

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF KIGOMA)

AT KIGOMA

LAND CASE NO. 12 OF 2022

KIKUNDI CHA WAFUGAJI KIJIKI CHA BUGAGA..... PLAINTIFF

VERSUS

1. BUGAGA VILLAGE COUNCIL..... 1ST DEFENDANT

2. NKUNDUTSI VILLAGE COUNCIL.....2ND DEFENDANT

3. THE HONOURABLE ATTORNEY GENERAL OF

THE UNITED REPUBLIC OF TANZANIA.....3RD DEFENDANT

RULING

Date of last order 24/08/2022

Date of ruling 26/08/2022

MANYANDA, J.

This is a ruling in respect of *a plea in limine litis* raised by the Counsel for 1st, 2nd and 4th Defendants to the hearing of the suit on one point of law that the plaint is bad in law for lack of *locus standi* by the plaintiff before the law to bring this case in court.

In this suit the plaintiff namely, Kikundi cha Wafugaji Kijiki cha Bugaga, is suing the Defendants namely, Bugaga Village Council, Nkundutsi



Village Council, Kikundi cha Wakulima Bugaga and the Honourable Attorney General of the United Republic of Tanzania, hereafter referred to as the 1st, 2nd, 3rd and 4th Defendants respectively.

The claim by the plaintiff is over ownership of a parcel of unsurveyed land about five (5) Kilometers length and fifteen (15) meters width for livestock corridor to and from grazing land. The Defendants oppose the claim, on top, they raised the above said preliminary objection in their written statement of defence that the suit is unmaintainable for want of the plaintiff's *locus standi*.

Hearing of the objection was by leave of this Court conducted by way of written submissions in order to afford opportunity to the plaintiff, who is unrepresented, to obtain the necessary legal assistance.

The submission by the 1st, 2nd and 4th Defendants was drafted by Mr. Anold Simeo, the State Attorney, while the Plaintiff filed submissions drawn by one, Ayubu Mahonda, a lay person.

The State Attorney submitted in support of the preliminary objection arguing that the principle of locus standi was demonstrated in the case of **Lujuna Shubi Balonzi, Senir vs. Registered Trustees of Chama cha Mapinduzi** [1996], Civil Appeal No. 47 of 2012 (unreported) where the Court of Appeal stated that *locus standi* means a common law

principle which provides that only a person whose rights or interest has been interfered with by another person has a right to bring his claim to court against that other person.

He was of the views that in order for any society to be recognized as a legal person capable of suing and be sued must be registered under the Societies Act, [Cap. 337 R. E. 2019]. He defined a society as per section 2 of the Societies Act as including a club, company, partnership or association of ten or more persons whatsoever its nature or object.

To bolster his point, the State Attorney cited the case of **Chama cha Wafanyakazi Mahotelini na Mikahawani Zanzibar vs. Kaimu Mrajis wa Vyama vya Wafanyakazi na Waajiri Zanzibar**, Civil Appeal No. 300 of 2019 (unreported) where the Court of Appeal of Tanzania nullified proceedings brought in court by an unregistered party.

The Counsel finalized by submitting that the plaintiff neither attach its registration certificate, if at all is registered nor its constitution. Further to that, the State Attorney argued that the plaintiff in the name of "Kikundi cha Wafugaji Kijiji cha Bugaga" is not recognized by local authority in the area it purports to be located. The State Attorney prayed the suit to be dismissed.



On the other side, the plaintiff argued that the preliminary objection is baseless. That the State Attorney wants to mislead the Court. It was argued further that the members of the plaintiff held a meeting on 24/12/2021 and passed a resolution to file this suit to contest ownership of the suit land. That to deny them from suing the defendants on mere allegation of lack of *locus standi* is to deny them right of protecting their properties.

Further, the plaintiff concedes on the position of the law on locus standi in this land as was stated in the case of **Lujuna Shubi Balonzi, Senior's case (supra)**. However, they added that this Court has the power to modify the applied common law so as to suit local condition.

The plaintiff also concedes been a group of persons who associate together with a common goal to secure their common interest as a Community Based Organization (CBO) and that such group are not registerable under the Societies Act, because it does not apply to them.

Then he went on distinguishing the case of **Chama cha Wafanyakazi Mahotelini na Mikahawani Zanzibar (supra)** that in that case the organization was of a union of workers with a board of trustees not in the instant case where it is a group of persons been a mere social group with a common interest. The plaintiff cited the case of **Sabina vs.**

Mwenyekiti Kikundi cha TAMTAM (Balbina Kiza), PC Civil Appeal No. 58 of 2021 (unreported) where this Court recognized a chairperson of an unregistered social group as having *locus standi*. He asked this Court to invoke the overriding objectives principle and prayed the preliminary objection be overruled.

The issue in this matter is whether the case is maintainable in law been brought by an unregistered group of persons.

As submitted by the State Attorney and conceded to by the plaintiff, rightfully, the term *locus standi* is defined to mean the right of a person whose rights or interest has been interfered with by another person to bring his claim to court against another. This was the definition given in the **Lujuna Shubi Balonzi, Senior's case (supra)**. It is a definition emanating from common law which according to the reception clause is applicable to our land subject to such modification as suiting the circumstances of Tanzania and its inhabitants.

The State Attorney for the Defendants argues that the plaintiff has no *locus standi* because been a group of persons purports to be capable of owning properties, capable of suing and being sued, but it is not registered in whatever law so as to give it such legitimacy. Hence, lacks *locus standi* to bring this suit to court in its name. On the other hand,



the plaintiff concedes that the same is neither registered under the Societies Act nor under any other law. That it is a group of persons with common interests, it is an association recognized by the local authority as a Community Based Organization (CBO), hence right to bring the suit in court.

I have considered the rival arguments; I think the State Attorney is right. In law, a person may be a natural person or an entity comprising of a group of persons associating together for a given purpose of interest. Such an association must be recognized by the law.

Under section 4 of the Interpretation of Laws Act, [Cap. 1 R. E. 2019] the term "person" is defined as follows: -

"person" means any word or expression descriptive of a person and includes a public body, company or association or body of person corporate or unincorporated"

From the definition of a term "person" given above, means there are two categories of persons, that is, a "natural person" and a "legal person".

Therefore, in my considered views, a group called "Kikundi cha Wafugaji Kijiji cha Bugaga" is a proper entity to bring a suit in court in its name as

such. I say so because in circumstances of this suit, not only that there is no known person but also the same will end with ineffectual decree in case it is secured by the plaintiff.

The plaintiff allege that it is a group of persons recognized by the local government authorities in the locality it is situated, however, there is neither such averment in the plaint nor attachment of its constitution in the said plaint.

I have read the case of **Sabina James (supra)** in which this Court recognized a chairperson of the group as having *locus standi* is distinguishable because, unlike the circumstances suiting that case where a mwenyekiti (chairperson) was sued in his personal capacity, in the instant suit the plaintiff is a "group" not recognized by the law. It could have been different circumstances if, let us say, the suit was filed under representative suit procedures by the chairman.

In the upshot, for reasons stated above, I find the suit unmaintainable in court for want of *locus standi* of the plaintiff.

Consequently, I do hereby make the following orders: -

1. The preliminary objection is sustained;

2. The plaint is hereby struck out for want of locus standi by the plaintiff; and
3. Costs of the case to be paid by the plaintiff.

Order accordingly.

Dated at Kigoma this 26th day of August, 2022




MANYANDA

JUDGE