

**IN THE HIGH COURT OF TANZANIA
TANGA SUB- REGISTRY
AT TANGA**

CIVIL APPEAL NO. 15 OF 2023

(Arising from Civil Appeal No 13 of 2022 of Handeni District Court; originating from Civil case No. 137 of 2022 of Kabuku Primary Court.)

TUMAINI VIKOBA GROUP (RUKIA AHMAD MASHARUBU)..... APPLICANT

VERSUS

MWAJUMA HASSANI MGANGA RESPONDENT

JUDGMENT

K. R. Mteule, J

8/2/2024 & 13/3/2024

This appeal originates from a dispute determined by Kabuku Primary Court in Handeni District in Tanga region in **Civil case No. 137 of 2022** issued on 19 October 2022. From what I gather from the Primary Court record, the dispute arose amongst the members of Tumanini Vikoba Group which was a local group of members which operated in cash in a form of SACCOS. It appears that the group encountered financial loss which led to the lodging of a suit in the Primary Court of Kabuku alleging the Respondent to have been responsible with the alleged loss of **TZS 4,000,000.00**. The instant Respondent was, therefore, the defendant in

the Primary Court. The Primary Court decided the suit against the Respondent herein condemning her to pay **TZS 4,000,000** to the Appellant.

Being dissatisfied, the Respondent preferred an appeal in the District Court of Handeni vide **Civil Appeal No 13 of 2022**. There were three grounds of appeal filed in the District Court, thorough consideration shows that, basically the respondent was challenging the Primary Court's evaluation of evidence and the propriety of the Primary Court's decision in not determining the point of law on the locus standi of the Plaintiff therein.

The District Court found the ground challenging the evaluation of evidence to have merit due to the contradictions noted in the Plaintiff's evidence in the primary Court. The District Court found further that the plaintiff in the Primary Court did not have *locus standi*. Having concluded both grounds of appeal in favour of the appellant, the District Court allowed the Appeal without any other subsequent orders.

The Appellant was not pleased with the decision of the District Court hence preferred the instant Appeal with 3 grounds. Generally, the appellant's grounds in this appeal in the totality, they are challenging the holding of

the district Court that the primary court wrongly evaluated the evidence and fault the decision to decide in favour the respondent while the DC noted the legal issue of locus standi.

This appeal was argued by written submissions. Parties were not represented. They filed their submissions in their own names. Since parties are contesting on the issue of locus standi, this is a point of law which practically needs to be determined firstly.

It appears that there is no dispute that there is an issue of locus standi in the primary court which is affirmative. Both parties argue in favour of this position. They both agree that it is on record that the matter was wrongly instituted by **Rukia Ahmad Masharubu** without any authorization as to whether she was suing on behalf of **Tumaini Vikoba Group** or on behalf of its members or she was suing on her own capacity. Surprisingly, the Judgment and the proceedings came out with the name of **Tumaini Vikoba Group** added with the of **Rukia Ahmed Mashurubu** appearing bracketed. This was rightly noted by the District court which confirmed that the plaintiff lacked locus standi in the matter.

What tasks the minds of the parties and of this court is what should have been done by the District Court after having found the plaintiff lacking *locus standi* to pursue the matter.

According to the Appellant, the District Court having found the plaintiff to have lacked *locus standi*, ought to have considered it as a legal irregularity and nullify the proceedings of the Primary Court. The Appellant argues that, it was the fault of the Primary Court while recording who is the plaintiff where it recorded **Rukia Masharubu** as the plaintiff without indicating as to whether she was suing under which capacity in **Tumaini Vikoba Group**. In the Appellant's view, the scenario of having **Rukia Masharubu** as the Plaintiff and later **Tumaini Vikoba Group** featuring in the proceedings and judgment constitute a legal irregularity which should have rendered the proceedings in the Primary Court a nullity. The Appellant is in a view that, the 1st Appellate Court ought to have nullified and quashed the proceedings with an order for proper trial. She cited the case of **Khanan Said Aljabry vs Nevumba Salum Mhando, Land Application No. 18 of 2021**. Although the Appellant did not give full citation, the case is available on TanzLii as **Khanan Said vs Nenumba**

**Mbando (Misc. Land Appeal 81 of 2021) [2021] TZHCLandD 752
(25 October 2021).**

On the part of the Respondent, arguing on what should have been done by the District Court after confirming lack of locus standi in the Primary Court, the Respondent is of the view that, the only remedy was the dismissal of the suit with costs.

The Appellant filed a rejoinder and maintained that the District Court was supposed to nullify the proceedings of the Primary Court and not to decide it in favor of the Respondent.

I have considered the arguments from both parties concerning the consequences of the plaintiff's lack of *locus standi* in the Primary Court. It is in agreement amongst the parties that the suit in the Primary Court was filed by one **Rukia Ahmas Masharubu**. No where in the proceedings is it shown that the said **Rukia** was suing on behalf of **Tumaini Vikoba Group**. But the trial Magistrate invented parties in the proceedings where the plaintiff appeared to be **Tumaini Vikoba Group (Rukia Ahmad Masharubu)**. Firstly, in the form marked (MCA/83) the Plaintiff is **Rukia Ahmad Masharubu**. It is obvious that the trial primary court did not

satisfy itself as to the capacity of **Rukia Ahmed Masharubu** in suing for the debt of **Tumaini Vikoba Group**. This alone is an indication that the said **Rukia** did not have locus standi as she sued on her own capacity while the real claimant appeared later to be **Tumaini Vikoba Group**.

Secondly, MCA/83 is a standard form which constitute a plaint in the Primary Court. It has to be respected as pleadings constituting the plaint. Although the name of the plaintiff in this form was **Rukia Ahmad Masharubu**, the Magistrate's invention of parties in the proceedings and in the judgment by itself constitute irregularity. The court is bound to base its decision on the available pleadings. Changes in the names of the parties in the proceedings and in the judgment contravenes the law of pleadings. In **Barclays Bank (T) Ltd vs. Jacob Muro/ Civil Appeal No. 357 of 2019 (unreported)**, it was held:

"For sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is bound by the pleadings of the

parties as they are themselves. It is no part of the duty of the court to enter upon any enquiry into case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings."

From the above quotation, not only are parties bound by the pleadings but also the court. The act of the Trial Magistrate to include a stranger as a party to the suit without any formal amendment amounts to a serious irregularity. Therefore, I agree with the parties that bringing **Tumaini Vikoba Group** in to the suit as a plaintiff constituted a violation of principles guiding pleadings and parties to the suit.

What then ought to be done by the Court? In my view, since the entire scenario in this case is clouded by irregularities, this means the proceedings in the Primary Court needed to be nullified. Since the District Court found the plaintiff in the Primary Court to have no locus standi, the remedy was to nullify the proceedings and quash the decision therefrom leaving whoever has an interest in the matter to properly pursue it.

From the foregoing, it is my finding that the 2nd and the 3rd grounds of appeal have merit. These two grounds are sufficient to dispose of the

matter as the 1st grounds would lead to the determination of the merits of the matter while there is legal faulty which needs to be corrected.

The appeal is therefore allowed based on the 2nd and the 3rd grounds of Appeal. I therefore quash and set aside the decision of the District Court and nullify and quash the proceedings in the Primary Court. Anyone who is interested in the matter can pursue it afresh. It is so ordered.



Dated at Tanga this 14th March 2024.


KATARINA REVOCATI MTEULE

JUDGE

14/3/2014

Court:

Judgment was delivered on this 14th Day of March 2024 in the presence of both the Appellant and the Respondent in person.




KATARINA REVOCATI MTEULE

JUDGE

14/3/2014