

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**PC. CIVIL APPEAL NO. 54 OF 2020**

**(C/F Civil Appeal No. 06 of 2019 in the District Court of Monduli at Monduli, Original, Civil  
Case No. 15 of 2019 at Kisongo Primary Court)**

**REHEMA NURU MOHAMED.....APPELLANT**

**VERSUS**

**CAS – MICROFINANCE LTD.....RESPONDENT**

**RULING**

**5/08/2021 & 30/09/2021**

**GWAE, J**

In the Kisongo Primary Court (trial court) the appellant **Rehema Nuru Mohamed** was sued by one **Joel Supuku Mollel** for the recovery of Tshs. 1,182,000/=, an outstanding loan which was advanced to the appellant by a company known as CAS.

After full trial, the trial court gave its judgment in favour of the said Joel Supuku Mollel after being satisfied that the appellant had not paid the loan she obtained from CAS. The appellant was therefore ordered to pay the outstanding loan of Tshs. 1,182,000/= within three months from the date of judgment.

Dissatisfied with the trial court's decision, the appellant preferred an appeal to the District Court of Monduli (1<sup>st</sup> appellate court), however, the appeal was filed against CAS – Microfinance and not Joel Supuku Mollel as appearing in the trial court proceedings. Without noting an anomaly, the first appellate court determined the appeal and upheld the findings of the trial court that the appellant had defaulted repayment of the loan, nevertheless, the amount to be paid was reduced to Tshs. 882,000/=.

Aggrieved by that decision, the appellant has filed this second appeal against the respondent CAS – Microfinance Ltd with the following grounds of appeal;

- i. That, the District Court erred in law and in fact by ordering the appellant to pay Tanzanian shillings Eight Hundred and Eighty-Two Thousand (Tshs. 882,000/=) to the respondent while there was no sufficient evidence to establish the amount ordered.
- ii. That, the District Court erred in law and in fact to have entered the judgment in favour of the respondent while there was no evidence during trial to prove how the debt of Tshs. 882,000/= accrued.
- iii. That, the District Court erred in law and in fact by not taking into consideration the appellant's evidence adduced during trial.
- iv. That, the District Court erred in law and in fact by ignoring the fact that the suit was res sub-judice as the respondent had instituted another

suit of the same nature in the same court before Civil Case No. 06 of 2019 was filed.

On hearing of this appeal, the appellant appeared in person, unrepresented, hearing proceeded *ex parte* as the respondent defaulted appearance without notice of absence. The appellant denied to be indebted by either CAS Microfinance or Joel, she further contended that she had never entered into any loan agreement with either of the two.

Before composing the intended judgment, I inquired the appellant to address me on the anomaly of the names of the parties as the respondent herein appears as CAS Microfinance Ltd while at the trial proceedings was not a party as the plaintiff in the suit filed in the trial court was a person known by the name of Joel Supuku Mollel. Speaking of this irregularity, the appellant stated that the error was caused by her lawyer.

Having gone through the trial court proceedings, it is evidently that the plaintiff who instituted the case against the appellant herein was one **Joel Supuku Mollel** who testified to be a loan officer, however after a careful reading of the testimonies from both parties I have noted that the appellant herein did not take a loan from the said Joel Supuku Mollel in his personal capacity. A good example can be gleaned from the plaintiff's testimony which is reproduced hereunder;

"Mnamo tarehe 24/11/2017 mdaiwa aliomba mkopo wa Tshs. 2,000,000/= kuwa atalipa awamu sita na kuna makubaliano ya kiofisi tuliotakiwa kupata kila mwezi alitakiwa kulipa Tshs. 433,400/= ambapo kwa awamu sita alitakiwa awe amerejesha Tshs. 2,600,000/="

From this piece of evidence, it is vividly that the from took a loan from an office (CAS Microfinance Ltd) and the transaction was not a personal business. Furthermore, I have also considered the documentary exhibits that were tendered at the trial court including the receipts of payment, they all indicate to be issued by CAS Microfinance Ltd and **not** Joel Supuku Mollel.

Given the circumstances of this case, which in my view, squarely falls within the ambits of section 33 (3) of the Magistrates Act Cap 11 R.E 2019 which reads;

"In any proceedings in a primary court to which a body corporate is a party (including proceedings of a criminal nature) a person in the employment of the body corporate and duly authorized in that behalf, other than an advocate, may appear and act on behalf of that party."

According to the wordings of the statute quoted above, an employee may appear on behalf of his or her employer but the name of the employer must be joined in the proceedings and not the name of an employee of an entity. Therefore, from the above quoted part of the law, the said Joel Supuku Mollel being a loan officer employed by CAS Microfinance Ltd, was only dully authorized to appear on


behalf of CAS Microfinance Ltd, a body corporate which in this case ought to have been a party to the proceedings of the trial court and therefore Joel Supuku Mollel even if he is an employee of CAS Microfinance Ltd could not sue the appellant on his own capacity.

Having brought up CAS Microfinance Ltd at an appellate stage as a party to the suit is quite improper in law and considering the fact that the appellant herein lamented that it was the mistake of her advocate but yet this court finds that the root of the problem stems from the proceedings of the trial court as the said Joel Supuku Mollel had no legal capacity to file a suit against the appellant on his own capacity.

Without further ado, this court having found that the one who initiated the trial court's proceedings was an improper party and that the respondent herein was not a party at the trial court's proceedings, the proceedings and judgments of the 1<sup>st</sup> appellate court and the trial court are hereby quashed and set aside, this court further orders for an expeditiously trial denovo after amendment of the plaint by joining proper parties. Each party shall bear its costs.

It is so ordered.



  
**M. R. GWAE**  
**JUDGE**  
**30/09/2021**