

IN THE COURT OF APPEAL OF TANZANIA

AT ZANZIBAR

(CORAM: MWANGESI, J.A., KOROSSO, J.A., And LEVIRA J.A.)

CIVIL APPEAL NO. 300 OF 2019

**CHAMA CHA WAFANYAKAZI MAHOTELI NA
MIKAHAWA ZANZIBAR (HORAU) -----APPELLANT**

VERSUS

**KAIMU MRAJIS WA VYAMA VYA WAFANYAKAZI
NA WAAJIRI ZANZIBAR-----RESPONDENT**

**(Appeal from the decision of the High Court of Zanzibar, Industrial Division,
at Vuga.)**

(Sepetu, J.)

dated the 17th day of August, 2018

in

Misc. Civil Application No. 1 of 2017

JUDGMENT OF THE COURT

15th & 18th December, 2020

LEVIRA, J.A.:

This appeal is against the decision of the High Court of Tanzania at Zanzibar (Sepetu, J.) in Miscellaneous Civil Application No. 1 of 2017 dated 17th August, 2018. In that application, the appellant had applied for the High Court to call for and examine the records of proceedings of the respondent of 6th December, 2017 in which the respondent cancelled the appellant's registration for the purpose of satisfying itself as to the

correctness, legality and propriety of the respondent's decision. Having heard both parties to the application and considering the exhibits tendered during hearing, the High Court Judge was satisfied that the act of the respondent cancelling the appellant's registration was justified and all the procedures were followed before the cancellation. In the circumstances, he found the application to be baseless and hence dismissed it. Aggrieved, the appellant lodged the current appeal with three grounds quoted verbatim as follows:

- 1. That, the Honourable High Court Judge, Industrial Division, erred in law in holding that the cancellation of the Appellant's registration by the Registrar dated 6th December, 2017 was lawfully (sic).*
- 2. That, the Honourable High Court Judge, Industrial Division, was wrong in failure to comprehend that the rules of natural justice were deliberately violated in cancellation of the appellant's registration.*
- 3. That the Honourable High Court Judge, Industrial Division, was wrong in failure to resolve judiciously that the cancellation of the Appellant's registration was based on manifest error on the face of record resulting in miscarriage of justice.*

At the hearing of the appeal, the appellant was represented by Mr. Isaack Msengi, learned advocate and the respondent had the services of Mr. Ali Ali Hassan, learned Principal State Attorney, assisted by Mr. Juma Msafiri, also learned Principal State Attorney and Mr. Didas Khalfani, learned Stated Attorney.

It has to be noted at the onset that before commencement of hearing of the appeal on merits, Mr. Hassan raised a legal point that the appellant has no *locus standi* before the Court. Upon being queried by the Court as to whether the issue concerning appellant's *locus standi* was raised and determined by the High Court during hearing of the application subject of this appeal, he replied in the negative. Following that answer, we opted to hear first the appeal on merits pending hearing of the legal issue of appellant's *locus standi* raised by Mr. Hassan.

Mr. Msengi adopted the appellant's written submissions in commencement of his oral submission before us. As regards to the first ground of appeal, he stated that the High Court misdirected itself when it failed to recognize that the respondent cancelled the appellant's registration unlawfully. He argued, section 22 (1) (b) and 22(3) (f) of

Zanzibar Labour Relations Act, No. 1 of 2005 (the Labour Relation Act) which were referred by the Acting Registrar during the said cancellation were improperly invoked. He highlighted that section 22 (1) (b) of the Labour Relations Act requires the Registrar to cancel registration of a Trade Union if satisfied that the Trade Union does not exist but this was not the case. According to him, the appellant trade union exists and the said Registrar had no tangible evidence to prove otherwise.

Mr. Msengi argued further that, section 22 (3) (f) of the Labour Relations Act also referred by the Registrar in cancellation of appellant's registration, requires the Registrar to apply before the court to cancel the registration of a trade union upon being satisfied that the trade union has wilfully contravened the provisions of the law and after issuing it a notice to the that effect. He insisted that since there was no such application presented before the court as the one initially lodged by the respondent was withdrawn, we should therefore find that the High Court was wrong in holding that the cancellation of the appellant's registration by the Registrar was unlawful. In support of this argument, the learned counsel cited the

case of **Sanai Muronbe and Another v. Muhere Chacha** [1990] TLR 54, and **Director of Public Prosecution v. Daudi Pete** [1993] TLR 22.

As regards to the second ground of appeal, Mr. Msengi submitted that the High Court failed to comprehend that the rules of natural justice were deliberately violated by the respondent as she failed to accord the appellant the right to be heard. His argument was based on section 22 (2) of the Labour Relations Act which requires the Registrar to issue a three months notice before cancelling registration of a trade union. The learned counsel condemned the respondent for failure to issue the appellant with the said notice. As a result, he said, the appellant was denied the right to be heard and the cancelation was illegal.

Submitting on the third ground of appeal, Mr. Msengi faulted the decision of the High Court for failure to declare that the cancellation of the appellant's registration was wrong and it caused miscarriage of justice on the part of the appellant.

Mr. Msengi concluded his submission by urging us to allow this appeal and nullify the decision of the High Court with costs.

In reply, Mr. Hassan adopted first respondent's written submissions and combined the first and third grounds in his submission. Briefly, he stated that the respondent was right to cancel the appellant's registration because the appellant ceased to exist as a trade union by virtue of the Official Government Gazette No. 22 of 2016 which we should take judicial notice of its existence. It was his argument that the respondent was justified to invoke section 22 (1) (b) and (2) of Labour Relations Act to cancel the appellant's registration because that provision empowers her to do so. He urged us to consider that it was a slip of the pen for the Registrar to cite section 22 (3) (f) as well. He thus prayed that we should ignore it since the right provision was cited as well. According to him, there was no miscarriage of justice on the part of the appellant.

The learned counsel submitted in respect of the second ground of appeal to the effect that, the appellant was issued three months notice by the respondent before cancellation of its registration although the said notice was not tendered before the High Court as an exhibit. Basing on his submission, Mr. Hassan urged us to dismiss this appeal.

In rejoinder, Mr. Msengi insisted that the respondent wrongly invoked section 22 (3) (f) to cancel the appellant's registration. Therefore, it was equally wrong for the High Court Judge to make a finding that the cancellation was lawful. He also insisted that, the appellant was not accorded the right to be heard before cancellation of her registration. In conclusion, he reiterated his prayer that this appeal be allowed.

In the course of preparation of our decision and upon thorough perusal of the record of appeal, we discovered that, although the counsel for respondent informed the Court that the issue concerning the appellant's *locus standi* he intended to raise was not raised before the High Court, the said issue was raised by the respondent as one among the four grounds in the respondent's notice of preliminary objection lodged on 24th January, 2018 found on page 48 of the record of appeal.

In the circumstances, we had no option other than recalling the parties to address the Court on this pertinent issue. On 15th December, 2020 parties appeared before the Court to address us on the *locus standi* of the appellant and the coram was the same as on the previous day.

Mr. Hassan was the first to address and when prompted by the Court, he conceded that the appellant's *locus standi* was questioned before the High Court referring to page 48 of the record of appeal where the notice of preliminary objection is found. He also referred us to page 84 of the record of appeal where the counsel for the appellant raised a concern before the High Court that the respondent's notice of preliminary objection was preferred under a wrong provision of the law. The High Court Judge heard from both parties regarding the competence of the said notice and in the end, struck out the said notice for being incompetent.

Mr. Hassan submitted further that, since the respondent expected to win the case against the appellant, which she won, she did not see the need to file a fresh notice of preliminary objection as she ought to have done. As a result, hearing of the case proceeded normally and at the end of the day, the decision of the High Court subject of this appeal was delivered as indicated above.

As regards to the appellant's *locus standi*, Mr. Hassan stated that the appellant had no *locus standi* to institute a case against the respondent. He argued that section 48 of the appellant's Constitution empowers the Board

of Trustees to sue for the appellant. Therefore, the appellant had no *locus standi* to sue the respondent and he urged us to find so. In addition, he contended that the proceedings and decision of the High Court were null and void. Therefore, it is as good as nothing had taken place before the High Court and there is no appeal before the Court. Finally, he prayed for the Court to dismiss this appeal.

In reply, Mr. Msengi submitted that the appellant had *locus standi* to file revision application against the respondent before the High Court following respondent's cancellation of the appellant's registration. He argued that the appellant was a recognized trade union in terms of section 25(1) of the Labour Relations Act and thus, had *locus standi* to sue the respondent.

The learned counsel referred us to section 47(c) of the appellant's Constitution which he said, gives the appellant authority to sue directly if the Board of Trustees is not ready to do so. However, he said the Board of Trustees did not give the appellant an authorization to sue the respondent in this matter and therefore, he left it for the Court to decide.

We have carefully considered submissions by the counsel for the parties, grounds and the record of appeal. We think, it is necessary for us to determine first the issue regarding appellant's *locus standi* before turning to the merits of the case. We observed that, although the learned High Court Judge struck out the respondent's notice of preliminary objection for being improperly moved, still the issue regarding appellant's *locus standi* was very vital and we think, the High Court ought to have considered it. This is due to the fact that, the appellant's claims could not be established by a person who is not entitled to claim before the court. It is very unfortunate that the grounds of preliminary objection raised by the respondent against the appellant's claims did not become an eye opener for the appellant to reevaluate her *locus standi* before the court. Instead, the appellant participated fully in the hearing of her application before the High Court as scheduled.

Having heard the rival submissions for and against the appellant's *locus standi*, the key issue for our determination which we think is capable to dispose of this appeal is, whether the appellant had *locus standi*

to institute the application against the respondent before the High Court which eventually led to the current appeal.

It has to be understood at the outset that, *locus standi* is a common law principle which provides that, only a person whose right or interest has been interfered with by another person has a right to bring his claim to court against that other person (See **Lujuna Shubi Ballonzi, Senior v. Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203; **Godbless Jonathan Lema v. Mussa Hamis Mkanga & Two Others**, Civil Appeal No. 47 of 2012 (unreported). We wish to observe that a person whose right or interest has been interfered by another is able to come to the court personally or through an authorised agent or board depending on the circumstances of each case.

In the matter at hand, the appellant being a trade union was formed in accordance to the law, the Labour Relations Act and its Constitution. Section 47 of the appellant's Constitution established a Board of Trustees which comprised of members whose qualifications are stated in Swahili therein as follows:

"Kutakuwepo na wajumbe wa Baraza la Wadhamini ambao watateuliwa na Baraza Kuu, kwa kuzingatia sifa zifuatazo:-

- a) Miongoni mwa watu wenye uzoefu wa shughuli za vyama vya Wafanyakazi na Maswala ya Sheria za Kazi.*
- b) Miongoni mwa waliokuwa viongozi wa shughuli za Mahotelini na Utalii Nchini.*
- c) **Watakaokuwa tayari kusimama Mahakamani kwa niaba ya Chama.***
- d) Watu maarufu, waaminifu na waadilifu katika jamii.*
- e) Watachaguiwa kutoka nje ya miongoni mwa wajumbe wa Kamati Tendaji.*

[Emphasis Added]

The functions of the Board of Trustees are stated under section 48, they include to represent the appellant in court as stated under subsection (ii) of that section which provides that:

- " (i) Kazi za Baraza la Wadhamini
- (ii) Kusimamia chama na mali zake mbele ya vyombo vya Sheria."

Therefore, in terms of section 48 (ii) of the appellant's Constitution, the responsibility to sue is vested on the Board of Trustees and not the appellant as a trade union. This is due to the fact that the appellant is guided by her Constitution in all matters pertaining to the union as stated under section 1 of the said Constitution thus:

"... Sisi Wafanyakazi wa Sekta hizo kwa niaba ya wenzetu tumeamua kujiunga pamoja na kuanzisha chama chetu cha Wafanyakazi kitakachojulikana kwa jina la Chama cha Wafanyakazi wa Mahoteli, Mikahawa na kazi zihusianazo nazo kwa kifupi "HORAU" Hotels, Restaurants and Allied workers Union ambacho kimeanzishwa tarehe 19/10/2008 na kusajiliwa rasmi tarehe 27/04/2009 chini ya sheria ya uhusiano kazini No 1 2005 ya Zanzibar. Chama hiki kitatetea, kulinda haki na ajira zetu pamoja na kuendeleza taaluma ya utoaji wa huduma kwa wageni na Watalii kwa jumla, kwa hivyo sisi wanachama wa HORAU kupitia katika mkutano Mkuu wetu wa Taifa uliofanyika tarehe 15/10/2011 katika ukumbi wa Hoteli ya Bwawani, tumepitisha katiba hii, pamoja na marekebisho yake kwa kauli moja."

Therefore, it is very clear that all members of the appellant's union consented to be led by their Constitution.

In his submission before us, the counsel for the appellant argued that the Board of Trustees was not ready to come to court to sue that is why the appellant decided to institute the case. According to his interpretation section 47 (c) of the appellant's Constitution gives an option to the Board of Trustees to come to court when they are ready or otherwise. Therefore, having seen that the Board of Trustees were not ready to come to the court, the appellant exercised its right under the Labour Relations Act to sue the respondent.

The arguments by counsel for the appellant were vehemently in opposition of the counsel for the respondent who argued, which we agree, that the appellant had no *locus standi* to sue the respondent because the appellant's Constitution states categorically under Article 48 that, among the functions of the appellant's Board of Trustees is to represent the appellant before the court.

In the circumstances we find that the appellant had no *locus standi* to institute a case against the respondent. Therefore, we do not see the

need to determine the three grounds of appeal presented by the appellant before us. Consequently, in exercise of our revisional powers under section 4(2) of the Appellate Jurisdiction, Cap. 141, we nullify the proceedings of the High Court and set aside the dismissal order. Since this appeal emanated from null proceedings, it is improperly before us and therefore, we dismiss it.

DATED at ZANZIBAR this 17th day of December, 2020.

S. S. MWANGESI
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

The Judgment delivered this 18th day of December, 2020 in the presence of Mr. Issack Msengi, learned counsel for the appellant and Mr. Abubakar Omary, learned State Attorney for the respondent is hereby certified as a true copy of the original.



H. P. NDESAMBURO
DEPUTY REGISTRAR
COURT OF APPEAL