

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA**

AT MUSOMA

PC CIVIL APPEAL NO. 8 OF 2021

RODA ONYANGO APPELLANT

VERSUS

KIKUNDI CHA UMOJA WA

MADEREVA NA UFUNDI SHIRATI RESPONDENT

**(Appeal from the judgment of the District Court of Tarime at
Tarime in Civil Appeal No. 40 of 2020)**

JUDGMENT

13th July and 16th August, 2021

KISANYA, J:

At the Shirati Primary Court, the appellant, Roda Onyango sued the respondent, Kikundi cha Umoja wa Madereva na Ufundi Shirati (hereinafter referred to as “the Group”) on a claim for recovery of two million Tanzania shillings (TZS 2,000,000), being her fees and contributions, as a member of the Group, in which she was expelled.

Upon hearing both sides, the trial court ordered the respondent to pay the appellant and two other persons namely, Oliva James and Pendo John, a sum of TZS 1,450,000/=.

The trial court's decision did not amuse the respondent. She appealed to the District Court of Tarime, which reversed the trial court's decision, thereby leading to this second appeal.

To appreciate the essence of the appeal, it will be necessary to highlight the material facts. The respondent, is an association or group of drivers and technician based in Shirati, Rorya District, Mara Region. It was formed on 10th November, 2008. The appellant joined the Group in October 2017. Her membership was ended on 2nd July, 2019 when expulsion letter was addressed to her. The main reason for expulsion from the Group was defaulting to pay membership fees for more than three consecutive months. Believing to have paid the fees up to June, 2019, the appellant sued the Group for the above stated claims. He also contended to have been denied the right to be heard before being expelled.

The defence case was to the effect that, the appellant was expelled from the Group after defaulting to pay her membership fees for eight (8) consecutive months. It was also the defence case that, in terms of the constitution of the Group, the respondent was not entitled to refund of her fees and contributions after being expelled.

As indicated earlier, the trial court was satisfied that the appellant had proved her claim and that of Oliva James and Pendo John. They were awarded a sum of TZS 1,456,000/=.

During the first appeal, the respondent raised four grounds of appeal. However, only the following two grounds were found

meritorious. One, that the trial court erred in law and fact in failing to consider that constitution of the respondent which dictates determination of membership. Two, that the trial court erred in law and facts by making decision in favour of the appellant and other two persons who neither testified before the trial court nor adduced evidence.

In the end, respondent's appeal was allowed on the reason that, it was not lawful for the trial court to order payment of TZS 1,456,000 to the appellant in inclusion of Olivia James and Pendo John who were not a party. The second reason was to the effect that, the appellant was not entitled to the refund of her contribution after defaulting to pay membership fees for eight months consecutively. However, the first appellate court ordered the respondent to refund the appellant a sum of TZS 10,000 paid after expulsion from the Group.

Aggrieved, the appellant has lodged this appeal. She has raised the following grounds of appeal, in verbatim.

1. That, the Senior Resident Magistrate erred in law and fact by failure (sic) to consider the letter dated 20th August, 2019 which instituted the case at original court.
2. That, the Senior Resident Magistrate erred in law and fact by assuming that the Appellant has knowledge of the constitution which infringes rights of its members.

3. That, the Senior Resident Magistrate erred in law and fact by failure (sic) to observe Natural Justice to Appellant and her fellow (sic) done by Respondent.
4. That, the Senior Resident Magistrate erred in law and fact by failure to give clear reasons of the award of 10,000/= to the Appellant.

At the hearing of this appeal, the appellant appeared in person while the respondent was represented by Geoffrey Lucas and Mbano Sarungi who introduced themselves as respondent's principal officers.

When called upon to submit on the appeal, the appellant prayed to adopt the petition of appeal and urged the court to allow the appeal. On the issue of representing other two persons, the appellant contended that she was appointed by Oliva James and Pendo John to represent them. She invited the Court to consider the letter lodged in the trial court to such effect. However, the appellant conceded that, she is the one who filled in the complaint form that instituted the case before the trial court.

In his rely submission, Mr. Godfrey Lucas commenced by adopting the reply to the petition of appeal and moved this Court to dismiss the appeal with costs. He went on to submit that the appellant was not representing other complainants. He was of the view that the said complainants were also required to fill in the complaint form and appoint the appellant to represent them.

Mr. Lucas further contended that the appellant did not prove her claims against the respondent. He went on to submit that the appellant was not entitled to refund of her contributions.

As regards the third ground that the appellant was not heard, Mr. Lucas submitted that she (appellant) was duly informed and given time to pay her arrears before being terminated. He finally asked me to dismiss the appeal and uphold the decision of the first appellate court.

I have carefully considered the competing arguments, the evidence on record and the law. I will proceed to determine the merits of this appeal, by considering the first, second and third grounds.

In my view the first ground calls us to consider whether the appellant was representing other complainants, namely Oliva James and Pendo John. This is so because the appellant faults the first appellate court for failing to consider that the case was instituted by letter dated 20th August, 2019 in which the said Oliva James and Pendo John appointed her to represent them.

Pursuant to rule 11(1) of the Magistrate's Courts (Civil Procedure in Primary Courts) Rules, GN No. 310 of 1964, a proceeding before the trial court is instituted by an application specifying: the name of the court in which the proceeding is brought; the name, occupation and place of residence or place of business of the claimant; the name, occupation and place of residence or place

of business of the defendant, so far as they can be ascertained; the facts on which the claim is based and when and where it arose; the relief claimed; and where property is claimed, the value of the property.

I went through the letter dated 20th August 2019 relied upon by the appellant. Having done so, I am of the considered view that, the said letter falls short of application instituting the case before the trial court because some of the items specified in rule 11(1) the Magistrate's Courts (Civil Procedure in Primary Courts) Rules were not stated. Further, the letter was not signed by the said Oliva James and Pendo John. Therefore, it cannot be said that they had appointed the appellant to represent them. As that was not enough, upon receiving that letter, only the appellant filled in and signed a prescribed form which instituted the case. Yet, she did not indicate that she was also representing other two persons or suing on their behalf. For the foregoing, I find no reason to fault the first appellate court's decision on the matter. It is clear that the appellant was also not representing Oliva James and Pendo John. Thus, the first ground fails.

The second ground is whether the first appellate court assumed that the appellant had knowledge of the respondent's constitution. This ground is based on the following decision by the first appellate court.

"According to the appellant's constitution which governs the daily activities of the appellant and to my

understanding the respondent read and understood the same before she decided to join the group...

Failure to pay membership fee for three consecutive months shall led to membership cessation."

In my view, since the respondent's affairs is governed by the constitution the appellant was duty bound to know the rights, obligations and duties of members before joining the Group. It is on record that the appellant is among members who signed the constitution. In terms of part 10 of the constitution, members declared to adhere by the terms and condition of the constitution before signing it. Therefore, I find that the first appellate court did not err by holding that the appellant had knowledge of the respondent's constitution in which clause 3.4 provides for cessation of membership upon failure to pay membership fees for three consecutive months.

Moving to the third ground, the issue is whether the first appellate failed to consider that the appellant was denied the right to be heard before her expulsion from the Group. As indicated earlier, this issue was raised in the complaint before the trial court. In its decision, the trial court was of the view that the appellant was not accorded the right to be heard before being evicted from the Group. Reversing the decision of the trial court, the first appellate court did not consider whether or not the appellant was accorded the right to be heard. Its decision was based on clauses 3.4 and part four of the respondent's constitution.

I agree with the first appellate court that, in terms of clause 3.4 of the respondent's constitution, membership ceases upon defaulting to pay membership fees for three consecutive months. Also it is clear that in terms of part four of the same constitution, a member expelled from the Group loses all his rights including contributions.

However, reading the said constitution as a whole, I am at one with the trial court that the appellant was entitled to be heard before being expelled from the group. This right is enshrined under Article 13(6) (a) of the Constitution of the United Republic of Tanzania, 1977. Luckily, item (iv) of clause 3.2 of the respondent's constitution provides for the right to be heard, as follows:

"Kila mwanachama atakuwa na haki zifuatazo:-

(i) ...

(ii) ...

(iii) ...

(iv) Kujitetea kutoa maelezo yake mbele ya kikao kinamhoji kwa tuhuma inayomhusu."

In this case, both parties are not at issue that the appellant was a member of the Group. The appellant testified, among others, that she was neither reminded of the arrears of membership fees nor heard before being expelled from the Group. That evidence was not challenged by the respondent during cross-examination. During the defence case, DW1 testified that at the meeting held 19th May, 2019, the respondent resolved that the defaulters be given one month to pay their arrears. However, the appellant did not attend the said

meeting and no evidence adduced to show that she was invited or informed of the resolution made thereto.

DW1 went on to depose that the appellant was evicted during the meeting held on 31st June, 2019. Again, he did not prove that the appellant was invited to attend the meeting and be informed of the allegations against her. When cross examined by the appellant on that issue, DW1 stated the procedure was to inform all members orally or through short messages (sms). However, a printout of SMS sent to the appellant was not tendered. Also, no witness who testified to have informed the appellant about the allegation against her or inviting her to meeting. Therefore, I find merit in the third ground. The respondent denied the appellant the right to be heard thereby contravening item (iv) of clause 3.2 of its constitution.

Since the appellant was evicted without being accorded the right to be heard, the provisions of the constitution cannot apply to her. Therefore, she was entitled to recover her contributions. The respondent, though DW1 admitted that the appellant had paid the following: entrance fees (TZS 50,000); membership fees for 11 months from October, 2017 to October, 2018 (TZS 22,000); disaster (*maafa*) (TZS 44,000); and membership fees paid in July, 2019 (TZS 10,000). DW1 further adduced that the appellant had not paid membership fees for October, 2018 to July, 2019. Although the appellant (PW1) and PW2 deposed that the membership fees for October, 2018 to June, 2019 and other contributions were duly paid, no evidence (receipts) tendered to prove that fact. Since the

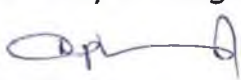
appellant failed to prove that she had paid the membership fees from November, 2018 to June, 2019, the claim for compensation could not stand. However, having considered that the appellant was evicted without being given the right to be heard, I find that she was entitled to recover a sum of TZS 126,000/= admitted by the respondent through DW1.

Eventually, the appeal is partly allowed to the extent shown hereinabove. Accordingly, the respondent is ordered to pay the appellant a sum of TZS 126,000/=. Costs of this appeal is hereby awarded in favour of the appellant.

It is so ordered.

DATED at MUSOMA this 16th day of August, 2021.





E. S. Kisanya
JUDGE

Court: Judgment delivered this 16th day of August, 2021 in the presence of the appellant in person and the respondent's principal officers namely, Mr. Godfrey Lucas and Charles Gogiwa. B/C Joavian Katundu present.

Right of further appeal to the Court of Appeal is well explained.




E.S. Kisanya.
JUDGE
16/08/2021