

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

(MOROGORO SUB REGISTRY)

AT MOROGORO

PC CIVIL APPEAL NO. 17 OF 2022

(Originating from the PC Civil Appeal No. 2 of 2022 District Court of Morogoro)

POSTA NA SIMU SACCOS APPELLANT

VERSUS

CHRISTOPHER ERNES KOWI RESPONDENT

JUDGMENT

21.10.2022 & 05/10/2022

NDESAMBURO, J

This a second appeal filed by Posta na Simu Saccos (the Saccos) challenging the judgment of Morogoro District Court which upheld the decision of Kihonda Primary Court instituted by the respondent one Christopher Kowi.

The brief background of this appeal is as follows; sometimes in 1995, the respondent joined as a member of the Saccos (the appellant) and his savings from the contributions for the whole period of his membership amounted to Tsh. 6, 574,393/9. In September, 2020, the respondent wrote a letter for resignation from the membership. His letters were not replied to despite the remainder. Seeing that, the respondent sought Court's assistance for the recovery of his savings. As

early on mentioned, he filed a law suit at Kihonda Primary Court claiming to be refunded a total sum of Tshs. 6,574,393/9

At the Primary Court, the appellant through his manager one, Mr Essau admitted the claim and the judgment was entered in favour of the respondent. The appellant's counsel was not happy with the decision of the Primary Court, filed an appeal at the District Court raising among others, a jurisdictional issue that, the Primary Court had no jurisdiction to entertain the matter and ought to have taken a judicial notice of the existence of GN No. 272 of 2015 made under section 141 of The Cooperative Society Act No 6. of 2013. GN no 272 of 2015 requires disputes arising between members and the cooperative societies to be amicably mediated.

After the hearing of the appeal, the District Court decided in favour of the respondent. It found that, the Primary Court had jurisdiction to entertain the matter as Regulation 83 of GN No. 272 of 2015 does not extend to non-members as the respondent ceased to be a member when he handled his resignation letter.

Appellant knocked the doors of this Court armed with 5 grounds of appeal summarised as follows:

- i. That the District Court erred in law and fact on upholding that the appellant owes the respondent Tshs. 6,574,339/9 despite the fact*

- raised by the appellant that the respondent is still the member of the appellant, the said amount being the respondent's savings thereof.*
- ii. That the District Court erred in law and fact on upholding by treating the savings of the respondent as debt despite the fact raised by the appellant that the respondent is its member/shareholder with 100,000 shares.*
 - iii. That the District Court erred in law and fact on upholding that the respondent's membership was terminated, thus suggesting automatic refund as to his contributions without satisfying itself of the documentary evidence thereof.*
 - iv. That the District Court erred in law and fact on upholding what the trial Court did on her failure to interpret properly the law governing the dispute resolutions arising in the Cooperative Societies in Tanzania.*
 - v. That the District Court erred in law and fact on upholding that the trial Court had jurisdiction to entertain the matter before it.*

At the hearing, the appellant was represented by Mr. Philemon Mujumba, learned counsel while the respondent appeared in person.

Submitting in support of the appeal, Mr. Mujumba opted to start with ground four and five and argued them together. It was his submission that, Saccos are governed by The Cooperative (Societies) Act No.

6/2013 (the Act). That section 141 of the said Act empowers the responsible Minister to make Regulations to govern operation of the Cooperative Societies. The minister exercised his mandate and made Regulation which was published as Cooperative Societies Regulations GN No. 272 of 2015. The regulation among others regulates disputes between Saccos with his members and non-members. That Regulation 83(1) specifically deals with disputes settlement mechanisms arising between the Saccos, members, non-member and requires those disputes to be amicably settled through negotiations or reconciliation. Therefore, it was his submission that, the respondent was duty bound to follow the prescribed mechanism and hence the Primary Court lacked the requisite jurisdiction to entertain the matter instituted by the respondent.

On the rest of the grounds of appeal which was argued together, Mr. Mujumba, submitted that, the respondent membership did not cease after handling of the resignation letter as held by the District Court. He submitted that, there was no any proof that the resignation letter was tendered and became part of the evidence at the trial Court. Further that the letter was not addressed to the board as required by clause 16(c) of the Code of Ethics of Wafanyakazi wa Posta na Simu Savings and Credit, Cooperation Society Ltd, Reg no. DSR. 118 (the Code) which

was relied by the District Court. He insisted that the letter was neither proved to have been sent neither received by the board.

Mr. Mujumbe winded up his submission by asking the Court to grant the prayers made in his petition of appeal.

In respond to the above submission, the respondent being a lay person had no much to say. He insisted to have followed all the required procedures for resignation as provided by the clause 16 (c) of the Code and that the Saccos was required to refund his contribution within three months as provided by clause 17 of the Code. Since he was no longer a member, there was no any dispute between him and the Saccos to require him to invoke the dispute resolution mechanism stipulated by the Act and Regulation cited by the counsel for the appellant.

In respect of the resignation letter, it was his submission that, the manager was the right addressee as he runs day to day business of the Saccos. He rested his submission by requesting the Court to dismiss the appeal with costs.

In rejoinder, Mr. Mujumba was of the firm view that, the respondent had dispute with the Saccos and that is why he instituted suit before the Primary Court. For the rest, he reiterates his submission in chief.

Having summarised the submission by the parties and gone through the Courts' record now, the vital issue to be determined in this appeal is whether the Primary Court had jurisdiction to entertain the matter as raised in issues no. 4 and 5. If this point is answered in affirmative, I will then proceed to determine issues no. 1, 2 and 3.

Starting with the jurisdictional issue, counsel for the appellant submitted that, the trial Court lacked the requisite jurisdiction to entertain the matter instituted by the respondent as the matter was supposed to be amicably settled through negotiations or reconciliation. Respondent was of different views as he claimed that he was no longer a member to that Saccos. I would like to quote provision of Regulation 83 (1) GN No. 272 of 2015 which provides:

*"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".*

From the wording of the above Regulation, it is crystal clear that where there is any dispute concerning the business of the cooperative society and its members, or persons claiming through them, or between

the members of the society or **persons so claiming**, the dispute has to be resolved amicably through negotiations or reconciliation.

The respondent asserts that he was no longer a member of the Saccos by the time he instituted the matter at the Primary Court and so the above provision does not bind him. However, reading along the wording of the Regulation, members and non-members when they come to dispute with the cooperative or its board are bound to follow the prescribed procedure for settlement. In that sense, the respondent whether as a member or not, was bound by the laid procedures. Applying the procedure laid by Regulation 83(1) to the matter at hand, it is obvious that the respondent failed to adhere to the established dispute settlement mechanism. His assertion is wrong and so with due respect was the District Court which erred to properly interpret the above Regulation.

Fortunate enough, the matter has been tested in our Courts. In the case of **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], when the court was confronted with an issue of the like nature the Court held that:

"There is no dispute that, the law provides specific dispute settlement mechanism for cooperative societies...."

Again, in another decision of the court, **Viongozi Kusure Saccos Ltd vs. Godwin Mosses Mbise**, (PC) Civil Appeal no. 18 of 2020 (Unreported) where the respondent sued the appellant at the Primary Court, the court held that, the Primary Court was ceased with jurisdiction as the matter was pre maturely referred to it. In that case, the respondent did not refer his claim to the Registrar for having amicably settlement and negotiation as required of by Regulation 83(2) GN No. 272 of 2015 and went to the Primary court.

All said and done, it is my conclusion that, the Primary Court did not have the requisite jurisdiction to entertain the matter. Therefore, appeal has merit and is allowed. Proceedings of the trial Court and the 1st appellate Court are nullified, decisions and orders emanate from the above are hereby quashed and set aside. Considering the nature of this appeal, each party should bear its own costs.

It is so ordered.

DATED at MOROGORO this 5th day of October, 2022



H. P. NDESAMBURO

JUDGE

05.10.2022

Court: Judgment delivered at Morogoro in Chambers on this 5th day of October, 2022 in the presence of Mr. Phillemon Mujumba, Advocate for the Appellant and in the presence of Mr. Christopher Ernest Kowi Respondent.



A handwritten signature in blue ink, appearing to be "H. P. Ndesamburo".

H. P. NDESAMBURO

JUDGE

05.10.2022

Right to appeal explained.



A handwritten signature in blue ink, appearing to be "H. P. Ndesamburo".

H. P. NDESAMBURO

JUDGE

05.10.2022