



Bidii Traders Savings Credit Group (Suing Through Its Officials)Kiambi & another v Kiarri & another (Civil Appeal E103 of 2021) [2025] KEHC 6098 (KLR) (27 March 2025) (Judgment)

Neutral citation: [2025] KEHC 6098 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL APPEAL E103 OF 2021**

**JM OMIDO, J
MARCH 27, 2025**

BETWEEN

**BIDII TRADERS SAVINGS CREDIT GROUP (SUING THROUGH ITS
OFFICIALS)SIMON KIAMBI (SECRETARY) 1ST APPELLANT**

FRIDAH KINYA KIAMBI (VICE SECRETARY) 2ND APPELLANT

AND

STEPHEN KIARII (CHAIRMAN) 1ST RESPONDENT

TERESIA WANJALA (TREASURER) 2ND RESPONDENT

(Being an Appeal from the Judgement and Decree of Hon. T.M. Mwangi, Senior Principal Magistrate delivered on 1st July, 2021 in Meru CMCC No. 104 of 2017)

JUDGMENT

1. This appeal emanates from the judgement and decree of Hon. T.M. Mwangi, Senior Principal Magistrate, delivered on 1st July, 2021 in Meru CMCC No. 104 of 2017.
2. The grounds of appeal presented by the Appellants vide the Memorandum of Appeal dated 26th July, 2021, upon which they seek to upset the judgement and decree of the lower court, are as follows:
 - i. The learned trial Magistrate erred in law and in fact in dismissing the Appellants' suit with costs to the Respondents.
 - ii. The learned trial Magistrate erred in law and in fact in failing to appreciate that the Appellants have pleaded for saving and costs (sic) of the suit.
 - iii. The learned trial Magistrate erred in law and in fact in arriving to (sic) the wrong decision in judgement that the Appellant did not claim for a refund of their contribution and savings.



- iv. The learned trial Magistrate erred in law and in fact in allowing the Respondents' counterclaim when they not proved (sic) their claim in (sic) balance of probability.
 - v. The learned trial Magistrate erred in law in awarding the Respondents costs with interest of 10%.
 - vi. The learned trial Magistrate erred in law and in fact in in failing to appreciate that the group bylaws requires that an auditor shall be appointed to audit group monies.
 - vii. The learned trial Magistrate erred in law and in fact in arriving to (sic) the wrong decision when indeed the Respondent did not claim that the Appellant had crippled the operations of the group.
3. Simon Kiambi and Fridah Kinyua Kiambi, whom I will refer to as the 1st and 2nd Appellants respectively or collectively as the Appellants propose that the appeal be allowed with costs and that the judgement of the lower court be set aside and the Appellants' claim before the lower court be allowed.
 4. The two Appellants purport to present the appeal (and the suit before the trial court) as officials (Secretary and Vice Secretary respectively) of Bidii Traders Trading and Credit, (hereinafter referred to as "Bidii") an entity whose capacity to sue and be sued I will shortly discuss.
 5. The claim before the trial court was commenced by way of a plaint dated 2nd June, 2017. The Appellants (the Plaintiffs in the lower court) sought the following reliefs against the Respondents:
 - a. A permanent order of injunction restraining the Defendants, whether by themselves, their agents, assigns and/or any person working under their instructions from taking over control or management of the Plaintiff Association, changing of signatories, withdrawing the Plaintiffs' funds in Capital Sacco Bank Account No. 1736 and Cooperative Bank Account No. 01*****00 and/or in any way interfering with the Plaintiffs' elected officials proprietary rights over the group until an audit report (sic).
 - b. An order compelling the Defendants to appoint an auditor to examine group bank account namely Capital Sacco Bank Account No. 17*36 and Cooperative Bank Account No. 01*****00 and payment of Plaintiffs' savings, interest and shares from 2014 up to the year 2016.
 - c. Costs and interest of the suit.
 - d. Any other better relief the Honourable Court may deem fit and just to grant.
 6. As per the plaint, the Appellants' claim as against the Respondents was premised on the allegation that the Respondents had refused to convene a meeting for Bidii whose purpose, inter alia, was to appoint an auditor to examine the financial affairs of Bidii, in accordance with its bylaws.
 7. The Appellants further pleaded that the Respondents had made unauthorized withdrawals of funds from the Bidii's accounts, necessitating the suit.
 8. Stephen Kiarri and Teresia Wanjala (hereinafter referred to as the 1st and 2nd Respondents respectively or collectively as the Respondents) resisted the Appellant's claim and to that end filed a statement of defence and counterclaim dated 29th August 2019. The Respondents sought that the Appellants' suit be dismissed with costs and further counterclaimed, purportedly as officials (Chairman and Treasurer respectively) of Bidii seeking the following reliefs:



- a. Release of the original certificate of registration to its officials (sic) and in default this Honourable Court do order the Subcounty Social Development Officer, Imenti South Subcounty, to cancel the same and issue a fresh certificate to the Plaintiff in the counterclaim.
 - b. Permanent injunction restraining the Defendant in the counterclaim, his agents, assigns, servants or successors from taking, receiving the plaintiff in the counterclaim documents (sic) or interfering with its operations thereof howsoever.
 - c. Any other or better relief.
 - d. Costs of the suit.
 - e. Interest on (d) above at court rates.
9. It is instructive from the counterclaim that the Respondents named Bidii as the “Plaintiff” in the counterclaim, suing through its officials, the Respondents herein. The 1st Appellant is named therein as the “Defendant” in the counterclaim. Quite jumbled up, I may say!
 10. Be that as it may, it is clear from both the plaint and the defence and counterclaim that both the 2nd and 3rd Appellants on one hand and the 1st and 2nd Respondents on the other purported to present the suit and the counterclaim, respectively, on the pretext that both opposing pairs were doing so as officials of Bidii.
 11. I have perused the record and it is clear to me that the entity of Bidii Traders Trading and Credit was registered under the Ministry of Labour, Social Security and a certificate of registration issued to that end that the entity had been registered as a self-help group.
 12. An issue I will then sua sponte raise is whether the said entity had the locus or legal capacity to institute proceedings or be sued in its name.
 13. The answer to this question is to be found, gladly, in the authority of *Kipsiwo Community Self Help Group v Attorney General And 6 Others* [2013] eKLR3. in which the court observed as follows:
 - “38. I think the issue is not really whether unincorporated entities may commence action but the manner in which unincorporated entities may commence proceedings. A number of individuals may come together and form an identifiable group. They can bring action as the group, but it does not mean, that the group is now vested with legal capacity to sue and to be sued. In such instance, the members of the group have to bring action in their own names, as members of the Group, or a few can bring action on behalf of the other members of the group, in the nature of a representative action. Unincorporated entities have no legal capacity and cannot therefore sue in their own names. They can however sue through an entity with legal capacity. Just because *the Constitution* allows unincorporated bodies to sue, does not vest such bodies with legal capacity, and such bodies do not become persons in law, and cannot be the litigants or sue in their own standing. They still have to use the agency of a person recognized in law as having capacity to sue and to be sued.
 39. This was indeed the holding in the case of *Kituo Cha Sheria vs John Ndirangu Kariuki & Another*. In this case a petition was instituted by Kituo Cha Sheria. An application was filed to dismiss the petition on the grounds inter alia that the petitioner is a non-entity and lacks the requisite locus standi to file and



prosecute the petition. Kimondo J, found that Kituo Cha Sheria is not a legal entity capable of bringing an action in its own name and averred that it can only maintain an action through its officials or other person nominated by its board.

40. The question of whether Self-Help Groups have capacity to sue arose in the case of *Dennis Olooligero & 2 Others vs The Art of Ventures Limited & 2 Others*, Nairobi HCCC 1358 of 2005 [2006] eKLR. This was a suit by persons who described themselves as members of a Community Based Organisation (CBO), registered under the Ministry of Gender, Sports, Culture and Social Services. The court held that such organization has no legal capacity and proceeded to strike out the pleadings. In the said suit, the Aluoch J, indeed went as far as alluding that such entity was an unlawful society. She stated thus:

"I am satisfied from the evidence I have considered so far, that the plaintiffs/applicants herein lack the legal capacity to commence or maintain the present proceedings, since they represent an unlawful society in law..."

The judge had in mind Section 9 of the *Societies Act*, which requires societies to be registered within 28 days of formation.

41. It is clear that Self - Help Groups are not incorporated bodies. In fact I know of no law that recognizes them or incorporates them. They were probably the brain-child of administrators who at times had to come up with a tool to identify specific groups of people that needed assistance, or needed to undertake projects together. They seem to have helped harness resources at community level. The only problem is that the Government has not put in place any legal framework under which they can be registered and managed. Such groups, in absence of a legal framework, indeed stand the risk of being declared unlawful societies as held in the case of *Dennis Olooligero*.
42. Self Help Groups having no legal personality, cannot therefore institute proceedings in their own name.
43. Kipsiwo Self Help Group had no capacity to institute action in its own name. A person recognized in law had to sue on behalf of members of Kipsiwo Self Help Group and such members had to be named and identified with precision. The person bringing action has to demonstrate that he has permission to bring the action on behalf of the members of the Group, or on behalf of the people he seeks to represent, if it is a representative suit. The importance of this, is so as to recognize the persons who seek legal redress, and so that orders are not issued in favour or against people who cannot be precisely identified. This may look minor, but it is extremely significant. In litigation, rights and duties will be imposed on the litigants. If the court does not know who the litigants are, then it becomes impossible for the court to enforce its own orders, for it will never be clear, who the beneficiary of the order was, or who had obligation to obey or enforce such order."

14. It would appear that the learned trial Magistrate did not interrogate the capacity in which Bidii Traders Trading and Credit, a self-help group was suing (both as a plaintiff and as a counterclaimant). Although in both purported capacities the other parties (the 1st and 2nd Appellants and the 1st and 2nd Respondents) claimed that the entity of Bidii was suing through its officials whereby each pair



conveniently named themselves as the officials, the members of Bidii, whom the parties purported to represent ought to have been clearly identified and the persons claiming to be officials were under a legal obligation to demonstrate that they had the authority of the members to file the representative suit or to counterclaim on their behalf.

15. I have combed through the record of the lower court and I am clear that neither of the two sides demonstrated that they had such authority. It was not enough for the parties to merely state that they were officials and sue in that capacity. The significance of obtaining and exhibiting such authority has clearly been underscored above in the Kipsiwo case (supra).
16. Having said as much, it is my finding that the Appellants and the Respondents had no capacity or locus to file the suit and counterclaim before the trial court. Considering that both the Appellants and the Respondents had their respective cases hinged on the existence of the self-help group whereof they all claimed to be officials, both the suit and counterclaim were non-starters and ought to have been struck out.
17. In the result, the orders commend this appeal are that for the reasons above, I set aside all the ultimate orders issued in the trial court's judgement and substitute the same with an order striking out both the suit and the counterclaim, effective 1st July, 2021, being the date the trial court delivered its judgement. I further order that each party bears their own costs of this appeal and those of the suit and counterclaim before the trial court.

DELIVERED (VIRTUALLY), DATED & SIGNED THIS 27TH DAY OF MARCH, 2025.

JOE M. OMIDO

JUDGE

For The Appellants: No appearance.

For The Respondents: No appearance.

Court Assistants: Mr. Ngoge & Mr. Juma.

