

IN THE HIGH COURT OF TANZANIA

DODOMA SUB – REGISTRY

AT DODOMA

PC. CIVIL APPEAL NO. 53 OF 2023

(Arising from Civil Appeal No. 3 of 2023 in the District Court of Iramba at Kiomboi, originating from Civil Case No. 2 of 2023 in the Primary Court of Iguguno)

MICHAEL ELIA..... APPELLANT

VERSUS

ANETH SALUM acting on behalf of Upendo Group.....**RESPONDENT**

JUDGMENT

16th April & 10th May, 2024.

MUSOKWA, J.

This appeal originates from the Primary Court of Iguguno in Civil Case No. 2 of 2023. In the aforementioned suit, the appellant herein was sued by the respondent herein, namely Aneth Salum; a member of Upendo Group (Upendo Group), suing as a representative of other members of the Upendo Group. The dispute was centered upon the claim of TZS. 7,085,000/=, monies of Upendo Group which was the collection of members and had been entrusted in the custody of the appellant as the treasurer of Upendo Group.

In the trial court, judgment was entered in favour of the respondent, and the appellant was ordered to refund the monies back to Upendo Group. Being aggrieved by the decision of the trial court, the appellant herein lodged an appeal to the District Court of Iramba at Kiomboi in Civil Appeal No. 03 of 2023. Again, the appellant was unsuccessful in the first appellate court which upheld the decision of the trial court, and dismissed the appeal. The appellant has now approached this court, with the following grounds of appeal: -

- 1. Both subordinate courts erred in law and in fact to enter into finding that the appellant received TZS. 19,472,000/= from Upendo Upendo Group without any cogency and credible evidence to support the findings.*
- 2. Both subordinate courts erred in law and in fact to allow and determine the matter in the respondent's favor without resolving the question of locus standi of the respondent.*
- 3. Both subordinate courts erred in law and in fact by relying on borrowing ledgers and disregard (sic) Exhibit D1 which reveals the appellant received only TZS. 12,387,000/= and not TZS. 19,472,000/=.*

The matter was scheduled for hearing on 2nd April, 2024 and both parties appeared in person, being unrepresented. The appellant commenced his submission in chief by stating that both the trial court and the District Court

erred in their findings and that consequently, their decisions were unfounded.

Submitting further, the appellant asserted that the respondent did not produce any document neither in the trial court nor in the District Court to prove that TZS 19,472,000/= monies of Upendo Group were placed in his custody. Furthermore, he added, none of the witnesses who were summoned during the trial were able to produce any evidence in court to that effect.

Proceeding to the 2nd ground of appeal, the appellant argued that the respondent had no *locus standi* before both the trial court and the District Court, as she was not granted any certification from either of the courts. The appellant argued further that it was mandatory for the respondent to obtain such certification before instituting legal proceedings in any court of law on behalf of Upendo Group. The appellant further alleged that the respondent ceased to be a member of Upendo Group, and hence her *locus standi* is questionable. In explaining this point, the appellant asserted that the regulations governing Upendo Group provided that abscondment by a member for three (3) consecutive meetings, resulted in the automatic disqualification from membership. The appellant submitted that the

respondent absconded from meetings from March, 2022 until November, 2022. The appellant further stated that Upendo Group was dismantled in November, 2022 following the discovery of the loss of money.

The appellant reiterated the fact that the respondent did not produce any documents during the trial to substantiate the claims against him. Instead, the respondent produced 60 ledger books in the trial court which belonged to each of the members. The appellant explained that the trial court erroneously admitted the ledger books as evidence, and proceeded to issue judgment based on the faulted findings.

In reply, the respondent at the onset averred that she represents Upendo Group. The respondent firmly disputed the claims of the appellant regarding failure to produce sufficient evidence to substantiate the claims. In rebuttal, the respondent asserted that the exhibits which were tendered in the trial court, thus the 60 ledger books, were sufficient proof of receipt of the claimed amount by the appellant.

The respondent further explained that, apart from the ledger books, they also used pass books. These were small books which were used to keep the financial records of an individual member. The pass books were mostly

handled by the secretary; however, the ledger books were mainly signed by the treasurer of Upendo Group. The respondent admitted that sometimes the ledger books were signed by the chairperson or the secretary as proof of the money that was deposited by members into the general fund. The arrangement, she further stated, was rather similar with the pass books, whereby either the treasurer, secretary or the chairperson could sign. In emphasis however, the respondent claimed that the main person who signed the ledger books was the treasurer, who is the appellant herein. It is the ledger books which kept record of the amount that was deposited into the general fund by the members. Therefore, the ledger books contained the most reliable information of the accounts of Upendo Group. The respondent further explained that the ledger books were stored in a box that was kept at the appellant's home.

The respondent offered to provide a brief summary of the events leading to the dispute at hand. The leaders she explained, convened a meeting in preparation of the distribution of dividends to the members. The main agenda was to conduct an internal financial audit before the general meeting with the members. During the leaders' meeting, it was noted with concern that the ledger books seemed to have been tampered with. This involved

certain contents of the ledger books being erased, resulting in difficulty in reading the contents therein. As a result, the exercise could not be completed.

In the alternative, the leadership resorted to gather the missing information by convening meetings with individual members and requesting from them their personal records. Further, the pass books were used to verify the information that was provided by each member. Fortunately, the leaders were able to retrieve the missing information, the findings of which revealed the loss of TZS 7,085,000/= from the general fund. The respondent explained that thereafter, the appellant submitted TZS 12,387,000/= in cash to Upendo Group. This amount, he claimed, was the total collections, and not TZS 19,472,000/= that had been ascertained by the leadership.

Proceeding with the issue of *locus standi*, the respondent asserted that she was appointed by the members of Upendo Group to represent them in court. The said appointment was done in a general meeting held on 28th February 2023, whereby all members of the Upendo Group were in attendance. The minutes of the said meeting, apart from listing the members, also recorded the total amount claimed by each individual member, from the alleged misappropriated TZS 7,085,000/=. In support of her appointment by the

Upendo Group members, she stated that an introduction letter from the Village Executive Officer (VEO) of Tumuli Village was also obtained.

In rebuttal of the appellant's submission that she had no certification from the subordinate courts to grant her legal standing as a representative of the Upendo Group; the respondent averred that in the trial court there is no such requirement as a prerequisite to institute a representative suit. In conclusion, the respondent submitted that the minutes of the general meeting and the letter from the VEO sufficed to grant her *locus standi* to institute the suit in a representative capacity.

This court, sought further clarification from the respondent on the alleged cessation of her membership to Upendo Group. In response, the respondent averred that the allegations were mere fabrications of the appellant. Expounding further, she stated that membership to Upendo Group ceased only upon failure by a member to contribute their shares. The respondent asserted that she never defaulted in contributing her shares. In emphasis, she submitted that she never ceased to be a member of Upendo Group. Finally, she prayed that this court be pleased to decide in favour of the respondent and the whole Group as this would serve the interests of justice.

In rejoining, the appellant adopted his submission in chief. In addition, the appellant vehemently disputed the submission of the respondent. The appellant reiterated that the respondent had no *locus standi* to institute this case in the courts of law on behalf of Upendo Group; adding that this was an unofficial arrangement between the respondent and the leadership of Upendo Group. Further that it was an arrangement that was initiated without the consent and consultation with other members of Upendo Group.

The pertinent issues to be determined by this court are whether the respondent had *locus standi* to institute the suit in the trial court on behalf of Upendo Group; and whether there was sufficient evidence to prove the respondent's claim.

Undoubtedly, the issue of *locus standi* being a point of law can be raised at any stage of the proceedings. The Court of Appeal of Tanzania (CAT) in the case of **Peter Mpalanzi vs. Christina Mbaluka**, Civil Appeal No. 153 of 2019, (unreported) held that: -

"Simply defined, locus standi is the right or legal capacity to bring an action or to appear in a court. In Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi (1996) TLR 203, Samatta, J (as he then was) had the following to say on locus standi: 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 addressing the issue of *locus standi*, the appellant contended that the respondent had no *locus standi* before either of the subordinate courts as she was not granted any certification from either of the courts. According to the appellant, obtaining such certification was mandatory before the respondent could institute legal proceedings as a representative of Upendo Group. In response, the respondent argued that such a requirement is non-existent in the trial court. The respondent further submitted that her legal mandate to sue on behalf of Upendo Group was derived from the minutes of the general meeting of the Group members. Additionally, that the VEO had drafted a letter to that effect.

Looking at the records, the issue of *locus standi* of the respondent was not among the framed issues for determination before the trial court. However, at page 2 of the typed judgment the following is recorded: -

"Lakini kufikia mwezi Novemba 2022, muda wa kufanya mahesabu na kugawa pesa kwa wanakikundi ilitokea sintofahamu baada ya wanakikundi kupokea fedha pungufu na zile ambazo wameweka kwenye kikundi. Suala hili

*walilifikisha kwenye uongozi wa kijiji bila mafanikio na hatimaye walifika mahakamani na kufungua kesi dhidi ya mdaiwa/mhasibu wa kikundi **wakiwakilishwa na mwanakikundi mwenzao, Aneth Salumu baada ya kuwa amepitishwa na kikundi katika kikao chao cha tarehe 28/02/2023.*** [emphasis added]

Similarly, in the first appellate court, the issue as to whether Ms. Aneth Salum had legal capacity to institute the claim on behalf of the group at the trial court was among the grounds of appeal.

In determining the issue of *locus standi* of Ms. Aneth Salum, the District court based its findings on the minutes of the meeting of the Group members which appointed Ms. Aneth Salum to represent Upendo Group in the prospective suit against the appellant. The District Court held at page 6 of the typed judgment as follows: -

*"This court examined the findings of the trial court...there was a meeting of Upendo Group where sixty (60) members of Upendo Group attended that meeting and **appointed Aneth d/o Salum to represent the Upendo Group to sue the appellant Michael s/o Elia claiming Tshs. 7,085,000/=...**therefore the trial court was right in law and facts to entertain this suit because Aneth d/o Salum has locus standi, and those Tshs. 7,085,000/= is the money of Upendo Group and not of Aneth d/o Salum as individual. **Also, Aneth d/o Salum is an active member of Upendo Group her ledger card is 03.**"* [emphasis added]

Evidently, before the trial court, the question of *locus standi* and representative status of the respondent was justified based on the minutes of the general meeting whereby the members appointed Aneth Salum to represent the Group in the legal proceedings. In addition, the respondent being a member of Upendo Group is directly interested in the rights and obligations of the Group. Thus, the position of the respondent in Upendo Group had sufficient interest on the subject matter so as to give a right which required protection through bringing a legal action. Truly, the respondent's rights or interests were breached or interfered with as correctly held in the CAT case of **Peter Mpalanzi** (*supra*).

Being guided by the above decision, I find that the respondent herein had the *locus standi* to institute the claim against the appellant on behalf of the members of Upendo Group.

I will briefly address the second issue on whether there was sufficient evidence to prove the respondent's claim. The CAT in the case of **the Director of Public Prosecutions vs Jackson Sifael Mtares and Three Others**, Criminal Appeal No. 2 of 2018, held that: -

*"As often restated, the practice is that in a second appeal, **the court rarely interferes with the concurrent findings of***

facts by the two courts below. As a wise rule of practice, the court may interfere as such only when it is clearly shown that there has been a misapprehension of the evidence, a miscarriage of justice or violation of some principles of law or procedure by the courts below". [emphasis added]

Therefore, upon careful perusal of the court records, I don't intend to interfere with the concurrent findings of the two courts below regarding proof of the respondent's claim. In this regard, I refer to pages 13 to 14 of the judgment of the trial court; and pages 8 to 9 of the judgment of the District Court respectively.

For the foregoing reasons, I find this appeal to be devoid of merits and it is hereby dismissed with costs.

I order accordingly.

Right of appeal is explained.

DATED at DODOMA this 10th day of May, 2024.



A handwritten signature in black ink, appearing to read "I.D. Musokwa".

**I.D. MUSOKWA
JUDGE**

Judgment delivered in the presence of the appellant and in the presence of the respondent.



I.D. Musokwa

**I.D. MUSOKWA
JUDGE**