

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBA DISTRICT REGISTRY

AT BUKOBA

(PC) CIVIL APPEAL NO. 7 OF 2020

(Arising from the Civil Appeal No. 02 of 2019 of the District Court of Karagwe and Originating from Civil Case No. 71 of 2018 of the Kayanga Primary Court)

1. MWENYEKITI WA SACCOS.....APPELLANT

2. KATIBU WA SACCOS.....APPELLANT

3. MTUNZA HAZINA WA SACCOS.....APPELLANT

VERSUS

ALBINUS ZEPHRINE.....RESPONDENT

JUDGMENT

30/06/2022 & 29/07/2022
E. L. NGIGWANA, J.

This is the second appeal. It stems from Kayanga Primary Court in Karagwe District where the respondent Albinus Zephrene, following the demise of his father, sued the Chairman, Secretary and Cashier of UWAKA GROUP, claiming a sum of **Tshs. 1,200,000/=** being contributions entitled to him as a group member.

After a full trial, the court decided the matter in favor of the appellants. In other words, the trial court found that the respondent had failed to prove his case.

The respondent was dissatisfied with the trial court decision, therefore, he appealed to the District Court of Karagwe, whereas, the appeal was registered as Civil Appeal No. 02 of 2019. In his petition of appeal, the respondents' names appeared as follows;

1. MWENYEKITI WA SACCOS
2. KATIBU WA SACCOS and
3. MTUNZA HAZINA WA SACCOS

However, the trial court record revealed that the respondents' names were written as follows; **MWENYEKITI WA CHAMA CHA UWAKA, NA WENZAKE.**

After hearing the appeal, the 1st appellate court reversed the decision of the trial court and ordered the appellant, now respondent be paid his benefit amounting to Tshs. **1,200,000/=**.

Aggrieved by the decision of the 1st appellate court, the appellants have knocked doors of this court armed with five grounds of Appeal as follows:-

1. *That, the District Court Magistrate erred in law and fact for failure to know that the respondent has a debt of **30,000/=** from the group and thus the respondent is not qualified to get any benefits from the group as per clause No. 3.02 (VII) of the UWAKA GROUP AMENDED CONSTITUTION.*
2. *That, the District Court Magistrate erred in law and fact for failure to take into consideration of watertight evidence which was adduced by the appellants in the primary court to support their own claim of **30,000/=** against the respondent and thus the appellants proved their own case beyond balance of probability. **The copy of loan agreement will be adduced during the hearing of the case.***
3. *That, the District Court Magistrate erred in law and in facts for failure to know that the respondent appealed his own case in the District Court of Karagwe against SACCOS instead of appealing against Chairman*

of UWAKA Group, Secretary of UWAKA Group and the Treasurer of UWAKA Group contrary to the constitution.

4. That, the District Court Magistrate erred in law and in facts by basing its finding on contradictory and inconsistent evidence of the respondent in which the District Court failed to make proper evaluation of evidence on record on the balance of probability.

5. That, the District Court Magistrate erred in law and in facts for failure to explain the right to appeal on the side of the appellants.

Wherefore, the appellants are praying for the reliefs that the judgment and orders of the 1st appellate court be quashed and set aside with costs and the decision of the Primary Court of Kayanga be upheld.

When the appeal was called on for hearing, Mr. Ibrahim Mswadick, learned counsel appeared for the appellants while Mr. Samwel Angelo, learned advocate appeared for the respondent. Since the third ground is sufficient to dispose of this appeal, I will not address the rest of the grounds.

Submitting on the third ground of appeal, Mr. Mswadick stated that the trial court revealed that the parties who were sued by the respondent the Chairman, Secretary and Treasurer, all of UWAKA group, but in the petition of appeal lodged in the 1st appellate court, the names the respondents now appellants are; Chairman of SACOSS, Secretary of SACOSS and Treasurer of SACOSS.

The learned counsel added that nowhere in the 1st appellate record that the said names were changed after obtaining leave of the court, and that is a major irregularity capable of vitiating the entire proceedings of the 1st

appellate court. To support his argument, Mr. Mswadick referred this court to the Court of Appeal decision in **CRDB Bank PLC (Formally CRDB (1996) LTD) versus George Mathew Kilindu**, Civil Appeal No.110 of 2017 (Unreported) where the Court held that;

*"It is our considered view that citing of all these new names for the appellant without leave or an order of the court is a fatal irregularity which has affected the competence of the entire appeal and cannot be rectified a Slip Rule as we decided in the case of **Inter-consult Ltd versus Nora Kasvanga and Another**, Civil Appeal No. 79 of 2015 (unreported)"*

The learned counsel went on submitting that the issue was raised in the 1st appellate court as a ground of appeal but it was ignored by the court thus, urged this court not to close its eyes on this issue. He cited the case of **Diamond Trust Bank of Tanzania Ltd versus Idrisa Shehe Mohamed**, Civil Appeal No. 262 of 2017 CAT (unreported) where it was held that; for the interest of justice, the court has a duty to address a vivid illegality and that it cannot justifiably close its eyes thereof.

On his side Mr. Samwel Angelo, learned advocate for the respondent conceded that the names of the appellants in the trial court are different from the names appearing in the Petition of Appeal filed by the respondent in the 1st appellate court. He went on submitting that the omission is minor therefore, cannot defect justice. He added that, the law allows the names to be corrected, and the cited case of **Christina Mrimi versus Cocacola Kwanza Bottlers Ltd**, Civil Application No.113 of 2011 where it was held that; names of the parties to a suit can be corrected through review.

In his rejoinder, Mr. Mswadick conceded that names can be corrected through review, but differed with Mr. Angelo on the court with mandate to correct the names. According to Mr. Mswadick, this court has no power to correct the said names.

Having heard the submission by the parties learned advocates, the issue for determination is whether this appeal is meritorious. Appeals from Primary Courts to the District Courts are regulated by part III (b) of the Magistrate Courts Act Cap. 11 R:E 2019. Section 20 (3) provides that;

"Every appeal to a District Court shall be by way of petition and shall be filed in the District Court within 30 days after the date of the decision or order".

The petition of appeal must bear the name or names of the parties as they appear in the copy of the judgment and decree of the trial court, and where the names have been incorrectly written in the said documents, any of the party thereto lodge an application for review to have the names corrected/rectified by the court which made such a mistake. In the instant case, the 1st appellate court wrote the names of the parties the they were written in the petition of appeal thus it made no error in writing the parties names as per petition of appeal, thus could not rectify them.

Since the names appearing in the petition of appeal and the judgment of the 1st appellate court, and the names appearing in the proceedings and judgment of the trial court are different, and since respondent did not seek leave of the court to amend the petition of appeal in the 1st appellate court, it is apparent that the appeal that was before the 1st appellate court was incompetent, hence ought to have been struck out accordingly.

Since, the decision of the District Court stems from an incompetent appeal, I allow the appeal with costs. The proceedings of the first appellate court are nullified; judgment and resultant orders are quashed and set aside. The respondent is at liberty to institute a competent appeal subject to the law of limitation.

Dated at Bukoba this 29th day of July 2022.



E.L. NGIGWANA
JUDGE

29/07/2022

Judgment delivered this 29th day of July 2022 in the presence of the parties in person, Hon. E. M. Kamaleki, Judges' Law Assistant and Ms. Tumaini Hamidu, B/C.



E.L. NGIGWANA
JUDGE

29/07/2022