

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA SUB-REGISTRY
AT MBEYA
LAND APPEAL NO. 28626 OF 2023

(Arising from the Ruling of District Land and Housing Tribunal of Mbozi in Misc. Land Application No. 43B, 43C of 2023, Originating from the Land Case No. 43 of 2023 at District Land and Housing Tribunal of Mbozi at Songwe)

USHINDI UMOJA CLUB/AKINA MAMA.....APPELLANT

VERSUS

REGISTERED TRUSTEES OF CHAMA CHA MAPINDUZI (CCM)....1ST RESPONDENT

SADOKI MWAMPASHI.....2ND RESPONDENT

FAIBE KIJALO.....3RD RESPONDENT

JOHN MWAJEKA.....4TH RESPONDENT

RULING

Date of last Order: 15th May, 2024

Date of Ruling: 6th June, 2024

KAWISHE, J.:

The appellant **USHINDI UMOJA CLUB/AKINA MAMA** having been aggrieved by the decision reached by the trial tribunal in Misc. Land Application No. 43B, 43C of 2023, originating from the decision of the District Land and Housing Tribunal of Mbozi at Songwe in Land Application No. 43 of 2023, filed an appeal before this court.

Drawing from the facts of the case before the District Land and Housing Tribunal (the DLHT) of Mbozi at Songwe, the application was struck out with no order to cost on 21/9/2023. The decision was reached on the ground that the applicant did not comply with the procedures, to attend ward tribunal for mediation. On 5/10/2023 the applicant filed Miscellaneous Application No. 43B seeking for an order of temporary injunction. The application was dismissed with costs, on the reasons that the Miscellaneous Application was filed while there was no main application pending before the trial tribunal.

Irritated with the decision, the appellant preferred this appeal with the following grounds reproduced hereunder regardless of errors:

- 1. That, the trial chairman tribunal erred in law and fact by violating the principle of natural justice during hearing of the case.*
- 2. That, the trial chairman tribunal erred in law and fact for not recording both parties' submissions and ending in issue the ex-parte ruling.*
- 3. That, the trial chairman tribunal erred in law and fact by violating the overriding objective principle for not applying it in expensing justice during trial case.*
- 4. That the trial chairman tribunal erred in law and fact by issuing the ruling which is not in conformity to applicants' Application No. 43B/2023.*
- 5. That the trial chairman tribunal erred in law and fact by striking out the Land Application No. 43/2023 and 43B without any legal justification.*
- 6. That the trial chairman tribunal erred in law and fact by not determined that jointly respondents are those abused court process.*

7. *That the trial chairman tribunal erred in law and fact by failing to declare that, the jointly respondents are trespasser to the land in disputes.*
8. *That the trial chairman tribunal erred in law and fact for not expensing justice but ending in to favour the respondents without any merits.*

The matter was scheduled for hearing, but the respondents raised preliminary objection. That person stood before the court as a representative of the appellants had no *locus standi*. As a matter of principle, when an objection is raised, the court has to dispose of the objection before proceeding with the main issue. In that regard, the court schedule for hearing of the preliminary objection.

When the objection was due for hearing, the respondents enjoyed the service of Ms. Caroline Mseja, learned counsel. The counsel stated that she does not recognize a person standing before the court (David Rauden Mwangwale), because he had no *locus* before this honourable court.

Ms. Mseja, learned counsel for the respondents argued that the appellants are absent and there is no legal representative before this honourable court. That the respondents were served with the petition of appeal without the document which David Mwangwale is referring to in court. She further argued that the power of attorney has to be donated by a person who is out of the jurisdiction, where the matter is being

tried. That in the appeal before this court, the appellants are in Mbozi and nowhere stated that they cannot pursue the matter. She commented that Mr David is acting as a bush lawyer.

The learned counsel prayed that the court find that the appellants are not in court, because they are represented by a person who is not allowed by the law. She cited the case of **Abdul Rahim Jamal Mohamed (suing through his lawful Attorney Fauzia Jamal Mohamed) vs. Watumishi Housing Co. Ltd**, Civil Appeal No. 54 of 2021, which stated that power of attorney cannot be ordained to a person to represent persons who are within the jurisdiction. The counsel prayed the matter to be struck out with cost.

In his reply to the objection raised against his locus before this court, Mr. David Rauden Mwangwale argued that the matter was filed before the District Land and Housing Tribunal of Mbozi by USHINDI UMOJA CLUB in Case No. 43 of 2023. That he was ordained by USHINDI to do the following: **first**, to testify and pursued the matter No. 43 of 2023 before the Tribunal of Mbozi; **second**, the power to defend any appeal in any court which will arise from that case; **third**, to discharge duties which will concern the powers ordained to him. He was also empowered to sign documents and other duties which will arise thereof.

He added that this matter before this court is an appeal emanating from Case No. 43 of 2023, therefore his power to represent is lawful and satisfied legal requirement as it is discharged with the powers given to him.

Mr. David added that the case cited by the learned counsel is not applicable in this case. That the person ordained with the power is the natural person, and an appeal is by a legal person with powers to sue and be sued. That done in the cited case was given the power to pursue a suit in Plot No. 195 and 196 but in representation he opened a case concerning Plot No. 194. Hence, the cited case is distinguishable from the case at hand, it ought to be disregarded.

Countering the issue of jurisdiction Mr. David argued that USHINDI is registered to operate country-wide. That he is a member and a leader. He continued to unfold that the power of attorney was ordained to him lawfully hence, USHINDI UMOJA CLUB/AKINA MAMA has a right to be represented. Thus, he prayed to the court that the power of attorney to be accepted by this court since, he has not gone astray from the duties vested unto him. That the objection to be dismissed with costs.

In rejoinder Ms. Mseja reiterated her submission in chief. That Mr. David has no locus to address the court. Thus, the appeal be struck out with costs.

Having heard both parties' submission, and having a thorough perusal of the trial tribunal records, there is only one issue to be determined, as to whether Mr. David Rauden Mwangwale has the power to represent USHINDI UMOJA CLUB/AKINA MAMA, (to be referred to as USHINDI) under the power of attorney. If the issue is answered in the affirmative, whether he had *locus standi* before this court.

Power of attorney has been defined as a formal instrument by which one person empowers another to represent him/her or act on his/her behalf for a certain purpose. Thus, the power of attorney is the document made by the principal to authorize the agent or attorney to act on behalf of the principal in the course of business of the principal. The power of attorney is governed by Order III Rule 2(a) of the Civil Procedure Code, Cap 33 R.E 2019 (the CPC) which provides:

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;

With regard to the provisions of the law cited, there are reasons which are allowed legally for donating power of attorney. First is that the principal is outside the jurisdiction of the court and is not able to attend trials. This means that the principal is outside the country and not in another place within the country. This was held in the case of **Georgia Celestine Mtikila vs. Registered Trustees of Dar es salaam Nursery School and International School of Tanganyika Ltd** [1998] TLR 512, and in the case of **Abdul Rahim Jamal Mohamed** (supra) the case cited by the respondent's counsel. In the case of **Georgia Celestine Mtikila** (supra), it was held that:

"...one may grant power of attorney to appeal only where the grantor is not residing in Tanzania..."

The second reason is when the principal is unable to carry out his business in his own capacity, due to the following reasons, accident which cause incapacitation, sudden and serious illness, loss of legal capacity due to bankruptcy, old age and any other reasons recognized by the law as the case may be. The above reasons were collectively discussed in the case of **Hassan Marare Magori & Another vs. Juma Marare & 4 Others** (HCT) (1992), it was stated that:

"...where a person who is party to a case is unable to pursue the case himself or herself for reasons of old age, sickness or where such party is dumb or

deaf, or when the party to the proceedings is away in a foreign country and getting such party back would be tedious or expensive.... Lastly, his lordship said that the grant of the power of attorney should not be made subject to remuneration”.

As stated above that the power of attorney should not be granted to the person who carries business or representation in the court for gain. This was held in the case of **Julius Petro vs. Cosmas Raphael** [1983] TLR 346, Mwalusanya, J, held as follows:

“...appearance by a recognised agent who works for gain by dint of agency is expressly prohibited by section 41(1) of Advocate’s Ordinance, also, s. 70 of the Advocate’s Ordinance implies that representation on behalf of the parties is not prohibited altogether but permitted in certain circumstances only; these are given under section 33 of the Magistrates Courts Act and in respect of the Civil Procedure Code, where a genuine recognized agent represents a party in a suit; and not a professional agent who makes his living by representing clients in court...”.

In this case at hand the power of attorney was granted to the donee for the purpose of performing the following acts: to prosecute, defend, and adduce evidence in the Land Case Application No. 43/2023 instituted at District Land and Housing Tribunal at Songwe, Mbozi; to defend any appeal, application or any other proceedings in any court or tribunal which may arise as results of the mentioned case on behalf of USHINDI UMOJA CLUB/AKINA MAMA; to perform any and all relative matter for the fulfilment of the given authority. Mr David argued also

that in the issue of jurisdiction USHINDI is registered to operate country wide, therefore the power ordained to him is lawful. In reply, the respondents' counsel stated that the power of attorney has to be by person who is out of the jurisdiction as shown above. In this case at hand the appellants are in Mbozi, nowhere has been stated the appellants are not within the jurisdiction of this court.

Therefore, basing on the cited cases above and the respondents' counsel arguments and records from the trial tribunal, in my view, in this case at hand the power of attorney was granted by the donor, who according to Mr. David operates country-wide. The issue is whether a donor is not within the jurisdiction of the court to the extent of appointing the donee to prosecute his case. The same was stated in the case of **Abdul Rahim Jamal Mohamed** (supra):

"The issue for consideration is thus, whether a person who is in the court's jurisdiction could appoint another person by a power of attorney to prosecute a case in court on his behalf. Ms. Chihoma was candid that, that could not be proper in law and we agree with her".

"...order III Rule 2(a) of the Civil Procedure Code (the CPC) which allows court representation through an attorney, that provision must be limited to persons outside the jurisdiction of the court. As alluded to earlier, both the donor and donee of the power of attorney were within the same jurisdiction of the court. Accordingly, the prosecution of the suit by Fauzia Jamal Mohamed as an attorney of the appellant was highly irregular".

Similarly, there is no any reason adduced to show that the appellants are having any compelling reasons to grant the agent with the power of attorney as stated in the case of **Hassan Marare Magori & Another** (supra). Therefore, permitting proceedings of the nature as in this case would cause greater danger to the judicial proceedings.

After finding out that the power of attorney was no properly granted, it is time to look at the issue of *locus standi*. When the power of attorney is granted according to the law, is when the donee can have *locus standi* before a court of law. From case law, *locus standi* has been defined to mean the right or legal capacity to bring an action or to appear in a court. In **Lujuna Shubi Ballonzi vs. 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."

In the case of **Peter Mpalanzi vs. Christina Mbaruku** (Civil Appeal 153 of 2019) [2021] TZCA 510 (23 September 2021) which also cited the case of **Godbless Lema vs. Mussa Hamis Mkanga and 2 Others**, Civil Appeal No. 47 of 2012 (unreported) stated that:

"Locus standi is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject matter. Unless a person stands in a sufficient close relation to the subject matter so as to give a right which requires protection or infringement of which he brings the action, he cannot sue on it. ... Further, 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."

The principle set by the apex court in the country is very clear, since *locus standi* is a point of law, whenever it is raised at any stage of the case it must be attended to. The issue of locus standi has to be considered by the court regardless of having been improperly raised or raised at a late stage. The issue at hand has been raised at the earliest stage of this appeal hence, this court has an opportunity to determine it as soon as it was raised.

In the case at hand, Mr. David who is claiming to be a representative of the USHINDI and that he has *locus standi* before this court, had it been so also, he should have pleaded and attached the document. The mere appending signature and his name at the memorandum of appeal does not amount to pleading the same. In the case of **Ramadhani Omary Mbuguni vs. Ally Ramadhani & Another** (Civil Application 173 of 2021) [2022] TZCA 267 (12 May 2022) the Court stated that:

"It is now a settled law that, where, like the instant case, a party commences proceedings in representative capacity, the instrument constituting the appointment must be pleaded and attached. Failure to plead and attach the instrument is a fatal irregularity which renders the proceedings incompetent for want of the necessary standing."

Mr. David did not meet this criterion which was set by the Court of Appeal which is binding on this court. See also **Ally Ahmed Bauda (Administrator of the Estate of the Late Amina Hossein Senyange) vs. Raza Hussein Ladha Damji and Others**, Civil Application No. 525/17 of 2016 (unreported).

Extending the reasoning on the defence of Mr. David, who claimed to have power of attorney which failed before this court as per the criteria set by the law. In his defence, he stated that he is a member and a leader of the USHINDI UMOJA CLUB/AKINA MAMA. Also, it is shown in the memorandum of appeal where, he signed the document as "Member & Representative of the Appellant." In my opinion "AKINA MAMA" means ladies or women. Mr. David did not explain on his membership status in the women's club. Does he have the qualifications of being a member of the women club? Or is he an honorary member? This leaves a lot to be desired. If not a bush lawyer as Ms. Mseja alleged, then how is he connected to the AKINA MAMA? He never touched that.

From the analysis made, Mr. David is not properly ordained with the power of attorney to represent the appellants. Even if he was properly ordained, he did not meet the criteria set by case law of pleading and attaching the instrument if it was legally granted. Consequently, the objection is sustained.

Therefore, Mr. David Rauden Mwangwale has no *locus standi* before this court. In result thereof, the appeal is accordingly struck out with costs.

It is so ordered.



A handwritten signature in blue ink, appearing to read "E. L. Kawishe", written over a horizontal line.

E. L. KAWISHE
JUDGE
6/6/2024

Dated and Delivered at **MBEYA** this 6th day of June, 2024 in the presence of Ms. Caroline Mseja, learned advocate for the respondents, Mr. David Rauden Mwangwale.



A handwritten signature in blue ink, appearing to read "E. L. Kawishe", written over a horizontal line.

E.L. KAWISHE
JUDGE