

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL APPEAL NO. 124 OF 2017**

**JV OF CR 15 G & NEW CENTRY CO. LTD..... APPELLANT**

**VERSUS**

**PHOENIX OF TANZANIA**

**ASSURANCE CO. LTD..... RESPONDENT**

*Date of last Order: 16/10/2020*

*Date of Judgment: 08/05/2020*

**J U D G E M E N T**

**MGONYA, J.**

The Appellant named above being aggrieved and dissatisfied with the whole Judgment and Decree of the Resident Magistrate's Court of Dar es Salaam, at Kisutu delivered on 27<sup>th</sup> February, 2017 by Hon. Shaidi PRM, in Civil Case No. 319 of 2013 do hereby appeal to this Honourable Court against the whole of the said Judgment and Decree on the following grounds:

- 1. That, the trial Magistrate erred in law and facts by misconstruing the provision of Section 4 (1) of the law reform (Fatal accidents and Miscellaneous***

- Provision) Act Cap. 310 [R. E. 2002] by holding that, by virtue of the said section the Appellant is not a proper person to sue;*
- 2. That, the trial Magistrate erred in law and facts to invoke the provision of section 4 (1) of the law reform (Fatal accidents and Miscellaneous Provision) Act Cap. 310 [R. E. 2002] while it is not applicable in the circumstances of this matter;*
  - 3. That, the trial Magistrate erred in law and facts by holding that the Appellant is not a proper person to sue while the insurance contract was entered between the Appellant and the Respondent herein and the Appellant is privy to the contract;*
  - 4. That, the trial Magistrate erred in law and fact by holding that, the Appellant is without the cause of action while it was a part to the insurance contract and its employees were covered by the Insurance policy in question.*

**WHEREFORE,** the Appellant prays that this appeal be allowed and the Judgement and Decree of the Resident Magistrate's court of Dar es Salaam at Kisutu dated 27<sup>th</sup> day of February, 2017 by Hon. Shaidi, PRM be quashed and set aside with costs both in the lower court and in this court.

When the matter came up for hearing, Parties submitted orally to the appeal. In the course of preparing this Judgment, I have thoroughly reviewed the same and noted that the center of this appeal is that the **Appellant is said not to have status standi in litigating this matter.**

In deed I join hands with the trial Magistrate on the matter that under the law especially **The Law Reform (Fatal Accidents and Miscellaneous Provisions Act) Cap. 310 [R.E. 2002].**

For ease of reference let me quote the said law as hereunder:

***"4(1) Every action brought under the provisions of this Part shall be for the benefit of the dependents of the person whose death has been so caused, and shall be brought either by and in the name of the executor or administrator of the person deceased or by and in the name or names of all or any of the dependants (if more than one) of the person deceased."***

The section above clearly states that **the person to sue must be the Administrator to the deceased person.**

However, reading the facts and record of this matter it came clearly in my knowledge that the Appellant herein is not the deceased's Administrator rather an Employer.

I am aware that the Appellant herein is the one who had insured the deceaseds but the motor vehicle they used, but still that don't give the Employer the right to bring before the court this kind of a case claiming remedies out of the accident that had occurred. That the above law especially the quoted **section 4 (1) of the Cap. 310**, does not recognize the Appellant as a proper party, the stand of which too is my belief and legal position in this matter. The Appellant herein in my stance is indeed not a proper party to sue in all aspects.

From the wording of **section 4 (1)** above, the right persons to Litigate the matter after all that had happened was/is the deceaseds' Executors or Administrators in that sence and not otherwise.

The law on *locus standi* is very clear as the same had been repeatedly in many cases in this Land. The *Locus Standi* has been defined in the famous case of **LUJUNA SHUBI BALONZI SENIOR VS. REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI [1996] TLR, 203, 208** as:

*"A Principle governed by common law whereby in order to maintain proceedings successfully, a plaintiff or an*

*applicant must show not only that the court has power to determine the issue but also that **he is entitled to bring the matter before the court***”.

Further, in **Halbury’s Law of England 4<sup>th</sup> Edition** paragraph 49 at page 52 which states as follows:-

*“**Locus standi** means a party must not only show how that the court has power to determine the issues but also that the party is entitled to bring **the matter before the court.**”*

Basing on the above quotation, I am of the view that the Appellant herein from the time this matter was instituted at the trial Court, had no *locus standi* to Litigate the matter before the court as the said stand can be tressed straight from their pleadings. Here I have also to remind the parties that they are bound by their pleadings.

In the event therefore, as **all grounds of appeal herein are associated to the matter of *locus standi* of the Appellant herein, are meritless.**

Accordingly, the Appeal is hereby **DISMISSED in its entity; and the decision of the Judgment and Decree of the Resident Magistrate’s Court of Dar es Salaam, at Kisutu delivered on 27<sup>th</sup> February, 2017 by Hon. Shaidi**

**PRM, in Civil Case No. 319 of 2013 is respectively upheld.**

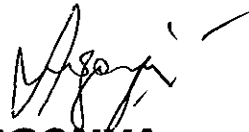
The Respondent to have their costs accordingly.  
It is so ordered.

Right of Appeal Explained.



**L. E. MGONYA**  
**JUDGE**  
**08/05/2020**

**Court:** Ruling delivered before Hon. Fovo, Deputy Registrar in chambers in the presence of Mr. Makwega, Advocate for the Appellant also holding brief for Mr. Manjeka, Advocate for the Respondent and Ms. Janet RMA, this 08<sup>th</sup> day of May, 2020.



**L. E. MGONYA**  
**JUDGE**  
**08/05/2020**