

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

HC CIVIL APPEAL NO. 76 OF 2020

(Arising from the decision of RM Civil Case No. 23 of 2018 of the Resident Magistrates' Court of Mwanza at Mwanza dated 11/11/2020 before G. K. Sumaye SRM)

JOSEPH MADIRISHA APPELLANT

VERSUS

CHAMA CHA MAENDELEAO CHA WANANDUGU RESPONDENT

JUDGMENT

19/07/2020 & 13/08/2021

W. R. MASHAURI, J;

This judgment is accruing from my ruling I delivered to the parties on 19/07/2021. Which was originating from Hc. Civil Appeal No. 76 of 2020 in which the appellant had mixed his Petition of appeal with a preliminary objection to the effect that, the trial court Resident Magistrate had no jurisdiction to try RM Civil Case No. 23 of 2018.

Since the purported grounds of appeal was mixed together with a preliminary objection, and bearing in mind of the submission by counsel for the appellant, who stated with the preliminary objection, instead of writing

the word judgment, I wrote the word ruling and upon gave my reasons in respect of the preliminary objection, I overruled the same, and upon overruled the preliminary, objection I ordered the learned counsel for the parties to argue the grounds of appeal No. 2, 3 and 4 separately and in my ruling I had an oversight of the submissions in support of the grounds of appeal and based on the preliminary objection. I realized the anomaly the day I was reading the ruling to the learned counsel for the parties.

In fact, it was the learned counsel for both parties who reminded me to have omitted the grounds of appeal in my purported judgment which I had cited it as ruling. I am sorry for the anomaly, hence this judgment on the three grounds of appeal namely: -

2. That, the trial court erred in law and fact to enter vain the matter in disregarding the evidence of the appellant in the judgment.
3. That, the trial court erred in law and fact by ordering the appellant to pay Shs. 21,475,000/= being specific damages which was not substantially proved on the required standard of proof.
4. That, the trial court erred in law and fact by ordering the appellant to pay Shs. 38,653,150/= being interest 5% from the date of default to the judgment of the court.

For the 2nd and 3rd grounds of appeal which he argued in consolidation, Mr. Zepherine counsel for the appellant submitted that the district court failed to put into account the evidence given by the appellant and it misconceived and given an order the respondent to be paid Shs. 21,475,000/= as specific damages. That, exhibit P3 tendered by plaintiff now respondent in the district court was admitted and marked exhibit P1 as indicated at page 28 of the district court typed proceedings, and the respondent admit that the appellant paid the debt in three instalments of Shs. 7,158,500/= each, with the interest of 5% per day.

For the 4th ground of appeal that the trial court misdirected itself to order the appellant to pay Shs. 36,650,500 with interest of 5% per day the appellant's counsel submitted that, the said claim of interest of 05% per day was justifiable on the reasons to wit: -

1. That, as he has submitted, above, the appellant had paid his loan.
2. That the organization of Chama cha Maendeleo cha Wanandugu Mwanza from which the appellant secured a loan was not a financial Institution within the meaning of The Financial Institution Act No. 5 of 2006 of which under section 6(i) of the Act refrains any person from engaging in the banking business and/or accepting deposits from the

general public unless such person has a license issued by the Bank in accordance with the provisions of this Act.

That, in the case of **David Charles v/s. Seni Manumbu** Civil Appeal No. 30 of 2007 Hc Mwanza Registry (unreported), the court held that:

"The only institution which people borrow money to be repaid with interest are Banks and Financial Institutions."

On that regard, the Chama cha Maendeleo cha Wanandugu Mwanza is neither a bank nor a financial Institution. It is merely a community based organization which is not a Commercial Institution.

Upon so submitted, the learned counsel for the appellant prayed the court to allow his appeal with costs.

In respect of the 2nd and 3rd grounds of appeal, that the trial court did not put into account the plaintiff's evidence, the learned counsel for the respondent refuted the allegation and submitted that, it is revealed at page 4 paragraph 3 of the trial court's judgment where it is said that, however in granting reliefs, the court has also taken into account the evidence of the parties, and according to the evidence of PW1 Joseph Madirisha, he admitted to have taken the loan of Tshs. 20,000,000/= and he deposited security for the loan. And upon considered the evidence in record, the trial court ordered

the defendant to pay the plaintiff the unpaid loan of Shs. 21,475,000/= as per exh. P2 and other reliefs.

On that regard, it is not true that the appellant paid the whole loan as it is shown in exhibit P2 that the unpaid loan was Tshs. 21,475,000/=: the exhibit of which was not objected by the appellant at the time it was tendered in court as an exhibit. That, it was held in the case of **Paulina Samson Ndawavya v/s Theresia Thomas Mdaha**, Civil Appeal No. 35 of 2017 CAT Mwanza Registry (unreported) that: -

"It is trite law and indeed an elementary fact that, since the matter is a civil proceeding the standard of proof was that on the balance of probabilities. Which simply mean that, the court is duty bound to sustain such evidence which is more credible than the other on a particular fact to be true."

That, it is an elementary requirement that, he who alleges has a duty to prove his ascertain (section 110) of the Tanzania Evidence Act Cap. 6 R.E. 2002. The learned counsel for the respondent was therefore of the view that, the evidence given by the respondent was more credible than the evidence given by the appellant.

That it has been established by the respondent that, there was an agreement between the respondent and the appellant which was breached

by the appellant the consequent of which the respondent suffered damages upon breach of the said agreement by the appellant.

The learned counsel for the respondent further submitted in reply to ground of appeal No. 4 that the trial court erred in law and fact by ordering the appellant to pay Shs. 38,653,150/= which was a result from the interest of 5% in a contract for loan as it was agreed by the group in particular when a loan is granted to a member.

The issues for consideration and determination in this matter are: -

1. whether the trial court failed to consider the evidence given by the appellant and it misdirected itself by giving an order that the respondent be paid Tshs. 21,475,000/= as specific damages.
2. Whether the appellant had paid all his debt/loan.

Loose at Centre of the court record, there is a certificate of Recognition of a Community Based organizations (CBOs) with reference No. MCC/CD/CBO/403 issued by Mwanza City Council on 19/10/2012. The certificate of recognition is annexed with the *"KATIBA CHAMA CHA MAENDELEO CHA WANANDUGU MWANZA"*

It is stated at the preamble of the constitution as follows: -

1.1 DIRA YA CHAMA

Kuwa chama cha Kijamii chenye uhai kiuchumi na maendeleo endelevu.

1.2. MAONO YA CHAMA

Kuwajengea wanachama uwezo na tabia ya kujiwekea akiba mara kwa mara kwa ajili ya kuinua hali zao za kuimarisha kiuchumi na kijamii.

1.3. LENGU LA CHAMA

- (i) Kusaidiana katika shida na raha.
- (ii) Kukuza uchumi na kupunguza umasikini kwa wanachama.
- (iii) Kuanzisha mfuko wa kuweka na kukopa.

1.4. MADHUMUNI YA CHAMA

- Madhumuni ya chama hiki, ni kuwakwamua wanachama kiuchumi.
- Kuwajengea uwezo na tabia ya kujiwekea akiba mara kwa mara kwa maisha yao ya baadaye.

Ili kufikia malengo hayo chama cha maendeleo cha wanandugu Mwanza kitafanya mambo yafuatayo: -

1.2.1 Kuanzisha mfuko wa kukopeshana kwa wanachama kwa riba na masharti nafuuu kwa ajili ya shughuli za maendeleo ya ujasiriamali kama vile; kilimo, ufuagaji, biashara, elimu na ujenzi wa nyumba bora.

1.2.2. Kutembeleana na kujenga mahusiano ya kindugu yaliyoainishwa na katiba hii.

1.2.3. Kumsaidia mwanachama anapopatwa matatizo mfano, kufiwa, ugonjwa na kuchangia elimu n.k

1.2.4. Kushirikiana na mwanachama wakati wa rufaha mfano: kuhitimu masomo, kuoia, kuolewa/kuozesha sherehe za kidini nk.

To mention a few.

It is quite apparent as filled in his loan form that one time, the appellant Joseph Madirisha Shigaha was granted by the group Chama cha Wanandugu Mwanza a loan of Shs. 20,000,000/= with interest of Shs. 1,600,000/=.

He paid the loan for two instalments of Shs. 2,700,000/= and remained with a loan of Shs. 16,200,000/=. he paid by two instalments on 31/08/2017 and 30/09/2017 respectively and remained with the balance of unpaid loan of Shs. 16,200,000/=.

As indicated in the loan form (annexture "A") between 30/09/2017 and 31/10/2017, the appellant Joseph Madirisha was given by the group another loan of Tshs. 25,000,000/= and he reached a total of unpaid loan of Shs. 42,951,000/=. He paid Shs 7,158,500/= in three instalments between 31/10/2017 and 30/11/2017 which made a total sum paid to be Shs. 21,475,500/=. Therefore, mathematically 42,951,000/= - 21,475,500/- Shs. 21,475,500/=. He is therefore correctly demanded by the group Chama cha

Wanandugu Mwanza the unpaid loan of Shs. 21,475,500/=. Plus, the claim of Shs. 38,653,750/= which has escalated from the delay of payment of fine of 5% per day being the money due as interest of 5% from the date the loan was obtained.


I agree with counsel for the appellant that the Chama cha Maendeleo cha Wanandugu Mwanza is not a Financial Institution created and/or registered to conduct Banking transactions, it is merely a community based organization which is established by members including the appellant with a vision of **"kuanzisha mfuko wa kukopeshana kwa riba na masharti nafuu kwa ajili ya shughuli za maendeleo, za ujasiliamali kama vile kilimo, ufugaji, biashara, elimu na ujenzi wa nyumba bora."** The mission of which does not ultra-vires the Commercial and Financing Act as well as the constitution of the URT.

Being member of the group, the appellant obtained the loan being aware of the requirement of the constitution of the group in respect of obtaining loans. In obtaining the loan which is not disputed by the appellant, the appellant was freely and voluntary with full knowledge of the nature of the loan and extent of the risk he ran, impliedly agreed to incur it. He is therefore estopped to say that the group,

is not empowered by the financial is not empowered by the Financial Act to give loans to members of the group. He is therefore duty bound to pay the unpaid loan of Shs. 21,475,500/= together with the escalated interest of Shs. 38,653,750/=.

Looking at that events, this appeal by the appellant Joseph Madirisha lacks merit, the same is dismissed with costs.




W. R. MASHAURI
JUDGE
13/08/2021

Date: 13/03/2021

Coram: Hon. W. R. Mashauri, J

Appellant:

Respondent:

B/c: Jackline

Court: Mr. Zephania Advocate, for the appellant Miss Gladness Lema Advocate for the respondent. The matter comes for judgment and we are all ready. Judgment delivered in court in presence of all learned counsel for both parties this 13/08/2021.

Right of appeal explained.




W. R. MASHAURI

JUDGE

13/08/2021