

IN THE HIGH COURT OF TANZANIA
(IN THE DISTRICT REGISTRY)
AT MWANZA

PC CIVIL APPEAL NO. 57 OF 2021

(Arising from Civil Appeal No. 05 of 2021 from Ilemela District Court originated from the decision of the Ilemela Primary Court in Civil Case No 203 of 2021.)

JOYCE NDALAHWA----- APPELLANT

VERSUS

MWENYEKITI WA KIKUNDI CHA AMANI----- RESPONDENT

JUDGMENT

Last Order: 07.03.2022

Judgement Date: 28.03.2022

M. MNYUKWA, J.

In this Appeal the appellant Joyce Ndalaha appealed against the decision of Ilemela District Court in Civil Appeal No. 05 of 2021 whereby she raised three grounds of appeal which are;

- 1. That, the learned magistrate erred in law and fact to uphold the decision of the trial court without taking into account that the respondent has no locus standi.*



2. *That, the learned trial magistrate erred in law to uphold the decision of the trial court based on Exhibit P1 which was tendered and admitted by the trial court as an exhibit, which its content was not read upon being admitted.*
3. *That, the learned magistrate erred in law for failure to analyse the nature, quality and substance of the entire evidence on record.*

Whereas the appellant prayed for the decision of the first appellate court and trial court be quashed and consequently the appeal be allowed with costs.

According to the trial court record, the appellant was the accountant of Kikundi cha Amani Bwiru Ziwani who was entrusted to keep the contribution of members worth Tsh. 5,400,000/= so as they can later on open an account. When the time of opening the account matured, the appellant was asked to cash out the money but she gave an excuse that she does not have that money and requested to be given two months to return the money. After the expiration of that period, the appellant did not honour her promise and the members reported the matter to the Ward Executive Officer to resolve the matter. The appellant wrote a commitment letter that she will pay after a month. Again, the appellant did not honour her promise and as a result, the chairperson of Amani



Bwiru Ziwani filed a suit after she was authorized by the members to do so.

To prove its case, the respondent called two witnesses and tender one exhibit while the appellant fended for herself without any exhibit. The appellant denied the total claim as presented by the respondent.

After a full trial, the appellant was ordered to pay the claimed amount of Tsh. 5,400,000/=. Dissatisfied with the decision of the trial court, the appellant appealed to the District Court and after the hearing of the appeal, the first appellate court uphold the decision of the trial court and ordered the appellant to pay the claimed amount to the respondent. Aggrieved further by the decision of the first appellate court, the appellant lodged the present appeal with three grounds of appeal as presented above.

This appeal was argued orally. During the hearing, the appellant had the services of Masanja Ngofilo learned counsel, while the Respondent fended himself.

Arguing in support of the appeal, the appellant's counsel submitted that, the 1st appellate court misdirected itself to uphold the trial court findings because the respondent had no locus stand to institute the case. After all, section 35(1) of the Co-operative Society Act, 2018 gives power



to the co-operative society to sue on its own name. Thus, it was not proper for the chairperson to file a case and to sue on her name since after being registered the society had the capacity to sue and be sued on its own name.

He went on that, at page 4 of the first appellate court judgement, it hold that the chairperson had a letter of consent from the members of Kikundi cha Amani Bwiru Ziwani to institute the suit on their behalf but the same was not tendered before the trial court. He claimed that it was not proper for both lower courts to base their decision on the evidence that was not presented before them. He buttresses his argument referring to the case of **Ramadhani Majebu vs. Kunisa Chamrisho Nyamsha**, PC Civil Appeal No 18 of 2020, HC. He remarked that the letter of consent was not admitted, therefore it was wrong for the court to rely on it.

On the second ground, the appellant's counsel challenged the admissibility of Exhibit P1, that was a letter which its contents were not read over before the court after being admitted. He claimed that, failure to read the contents of the document vitiates proceedings. He refers to the case of **Mwijage Jackson vs Elizabeth Rwegama and 5 others**, Land Case No 40 of 2020, HC at Mwanza.



On the third ground, he submitted that, evidence of both parties was not properly evaluated which resulted to an improper decision. He claimed that, the lower courts did not consider the evidence of the appellant. He gave an example that, the appellant testified that he was not a member since 2015, and therefore it was the duty of the respondent to bring the constitution to show that she was the member, but the lower court did not consider that. He added that, since Kikundi cha Amani Bwiru Ziwani was registered, it was expected the money to be deposited into bank account instead of trusting it to the appellant.

He retires his submission, by praying the appeal to be allowed, an order to quash and set aside the decision of the lower courts and the respondent be ordered to pay costs.

Responding, the respondent being a layperson and unrepresented was very brief. She submitted that she was authorized by the members to institute the case on their behalf. She went on that the exhibits were tendered, admitted and its contents were read over before the court. Finally, she stated that the books of account which show the amount of money collected was not found and it was not presented before the court. She retires her submission by stated that the evidence was properly analysed.



Re-joining, the appellant reiterates his submission in chief.

After hearing the submission of both parties, the only issue for consideration and determination is whether the appeal is meritorious. In answering this issue, I will start by determining the first ground of appeal and for the reason to be stated later on, the fate of other grounds of appeal will be known.

To begin with the first ground of appeal, the main concern of the appellant is that the respondent had no *locus standi* because the so-called Kikundi cha Amani Bwiru Ziwani had the capacity to sue and be sued on its own name and therefore, the chairperson had no power to sue. The respondent averred that, she had the power to sue because she has the consent of its members.

Upon revisiting the available record, I find the so called Kikundi cha Amani is registered in the name of Amani Bwiru Ziwani with Registration Number MZA/MC/CD/CBO/CMG/00684 after complying with the provisions of section 28 of the Microfinance Act, 2018. After registration, the community microfinance group like Amani Bwiru Ziwani shall by virtue of its registration, be a body corporate capable of suing and being sued on its own name. This is per the requirement of section 31(2) (a) of the Microfinance Act, 2018.



Thus, being a body corporate, it has power to sue and being sued on its name, acquiring and purchasing of properties and entering into contract. It was therefore expected that the respondent in this case, ought to be "Amani Bwiru Ziwani" instead of "Mwenyekiti wa Kikundi cha Amani" regardless of the fact that she was authorized to represent other members in instituting and prosecute the case on their behalf because Amani Bwiru Ziwani being a legal person, is capable of suing and being sued on its own name.

Upon further scrutinize the records, I find the letter of consent signed by members to authorize the chairperson of Amani Bwiru Ziwani to institute a claim on their behalf. Even if that was the position, still the name of the party ought to be Amani Bwiru Ziwani and not Mwenyekiti wa Kikundi cha Amani. Surprisingly, when I go through the trial court's record, I find the application form which initiated the civil complaint in the primary court the name of the plaintiff reads as "EDNA ELIAS" while the judgment reads that the plaintiff's name is "MWENYEKITI WA KIKUNDI CHA AMANI". From the two cited names above still, no name matches with the registered name of the organisation which goes by the name of "Amani Bwiru Ziwani".



The above suggests that, the plaintiff was "Amani Bwiru Ziwani" but the court erroneously registered the name of the respondent "Edna Elias" as the plaintiff instead of the name of the organization. This is contrary to their letter and request addressed to the Resident Magistrate In-charge titled: -

"YAH: KUMTAMBULISHA M/KITI WA KIKUNDI CHA AMANI BWIRU ZIWANI NDUGU EDINA ELIAS ILI AFUNGUE SHAURI LA MADAI YA PESA TSH 5,400,000/= MDAIWA JOYCE MDALAHWA AMBAYE NI MTUNZA HAZINA"

When I went further, I find the first paragraph of the letter which is also signed by members reads as hereunder

*"Husika na na kichwa cha Habari hapo juu.
Mheshimiwa hakimtu tunamtambulisha M/kiti wa kikundi cha amani Bwiru Ziwani ili afatilie haki ya kikundi baada ya mdaiwa alikuwa mweka hazina wa kikundi na tulimuamini sana...."*

The above letter to the magistrate In-charge implicates that the chairperson of Amani Bwiru Ziwani was appointed as their representative on behalf of the Amani Bwiru Ziwani to ensure that justice is attained and not to sue in her capacity as a chairman. Thus, the error committed by the court at filing the case is grave and vitiates the whole proceedings and



orders of the trial court and the 1st appellate court for the reason that the plaintiff "Amani Bwiru Ziwani" does not feature neither on the complaint form nor on the judgment of the trial court as a plaintiff.

The consequences of suing a wrong party was well stated by various case laws. In **Madam Marry Silvanus Qurro vs Edith Donald Kweka and Another-** Civil Appeal No. 102 of 2.016 - CAT at Arusha as compared to the case of **Lujuna Shubi Balози vs Registered Trustees of Chama cha Mapinduzi** (1996) TLR 203 was held that: -

"In this country, locus standi is governed by the common law. According to that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also that he is entitled to bring the matter before the court"


In fine, I find the respondent was not a proper party to sue at the trial court for two reasons. *first*, the introductory letter sent to the court was to introduce one Edina Elias who was by the time a chairperson of the institution "Amani Bwiru Ziwani" to represent the institution in suing the appellant and not to sue on behalf of the organization on her personal capacity. And *secondly*, the suit at the trial court was registered with the name of the plaintiff as Edina Elias while the judgment of the court has the name of the plaintiff as "Mwenyekiti Kikundi cha Amani" which are not



relevant to the intended plaintiff. This ground of appeal alone is decisive in determining this appeal.

In exercising the powers vested to this Court, I proceed to quash and set aside proceedings and orders of the two lower courts. The organization as per the introductory letter and as appears on the certificate of incorporation is at liberty to file a fresh suit in a competent court on its own name as required by the law within 6 months from today. That said, the appeal is allowed. Considering the nature of this matter, I give no orders as to costs each party shall bear its own costs.




M. MNYUKWA
JUDGE
28/03/2022

Court: Judgement delivered on this day 28th March 2022 in the presence of the parties.


M. MNYUKWA
JUDGE
28/03/2022