

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(DAR-ES-SALAAM SUB-REGISTRY)

AT DAR ES SALAAM

PC CIVIL APPEAL NO. 100 OF 2020

(Originating from Kinondoni District Court at Kinondoni in Civil Appeal No. 45 of 2018)

MWAJUMA MTUNZI..... APPELLANT

VERSUS

JANETH NICHORAUS RESPONDENT

JUDGMENT ON APPEAL

S. M. MAGHIMBI, J

The appellant named above, having been aggrieved by the decision of the District Court in its appellate jurisdiction, has filed 6 grounds of appeal to the effect that: -

1. The trial Court erred in law and in finding that the primary Court was just and fair to find that the respondent sued in a representative capacity.
2. The trial Magistrate erred in law and facts that the appellant owes money to the respondent without any credible evidence.
3. The trial Court erred in law and fact that during evaluating the grounds of appeal the trial Court did not consider the 1st, 4th, 5th and 6th ground of appeal while drawing the decision.

4. The trial Magistrate erred in law and fact by stating that the appellant has to pay money mentioned by the respondent without stating the amount or evaluate evidence.
5. The trial Court erred in law and facts in applying the case of **Abdallah Juma vs Salum Athuman** 1986 TLR 240.
6. The trial magistrate erred in law and in fact in framing issues without taking into account all ground of appeal.

When this appeal was scheduled for hearing, Ms. Maria Mushi learned advocate representing the appellant prayed that this appeal be argued by way of written submission, so that the respondent who is not represented gets legal assistance. The respondent having no objection the Court granted the prayer. The parties to this appeal filed their submission hence this determination of the appeal.

Before determining the said appeal, I find of essence to narrate the background of the matter at hand. This is the second appeal. Its origin can be traced in a Civil Case No. 04/2018 filed at the primary court of Kimara whereby the respondent sued the appellant for payment of Tshs. 6,000,000/= an amount alleged to be lost under her custody. It appears that parties herein belong to a women group called Angaza Viccoba a group which was not registered under the Societies Act. To maintain their Membership in the group, they were depositing their savings and the

appellant was their treasurer, they alleged to have many other members. When members wished to share their deposits, it appeared there was a shortage of Tshs. 6, 000,000/= discovered in the money held by the appellant. Members were not pleased and wanted their money be paid by the appellant who refused. To deal with her, the respondent instituted a civil suit on behalf of other members at Kimara Primary Court, this time they claimed there was shortage of 12,107,0000/= Tsh. The case was heard and the appellant was ordered to pay the money. Dissatisfied by the said decision, she (the appellant) appealed to the District Court of Kinondoni, where the appeal was dismissed. The appellant was aggrieved by the decision of Kinondoni District Court, and is now before this court. In support of the appeal the appellant argued ground 5 and 1 together she submitted that the primary court was not just and fair to rule that the respondent sued in representative capacity while the respondent sued in her own capacity on behalf of others and did not follow the required procedure when suing the appellant on behalf of other. She argued that the respondent lacked locus standi. She then submitted that locus standi is a common law principle which means ability of a person to institute and prove a case in court. She supported her submission by citing the case of **Lujuna Shubi Balonzi Senior Vs. Registered Trustees of Chama Cha Mapinduzi [1996] TLR, 203** where the Court held that:

*"In this country Locus standi is a principle governed by common law whereby in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue **but also that he is entitled to bring the matter before the court**".*

It was averred that the court since a Primary Court can, and is bound to, exercise its civil jurisdiction in accordance with Order I Rule 8 of the Civil Procedure Code, 1966, it follows that a representative action can, in law, be instituted before it. That although persons on whose behalf a representative suit is instituted are not parties to the proceeding, it is necessary that their identities be known to the court. The identities of other members of Angaza Viccoba Group is not known, there was no any documentary evidence which showed that the respondent was acting for the others. Therefore, she argued, from the above authority the primary court was supposed to entertain this matter as a representative suit and were bound by law to fulfill and observe all required element by the law. Ms. Maria added that, based on the foregoing, it is clear that the respondent did none of the above, she therefore lacked locus standi to institute a case at the trial court. She failed to show the identities of the other members of the group. Having no locus to institute the case at Kimara Primary Court on appeal the district Court ought to have nullified

the whole proceedings.

She went on submitting that since the Primary Court rules are silent on a representative suit they ought to have complied to Order 1 Rule 8 of the Civil Procedure Code. That the law applicable in Primary Courts (GN No. 310/1964, 119/1983) are silent on the procedure of filing a representative suit. However, in the case of **Abdiflah Juma vs Salum Athumani [1986] TLR 240**, Samatta, J (as he then was) held that: -

"despite having no law providing such a procedure in the Primary Court, still the same is bound to apply the letter and spirit of order 1 R 8 of the Civil Procedure code as shown above".

She then argued that the respondent was not justified to file the suit on behalf of others without prior permission of the court, at least she would have filed the plaint plainly indicating that she is doing so on behalf of fellow members of the group.

In reply the respondent submitted that the proceedings in the trial Court are governed by Rules, Primary Court Proceedings Rules, 1964, GN. NO. 310 and GN. NO. 119 of 119 of 1983 which does not specifically provide for procedure for representative suit. She then argued that the customs require that for a person to have an authority to represent others in the similar suits, especially those formed by informal groups of

entrepreneurs, a representative has to have an interest and or common interest to the matter, and authorized by the rest. On that trace to the proceedings, she submitted, it is undisputed fact that the respondent was a leader of Angaza and among the victims whose money were misused. That by presumption was consented by the rest to represent and this is well reflected in the proceedings where the rest members were listed along.

Having heard the parties' submissions, I find it important that I also start determination of this appeal by addressing the first and fifth grounds of appeal as submitted by parties. In this ground, the appellant is faulting the trial Court's failure in finding the primary Court was just and fair to find the respondent was right to sue at a representative capacity. The appellant herein has before this Court illustrated that the respondent suing the appellant at the primary Court was on bases of money owed by the respondent from a Women group called Angaza Viccoba of which the same was not registered under the law. The appellant finds that the respondent ought to have filed a representative suit and makes reference to the Civil Procedure Code because the Rules governing the Primary Court are silent. But the records reveal that the respondent was suing own her own capacity for there was no proof whatsoever that she was

suing on behalf of other members of the Angaza Viccoba group and this make the respondent lack Locus standi.

On the other side the respondent stipulates that the Rules governing the primary Court do not provide for a procedure to file representative suit. A representative suit at the primary Court level can be instituted by a person with interest or common interest to the matter and there has to be authorization from the others, therefore the respondent being a leader was suitable to represent the others. At this point, I do agree with both the appellant and the respondent that the laws governing proceedings in the primary Court are silent in matters of a representative suit. However, I strongly differ with the appellant in referring Order I Rule 8 of the Civil Procedure Code Cap. 33 R. E. 2019, since the same is not applicable in the primary Court. It is to be remembered that the respondent is a member and a leader of the Angaza Viccoba group which had claims of money lost in while in the custody of the appellant and therefore making the whole group having interest in the lost money.

It is the practice at the Primary Court in the nature of a matter like this one at hand the group has to appoint persons that they would obligate them to represent them in a suit to be instituted. The group would write a letter to Court informing the Court of who are the parties appointed to prosecute on behalf of the others. The respondent had the duty to bring

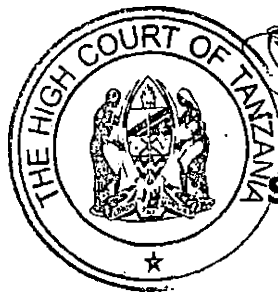
forth before the Court the letter proving appointment to represent the others in the suit against the appellant.

The practice above is of essence in the eyes of law, **first** it is an assurance that group members have consented to the institution of a suit, **secondly** persons appointed are obligated to represent the other members and be held liable in prosecution process and **third** is an assurance of persons to make follow up of other procedure after the matter is decided in Court.

Looking at the submissions I find nowhere that the respondent has testified and tendered a letter from the women group appointing her to represent the others. However, the respondent suing by her name and in absence of such letter before the eyes of law is suing under her own capacity. Further to that, in the spirit of the cited case of **Abdiflah Juma vs Salum Athumani [1986] TLR 240**, although the Primary Court do not provide procedures for representative suit, the spirit of the Order 1 R 8 of the Civil Procedure code apply and it is on that spirit the procedure to write a letter to the court as elaborated above was provided for in Primary Court. In conclusion therefore, the respondent did not have a locus to sue the appellant in her personal capacity while alleging she is representing a group.

Having said all of the above, I find the first ground of appeal, sufficient enough to dispose of the appeal therefore I find no reason to determine the remaining grounds. I proceed to quash and set-aside the decisions of the two lower Courts. Given the time that the matter has been pending for reasons of misplaced records, I grant the respondent's group, should they still be interested to sue the appellant, they shall do so within 30 days from the date of this Judgment. The appellant shall have her costs for this appeal.

Dated Dar es Salaam this 30th day May of 2024.



S. M. MAGHIMBI
JUDGE

