

**IN THE HIGH COURT OF TANZANIA  
(IN THE SUB-REGISTRY OF MWANZA)**

**AT MWANZA**

**CIVIL APPEAL NO. 105 OF 2022**

*[(Originating from Civil Appeal No. 02 of 2022 in the District Court of Ukerewe at Ukerewe  
and in Civil Case No. 40 of 2021 in the Primary Court of Irugwa at Ukerewe)]*

**MWENYEKITI UKEREWE SACCOS.....APPELLANT**

**VERSUS**

**IBRAHIM KIMOGA JOSEPH.....RESPONDENT**

**JUDGMENT**

*Date of Last Order: 14/04/2023*

*Date of Ruling: 24/03/2023*

**Kamana, J:**

This is a second appeal in which Mwenyekiti Ukerewe SACCOS, the Appellant, invites this Court to determine whether the appeal against the decision of Ukerewe District Court which was in favour of Ibrahim Kimoga Joseph, the Respondent, was meritorious. The grounds of appeal are as follows:

1. That the first appellate Court erred in law and fact in deciding against the Appellant who does not have locus standi to sue or be sued and the organization being unregistered.

2. That the first appellate Court erred in law and fact in not considering the evidence adduced by the Appellant in the trial Court.
3. That the first appellate Court erred in deciding that the trial Court was biased and that there was illegality which led to an incorrect decision.
4. That the first appellate Court erred in deciding that the trial Court did not analyze the adduced evidence.

In view of these grounds of appeal, the Appellant implored this Court to allow the appeal. The appeal was argued by way of written submissions. Both parties appeared in person.

Submitting in support of the first ground, the Appellant contended that he does not have the capacity of being sued as he is not incorporated under section 35 of the Cooperative Societies Act, 2013. He submitted that, according to the Act, registered SACCOS can only sue or be sued and in their names of incorporation. In that case, he averred that he was wrongly sued.

Opposing the first ground of appeal, the Respondent submitted that he commenced civil proceedings against the Appellant in the Primary Court claiming his properties which were seized and used by the

Appellant for his benefit. He contended that the seized properties were not part of the collateral he pledged when soliciting a loan from Ukerewe SACCOS.

The Appellant did not rejoin.

I have decided to discuss the rival arguments concerning the first ground as the ground disposes of the appeal. It is trite law that an unregistered organization cannot sue or be sued in its name. Once the organization is considered not to have been registered, it lacks legal personality. In other words, such an organization is not a body corporate capable of suing or being sued in its name. **See: Ambassador Secondary School v. Maxinsure Tanzania Limited, Civil Case No. 93 of 2018.** In that case, the Respondent could not sue Ukerewe SACCOS, an unregistered society in the eyes of the relevant laws.

Given that, the Respondent opted to sue *Mwenyekiti* of the said SACCOS. My perusal of the records of the trial Court is to the effect that while filling Claim Form No.2, the Respondent mentioned Masudi R. Mugasa-Mwenyekiti Ukerewe SACCOS as the Defendant. Further, according to the Form, his claims were:

*'Ninadai fedha Tshs.10,807,600/= thamani ya upotevu  
wa mali zangu baada ya Ukerewe SACCOS kukamata na*

*kukabidhi kwa ABBAKARI S/O HAMISI kuwa anaendelea kuzitumia. Nadai matengenezo ya mali zangu zilizoharibika. Pia nadai Ukerewe SACCOS kushikilia mali zangu ambazo sikuziweka dhamana na kuendelea kuzitumia kwa kuonyesha picha na mpira. Jumla ya madai yote nadai Shs.10,807,600/=’*

Deducing on the above passage, it is clear that the Respondent has a cause of action against Ukerewe SACCOS. The same being unregistered, the Respondent decided to sue Masudi R. Mugasa-Mwenyekiti Ukerewe SACCOS in Civil Case No. 40 of 2021. The proceedings of the trial Court evidenced that the Defendant was Masudi Mugasa. However, in the Judgment, the Defendant was Mwenyekiti Ukerewe SACCOS. There are no records as to what transpired to lead to the change of the name of the Defendant.

The question now is whether *Mwenyekiti* Ukerewe SACCOS can be sued in that capacity whilst the SACCOS is not a body corporate. As I stated herein, from the wordings of Form No.1, the Respondent had a cause of action against Ukerewe SACCOS. That being the case, the Respondent was supposed to sue all members of that SACCOS since the same was not a body corporate capable of being sued or sue in its

name. Alternatively, the Respondent was supposed to initiate his suit against the Appellant as a representative of other members of the SACCOS as per Order I Rule 8 of the Civil Procedure Code, Cap.33 [RE.2019] which provides:

*'Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested; but the court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.'*

One may argue that the Magistrates Court (Civil Procedure in Primary Courts) Rules, 1964 does not provide for the representative suit. Yes, but this Court has pronounced itself on that issue by stating that Order I Rule 8 of the Civil Procedure Code applies to Primary Courts. In the case of **Abdillah Juma v. Salum Athumani**, 1986 TLR, 240, this Court held that:

*'It is my considered view that a Primary Court can, and is bound to, exercise its civil jurisdiction in accordance with O .I., r. 8 of the Code.'*

Given that, it is my holding that *Mwenyekiti Ukerewe SACCOS* was incapable of being sued in that capacity. At this juncture, I feel to use the wisdom of this Court in the case of **Deonisia John v. Annastella Sprian**, PC Civil Appeal No.41 of 2020 where it was stated:

*'It is very unfortunate that the appellant has been claiming against a person who cannot satisfy the decree if awarded. It may be grave injustice if the respondent is ordered to pay the claim on behalf of the group.'*

Since the cause of action in the case that led to this appeal was against Ukerewe SACCOS, an unregistered society, suing the Chairman in the absence of other members is untenable in the eyes of the law. In other words, it is an injustice to expect the Chairman to satisfy the decree, if awarded, arising from wrongdoings of the society.

Invoking my revisionary powers, I quash the proceedings, judgments and orders of the trial and appellate Courts. The Respondent is at the liberty to institute a proper suit and the same if instituted be heard by another learned Magistrate. Order accordingly.

Right to Appeal Explained.

**DATED** at **MWANZA** this 24<sup>th</sup> day of March, 2023.



A handwritten signature in blue ink, appearing to read "KS Kamana".

**KS KAMANA**

**JUDGE**