IN THE HIGH COURT OF TANZANIA

(IN THE SUB-REGISTRY OF MWANZA)

AT MWANZA

CIVIL APPEAL NO. 2 OF 2022

(Originating from Civil Case No. 47 of 2013 at the District Court of Nyamagana at Mwanza)

ALLIANCE ONE TOBACCO TANZANIA LIMITED.....1ST APPELLANT

ABDALLAH SAID.....2ND APPELLANT

VERSUS

MARTIN JOHN MWITA.....1ST RESPONDENT

HERITAGE INSURANCE TANZANIA LIMITED.....2ND RESPONDENT

JUDGMENT

Date of Last Ruling: 15/03/2023

Date of Ruling: 24/03/2023

Kamana, J:

This appeal springs from the decision of the District Court of Nyamagana in Civil Case No.47 of 2013. Briefly, the 2nd Appellant Abdallah Said, a driver employed by the 1st Appellant Alliance One Tobacco Tanzania Ltd, while driving his employer's motor vehicle carelessly knocked the motor vehicle driven by the 1st Respondent Martin John Mwita. Since the motor vehicle driven by the 1st Respondent accident was damaged, he preferred a suit against the Appellants claiming damages. In that course, Heritage Insurance Tanzania Limited was joined in the said suit as the 3rd party.

The trial Court heard both parties and concluded that the 1st Respondent has proved his case against the 1st and the 2nd Respondent. Concerning the 3rd Party, an insurance company, the trial Court held that the company, at the time of the accident, was not an insurer of the 1st Appellant.

Aggrieved by that decision, the Appellants preferred this appeal armed with five grounds of appeal as follows:

1. That, the trial Magistrate erred in law and fact in copying and pasting *ex parte* judgment of Hon. J. Massesa, SRM dated 26th May, 2014 thereby reaching a misguided conclusion.
2. That, the trial Magistrate erred in law and fact for taking into consideration things that were not pleaded specifically in the 1st Respondent's Plaint thereby awarding him an exorbitant amount of specific damages and other things not specifically pleaded.
3. That, the trial Magistrate erred in law and in fact in entertaining the above matter in the name of the 1st Respondent while he was just an employee and not the owner of the motor vehicle with Registration Number T223 BDH and with no power of attorney from the owner to sue on the above matter.

4. That the trial Magistrate erred in law and fact in not considering the evidence adduced by the 2nd Appellant and relying entirely on the 1st Respondent's evidence hence reaching a biased decision.
5. That, the trial Magistrate erred in law and fact by exonerating the 3rd Party/2nd Respondent completely without any colour of right while evidence on record showed that the 3rd Party/2nd Respondent tried to reimburse 1st Respondent but the same was refused as being meagre.

On the date of the hearing, the Appellants were represented by Mr.Boniface Woiso, learned Counsel whilst the 1st and the 2nd Respondents had the services of Mr. Anthony Nasimire and Mr. Sifaeli Muguli, both learned Counsel, respectively. The appeal was argued viva voce.

At this point, I hasten to state that I will focus on the 3rd ground as it disposes of the appeal. Submitting in support of this ground, Mr. Woiso, learned Counsel contended that the trial Magistrate erred in law by entertaining a suit that was instituted by the 1st Respondent who had no *locus standi*. The learned Counsel submitted that according to the adduced evidence, the 1st Respondent was not an owner of the motor vehicle that was damaged in the said accident. Further, it was his

exposition that the Registration Card of the motor vehicle bears the name of Chacha Mwita Moseti and there was no evidence that the owner of the motor vehicle authorized the 1st Respondent to sue the Appellants on his behalf. He concluded his submission in chief by arguing that the trial Court did not have jurisdiction to grant the prayed reliefs to the 1st Respondent since he had no capacity to sue.

Addressing the 3rd issue, Mr. Nasimire, the learned Counsel conceded to the fact that the 1st Respondent was not the owner of the motor vehicle. However, he contended that during the trial the 1st Respondent testified to having been authorized by the owner of the motor vehicle to drive the car, keep it in his custody and litigate.

The learned Counsel further contended that the owner of the motor vehicle is a brother of the 1st Respondent and in that capacity, the latter was acting as an agent of the former. He opined that no law stipulates that an agent must be appointed through a document. He submitted that according to Order III Rule 2(b) of the Civil Procedure Code, Cap. 33 [RE.2019], a person can be represented by a recognized agent. To bolster his position, the learned Counsel referred to the case of **Julius Petro v. Cosmas Raphael**, 1983 TLR 346.

Mr. Nasimire, learned Counsel continued to argue that the Appellants had an opportunity of raising a preliminary objection in terms of Order X of the Civil Procedure Code. In that regard, he insisted that the issue concerning *locus standi* on the part of the 1st Respondent was not framed as an issue during the trial. He concluded his submission that the appearance of the 1st Respondent as a Plaintiff did not prejudice the Appellants.

Mr. Muguli did not argue the third ground. When the Court invited Mr. Woiso to rejoin, he contended that Order III Rule (2) (a) requires an agent to have the power of attorney when instituting the suit. He submitted that even the pleadings did not depict that the 1st Respondent was acting in the capacity of an agent.

Mr. Woiso contended further that the issue of the *locus standi* is a point of law that touches the jurisdiction of the court. He opined that the judgment that was entered in favor of the 1st Respondent may cause injustice since the decree-holder is not the owner of the motor vehicle.

Having heard the competing arguments, the issue for my determination is whether the 1st Respondent had a *locus standi* to institute the case that led to this appeal.

It is trite law that a party who initiates a suit or an action in a court of law is under the obligation to satisfy the Court that his rights or interests have been breached or interfered with. This principle entails that for a suit or action to be maintained in Court, the initiator must prove that he has an interest in the subject matter. In **Lujuna Shubi Ballonzi v. RegisteredTrustees of Chama Cha Mapinduzi** (1996) TLR 203, this Court stated:

> ***'Locus standi is governed by common law according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with****. The High Court has the power to modify the applied common law so as to make it suit local conditions. (Emphasis added).*

In his submission, Mr. Woiso contended that the 1st Respondent did not have a *locus* to sue the Appellants in Civil Case No.47 of 2013 on the account that the 1st Respondent was not the owner of the damaged motor vehicle but a driver. He further contended that there was no proof that he was authorized to sue on behalf of the owner. Mr. Nasimire observed that the 1st Respondent had a *locus* to sue as he was

authorized by the owner to act as his agent. I concur with Mr. Woiso's submissions that the 1st Respondent did not have locus standi to sue the Appellants for some reasons.

Firstly, the 1st Respondent was not the owner of the damaged motor vehicle as the Registration Card for such vehicle bears the name of Chacha Mwita Moseti. Fortified by the decision of this Court in **Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi**, the 1st Respondent did not have any right or interest which was interfered with by the Appellants. Being a driver of a motor vehicle owned by another person does not give such a driver a *locus standi* to claim for damages and other reliefs when a such motor vehicle is damaged in an accident. The one who was entitled to relief is the owner of the motor vehicle and not any other person including the 1st Respondent.

Secondly, there was no proof that the 1st Respondent was sued on behalf of the owner of the car. I have gone through the proceedings and found that the 1st Respondent testified to have been authorized to drive the motor vehicle. Further, the owner of the car testified to have authorized the 1st Respondent to litigate on his behalf. This evidence

was emphasized by Mr. Nasimire when arguing that the 1st Respondent sued the Appellants as an agent of his brother Chacha Mwita Moseti.

In this regard, both learned Counsel drew my attention to the provisions of Order III Rule 2 of the Civil Procedure Code. Mr. Nasimire focused his arguments on paragraph (b) by contending that such paragraph allows a person to be represented in a suit by a recognized agent. Relying on such paragraph, Mr. Nasimire beseeched this Court to take the 1st Respondent as the recognised agent of the owner of the motor vehicle. To bolster his argument, the learned Counsel referred this Court to the case of **Julius Petro v. Cosmas Raphael (Supra)**.

On the other hand, Mr. Woiso concentrated on paragraph (a) by averring that the recognized agent must have the power of attorney to institute the suit. He submitted that in the absence of the power of attorney, the 1st Respondent did have powers to institute the suit against the Appellants. I think it is prudent to reproduce the said order for ease of reference:

> ***'2.*** *The recognised agents of parties by whom such appearances, applications and acts may be made or done are-*
>
> *(a) persons holding powers-of-attorney, authorising*

them to make appearances or applications and to do such acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, applications and acts.'

Reading Order III Rule 2 between the lines, it is my considered view that such Order is not applicable in the circumstances of this matter. The application of Order III Rule 2 is limited to representation only. A holder of the power of attorney or any person falling within the ambits of paragraph (b) is incapable of suing in his name. What he can do is to represent the person whose suit is in his name.

In a bid to save the boat from capsizing, Mr. Nasimire invited me to consider the case of **Julius Petro v. Cosmas Raphael (Supra).** In my opinion, the case is distinguishable in the circumstances of the matter at hand. In the cited case, the thrust was the recognition of

recognized agents in representing litigants. This matter is about a person who litigates in his name while claiming to represent another person. It is my settled opinion that a person cannot sue in a personal capacity on behalf of another.

Thirdly, it is an established principle that parties are bound by their pleadings. In the case of **YARA Tanzania Limited v. Charles Aloyce Msemwa and 2 Others**, Commercial Case No. 5 of 2013, this Court had this to say:

> *'It is a cardinal principle of law of civil procedure founded upon prudence that parties are bound by their pleadings. That is, it is settled law that parties are bound by their pleadings and that no party is allowed to present a case contrary to its pleadings.'*

I have objectively perused the pleadings. The 1st Respondent did not state anywhere that he was suing the Appellants on behalf of the owner of the motor vehicle which would in my opinion be ridiculous as the law does not condone suing in a personal capacity on behalf of another. Further, the 1st Respondent when testifying, told the Court that he purchased the motor vehicle which is a total lie as the owner of the motor vehicle admitted to being the owner of the motor vehicle. In this

regard, the testimony that the 1st Respondent was authorized to litigate on behalf of Chacha Mwita Moseti, in the absence of that statement in the pleadings, is a mere afterthought.

Mr. Nasimire argued that the Appellants had the opportunity to raise this ground as a preliminary objection during the trial. I concur with that observation. However, as rightly contended by Mr. Woiso, *locus standi* touches the jurisdiction of the Court for being a point of law that can be raised at any stage including the appellate stage. In the case of **Peter Mlapanzi v. Christina Mbaruka**, Civil Appeal No. 153 of 2019, the apex Court had this to state:

> `…. *locus standi* is a point of law rooted into *jurisdiction.*
>
> *It is for that reason that it must be considered by a court*
>
> *at the earliest opportunity or once it is raised.'*

Fortified by that observation, it is my position that the issue of *locus standi* was properly raised at this stage.

For the foregoing reasons, I hold that the 1st Respondent did not have *locus standi* to sue the Appellants. In that case, the trial Court was not clothed with the jurisdiction to entertain the matter brought by the 1st Respondent. Since this ground disposes of the appeal, I do not see a

reason to determine other grounds of appeal as doing so amounts to an academic exercise which this Court has no time for.

The appeal is allowed with costs. The proceedings, judgment and orders of the trial Court are quashed. It is so ordered.

The Right To Appeal Explained.

DATED at **MWANZA** this 24th March, 2023.

KS KAMANA

JUDGE