

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

PC. CIVIL APPEAL NO.32 OF 2020

(Arising from the District Court of Masasi in Civil Appeal No. 2 of 2020.

Original Civil Case No. 42 of 2019 of Lisekese Primary Court.)

KUPENDA ABEID KUPENDA.....APPELLANT

VERSUS

RASHID ISMAIL CHILONGA.....1ST RESPONDENT

VERONICA MATATA.....2ND RESPONDENT

JUDGMENT

1 June, & 20 July, 2021

DYANSOBERA, J.:

This appeal has been filed by the appellant against the decision of the District Court allowing the respondents' appeal.

Brief facts of the case for deciding this appeal are the following. The respondents were employees of MINAMO AMCOS, a primary society. Their duties were receiving cashewnuts from farmers, weighing them, packing them in the sacks and storing them in the warehouse. In 2017/2018 cashewnut season, the Chiwale Villagers sold their

cashewnuts through the said society. At that time, the society had eight branches, Nambalala Branch, inclusive. After buying the cashewnuts, the farmers had to be paid the money. However, it turned out that there was a loss of eleven tons of cashewnuts caused by Nambalala Branch. Due to the loss, the members of all the branches were arrested, taken to a Police Station at Masasi and detained. They were then forced to pay the farmers on the understanding that the persons who were responsible for the loss would be obligated to reimburse them or else be sued in a court of law. No reimbursement was made and the two respondents and Adandi Vitori Mtandi were identified to be the persons responsible for the loss and subject to make the reimbursement. The respondents failed. They were arrested and taken to the police and later sued before the Primary Court of Masasi District at Masasi in Civil Case No. 42 of 2019. The appellant Kupenda Abeid Kupenda, the chairman who purported to represent the said MINAMO AMCOS at the Primary Court was the complainant. The suit against the respondents and their fellow was to the tune of Tshs. 41,240,000/=.

The trial court heard the evidence and at the end of the day found the claim against the respondents proved on balance of probabilities. In its decision made on 19th day of November, 2019, the trial court ordered the respondents together with their fellow to pay Tshs. 19,812,200/= only. The payment was to be made to the MINAMO AMCOS so that the said money could be reimbursed to the members.

This finding of the Primary Court aggrieved the respondents who successfully appealed to the District Court vide Civil Appeal No. 2 of 2020.

The present appellant, Kupenda Abeid Kupenda (MINAMO AMCOS) has come to this court challenging the decision of the first appellate District Court. He is armed with five grounds of appeal which whose substance is the complaint that the decision was against the weight of the evidence adduced at the trial.

Before discussing whether the appellant's case at the trial was proved on preponderance of probabilities, let me determine whether the appellant had locus standi to sue the respondents before the Primary Court.

According to the records, the respondents in their appeal before the District Court had challenged the *locus standi* of the appellant in suing them. In their first ground of appeal, the respondents had argued that:-

1. That the learned trial magistrate erred in law and in facts by delivering judgment in favour of respondent (now the appellant) while the respondent (appellant) had no *locus standi*.

In my view, I entertain no doubt that locus standi is, to some extent, a jurisdictional issue. In this case, it had to be proved that the appellant was not asserting a private right but was representing the MINAMO AMCOS, a primary society.

This Agricultural Marketing Cooperative Society is a legal personality and is established under the Cooperative Societies Act, No. 6 of 2013. Section 68 (1) of the Act provides that Management of registered society shall be vested in the Board. Rule 2 of the Third Schedule to the Act provides that every registered society shall establish

a Board to manage its day to day activities. At the same time, rule 4 (1) of the Third Schedule to the said Act enacts that:-

“The Board shall exercise all powers necessary to ensure the proper administration of the society subject to the by-laws of the society, the regulations and any resolution passed at the general meeting.”

Although MINAMO AMCOS is a registered society hence with legal personality capable of suing and being sued, there is no evidence that the Board by a resolution or any written instrument authorised Kupenda Abeid Kupenda to initiate legal proceedings against the respondent. In that respect, the appellant lacked *locus standi*.

Even if the appellant was the chairperson of the MINAMO AMCOS and probably the person who sued the appellant was MINAMO AMCOS, the appellant had to be clothed with legal authority by way of resolution of the Board or other instrument so that he could legally represent the said cooperative society in a court of law. This means that the learned trial Resident Magistrate was in error in dismissing this first ground of appeal. It is true that this issue was not one of the grounds of appeal before this court but since the question of *locus standi*, is to some extent a jurisdictional issue, this court had no alternative but to decide upon it.

In the same vein, the appellant has no power to appear before and address the court as he lacks legal authority.

Since this issue sufficiently disposes of the whole appeal, I find to be an academic exercise to discuss the grounds of appeal on whether or not the case against the respondents were proved on balance of probabilities.

Consequently, the appeal is, for the reason different from those raised in the appellant's petition of appeal, dismissed with costs. The proceedings before the trial primary court and the first appellate district court are nullified.

Order accordingly.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

W.P. Dyansobera

Judge

20.7.2021

This judgment is delivered under my hand and the seal of this Court on this 20th day of July, 2021 in the presence of all parties in person and unrepresented.

Rights of appeal to the Court of Appeal explained.



A handwritten signature in blue ink, appearing to read "W.P. Dyansobera".

W.P. Dyansobera

Judge