

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO.254 OF 2021

(Arising from High Court Order dated 30th April, 2021, Hon. Maige .J in Misc. Land Application No. 437 of 2021, and the Ruling and Drawn Order of the High Court of the United Republic of Tanzania, Dar es Salaam District Registry, at Kivukoni, Dar Es Salaam, in Misc. Application No. 880 of 2016, delivered on 21st March, 2019, by Hon. De -Mello J.)

LUCIA ELIAS MHAGAMAAPPLICANT

VERSUS

GONZALUBA GANUSI..... RESPONDENT

RULING

Date of last Order: 03/10/2022

Date of Ruling: 07/10/2022

KHALFAN, J

This is an *ex parte* application in which the applicant is seeking for leave to appeal to the Court of Appeal. The application is made under Section 5(1) (c) of the Appellate Jurisdiction Act. Cap 141. R.E 2019, Rule 45 (a) and 47

of the Tanzania Court of Appeal Rules, 2009. The application is supported by the affidavit of Mr. Sylvester Frederick Aligawesa, learned Counsel.

According to the applicant's affidavit, the grounds for leave are established vide paragraphs 3 and 8; that, the applicant is applying for leave to file an appeal to the Court of Appeal of Tanzania, being satisfied with the decision of the High Court (Hon. De-Mello.J) in Application No.880 of 2016, whereby the applicant was also the applicant in the said case, which Ruling was not in favour of the applicant.

It is alleged that the Hon. Judge erred in law and facts when she denied to allow the extension of time to file an Appeal against the decision of the District Land and Housing Tribunal (Hon. P.J Makwandi) in Land Appeal No. 31 of 2014, delivered on 9th, January, 2015, apart from existence of good reasons for delay; that, the Ruhembe-Kidogobasi Ward Tribunal as well as the Morogoro District Land and Housing Tribunal's decisions were reached erroneously in facts and law of which if leave to appeal out of time could have been granted by this Court, might have been resorted.

In support of this application, Mr. Aligawesa submitted briefly that, along the lines of the averments in the affidavit. He expounded on the grounds upon which leave to appeal to the Court of Appeal is sought.

He insisted that, the Trial Tribunal and the Appellate Tribunal's decisions were erroneous. Thus, if leave to appeal out of time could have been granted by this Court, the errors might have been rectified.

Mr. Aligawesa also argued that, the decision reached by the Trial Tribunal, which has never been challenged by any appellate jurisdiction is tainted with irregularities and illegalities which caused injustice to the applicant. He illustrated the particulars of illegalities and irregularities including the decision that the applicant lacked *locus standi* to prosecute the case while she was the respondent. He added that the Trial Tribunal decided in favour of the respondent without considering the evidence produced before the Tribunal.

The main issue for determination is whether the application is not without merit. I have looked into the available evidence in the applicant's affidavit in support of this application. I have also considered the issue whether the judgment of the Trial Tribunal is tainted with illegality for interpreting the legal maxim of *locus standi* against the applicant who was a respondent.

According to Black's Law Dictionary, Eighth Edition *locus standi* is defined as:

'The right to bring an action or to be heard in a given forum; STANDING.

In the case of **Lujuna Shubi Balonzi v Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 208; the Court of Appeal held that:

'In this country locus standi is governed by Common law. According to that law in order to maintain proceedings successfully, a plaintiff or applicant must show not only that the court has the power to determine the issue but also that he is entitled to bring the matter before the court.'

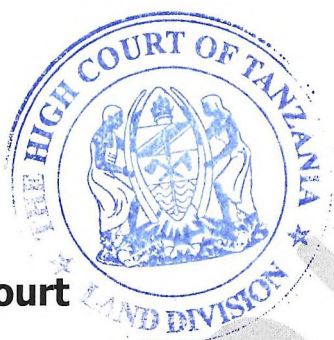
More illustration is given in the English case of **AXA General Insurance Ltd and Others v The Lord Advocate** [2011] UKSC 46.

The above definition refers to the right to bring an action, that means it refers to the party who initiates a suit or action. The issue is whether the respondent or defendant is required to establish his interest so as to have *locus standi*. In this case, the issue is whether the maxim of *locus standi* extends to the applicant, who was the respondent at the Trial Tribunal.

Much as I cannot determine at this point, whether or not that was proper because I am not the appellate court; I am satisfied with the issues above that call for for the attention of the Court of Appeal being issues of law.

Owing to the circumstances herein, leave is hereby granted for the applicant to appeal to the Court of Appeal against the decision of this Court in Misc. Land Case Application No. 880 of 2016. No order as to costs.

Dated at Dar es Salaam this 7th day of October, 2022.



Court

**F. R. KHALFAN
JUDGE
07.10.2022**

Ruling delivered in the presence of Mr. Sylvester Aligawesa, learned Counsel for the applicant this 7th day of October, 2022.



**F. R. KHALFAN
JUDGE
07.10.2022**