IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

PC CIVIL APPEAL NO. 22 OF 2022

(Originating from Civil No. 40 of 2021 in the Primary Court of Uyole Mbeya District, arising from the judgment and decree of the District Court of Mbeya before Hon. Chuwa-RM Civil Appeal no. 15 of 2021)

EVODIA KAYOMBO .....APPELLANT

VERSUS

FURAHA KIKOBA (CHISTINA OSCAR) .....RESPONDENT

JUDGMENT

Date of hearing: 21/6/2023

Date of judgment: 3/8/2023

NONGWA, J.

The Respondent named above had successfully sued the appellants in the Primary court of Uyole, in Mbeya District for the recovery of Tshs. 12,000,000/- after the appellant admitting the claims to the tune of Tshs. 11,850,000/- the court ordered the appellant to repay the loan she collected from the Respondent with costs.

In a nutshell, from the records the appellant had advanced from the Association in which the appellant is a member commonly known as *Kikoba*

a total of Tshs 12,000,000/- and failed to repay within the prescribed time save for Tshs. 150,000/-. Upon admission of the claim the trial court ordered the Appellant to repay the *Kikoba* the unpaid amount of Tshs. 11,850,000/- plus costs of the suit. The appellant unsuccessfully appealed to the district court. Aggrieved by the said decision, the appellant filed the appeal at hand founded under three grounds of appeal;

1. That the appellate Magistrate erred both in law and facts for leaving the 1st ground which was on a legal issue unresolved.
2. That the trial court and appellate magistrate erred both in law and facts ignoring the fact that the respondent had no locus stand to prosecute the matter.
3. That the trial court and the appellate court both erred in law and fact for failure to give the appellant the right to be heard.

When the appeal was called on for hearing the appellant has been represented by the Learned Counsel Mr. Iman Mbwiga whereas the respondent under the representation of the Mr. Shitambala learned advocate. Disposal of the appeal was by way of written submissions whose filing conformed to the schedule drawn on parties' consensus.

In his submission the counsel for the appellant submitted that the appellate magistrate erred both in law and facts for leaving the 1st ground which was on a legal issue unresolved. That in the first appeal the appellant

raised the issue on locus stand of the respondent, to the effect that the respondent had no locus stand to sue. The counsel supported his argument with the case of **SOSTHNES BRUNO & ANOTHER vs. FROLA SHAURI**, Civil Appeal No. 81/2016 (unreported).

As regards to the second ground of appeal that, the trial court and appellate Magistrate erred both in law and facts ignoring the fact that the respondent had no locus stand to prosecute the matter. The counsel argued further that records of the Primary Court shows that the one who sued the appellant was FURAHA KIKOBA (CHRISTINA OSCAR) then who was the Plaintiff, FURAHA KIKOBA or CHRISTINA OSCAR that if the claimant was FURAHA KIKOBA, then the Primary Court was dully bound to make sure that, the same had legal capacity to sue and be sued on its own, as an institution governed by the Microfinance Act 2018.

The counsel for the appellant contended that, the respondent sued on the name of FURAHA KIKOBA (CHRISTINA OSCAR), assuming that the respondent was suing on her own capacity as CHRISTINA OSCAR, also it was not proper, because in her evidence it is shown that, she was giving evidence on behalf of group members who were not given right to be heard, nor given the respondent the power of attorney to sue on their behalf.

Referring this court to the case of **HAWA HASHIMU vs. SHARIFU HASSAN SELEMANI & MWENZAKE** PC Civil Appeal No. 115 of 2020 (unreported). Page 7 – 10, the appellant counsel submitted that if the respondent was suing on behalf of others, then she was supposed to follow the legal procedures by filing a representative suit otherwise the respondent had no locus stand to sue.

The counsel for the appellant contended further that the magistrate's court (Civil Procedure in Primary Court) G. N. 310/1964 as amended, is very clear that, after the defendant admits to the claims then the court should enter judgment on admission, surprisingly the trial magistrate proceeded with taking evidence from the respondent and never gave the appellant the chance to vive her evidence and defend herself on the same contrary to law. He supported his contention with the authority in **BENARD M MASHIBA vs. MKUKUWANI SACCOS,** PC. CIVIL APPEAL NO. 39 OF 2019 (unreported). He prayed that the appeal be allowed and the decision of Primary Court and District Court be set aside with costs.

In responding, the counsel for the respondent submitted on the first and second grounds jointly that Furaha Kikoba is a contractual agreement between members who have agreed to lend money to each other as a group

and this was by way of conduct. Christina Oscar and Evodia Kayombo are members of the so called Kikoba which is a group made for helping each other. The capacity of Christina Oscar is to stand on behalf of others.

That, FURAHA KIKOBA does not fall under section 31 (2) of the Microfinance Act 2018. Therefore, being unregistered (FURAHA KIKOBA) lacks qualities of a corporate body according to section 31 (2) (a) of Microfinance Act 2018. So, it cannot stand as a corporate body. That it was right for Christina Oscar, to sue on behalf of the group.

Replying the 3rd ground of appeal, Mr. Shitambala submitted that the appellant was never denied a right to defend. The court gave her all space to defend without interference or objection. That, according to the court proceedings on 30/4/2021, the appellant testified by admitting claims as to have borrowed Tshs. 12,000,000/= (twelve million) from Furaha Kikoba and to have paid only Tshs. 150,000/= and so she still owes them a sum of Tshs. 11,850,000/= of which suffices evidence to show that the appellant was given her constitution right to be heard. He prayed for the appeal to be dismissed with costs.

Having considered the records and rival submissions made for and against the appeal, I wish to state at the very beginning that at this level, in particular at the second appeal, we strive to ascertain correctness of the procedures unlike trial court and first appellate court who are ascertain the truth of the matter before it.

To begin with, I wish to dispose the first and second grounds of appeal at once that the appellate Magistrate erred both in law and facts for leaving the first ground which was on a legal issue unresolved and that the trial court and appellate magistrate erred both in law and facts for ignoring the fact that the respondent had no locus standi to prosecute the matter. The first ground of appeal at the district court was that of failure by the trial court to consider the legal status of the complainant. I believe the appellant meant *locus standi* of the complainant.

I have gone through the proceedings of the district court and found that the first appellate court only dealt with 2nd and 3rd ground at once and she made findings that the determination of the two grounds disposes the whole appeal. The four grounds of appeal at the district level were that;

Kwamba hakimu wa mahakama ya mwanzo alikosea kisheria na kimantiki kwa 1. kushindwa kuzingatia sifa za kisheria za mjibu maombi aliyekuwa mlalamikaji, 2. kushindwa kuchanganua ushahidi uliotolewa mbele yake hivyo kupelekea maamuzi yasiyo sahihi, 3. Kumnyima muomba rufaa haki yake ya msingi ya kusikilizwa, na 4. Kutoa maamuzi bila kuwepo kwa ushahidi wa mkataba wa mkopokati ya mlalamikaji na mlalamikiwa.

It be noted that the appellate court is normally tasked to look at the law that was supposed to be applied and decide whether or not the trial court made any mistake save for the first appellate court which may also re-evaluate the evidence tendered at the trial court and come up with its own findings. Generally, a trial court decision must be based on facts that are proved during trial. I have gone through the trial court proceedings and found that the appellant had directly admitted to the claims filed by the respondent, and the court gave its decision based on the appellant's admission to the claims. Under rule 44 of **THE MAGISTRATES' COURTS (CIVIL PROCEDURE IN PRIMARY COURTS) RULES,** the trial court was right to enter decision on admission by the appellant to the claims filed.

> *'At the first hearing of a proceeding the court shall ascertain from each party whether he admits or denies the allegations*

made against him by the other party and shall record all admissions and denials and shall decide and record what matters are in issue.'

From the records; issues of status of the claimant were not raised at the trial, and to make it clear, by legal status of the claimant, to my understanding it a *locus standi*, issue of *locus standi* are issues of law and facts, since no hearing was conducted at the trial court, then no issue was for determination as for the legal status of the claimant to be determined at the district level, that is why the first appellate court found that the second and 3rd grounds of appeal were sufficient to dispose of the appeal.

The decision of trial court, based on admission of the claim by the appellant. Admission to qualify as valid admission should be unequivocal, un ambiguous, unconditional and should be made with intend to be bound by it, it should be valid without having to be proved by adducing evidence and should entitle the other party to succeed. In the appeal at hand the district court found that the admission was proper and proceeded to determine the two issues of failure to analyze the evidence tendered and denial of the fundamental right to be heard by the appellant who was the respondent at the trial court. The trial court found that there was no evidence to be analyzed.

Looking at the proceedings of the trial court, the appellant unambiguously admitted to have borrowed money from the claimant with whom she is also a member and had paid back some amount and promised to pay back on the 15th May 2021, part of the proceedings reads;

> ***'Tarehe:*** *30/04/2021*
>
> ***Mbele ya:*** *M. N. Manyeresa, Hakimu Mkazi.*
>
> ***Washauri:*** *1. Jonas*
>
> *2. Cylon*
>
> ***Karani:*** *Msokwa*
>
> ***Mdai:*** *Yupo*
>
> ***Mdaiwa:*** *Yupo*
>
> ***Mahakama:*** *Madai yamesomwa na kuelezwa naye mdaiwa kwa kauli yake anajibu kama ifuatavyo;*
>
> ***Mdaiwa:*** *Ni kweli nilikopa tarehe 22/8/2020 kiasi cha shilingi 12,000,000/= katika kikoba cha Furaha ila nimelipa shilingi 150,000/= bado deni la shilingi 11,850,000/= ninadaiwa.*
>
> ***Sgd. E. K.***
> ***I.K.S.***
>
> ***Washauri sgd.*** ***1. Jonas***
> ***2. Cylon***
>
> ***Sgd. M. N. Manyeresa***
> ***HAKIMU MKAZI***
> ***30/4/2021***
>
> ***Mahakama:*** *Mdaiwa amekiri deni la shilingi 11,850,000/=*
>
> ***Sgd. M. N. Manyeresa***
> ***HAKIMU MKAZI***
> ***30/4/2021***
>
> ***Mahakama:*** *Maelezo ya mdai kuhusu deni ni kama ifuatavyo;*
> ***Mdai:*** *Christina Oscar, miaka 32, mkinga, biashara, mkazi wa mwanyanje, anaeleza:-*
> *Mdaiwa alichukua mkopo kwenye kikoba cha Furaha kiasi cha shilingi 12,000,000/= mnamo tarehe 22/8/2020. Mdaiwa alirejesha shilingi*

150,000/= na kueleza kwamba hana hiyo pesa ndipo tulimfahamisha mme wake. Mme wa mdaiwa alitueleza kuwa ataongea na ndugu zake baada ya siku kadhaa mdaiwa alitueleza kuwa ataongea na ndugu zake baada ya siku kadhaa mdaiwa alisema kwamba anachelewesha kulipa makusudi ili kikundi kivunjwe. Mpaka sasa anadaiwa hajarejesha shilingi 11,850,000/= ambayo haijalipwa. Tunaomba mdaiwa alipe deni hilo Pamoja na gharama za hili shauri Pamoja na fidia ya kukiuka makubaliano.

I.K.S.

Sgd. M. N. Manyeresa
HAKIMU MKAZI
30/4/2021

Mahakama: *Mdaiwa anajibu kuhusiana na maelezo ya mdai kama ifuatavyo;*
Mdaiwa: *Ninadaiwa deni la shilingi 11,850,000/= ambayo ninapaswa kuirejesha tarehe 15/5/2021.*

Sgd. E. K.
I.K.S.

Washauri sgd. ***1. Jonas***
2. Cylon

Sgd. M. N. Manyeresa
HAKIMU MKAZI
30/4/2021

Mahakama: *Madai yamethibitika baada ya mdaiwa kukuri deni la shilingi 11,850,000/=.*

Sgd. M. N. Manyeresa
HAKIMU MKAZI
30/4/2021

Mahakama: *Mdaiwa anahojiwa namna ya kurejesha deni hilo naye anajibu kama ifuatavyo;*
Mdaiwa: *Nitalipa pesa yote tarehe 15/05/2021 siku ya kuvunja kikoba kiasi cha shilingi 11,850,000/=.*

I.K.S.

Sgd. M. N. Manyeresa
HAKIMU MKAZI
30/4/2021'

The appellant knew who advanced the money to her as such she was familiar with the claimant and to whom the money should be returned to.

The first appellate court stated clearly that the two grounds are capable of disposing of the matter before her therefore, the appellant cannot say that the same was left unresolved. As there was nothing to resolve after the appellant's admission to the claim filed by the claimant who is now the respondent.

As I have state before, I wish to refer the case of **Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi** (1996) TLR 203, that 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. Perhaps, if the appellant could not have immediately admitted to the claims at the trial court, the parties could have presented their evidence for or against locus standi issue, but the appellant admitted the claim and she had started paying back and she is aware of who to pay. Therefore, 1st and 2nd grounds of appeal have no merits.

The third ground of appeal that the trial court and the appellate court both erred in law and fact for failure to give the appellant the right to be heard. From the records of trial court and that of the district court on appeal, the appellant was given the right to be heard through her advocate at the

first appellate level and at the trial court she was given chance to respond to the claims filed against her that is when she admitted to the claim and promised to pay. She knew who to pay and therefore the argument by the counsel for the appellant that it is not clear as to should be paid, is baseless.

As stated by the counsel for the respondent that FURAHA KIKOBA does not fall under section 31 (2) of the Microfinance Act 2018. Therefore, being unregistered (FURAHA KIKOBA) lacks qualities of a corporate body according to section 31 (2) (a) of Microfinance Act 2018, it cannot stand as a corporate body. That it was right for Christina Oscar, to sue on behalf of the group. The appellant counsel contention that if the respondent was suing on behalf of others, then she was supposed to follow the legal procedures by filing a representative suit otherwise the respondent had no locus stand to sue has no weight because as seen from the proceedings, the appellant was aware of the debt and was ready to pay, she did not want hearing of the matter as there was nothing to dispute and whether there was evidence of representative suit or power of attorney for the respondent to sue on behalf of the KIKOBA was a matter of facts and evidence which the district court could not have reviewed on appeal for the decision at the trial court was entered on admission by the appellant to the claim.

I have endeavored to go through the cited cases by the counsel for the appellant, **Sosthnes Bruno** (supra) and that of **Hawa Hashimu** (supra) and I wish to borrow the reasoning of this court in **BULIMBE BONIPHACE BULIMBE versus FREDY JAPHET PC CIVIL APPEAL NO. 23 OF 2023,** that, in matters like this, the court should be inclined towards promoting social justice at its best that from an informal arrangement, one person gains economically but is trying to avoid settling his due obligation on the basis of want of formality. The appellant should be expected to clean her hands before she accesses the temple of justice. The appellant knows who gave her the amount she admitted to have been advanced and she knows where she remitted back the amount of Tshs. 150,000/- and is aware as to who should be paid back the remaining balance Tshs. 11,850,000/-

In the end, I find appeal without merits, it is hereby dismissed, bearing the parties social relationship, I order no costs. It is so ordered.

DATED and DELIVERED at MBEYA this 3rd Day of August, 2023.

THE HIGH COURT OF TANZANIA

V. M. NONGWA

JUDGE