

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

THE SUB - REGISTRY OF MWANZA

AT MWANZA

PC CIVIL APPEAL NO. 23 OF 2023

*(From the District Court of Geita Civil Appeal No. 13/2022, original
Nyankumbu Primary Court Civil Case No. 53/2022)*

BULIMBE BONIPHACE BULIMBE -----APPELLANT

VERSUS

FREDY JAPHET-----RESPONDENT

JUDGEMENT

June 26th & July 21st, 2023

Morris, J

The appellant above is dissatisfied with the judgement of the District Court of Geita in Civil Appeal No. 13 of 2022. The subject appeal originated from Civil Case No. 53 of 2022 which was filed at and determined by Nyankumbu Primary Court. He has now preferred this second appeal fronting two grounds. In the course of hearing, submissions centered on only one ground: that the respondent had no *locus standi* to sue the appellant.

Records reveal briefly that, the respondent herein acting as the treasurer of unregistered group of motorcycle-transport operators

(commonly referred to as *bodaboda*) sued the appellant before Nyankumbu Primary Court (elsewhere, *trial court*). He was claiming from the latter, Tshs. 1,800,000/- being the unpaid contribution due to the other youth co-contributors. It was alleged that the *bodaboda* operators were contributing the money to support one another. The respondent was a person who was collecting such money and disbursing it to the eligible person in the due round.

Under the foregoing *modus operandi*, the appellant received Tshs. 2,760,000/-. Consequently, he became liable to remit to the respondent the daily-contribution of Tshs. 30,000/- for other operators to access and receive the requisite support. He, however, defaulted contributing for sometimes and his outstanding debt then stood at as high as Tshs. 1,740,000/-. In a bid to recover the said amount from him, the respondent above filed the case before the trial court against the appellant. During trial, the appellant dutifully admitted being indebted. Nevertheless, he conceded to a debt of Tshs. 1,540,000/- only. The trial court's judgement based on his admission.

Consequently, the appellant was ordered to settle his debt. Dissatisfied with such order, he appealed to District Court of Geita.



Unquestionably, he continued admitting the said debt. However, he was praying the first appellate court to allow him pay Tshs. 50,000/- per months as he was economically unstable. The appeal was dismissed, hence, this second appeal.

In the present appeal, the appellant was represented by advocate Hidayah Haruna while advocate Silas John acted for the respondent. For the appeal, it was submitted that the trial court heard and entertained the case of a party who possessed no *locus standi*. It was argued further that, though the appellant concedes being indebted by a group to the tune of Tshs 1,540,000/=; he disputes the representation because the group was not registered. It was explained that, if members wanted the respondent to act on their behalf, they should have appointed him formally through a letter or signed document to such effect.

It was argued further that, *locus standi* is a jurisdictional issue. Thus, it may be raised at any time and stage of the proceedings. The appellant's counsel also submitted that, because the trial court had no jurisdiction (for want of respondent's *locus standi*), the trial court's proceedings are a nullity. Reference was made to the case of the ***Registered Trustees of SOS Children's Village(T) v Igenge***

Charles & 9 Others, Civil App. No. 428/08/2018 (unreported.) The appellant finally prayed for decisions of both lower courts to be quashed for being a pack of nullity.

In reply by the respondent's counsel, it was submitted that the ground of appeal is new as it did not feature in the trial or first appellate court. To the respondent, law does not condone introducing a new matter at the second appellate level. That is, the second appellate court should not entertain such new ground per **Obadia Sadick Makau v Tunu Alex Samwenda**, PC Civil Appeal No. 4/2022 (unreported). Further, the respondent's counsel argued that, a natural person is seized with the *locus standi* to sue in a matter in which he is interested.

Section 4 of **the Interpretation of Laws Act**, Cap 1, R.E. 2019 was cited to cement the foregoing position. On such basis, the respondent's advocate submitted that, the case cited by the appellant is accordingly distinguishable. On the similar vein, it was argued that the respondent was both a member and leader of unregistered group. Thus, he had the requisite *locus standi* to sue any member of the group to enforce what other had committed himself to perform.

Further, the appellant was of the view that justice demands that parties should not use courts to avoid their obligations. To him, so long as the appellant acknowledges being indebted the other technicalities should not be relied on. He argued further that, law dictates that a party who concedes to liability should not appeal. Further reference was made to the case of ***The Private Agricultural Sector Support Trust & another v Kilimanjaro Cooperative Bank Ltd***, Consolidated Civil Appeals Nos. 171 & 172 of 2019 (unreported) where it was held that if you borrow money, you must ultimately pay it back.

In rejoinder, it was submitted that *locus standi*, as is the case for other jurisdictional aspects, may be raised at any time; rights of parties notwithstanding. Moreover, it was argued that it was obvious the respondent was collecting the money on behalf of the other members in the group. But for him to proceed and sue he ought to first obtain appropriate permission to represent his colleagues. It was the appellant's conclusion that, in the current state of affairs, he was uncertain as to whom payment should be done.

I have considered the submissions of both parties. The court is thus called upon to determine one major issue: whether or not this appeal has

merit to warrant the claimed remedies. Evidently, the respondent herein instituted proceedings in the trial court to recover the debts amount from the appellant for him to disburse it to other members. It is also manifest that the subject *bodaboda* operators operated from an informal group which was not registered. In this connection, the trial Primary Court had the following finding:

“Mahakama baada ya kupitia ushahidi uliotolewa mbele yake umebaini (sic) kwamba kulikuwa na kikundi cha kukusanya pesa ambacho wadaawa walijiunga kwa utaratibu wa kuaminiana bila kukisajili na hivyo shughuli zote zilizokuwa zikiendeshwa zilikuwa zikiendeshwa kienyeji hivyo kikundi hicho sababu hakiko kihalali kinakosa nguvu ya kisheria ya kuweza kusimama chenyewe na hata ikitokea kuna hasara watakuwa wamejitakiawenyewe na watalia na wakwao.”

In this matter there are a number of obvious aspects. **One**, it is trite a law that, *locus standi* is a point rooted in jurisdiction. Hence, it can be raised at any stage pursuant to ***Registered Trustees of SOS Children’s Village(T)*** (*supra*); and ***Peter Mpalanzi v Christina Mbaruka***, Civil Appeal No. 153 of 2019 (unreported). **Two**, neither during trial nor in first appeal the *locus standi* of the respondent was

raised and discussed. **Three**, the respondent being a member of the unregistered group he had direct interest in the matter.

Four, the respondent informally acted as a treasurer of a group; responsible to collect and disseminate money among his colleagues. Records do not reveal whether or not he was formally authorized by other members to act in such capacity. Hence, as deciding on such aspect requires evidence, this Court, cannot determine the same at his stage. See the case of *Sospeter Kahindi v Mbeshi Mashini*, Civil Appeal No. 56 of 2017 (unreported). **Five**, the appellant received the money informally (the courts below do not indicate having analyzed or discussed evidence relating to authorization credentials) from and was remitting his daily contributions to the respondent on similar footing.

Six, the appellant herein admitted during trial, in the first appeal and in these proceedings that his debt is Tshs. 1,540,000/-. **Seven**, the appellant appreciates the need to repay such debt (to other members through the respondent) but only pleads on the actual amount of monthly remittance. **Eight**, he conceded debt stands unpaid for more than a year now.

Although, the argument of jurisdiction may be entertained at any stage, in this matter I will be loath to apply it on a hook, line and sinker basis. To begin with, having unequivocally admitted to being liable (to the respondent, the latter's legal status notwithstanding), it will be taking the court for a ride to twist his stand as an afterthought. In this connection, I partly subscribe to the reasoning of the respondent that parties cannot be allowed to hide from their obligations using the court's procedures.

Further, in matters like this, the court should be inclined towards promoting social justice at its best. I hold so because, from an informal arrangement, one person gains economically but is trying to avoid settling his due obligation on the basis of want of formality. He should be expected to clean his hand before he accesses the temple of justice. In addition, the appellant simply got his share of the money from the respondent (without ascertaining the exact status of the respondent); and he actually contributed his daily remittance to him on similar modal, he should be least expected to avoid paying the outstanding debt to him on feeble argument that he is not sure to whom such payment is to be made.



On such foregoing basis, the authorities cited to support the doctrine of *locus standi* are accordingly distinguishable. Further, I align my decision on an equally settled principle of law requiring each case to be decided on own integrality of ingredients of justice and its unique merits and prevailing circumstances. I stand guided by cases of ***Dr. A. Nkini & Associates Limited v National Housing Corporation***, CoA Civil Appeal No. 72 of 2015; ***Finca Tanzania Limited v Hassan Lolila***, CoA Civil Application No. 212/18 of 2020 (both unreported).

I am the firm view that, as this judgement is being processed; there could perhaps be numerous of such informal groupings out there whose memberships and operations are built on individual mutual trust. To condone mistrust and wariness that emerge therefrom to pierce the long-settled tranquil state of affairs in those groupings is; in my view, to overly apply a positivistic approach at the expense of justice. I desist yoking myself in such trap.

For the reasons stated and analysis made herein, the appeal is found to lack the requisite merit. I dismiss it with costs. It is so ordered.



The right of appeal is fully explained to the parties.



C.K.K. Morris

Judge

July 21st, 2023

Judgement is delivered this 21st day of July 2023 in the presence of Bulimbe B. Bulimbe, the appellant; and Advocate Silas John, counsel for the respondent.

C.K.K. Morris

Judge

July 21st, 2023