

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

MISC. CIVIL APPLICATION NO. 83 OF 2021

*(Arising from High Court App. No. 58/2010 originating from Civ. Case No. 01 of 2018
of the District Court of Ilemela at Ilemela)*

DAVID MSETI.....APPLICANT

Versus

WADOKI SACCOS LTD..... 1ST RESPONDENT

MAKAMA INVESTMENT Co. LTD.....2ND RESPONDENT

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

RULING

5th & 11th August, 2021

RUMANYIKA, J.:

With respect to judgment and decree of this court (Tiganga, J) dated 17th June, 021, before me the application is for leave for David Mseti (the applicant) to lodge an appeal. It was brought under S. 5(1) (c) of the Appellate Jurisdiction Act Cap 141 RE. 2019 and Rule 45(a) of the Court of Appeal Rules, 2009. It is supported by affidavit of David Mseti whose contents Mr. D. Mtete learned counsel for the latter (the applicant) adopted during audio teleconference hearing on 5/07/2021. Mr. D. Kahangwa learned counsel appeared for Wadoki Saccos Ltd, Makama Investment Co.

Ltd and Kiboko Auction Mart Co. Ltd (the 1st, 2nd and 3rd respondents respectively). I heard them through mobile number 0785662100 and 0713459900 respectively.

In a nutshell, on the 4 points by way of appeal now sought to be determined by the highest fountain of justice, essentially Mr. D. Mtete learned counsel stated and argued; **(a)** whether the ordinary Ilemela district trial court had jurisdiction over the matter with respect to decision of the Registrar of societies the appeal was pending **(b)** whether in any case decision of the registrar was binding the latter being a mere mediator/ arbitrator **(c)** whether where the dispute involved someone not a member of SACCOS the registrar had jurisdiction.

Whereas I am mindful of the legal principle that leave to appeal to the Court of Appeal was grantable where this court was convinced and satisfied that should the application be granted there was worth the name an arguable point to be considered by the Court of appeal (see the case of **Nurbhai N. Rattansi v. Ministry of Water Construction Energy Land and Environment & Another** (2005) TLR 320 (CA) quoted with approval in the case of **Mariam Mula Latifhussein & 2 Others v. Mohamed Hatibu Mbwana**, Civil Application No. 5 of 2014 (CA), unreported

provided, and if I may add, this court did not rehear the matter giving rise to the application for leave, assume jurisdiction of the Court of Appeal or reduce itself into a mere conduit pipe.

At least according to the evidence on record it was from the outset undeniable fact that on application the applicant having had the cash loan extended to him by the 1st respondent, but contrary to terms of the agreement the applicant defaulted and in order one to realize the money, rightly or wrongly the latter's property was attached, according to the governing cooperative laws he lodged his complaints to the Registrar of Societies but lost the war and battle, and, as his appeal to the minister was pending yet he instituted the civil case in the trial court.

The issue whether the trial court had jurisdiction it needs not detain me. In fact without running the risks of preempting the appeal No. 58 of 2020 and or any intended appeal, on that one my learned brother Tiganga, J is on record in blacks and whites having said;

"... 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 Cooperative Societies of P.O. Box 201 Dodoma ... he wanted the Honorable Minister to address, all were complaining about the Registrar's disregard or failure to address the complaint ... when the decision of the Minister is given, whoever is dissatisfied must as a matter of general principles, approach the High Court by way of Judicial Review... **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...** (the underline is mine).

Now that whether improperly or not there was, with respect to the same parties and subject matter an appeal pending before the minister until such time when the latter was done, on that one as this court held, institution of a civil case by the respondent it was, but forum shopping which behavior needed be discouraged. I would increasingly hold that where there was a special forum by law established for certain disputes, such other courts had no law jurisdiction (case of **Khofu Mlewa v Commissioner General of TRA & Another**, Civil Appeal No. 229 of 2019 (CA)) after all if cases were pursued in quasi-judicial organs and in

ordinary courts of law at the same time the possibilities of there being mockery of justice and confusion could not be eliminated.

Without prejudice to the foregoing, with all the concessions the applicant did not tell when actually he was going to repay the outstanding sum. With respect to attachment and sale of the collateral/security the respondent may have had gone beyond the terms and conditions of the loan agreement yes, but in all fairness this was not a fit case for the 1st respondent's claims to suffer consequence of the ancient saying; the means justify the ends. It would have been a different scenario which is not the case here, if, in that regard, and in place of the instant application there were objection proceedings filed.

In the upshot, with greatest respect the application runs short of merits. It is dismissed with costs. It is so ordered.

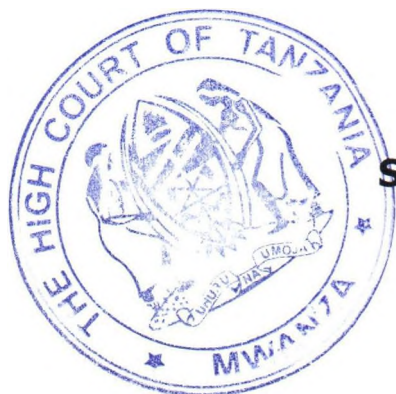
S.M. RUMANYIKA

JUDGE

11/08/2021

Right of appeal explained.

The ruling delivered under my hand and seal of the court in chambers this 11/08/2021 in the absence of the parties.



S.M. RUMANYIKA

JUDGE

11/08/2021