

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

PC. CIVIL APPEAL NO. 21 OF 2018

(Arising from Ukerewe District Court Civil Appeal No. 05 of 2017)

LUGOYO BUZEGWE OFISINI APPELLANT

VERSUS

VEDASTUS NAHONGE RESPONDENT

JUDGEMENT

11/10/2018 & 31/01/2019

RUMANYIKA, J.:

Appeal is against the 25/9/2017 judgment and decree. The District Court for Ukerewe at Ukerewe (1st appeal court) having enhanced it and ordered Lugoyo Buzegwe Ofisini (the appellants) to pay Vedastus Nahonge (the respondents) Shs. 1,772,000/= being his entitlement and contributions due from sort of a community death consolation insurance fund.

The 5 grounds of appeal mainly revolve around points:-

- (i) The 1st appeal court erred not holding that the appellants had no locus standi.
- (ii) The 1st appeal court improperly analyzed the evidence.
- (iii) The 1st appeal court erred in law and fact in not affording appellants a chance to be heard.

- (iv) The 1st appeal court erred in law and fact in not holding that the respondent had not proved his case on balance of probabilities.

Mr. John Edward learned counsel appeared for the applicants, while the respondent appeared in persons.

Mr. John Edward advocate in a nutshell submitted that the appellant had no locus standi. That the appellant should not have been just like that sued. That with regard to Shs. 1,772,000/=awarded, the respondent had not proved his claims. That he wasn't, according to their constitution even entitled to any contributions as was a habitual defaulter. Therefore owed the appellants some amount of money. That having, for quite sometimes breached provisions of their constitution (Exhibit P1), he was no longer a group member thereof. The appellants owed him nothing. That he was given opportunity, but the respondent just waived his own right to be heard.

The respondent similarly briefly submitted that now that the alleged constitution had been, for some reasons by trial court declared forged and a nullity, and as was, at the time away at Bugando hospital attending to the sick boy (deceased), the appellants therefore condemned him unheard. That the issue of locus standi could not, for the first time rise here. That the devoid of merits appeal be dismissed with costs.

The central issue is whether the respondent had proved his claims on the required balance of probabilities. The answer is no. Reasons are:-

One; It is common knowledge that some small communal groups at that level with common interest had such a voluntary and more or less individual sanction to defaulters insurance device. A breach of which, even when their constitution spelt it out, could not, with all intents and purposes be meant for intervention of ordinary courts of law. Whether or not their constitution was silent is immaterial in my considered opinion. It is very unfortunate that the trial court admitted the case, and, with greatest respect the 1st appeal court didn't question it at the earliest opportune. I imagine of a member who, on that unusual basis successfully takes the communal social group to book! How unpopular the member could be. Leave alone defendant community members and preparedness to assist litigant or such kind of litigants.

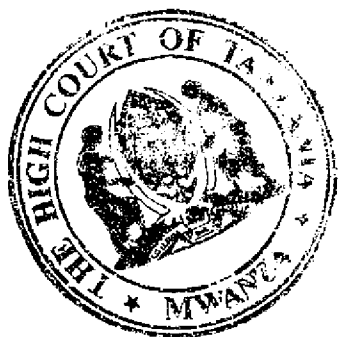
Now that for the reasons above the respondent had no cause of action, the issue of appellant's locus standi can rise here. The case wasn't proved on balance of probabilities. Suffices the point to dispose of the entire appeal.


Appeal is, for different reasons allowed. Decisions and orders of the two courts bellow are quashed and set aside respectively. Ordered accordingly.

Right of appeal explained.


S.M. RUMANYIKA
JUDGE
27/01/2019

Delivered under my hand and seal of the court in chambers this 31st day of January, 2019 in the presence of Mr. Jovin, the son of sick respondent and in absence of the appellant.




O.H. Kingwele
DEPUTY REGISTRAR
31/01/2019