the trial of the case on the assumption that the court has jurisdiction to adjudicate upon the case. For the court to proceed to try the case on the basis of assuming jurisdiction has the obvious disadvantage that the trial may well end up in futility as a null and void on ground of lack of jurisdiction when it is proved later as a matter of evidence that the court was not properly vested with jurisdiction"

That said, it goes without saying that, the court had no jurisdiction to hear the case, therefore whatever was decided is a nullity.

Regarding the argument that the respondent had already ceased to be a member, I do not buy this idea because, the facts that the respondent failed to pay a loan did not take away his liability. Further to that, the law that is Rule 52(2) provides that one of the issues which the Registrar is entitled to deal with is an issue concerning the business which included claim of unpaid debt. In my considered view, it would be absurd to rule

that, the jurisdiction of the Registrar ceased immediately when the respondent failed to pay the debt.

Further more, as pointed out here in before that, the jurisdiction of the Registrar, was not in question, as the appeal to the Minister had never complained about that. That means, even if we assume for the sake of argument that, the District Court had jurisdiction, which is not the case in this matter, yet, it was not proper for the respondent to file a case before the District Court while he had already filed an appeal before the Minister.

In my opinion, this is what this court in the case **Ms. Olam Tanzania Limited vs Leonard Magesa and 2 others**, Misc. Civil Cause No. 06/2019 - HC - Mwanza, referred to as forum shopping. This behavior should with all effort be discouraged.

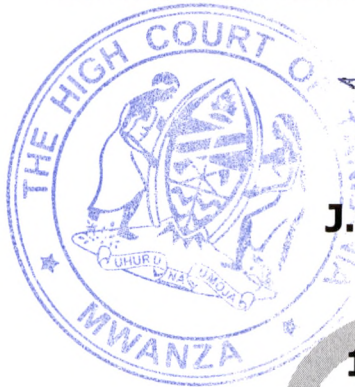
That said, I find that the District Court in this matter proceeded without jurisdiction. The appeal is therefore allowed with costs, it is held that the respondent was supposed to pursue his appeal which he lodged before the Minister.

The appellant has not shown that, he made follow up to the Minister and that the Minister failed to attend his appeal. That said, I hereby quash

the proceedings before the District Court in Civil Case No. 01/2018, and set aside the judgment and decree passed by the trial court for the reasons given.

It is so ordered

DATED at MWANZA, this 17th day of June, 2021



J. C. TIGANGA

JUDGE

17/06/2021