

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

(PC) CIVIL APPEAL NO. 18 OF 2020

(C/F Civil Appeal No. 20 of 2020 at Arumeru District Court, Originated from
Enaboishu Primary Court, Civil Case No. 18 of 2020)

VIONGOZI KUSURE SACCOS LTD..... APPELLANT

VERSUS

GODWIN MOSSES MBISE..... RESPONDENT

JUDGMENT

14.05.2022 & 19.07.2022

N.R. MWASEBA, J.

Godwin Moses Mbise, the respondent herein, instituted a civil suit against Viongozi Kusure Saccos, the appellant herein, at Enaboishu Primary Court (the trial court) for a claim of Tshs. 30,000,000/= following unlawful attachment of his four cows. It was alleged that the appellant extended loan to the respondent's wife where by the respondent was her surety. So, the attachment was for recovery of the said loan due to default payment. In a judgment delivered on 20.03.2020 the trial court was satisfied that the claim was proved and proceeded to order the appellant

to pay the whole amount of Tshs. 30,000,000/= as claimed. Their appeal to Arumeru District Court was unsuccessful since the court uphold the decision of the trial court.

Being aggrieved the appellant preferred the 2nd appeal to this court based on the four grounds as follows; -

1. That, both the trial court and the first appellate court erred in law and fact to adjudicate the matter in which they have no jurisdiction.
2. That, both the trial court and the first appellate court erred in law and fact by applying in the matter the principle of "lifting the veil of incorporation".
3. That, the first appellate court erred in law and fact to uphold the trial court decision and failed to observe irregularities in the trial proceedings which affected the merits of the case.
4. That the judgments of the trial court and that of the 1st appellate court are a nullity for failure to evaluate evidence adduced by the appellants, hence gave unfair decision.

At the hearing of the appeal which was steered by way of written submission, Mrs Aziza A. Shakale, Learned Counsel represented the appellant whereby Mr. Ombeni C. Kimaro, Learned Counsel represented the respondents.

Arguing in support of the appeal, Mrs Shakale abandoned the second ground of appeal and proceeded to argue the remaining grounds. The 1st

and 3rd grounds were argued jointly followed by the fourth ground of appeal. On the 1st and 3rd ground of appeal, Mrs. Shakale raised the issue of jurisdiction and argued that although it was never raised before, the issue of jurisdiction can be raised at any stage as per the case of **Tanzania- China Friendship Textile Co. Ltd Vs Our Lady of the Usambara Sisters** (2006) TLR 70.

She submitted further that; the respondent was not a member of the Saccos but surety to the loan taken by his wife from the Saccos. The respondent's wife being indebted to the Saccos, the heads of cattle which were security of loan were attached by the appellant and later released upon the debtor being granted time to repay the debt. She said due to the above facts the trial court ought to have ascertained its jurisdiction to entertain the matter and that what was done by the Saccos was in the course of business not otherwise. She referred this court to **Regulation 83 of the Cooperatives Regulations, 2015, GN 272 of 2015 and Regulation 130 of the Savings and Cooperative Society Regulations, 2014** which stipulate that all the disputes concerning business of Saccos need to be resolved following the procedures stipulated therein by way of negotiation and reconciliation. Her arguments were backed up by the case of **Ladislaus Mashauri Msana Vs**

Mashima Saccos Limited and Another, Land Case Appeal No. 16 of 2018 (HC-Unreported) and **Manager Majengo Saccos Vs Medrad Prosper Nyakulima**, PC Civil Appeal No. 7 of 2020 (HC-Unreported) and **Wadoki Saccos Ltd Vs David Mseti & Two Others**, Civil Appeal No. 58 of 2020 (HC-Unreported).

Responding to this ground, Mr Kimaro submitted that the trial court had jurisdiction to entertain the matter. He added that **Regulation 83 (1) of GN 272** of 2015 was complied with since the parties at first entered into an agreement and the respondent already paid Tshs. 1,600,000 to reduce the debt thus, the issue of jurisdiction has no merit at this stage. Further to that since the respondent was not a member of the Saccos the procedures under **Regulation 83 (1) of GN 272** of 2015 does not apply to him. The same was held by the CAT in the case of **Makubi Dogani Vs Ngodongo Maganga**, Civil Appeal No. 78 of 2019.

It was his further submission that, the respondent became aware later on that his wife had a saving of Tshs. 3,978,000/= thus the appellant could have decided to use the said amount to clear the debt instead of attaching the respondent's properties. More to that, the High Court has jurisdiction to entertain the matter as per GN 272 of 2015 which allows the matter to be taken to the High Court in case the parties are dissatisfied by the

decision of the minister. He cited the case of **The National bank of Commerce Limited Vs National Chick Corporation and 4 Others**, Civil Appeal No. 129 of 2015 (Unreported) and **Dangote Cement Limited Vs Nsk Oil and gas Limited**, Misc. Commercial Application No. 08 of 2020 (Unreported) to buttress his argument. So, it was his submission that both lower court and the High court are vested with jurisdiction to entertain the matter. He distinguished cases cited by the counsel for the appellant on the grounds that the situation differs with the present matter. Mr Kimaro also prayed for the court to apply the principle of overriding objection if it will find that the lower courts lack jurisdiction to entertain the matter as provided by **Article 107 A (20) (e) of the Constitutional of United Republic of Tanzania** as amended from time to time.

Regarding the 4th ground of appeal, Mrs Shakale argued that the 1st appellate court failed to analyse the evidence adduced by the appellants. At the trial court Exhibit Dex "A" revealed that on 30.11.2015 when the two heads of cattle were attached the respondent's wife prayed for restoration on the promise that he will pay the debt of Tshs. 2,898,900/= on 4.12.2015; failure of which she promised to hand over her security to compensate the said debt. The same was testified by SU6 before the trial

court. However, on 3.12.2015 the respondent promised to pay the debt on behalf of her wife (See exhibit Mex "A") failure of which legal action would be taken to compensate the debt, the same was witnessed by SU3. She submitted further that if the said evidence could have been well analysed, they could have found that the attached cattle were already restored to the respondent. So, she prayed for the appeal to be allowed.

In this ground, Mr. Kimaro responded that the 3rd appellate court has no jurisdiction to interfere with decision of the 1st appellate court in order to analyse the evidence afresh. Further to that the appellant failed to show misdirection of the evidence by the lower court for the 3rd appellate court to interfere. Although SU1 said the cattle were returned no evidence to prove who received the said cattle and SU2 admitted that they already sold 1 cattle at the price of Tshs. 700,000/= and other witnesses were not aware as to when then the cows were returned to the respondent. He cited the case of **Charles Haule Vs the Republic**, Criminal Appeal No. 250 of 2018 (CAT-Unreported) and **Hemedi Said Vs Mohamed Mbilu** [1984] 113 (HC-Unreported). It was his submission that since the evidence of the respondent was heavier than that of the appellant this appeal needs to be dismissed with costs.

In their brief rejoinder, Mrs Shakale reiterated what was submitted in their submission in chief and added that the overriding principle cannot be applied blindly against mandatory provisions of the procedural law which go to the very foundation of the case as per the case of **Mondorosi Village Council & 2 Others, Vs Tanzania Breweries Limited and 4 Others**, Civil Appeal No. 66 of 2017 (CAT-Unreported).

Having considered the arguments by both parties and the records of this matter there are two issues which need to be determined by this court as follows;

- i. Whether the trial court had jurisdiction to entertain the matter.
- ii. If the above issue is answered in affirmative, whether this appeal has merit

Starting with the first issue this court concur with the learned counsel for the appellant that the primary court had no jurisdiction to entertain the matter due to the following reasons: **Regulation 83 (1) of the Cooperative Societies Regulations**, GN No 272 of 2015 provides for the procedures of settling the disputes between the society and its members. The section provides; -

“Any dispute concerning the business of a cooperative society between the members of society or persons claiming through

them between the members of society or persons so claiming and the board or any officer or between one cooperative society and another shall be settled amicably through negotiation or reconciliation.”

The cited provision provides that the procedure for disputes settlement, requires the matter to be settled amicably. And where the dispute is not amicably settled within 30 days such dispute has to be referred to the Registrar for arbitration. And if a person is not satisfied with the decision of the registrar, he/she may refer the matter to the Minister whose decision will be final. See **Regulation 83 (9) of GN 272** of 2015.

In the matter at hand, it goes without saying that the appellant entered into a Loan agreement with the Respondent's wife. The respondent was a surety to the said loan in case of default where by their cattle were put as collateral. That's why after the default the appellant decided to attach the said cattle to settle the loan.

The law is very clear that any person who was aggrieved by the decision of the Registrar he/she may appeal to the minister, a decision which can only be challenged through judicial review. In this matter, the respondent did not exhaust other remedies provided under **Regulation 83 of GN 272** of 2015 prior to referring the matter to the court.

In **Evatha Michael Vs. Shalom SACCOS**, Civil Appeal No. 40 of 2016, (HC- Arusha unreported) which was cited in the case of **Arusha Soko Kuu Saccos Ltd and Another Vs Wilbard Urio**, (Civil Appeal 6 of 2019) [2020] TZHC 3931 (27 November 2020) (Tanzlii) the court held that;

"... There is no dispute that, the law provides specific dispute settlement mechanism for cooperative societies. The issue is Page 6 of 14 whether the society can refer the dispute to the court. Reading through the law it is obvious that the internal mechanism has to be exhausted first It is only the registrar who may refer the matter to court; see section 94 (2), 95 (1)-95 (4) o f the Act... Therefore, it was wrong for the court to entertain the matter which the respondent had no proper resolution."

Thus, it is the considered view of this court that a matter was pre maturely referred at the court since the respondent was never referred his claim to the registrar for having amicably settlement and negotiation as required by the law.

The Court therefore invokes its revisionary power under **Section 79 of the Civil Procedure Code**, Cap 33 R.E 2019 and proceed to nullify the proceedings, decisions and orders of the trial Court and the 1st appellate Court and the same are hereby quashed and set aside. Each party should bear its own costs.

The respondent is hereby advised to follow the dispute settlement procedures as they are provided for under **Regulation 83 of the Cooperative Societies Regulations 2015.**

It is so ordered.

DATED at **ARUSHA** this 19th day of July 2022.



A handwritten signature in blue ink, appearing to read "N.R. Mwaseba".

N.R. MWASEBA

JUDGE

19.07.202