

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYAMIRA

CIVIL APPEAL NO. 18 OF 2020

DAMARIS MWANGO OCHANDA.....APPELLANT

VS

AMANI WOMEN GROUP

(Suing through ESTHER GESARE OKIO – CHAIR).....1ST RESPONDENT

JACKLINE NYABOKE OBENGA – SECRETARY.....2ND RESPONDENT

TABITHA MOGERE – TREASURER.....3RD RESPONDENT

JUDGEMENT

By his judgment delivered on 27th July 2020 the trial magistrate ordered the appellant to pay the respondents a sum of Kshs. 59,365/= together with interest and costs of the suit. Being aggrieved by that judgment the appellant preferred this appeal the gist of which is that the respondents did not prove their case on a balance of probabilities; that the appellant's defence was ignored and that the Amani Women Group was in any case not a legal entity with capacity to enter into and/or enforce loan agreements. Further that the appellant was not in any event a member of Amani Women Group at the material time having quit the group in the year 2017.

As a first appellate court my duty is to reconsider and evaluate the evidence in the trial court so as to arrive at my own independent conclusion while keeping in mind that I did not hear or see the witnesses. I have also considered the rival written submissions put forth by Learned Counsel.

The burden of proof in a civil case such as the one before me lies squarely upon the plaintiff and the standard of proof is on a balance of probabilities.

The respondent's case against the appellant was that she did not refund a sum of Kshs. 59,365/= which she borrowed from the group. To prove that she borrowed the money the respondents produced an Amani loan Application and Agreement Form dated 8th December 2017 which they allege the appellant executed at the time she borrowed the money. During cross examination the appellant conceded that she was a member of the Group and that she had taken a loan. She however claimed to have repaid it without producing any evidence to that effect. It is my finding therefore that there was no rebuttal of the respondent's claim. There is also evidence that proves that she was still a member on a balance of probabilities. Evidence was adduced by the respondents that the group was duly registered as a Self Help Group at the Ministry of Labour Social Security and Services both at the time the appellant borrowed the sum claimed and in the year 2018. Her contention therefore that the group did not exist cannot hold. Neither can her contention that the loan was illegal or unconscionable because it was geared at unjustly enriching the group. This is because she did not adduce any evidence to prove that she was either induced or in any other manner lured into obtaining the loan. Indeed from her testimony in cross examination she voluntarily entered into that agreement. Moreover as was stated by the trial magistrate it cannot be the case that the loan only became illegal because she could not pay. It was her evidence that she had earlier taken another loan which she repaid fully. I likewise believe that she borrowed the sum of Kshs. 59,365/= from the respondent but she did not repay it.

As to whether the respondent had legal capacity to enter into and to enforce the loan agreement I can only reiterate the holding of Ogola J in the case of **Scholar Munyithya Kulu V Syondo Mathunyani Women Self Help Group [2010] eKLR** that:-

“5. This appeal hinges mainly on the allegation that the Respondent did not have legal capacity. It is true that being a women group the respondent was not registered under an Act of Parliament. However, that did not mean that the group did not exist. I am satisfied with the finding of the learned magistrate that the group existed enough to sustain the suit. A court of law is a court of justice.

It will not allow a party to benefit from its own unlawful conduct. Women groupings in Kenya is now a well-founded phenomenon. Through these entities women have invested billions of shillings and have received incomes which have paid school fees (sic) to children and sustained family units. The appellant was herself a member of that group and she admitted as such (sic). She cannot now turn around and disown the group. Needless to add, the group did not have legal registration. However, a court of law will not be blinded to allow a party to misuse that fact”

In our case Amani Women Group was duly registered with the Ministry of Social Services as a Self Help Group a fact which clothed it with legal capacity to carry on the activities it was associated with and which included table banking. The loan agreement concerning the appellant was therefore valid and enforceable as a contract between her and the group. My finding therefore is that this appeal has no merit

and in the premises it is dismissed with costs to the respondents.

It is so ordered.

DATED SIGNED AND DELIVERED ELECTRONICALLY ON THIS 14H DAY OF OCTOBER, 2021.

E.N. MAINA

JUDGE