IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA SUB REGISTRY

AT MUSOMA

PC CIVIL APPEAL NO 49 OF 2022

(Arising from the District Court of Musoma at Musoma in Civil Appeal No 06 of 2022 and originating from Kukirango Primary Court in Civil Case No 118 of 2021)

IBRAHIM HASSAN ..... APPELLANT

VERSUS

SECRETARY JIPE MOYO GROUP

(WAMBURA MATIKU) ..... 1ST RESPONDENT

CHAIRMAN JIPE MOYO GROUP

(MARIA MATIKU) ..... 2ND RESPONDENT

JUDGMENT

13th & 27th Feb, 2023
F. H. Mahimbali, J:.

The appellant in this case was the treasurer of the Jipe Moyo Group in which the respondents served as secretary and chairperson respectively. It has been alleged that the appellant as treasurer had collected some contributions from the group members in which he un honestly squandered or failed to account for. The actual money allegedly contributed by the said group members is 837,480/=. Each member

contributed a total sum of 51,000/= as a collection of 2800 per month. the total number of claiming members is 19.

The respondents successfully sued him at the trial court. The appellant unsuccessfully challenged the said decision before the first appellate court. This is now his second appeal, with the following grounds of appeal:

1. *That, the District court erred in Law to affirm the Primary court's decision by ordering the appellant to pay the Respondent Tshs 837,480/= as the amount kept for "maafa fund" while it is trite Law that specific damages need, by way of evidence to be specifically pleaded and proved. Worse still it is very unfortunate that both the lower courts only relied on assertions and plain words of the respondents because the statements on specific claims were too general.*
2. *That, the District Court erred in failing to revise the Primary Court's proceedings which were tainted with illegalities and the respondents had no locus stand to institute the suit against the appellant.*
3. *That, the district court in failing to revise the trial primary court's proceedings which were tainted by illegalities and relied purely hearsay evidence via sm 4 that appellant admitted before VEO that he owed money for "maafa fund" and he promised to pay back while VEO did not appeal to tetify before the primary court.*
4. *That, the District Court erred in Law to affirm primary court's decision that the appellant was the one entrusted to collect*

and keep money for " maafa fund" while the decision of the primary court was based on the assumption only because all times Jipe moyo group was not collecting money as "maafa fund".

5. *That, the 1st appellate court erred in failing to be guided by the principle of evaluating the evidence on record from the trial court and come to its own conclusion.*

During the hearing of appeal, the parties appeared in person. On his part the appellant who was unrepresented prayed that his appeal be allowed claiming that there was no any proof of the said claims against him as lodged. In essence, the claims were not proved that he collected the said money as allegedly claimed from the members.

The first respondent who is the secretary of the said group responded that what the appellant is arguing for this appeal is not true. He was their treasurer of the said group. He collected the contributions from the members but when the members had demanded their collections, he refused that he had none. He concluded by saying that, what was actually decided by the two lower courts is true and humbly prayed that this appeal be dismissed with costs.

The 2nd Respondent on her part, argued that the appellant's claims in this appeal are baseless. She insisted that the appellant was their group treasurer. Upon collection of the said money of the group

members, he squandered it. That they were a total of 19 group members. Each one had contributed a total of 51,000/= (for about 16 months) for a contribution of 2800 @ month. After the said collection, members had decided to take their money they had contributed. They were astonished by the appellant's reply that he had none. Thus, the genesis of this case. In essence, he considered the appeal as baseless.

In his rejoinder submission, the appellant kept on insisting of the said amount claimed as having has no basis. What was actually contributed by each one was rateably distributed as per one's respective contribution. Otherwise, there is no any outstanding balance legally established and owed to him as claimed.

In a careful scan of these grounds of appeal, they can be clustered into two main grounds of appeal: factual and legal issues. On factual, it is based on evidence adduced whether it sufficiently established/disestablished the claims in dispute. On the legal issue, is whether the respondents had locus standi to sue the appellant as per law.

With the legal issue whether the respondents had capacity to sue the respondents in this case instead of the group itself: Jipe Moyo

Group, it was first raised at the first appellate court but ignored in its discussion. There are no reasons stated by the trial court for that skip.

At this juncture, it is important to understand that locus stand can be simply defined as the right or legal capacity to bring an action or to appear in a court. It is a right to bring an action or to be heard in a given forum. In **Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi** (1996) TLR 203, Samatta, J (as he then was) had the following to say on locus standi:

> *"Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with. The High Court has the power to modify the applied common law so as to make it suit local conditions."*

In the matter at hand, it is without a doubt that there has not been evidence that JIPE MOYO GROUP was registered as testified by SMI, SM2, SM3 and SM4 but going to the records, I do not subscribe to the appellant's argument that the respondents lacked mandate to act for the organisation in the presence of consent of the members of the group to be represented by some of its members. That notwithstanding, what existed between parties was purely a contractual relationship where parties agreed on the terms of performance of the contract.

However, the available record does show that the leaders of JIPE MOYO GROUP were authorized by the members of the organization to represent the said group to institute and prosecute the case on their behalf as it is evidenced in complaint form no 2 which was accompanied by the letter addressed to the Musoma Primary Court authorizing the chairperson and the secretary to prosecute case on their behalf. Thus, with the above evidence available in court records, I am satisfied that the chairperson had a locus stand to sue.

Additionally, it is settled law that parties are bound by the agreements they freely entered into and this is the cardinal principle of the law of contract. That is, there should be the sanctity of the contract as lucidly stated in **Abualy Alibhai Azizi v. Bhatia Brothers Ltd** [2000] T.L.R 288 quoted with authority in the case of **Simon Kichele Chacha vs Aveline M. Kilawe,** Civil Appeal No. 160 Of 2018 CAT, it states: -

> *"The principle of sanctity of contract is consistently reluctant to admit excuses for non-performance where there is no incapacity, no fraud (actual or constructive) or misrepresentation, and no principle of a public Policy prohibiting enforcement"*

With the same spirit of the principle of sanctity of contract and being mindful of the evidence of SMI, SM2, SM3, SM4 and annextures to

the Form 2 embodying the said claims, it is clear that the respondents had legal capacity to represent the JIPE MOYO GROUP depending on the nature of claims itself. Therefore, this ground of appeal fails.

The central issue for determination now is whether there has been proof of the said claims at the trial court to hold the appellant responsible. I am mindful that this is the second appeal. The law, is the second appellate court should be reluctant to interfere with the concurrent findings of the two courts below except in cases where it is obvious that the findings are based on misdirection or misapprehension of evidence or violation of some principles of law or procedure or have occasioned a miscarriage of justice (See **Helmina Nyoni vs Yeremia Magoti,** Civil Appeal No. 61 of 2020, **Amratlal Damodar Maltaser and Another t/a Zanzibar Silk Stores vs. A.H. Jariwala t/a Zanzibar Hotel** [1980] TLR 31.

In a careful scan of the parties' evidence at the trial court and their submissions before this Court, it is my emphasis that in civil cases the standard of proof is on the balance of probabilities. As this case emanates from primary court, the rules of evidence governing primary courts will triumph. This means that the primary court will accept and

reach its decision on the evidence which is pertinent, worth of belief and stronger that establishes the allegation brought before it as it is provided for under section 19(2) of the Magistrate's Courts Act, Cap 11 R.E 2019.

The above requirement is in line with Regulation 6 of The Magistrates Court (Rules of Evidence in Primary Courts) Regulations, 1964

G.N No. 22 of 1964 which states that:

> *"In civil cases, the court is not required to be satisfied beyond reasonable doubt that a party is correct before it decides the case in its favour, but it shall be sufficient if the weight of the evidence of the one party is greater than the weight of the evidence of the other."*

From the above provision of law, it is clear that the law mandates the primary court to accept such evidence of one party which is greater than the evidence of the other and ultimately declare him the winner over the other party whose weight lesser in value (see the case of **Helmina Nyoni v Yerenia Magoti**, Civil Appeal No 61 of 2020, and the case of **Barelia Karangirangi vs Asteria Nyalwambwa,** Civil Appeal No. 237 of 2017).

In my careful perusal of the trial court record, since the claim at the trial court is none-refund of the 19 group members' contribution, there ought to have been clear and available evidence in record that

each of the 19 members really contributed the 51,000/= claimed. That would only be established had each one of the members presented clearly availed evidence to that effect. In this case, only three members testified. Since it is a claim of the group members' contribution against their treasurer, then it was the individual's interest for each group member to establish how he/she contributed the said money and handed it to the said appellant as alleged. There is no such evidence in record, but only ledger books with some un-establishing figures in it. But none explains anything forb the establishment of the said claims. The law is, there is no known law so far that one can testify for the other despite the fact that one can sue for another (See **NATIONAL AGRICULTURAL AND FOOD CORPORATION v MULBADAW VILLAGE COUNCIL AND OTHERS [**1985] TLR 88 (CA)).

In the final analysis, it is my finding that as per the facts of this case and the available evidence in record, the appeal has merit on the factual basis that there was not established evidence that the appellant collected the said money from the 19 members of the JIPE MOYO GROUP members to justify the claim of the alleged amount. It is not even convincing how in this era of the digitalized world; you find such a group organization running monetary affairs without a banking account.

The Swahili saying goes this way: *"Wajinga ndiyo wali wao"* might fit well the purported members of this group.

That said, the appeal is allowed. In the circumstances of this case, parties shall bear their own costs.

It is so ordered.

DATED at MUSOMA this 27th day of February, 2023.

F.H. Mahimbali

Judge

Court: Ruling delivered this 27th day of February, 2023 in the presence of the appellant and the respondent and Mr. Kelvin Rutalemwa, RMA.

F. H. Mahimbali

JUDGE