

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
CIVIL APPEAL NO. E221 OF 2023

FRANCIS NJERU NYAGA.....APPELLANT
-VERSUS-
MBEERE MWELEKEO MPYA GROUP.....RESPONDENT

JUDGMENT

1. The respondent sued the appellant in the Chief Magistrates’ Court Civil Case No. 857 of 2019 for a liquidated claim of Kshs. 217, 174/= together costs and interest. The respondent was described in the plaint as a self help group registered under the Societies Act, cap. 108. The appellant is said to have been the treasurer of the respondent at times material to the suit. It is in his capacity, as the treasurer of the respondent, that the appellant was entrusted with the money he was sued for; the money was said to have been the respondent’s members’ contributions which the respondent was alleged to have misappropriated.
2. The appellant denied the claim and one of the issues he raised in his defence was that the respondent, being an unincorporated entity, had no capacity to sue him in its own name.
3. In a judgment delivered on 22 June 2023, the learned magistrate (Hon. R.N. Akee, Senior Resident Magistrate) held that the respondent owed the appellant the sum claimed and allowed the respondent’s suit.

4. Being aggrieved by the learned magistrate’s decision, the appellant filed the instant appeal and in my humble view, it turns on whether the learned magistrate was right in holding that the respondent could sue in its own name. On this particular aspect of the respondent’s case, the learned magistrate held as follows:

“It is clear that self help groups are just social welfare organisations that can be registered under the ministry relevant for social services and still this doesn't negate the fact that the defendant was given some money. The solution to any debt is payment. In the circumstances the prayers in the plaint is (sic) hereby allowed as prayed.”

5. The respondent may have been a social welfare group as determined by the learned magistrate, but according to the respondent’s own pleadings, it was registered as a society under the Societies Act, cap. 108; contrary to the learned magistrate’s holding, the respondent was not registered under a ministry.
6. That being the case, there shouldn’t have been any dispute that being an unincorporated body, the respondent has no legal personality of its own as to sue or be sued in its own name. There is no express or implied statutory

authorisation in the Societies Act under which the respondent can sue or be sued in its own name. On this point, it has been held that:

“An unincorporated association is not a legal person and therefore cannot sue or be sued unless such a course is authorised by express or implied statutory provisions...” (see New Hampshire Insurance Company & Ors v. MGN Ltd & Ors, (1996) EWHC 398 (Comm) (Sep 6, 1996).

7. Thus, in law, only the principal officers or trustees of a society registered under the Societies Act may sue or be sued in an action for or against the society. The learned magistrate fell into error when she held that the respondent had the capacity to sue and that there was a proper suit before her. The suit was, in fact, fatally defective and incompetent and ought to have been struck out *in limine*.
8. Having come to this conclusion, I need not delve into any other grounds of appeal, which basically go to question whether indeed the respondent proved its claim against the appellant. There was simply no suit or any valid suit before court for the court’s determination on the merits. The appeal is allowed with costs to the appellant.

Signed, dated and delivered on 24 April 2026

Ngaah Jairus
JUDGE