

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

(PC) CIVIL APPEAL NO. 12 OF 2022

(Arising from Civil Appeal No. 9 of 2021 of Karagwe District Court (R. P Kaanwa-RM) & Original from Civil Case No. 2 of 2021 of Kayanga Primary Court(V.H.Mushi -RM).

ANASTAZIA SYLIVESTER.....APPELLANT

VERSUS

BENEZETH EVARISTER.....RESPONDENT

RULING

26/07/2022 & 28/07/2022
E. L. NGIGWANA, J.

Before the Primary court of Kayanga within Karagwe District in Kagera Region, the Appellant, Anastazia Sylvester, claimed against the respondent a sum of **Tshs. 1,400,000/=** allegedly being contributions (shares) as a member of **"TUMAINI K.B. GROUP"**.

Upon hearing both parties, the trial court ordered the respondent to pay the appellant a sum of **Tshs. 830,000/=**. The trial court's decision did not amuse the respondent. He appealed to the district court of Karagwe on the following grounds:-

- 1. That the trial court erred in law for deciding the matter in favor of the respondent, now appellant who sued a wrong party who had no capacity to be sued on behalf of "TUJINUSURU GROUP".*

2. *That the trial court erred in law and facts for believing the testimonies adduced by Anastazia's witnesses who were not group members.*
3. *That the trial court erred in law and facts by deciding that Benezeth Evarister had admitted the said claim while such admission is not featured in the entire proceedings.*
4. *That the trial court erred in law and facts by failure to take into consideration that Anastazia Sylvester being the Chairperson of the group had been paid more than **Tshs. 550,000/=** as part of her shares, hence the order for payment of **Tshs. 830,000/=** had no legal basis.*
5. *That the trial court erred in law by not considering the heavy evidence adduced by the appellant Benezeth Evarister and his witnesses who adduced evidence on the reality of the amount claimed.*
6. *That the trial court erred in law by awarding Anastazia Sylvester the total sum of **Tshs. 830,000/=** the amount that was not claimed by her and the same was not concretely proved by evidence.*

Wherefore, the appellant prayed for the following reliefs; that the trial court decision be quashed and orders thereto be set aside, the respondent now appellant be ordered to sue the right party for proper remedy, costs both of the trial court and the 1st appellate court be granted, and any other relief at the discretion of the court.

Upon hearing the appeal, the 1st appellate court found that Benezeth Evarister had already paid a sum of **Tshs.550,000/=** out of Tshs. 830,000/= to the appellant now respondent Anastazia Sylvester therefore, ordered **"TUJINUSURU GROUP"** under the supervision of the Appellant Benezeth Evarister to pay the respondent the balance of **Tshs. 280,000/=**.

The appellant Anastazia Sylvester was aggrieved by the decision of the first appellate court hence this appeal. In her memorandum of appeal, she raised five (5) grounds of appeal as follows;

- 1. That, the learned District Court Magistrate grossly erred in law and in facts for failure to know that the appellant was claiming from the respondent amount of **Tshs. 1,380,000/=** where the respondent paid amount of **Tshs.550.000/=** to the appellant and remained unpaid balance of **Tshs. 830,000/=** hence wrong decision.*
- 2. That, the learned District Court Magistrate grossly erred in law and in facts to make wrongly reduction of **Tshs. 550,000/=** from **Tshs.830,000/=** instead of reducing from **Tshs. 1380,000/=** and thus the appellant is still claiming unpaid amount of **Tshs. 830,000/=** from the respondent hence wrong decision.*
- 3. That, the learned District Court Magistrate grossly erred in law and in facts to interfere the whole proceedings and decision of the trial tribunal which was properly decided*

4. *That, the learned District Court Magistrate grossly erred in law and in facts for failure to take into consideration that the respondent confessed at page 3 of the judgment the debt of **Tshs. 830,000/=** demanded by the appellant in the Primary Court.*
5. *That, the learned District Court Magistrate grossly erred in law and in facts to decide the case in favor of the respondent on the amount to be paid instead of appellant who proved her own case beyond balance of probability.*

Wherefore, the appellant is praying that the judgment of the 1st appellate court be quashed and set aside, the judgment of the trial court be upheld, and that the appellant be granted costs.

Since the parties were not represented, it was agreed that this appeal be disposed of by way of written submission. However, in the course of constructing the judgment, I carefully read the trial court record as well as that of the 1st appellate court. In that exercise, I discovered that there is a crucial legal issue that was raised in the first appellate court in the first ground of appeal but it was not properly addressed. The first ground of appeal raised in the 1st appellate court was coached as follows;

“That the trial court erred in law for deciding the matter in favor of the respondent who sued a wrong party who had no capacity to be sued on behalf of “TUJINUSURU GROUP”.

In the circumstance, and being guided by the decision of the Court of Appeal in **Said Sozy Mziba versus Director of Broad Casting, Radio**

Tanzania DSM and Another, Civil appeal No. 04 of 2021 and **Pan Construction Company and Another versus Chawe Transport Import & Export Co. Ltd**, Civil Reference No. 20 of 2006 (both unreported) I re-opened the proceedings by directing the parties to address me on that issue albeit, briefly.

The appellant, though a laywoman stated that, in 2010, she joined a group known as **TUMAINI K.B. GROUP** and she went on paying the necessary contributions, and that member could deposit and borrow money when the need arise. She further stated that, in 2018, shares were divided among members but on her side; she went on claiming against the group a sum **Tshs. 1,400,000/=** being her shares/contributions. She added that, there was another group known as **TUJINUSURU GROUP** of which she was also a member, and that the same was aimed to assist members in funeral activities. She added that both groups were duly registered.

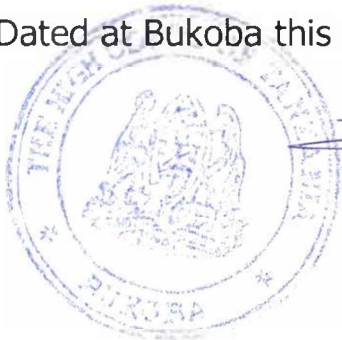
On his side, the respondent submitted that both of them were leaders of **"TUJINUSURU GROUP"** the appellant being a Chairperson and the respondent being a group secretary. The respondent further stated that the appellant ought to have instituted a suit against the group to wit; **"TUMAINI K.B. GROUP"** which was registered on 25/08/2016 at the District level and issued with Certificate of Registration **No.KDC/CD/CBO/955** and not against him on behalf of Tujinusuru Group which was also registered on 20/12/2018 and issued **Certificate of registration No. KDC/CD/CBO/1266.**

Having heard submissions by the parties, the issue for determination is whether the issue raised in the 1st appellate court and now being addressed to me is meritorious.

In the instant case, the act of suing the respondent as an individual or on behalf of the group is an irregularity which goes to the root of the matter because the court decree would not be executable. The group which ought to have been sued is **TUMAINI K.B. GROUP.**

In the event, I invoke the revisional powers bestowed to this court and proceed to nullify the entire proceedings of the lower courts, set aside the judgments and subsequent orders thereto. Should the Appellant desire to pursue her case, she is at liberty to do so afresh according to the law. Given the nature of the matter, I make no order as to costs. It is so ordered.

Dated at Bukoba this 28th day of July 2022.




E. L. NGIGWANA
JUDGE

28/07/2022

Ruling delivered this 28th day of July, 2022 in the presence of both parties in person, Hon. E. M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, BC.




E. L. NGIGWANA
JUDGE

28/07/2022