IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

PC CIVIL APPEAL NO.16 OF 2022

(Arising from District Court of Newala in Civil Appeal No.6 of 2020, originating from Nkunya Primary Court in Civil Case No.1 of 2020)

ISSA SELEMANI MWANGA...APPELLANT

VERSUS

HAMISI MEGA...RESPONDENT

JUDGEMENT

9/3/2023 & 2/5/2023

LALTAIKA, J.

The appellant herein **ISSA SELEMANI MWANGA** is dissatisfied with the decision of Newala District Court at Newala (herein the first appellate court) delivered on 23/11/2020. The impugned decision originates from Primary Court of Newala at Mkunya (herein after the trial court) in Civil Case No.1 of 2020.

Rivalry is over a claim of money **TZS. 2,872,000/=** property of a group called "KIKUNDI CHA VIKOBA ENDELEVU" raised from members' contributions. The original case was lodged by the respondent **HAMISI MEGA,** a member of the group against the appellant. The appellant, a former treasurer of the group allegedly squandered/misappropriated the

funds entrusted to him by his fellow group members including the respondent. Apparently, the trial and first appellate courts adjudged in favour of the respondent hence this appeal. The appellant has preferred four grounds of appeal as reproduced below:-

1. *That, both the trial and first appellate court erred both in law and fact for failure to rule that, the respondent had no locus standi to sue the Appellant.*
2. ***ALTERNATIVELY BUT WITHOUT PREJUDICE** to ground 1 above, the first appellate court erred in law to hold that, Rule 29 of the Magistrates' Courts (Civil Procedure in Primary Courts) Rules G.N. No. 310 of 1964 gives leave for claimant to prove the case, which Rule does not in fact so provide.*
3. *That, the first appellate court erred both in law and fact for relying on the Magistrates' Courts (Limitation of Proceedings under Customary Law) Rules G.N. No.311 of 1964 which was irrelevant and non applicable at issue hence arriving at an erroneous conclusion.*
4. *That, both the trial and the first appellate court erred both in law and fact in awarding the respondent Tshs. 2,792,000/= the sum of money he did not claim and prove during the trial.*

When the appeal was called on for hearing on 9/3/2023 both parties appeared in person, unrepresented. To this end, their submissions bellow do not neatly confine to the numbering of the grounds of appeal reproduced herein above. Nevertheless, with some degree of flexibility, each party was able to expound on their part of the story thus offering this court the requisite information and insights for decision making.

Some background information is considered essential for connecting the dots on the arguments for and against the appeal. The appellant retired as a primary school teacher more than a decade ago. As a charismatic leader in his village, he successfully convinced 30 members of his village to join forces and form a self-help group for economic empowerment. The group was indeed established but 12 members "left" to borrow the word from the

virtual world. The appellant ended up becoming the treasurer and allegedly squandered the hard-earned monies of his fellow villagers. The respondent, an equally charismatic leader, and a former political party leader, chose to go by the saying of the wise **"be the change you wish to see in the world."** On behalf of his group members, he pursued justice. Both the trial and first appellate courts adjudged in his favour.

On being invited to amplify his grounds of appeal, the appellant started off with a historical backdrop to the formation of the group. He stated that they had established a self-help group called Tupendane, which had 30 founding members, with the appellant serving as the founding Secretary. However, 12 members left, and the remaining 18 members started contributing for helping one another during unforeseen calamities and allotment of shares. The group was supposed to last for three years.

Four weeks after the group was established, the treasurer, Hamisi Mega (the respondent), resigned. He gave reasons for his resignation, stating that he had more responsibilities a political party that had elected him one of the topmost leaders in his locality. When he resigned, the appellant and other members told him to put the money they had contributed into the Tanzania Postal Bank (now Tanzania Commercial Bank), where they had their account. He agreed, but the appellant did not remember how much money was in the account.

After one year, they had to divide the money to each member according to the amount they had contributed, as provided by the constitution. They divided **TZS 1,800,000 among themselves (each**

member received TZS 100,000). They started contributing once again, but the pace was no longer the same. They decided to lend money to each other for profit, **with each member having to pay back 3 shillings out of every 100 shillings borrowed.** They used **TZS 3,250,000** for this purpose.

At a later stage, all members had to borrow TZS 100,000. They came to another stage where they needed to borrow any amount, provided they accepted to pay 5% interest. They used TZS 1,720,000 for this purpose, but only two people repaid their debts. Later on, the respondent advised them to bring the group to an end, **"kumaliza kikoba."** The appellant computed the total value and found that **they had collected TZS 12,000,000.** The appellant had the money because they were the acting treasurer.

The respondent took the appellant to court, claiming that he owed the appellant money and that he was representing the 17 other members. He claimed that when he resigned from his position as treasurer, he continued to be a member thus in the position to speak for and represent the group. The appellant strongly disagrees . He insist that the appellant has no right to take him to court in the first place. In the lower court, the appellant explained what happened, stating that they did not owe him the TZS 5 million as originally claimed nor TZS 2,798,000, as reduced and currently claimed.

The appellant concluded his submission by a complaint that he believed that the respondent simply wanted to harass him. As a retired teacher who was only trying to educate fellow citizens on the importance of self-help groups, the appellant stated eloquently, it was unfair to reward him

with court cases. The appellant believes that the respondent, who was a former *Diwani* and a powerful person, wanted to frustrate him economically and psychologically. He stated that previous positions held by the respondent made him very influential in the lower courts. He prayed that this court allows his appeal.

It was time for the respondent. He stated that some of the things said by the appellants were true while the rest were not. He confirmed that it was true that they had decided to end their contributions, but it was not his idea. He mentioned that they had asked the appellant to go through the entire record and advise them on who deserved how much, and they gave him two weeks to complete the task.

The appellant, the then treasurer who doubled as the "financial consultant" returned on the agreed date and read out loud how much each member had contributed and how much they were entitled to. Only two members had queries. The respondent added that they found out that out of the total amount of 12 million plus, 5.9 million plus was the amount to be distributed among members.

They group asked the appellant to bring the money and distribute it to the members on a given date, but he never appeared. They called him, and he said he was in a bank. They postponed the meeting to three days later, but he still did not show up, and his phone was not reachable. Members wanted to go to his house and collect anything of value. When it was obvious that he was not coming, members followed him to his home place.

The Ward Executive Officer (WEO) decided to intervene to protect the peace. He summoned both the appellant and respondent claiming that they had squandered the money of the group thus endangering peace. The respondent denied the allegations, stating that he was no longer the treasurer. The WEO asked an independent group to inspect the records, and they decided that the amount due from the appellant was 5.9 million.

Upon being pressed the appellant eventually produced TZS 900,000. Members of the group reported him to the police. He was locked up for a while and upon being pressed further, he gave 2,200,000, making the total 3,180,000. The group decided to go to court for the rest of the money and the respondent was appointed as the representative. The case started as a criminal one, and the appellant was acquitted. The respondent stated further that they were then advised to institute a civil case, which the Primary Court decided in their favour, **ordering the appellant to pay 2,792,000**. The appellant appealed to the District Court, which upheld the decision of the Primary Court. The respondent concluded his submission by a prayer that this court upholds the decision of the lower courts.

In a brief rejoinder, the appellant reiterated his dissatisfaction with lower courts' decisions. He mentioned that he had lodged four grounds of appeal, including the fact that the respondent had no *locus standi* to sue him since he had not taken part in any meeting of their group to allow him to institute a case against him. The respondent countered this claim by producing a copy of minutes showing that the group had decided to appoint him to represent the group in court. The court had to explain to parties what

a rejoinder means albeit with sufficient flexibility and relaxation of procedural rules and "rituals" to facilitate access to justice by unrepresented litigants.

The appellant also disputed the amount awarded to the respondent by the courts, arguing that the sum of money he was ordered to pay was not claimed and proved during the trial. He stated that the total collection of money was 12,235,000, and the amount they lent to each other was 8,405,000. He claimed that each of them took that amount, and he had 3,180,000. He further explained that he had paid 900,000 the first time, 1,080,000 on the second day, and 1,200,000 on the last day, while he was on remand. Owing mainly to time limitation, this court had to bring the drama to an end having enjoyed the eloquence of the charismatic grassroot leaders from Newala.

Having dispassionately considered the rival submissions by both parties and having gone through the records of the lower courts, I am inclined to decide whether the appeal is meritorious. The contentious matters as expounded above are on ***locus standi*** of the respondent to sue the appellant claiming money entrusted to him by members of "KIKUNDI CHA VIKOBA ENDELEVU".

One may ask, what exactly is *locus standi* and how is it relevant to the instant matter? Thanks to the anonymous legal aid provider who assisted the appellant in drafting the four grounds of appeal, ***locus standi*** is a Latin maxim which consists of two words namely "locus" which means place and "standi" which means the right to bring an action.Therefore, collectively, it means the right to bring an action before the court.

If we must extract the centuries old wisdom carried by the maxim, as we hereby do, it simply means a person bringing an action to court needs to show his personal interest is suffered or injured. The relevance of the maxim in our jurisdiction cannot be overemphasized. This court in the case of **Lujuna Shubi Balonsi, Senior v. Registered Trustees of Chama Cha Mapinduzi** [1996] TLR, 203, Hon. Samatta, JK (As he then was) stated 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 the case at hand, the appellant's complaint is that the respondent had no locus standi to bring the matter before the trial court against him. However, the appellant and the respondents are members of "KIKUNDI CHA VIKOBA ENDELEVU" and the suit is on the misappropriation of the funds of the "KIKUNDI CHA VIKOBA ENDELEVU" entrusted to the appellant. It is undisputed that the claimed misappropriated fund is from members' contributions including contributions of the respondent. To this end, it does not take much thought to realize that the respondent has sufficient interest on the matter in its entirety.

More importantly, the respondent submitted that he was appointed by his fellow members to represent them in the matter. Even if the appellant was not appointed by his fellow members still, he has a sufficient or close interest in the subject matter and he is injured by the act of the appellant. The right and the injury sustained give the respondent the right to bring the matter to court against the appellant.

In view of the above observation, I find the appellant's complaint on the first ground of appeal devoid of merit, and it is hereby dismissed.

On the fourth ground of appeal, it is clear to me that the lower courts properly evaluated the evidence adduced by the respondent and his witnesses (SM2 and SM3). Moreover, one Ramdahani Fakihi Bakari (SU2) witness of the appellant was unambiguous when he testified that the appellant had misappropriated TZS 5,752,000/= and paid TZS. 1,980,000/= and TZS. 1,200,000/= at the WEO's office and at the police, respectively. This makes TZS.3,180,000/= paid by the appellant. I am fortified that the lower courts correctly awarded the relief claimed by the respondent. Thus, I find the fourth ground of appeal is unmerited hence, it is dismissed.

Before I mark the end of this matter, it is imperative to address the second and third grounds of appeal in a nutshell. Indeed, the first appellate court misdirected itself as it **applied Rule 29 of the Magistrates' Courts (Civil Procedure in Primary Courts) Rules, G.Ns. Nos.310 of 1964** and 119 of 1983 which covers setting aside ex parte proof. In the matter at hand both parties had appeared in court as recorded in the proceedings.

I also find it equally perplexing if not utterly puzzling that the learned appellate magistrate invoked **Rule 3(1) of the Magistrates' Courts (Limitation of Proceedings under Customary Law) Rules, G.N. No. 311 of 1964.** The matter brought before it had nothing to do, even remotely, with customary law because the economic empowerment self-help group KIKOBA in question, like other voluntary associations in this country, are governed by regular laws of this country. These irregularities notwithstanding, I concur with concurrent findings of the learned

magistrates. The retired but not tired *Mwalimu* should remember that there is not any other solution to a debt except paying it in full. That is, in part, the essence of the saying of the sage ***"dawa ya deni ni kulipa"***

In the upshot, I am convinced that this appeal is devoid of merit. Consequently, the same is hereby dismissed. The decisions of the District Court of Newala and trial court are upheld. Each party to bear his own costs.

It is so ordered.

E.I. LALTAIKA

JUDGE
2.5.2023

<u>Court:</u>

This judgement is delivered under my hand and the seal of this court on this **2nd day of May 2023** in the presence of both parties who have appeared in person, unrepresented.

E.I. LALTAIKA

JUDGE
2.5.2023

<u>Court:</u>

The right to appeal to the Court of Appeal of Tanzania fully explained.

E.I. LALTAIKA

JUDGE
2.5.2023