IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA

(CORAM: MWARIJA, J.A., KITUSI, J.A., And KEREFU, J.A.)

CIVIL APPEAL NO. 177 OF 2018

1. **ELIEZA ZACHARIA MTEMI**
2. **ALOYCE RAFAEL AWE**
3. **ROBERT EMMANUEL SILLO**
4. **MOSHI IRANGHE**
5. **JOHN GOBRE AMI**
6. **JOSEPH AMSI SAQWARE**
7. **NICODEMUS SLAQWE IRANGHE** ..... **APPELLANTS**
8. **JOHN PETER KARERA**
9. **DANIEL AWET TEWA**
10. **GEORGE NDEGE GWANDU**
11. **KAROLI EMMANUEL NADE**
12. **MELKIADI NG'ORA SIGHIS**
13. **XUFO SHAURI NAMAN**

VERSUS

1. **ATTORNEY GENERAL**
2. **THE MINISTER, MINISTRY OF REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT**
3. **KARATU DISTRICT COUNCIL** ..... **RESPONDENTS**
4. **KARATU TOWNSHIP AUTHORITY**

(Appeal from the decision of the High Court of Tanzania at Arusha)
(Moshi, J.)

dated the 11th day of November, 2016
in
Civil Case No. 2 of 2015

JUDGMENT OF THE COURT

17th & 25th February, 2021

KITUSI, J.A.:

In 2009, Karatu Township Authority, the 4th respondent, was established vide GN No. 353 of 2004. The appellants instituted Civil Case No. 2 of 2015 at the High Court, Arusha Registry, to challenge the

establishment of the 4th respondent and the consequences that befell three villages, that is, Tloma, Gyekrum Arusha and Ayalabe. The first three appellants are members of Tloma Village. The next four appellants are members of Gyekrum Arusha village while the last five appellants are members of Ayalabe village.

At the trial the appellants alleged among other things, that GN No. 353/2004 which established the 4th respondent was not preceded by a requisite resolution from Karatu District Council, the 3rd respondent. Therefore, in issuing that Government Notice, they alleged, the Minister of Local Governments and Regional Administration, the 2nd respondent, acted outside his powers. They further alleged that as a consequence of the establishment of the 4th respondent, their three villages were purportedly abolished, but they fault the said abolishment for having been carried out by an incompetent authority. In the end they prayed for eight declaratory orders which have been correctly summarized in the written submissions of the appellants' counsel as follows:

> "(i) *The order of the 2nd Defendant to establish the Karatu Township Authority (the 4th Defendant) is inoperative and/or of no legal effect for being gazetted without being first signified by resolution of the Karatu District Council, the 3rd Defendant.*

(ii) *The village of Ayalabe, Tloma and Gyekrum Arusha are not Gazetted as part of the area of the 4th Defendant.*

(iii) *The 3rd Defendant has no legal power to dissolve the Plaintiffs' villages as it purported to do."*

The appellants also made prayers for compensation for "*damages suffered by the plaintiffs due to the Defendants' acts of interfering with the Plaintiffs' rights to own and perform economic activities within their village areas and without any lawful justification."*

The Attorney General was cited as the first defendant, now the first respondent. All respondents maintained that the 4th respondent was competently established and is validly in existence and that what used to be Tloma, Gyekrum Arusha and Ayalabe villages are since then no longer in existence but are part of the said 4th respondent.

At the trial, all the issues revolved around the validity of the establishment of the 4th respondent and its effect on the three villages. The trial court concluded that the 4th respondent was established by GN No. 353 of 2004 dated 17/9/2004 and it became operative from 1/8/2009 after abolishment of the three villages on 31/7/2009 vide GN No. 205 of

2009. It was found that the 4th respondent was competently established and that the three villages were abolished by a competent authority.

But the trial court went a step further. It considered the question whether the appellants had the authority to sue over properties belonging to the villages, and concluded that they being mere villagers did not have that authority. The court was of the view that the villages were the ones empowered to sue over such properties. It also considered in the alternatives, if the appellants had been authorized by fellow villagers to institute a representative suit, but it answered the issue in the negative.

That decision is being challenged on ten grounds. On our close scrutiny of these grounds however, we are satisfied that the best part of those grounds consists of mere details though in essence the decision of the High Court is being challenged on the following three areas: -

(i) The High Court erred in concluding that the establishment of Karatu township Authority observed all procedures.

(ii) That the trial High court erred in finding that Tloma, Gyekrum Arusha and Ayalabe villages were abolished by a competent authority and are now part of Karatu Township Authority.

(iii) That the trial High Court erred in finding that the appellants have no locus standi to sue over properties owned by the villages.

Before us, Mr. Peter Qamara and Daniel Welwel, learned advocates who had prominently featured at the trial as acting for the plaintiffs continued to represent them now as appellants. The four respondents were represented by Mr. Deodatus Nyoni, Principal State Attorney who was assisted by Mr. Aloyce Sekule, Principal State Attorney (PSA), Mr. Mkama Musalama, State Attorney, and Ms. Glory Isangya, State Attorney. The appellants had made use of Rule 106 of the Tanzania Court of Appeal Rules, 2009 as amended (the Rules) by filing written submissions. The respondent did not.

Before going into the fine points of whether the 4th respondent's establishment observed the requisite procedures and whether Tloma, Gyekrum Arusha and Ayalabe villages were abolished and became part of the 4th respondent, we shall consider the ground on the appellants powers to sue on the matter, lest we put a horse before the cart. During the hearing we also raised the issue whether the appellants' action by way of a plaint was proper and if the High Court had jurisdiction to entertain it. Therefore, we shall also consider this issue ahead of the substantive issues because it has always been our duty to consider such preliminary

legal points first especially matters of jurisdiction. We have had occasions to emphasize on the need for courts to satisfy themselves on matters of jurisdiction in a number of cases. For instance, in **Fanuel Mantiri Ng'unda v. Herman Mantiri Ng'unda & 20 Others,** Civil Appeal No. 8 of 1995 cited in **Alois Hamsini Mchuwau & Another v. Hamadi Hassan Liyamata,** Criminal Appeal No.583 of 2019 (both unreported), we said: -

> *'The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature...The question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it ascertain and be assured of their jurisdictional position at the commencement of the trial...It is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has the jurisdiction to adjudicate upon a case".*

Counsel for the appellants argued this issue from several fronts. One, they argued that as members of the said villages, the appellants have vested interest in the assets of those villages, so they have the right to sue so as to protect any intended misappropriation. Two, the learned counsel submitted that the High Court erred in taking the narrow view of *locus standi.* They submitted that theirs is a public interest litigation so

the High Court should have applied the principle in the case of **Rev. Christopher Mtikila v. The Attorney General** [1995] TLR 31 where this Court stated that in public interest litigation it is not necessary for a genuine and bona fide litigant to demonstrate personal interest in the matter under consideration. Three, it has been submitted that the appellants have a duty under Articles 27 and 28 of the Constitution of the United Republic, 1977 (the Constitution) to protect public property.

In elaboration, Mr. Welwel submitted that though the appellants were exercising their right under the Constitution, their suit did not seek to enforce any article of the said Constitution so the pleadings need not have changed to reflect that the matter was under the Constitution. He also submitted that the appellants were not challenging the validity of the Government Notices that established the 4th respondent and abolished the three villages. He submitted that the appellants were challenging the authority of the officer who abolished the three villages and included them in the 4th respondent's area of jurisdiction.

As regards the long list of names of other members of the villages annexed to the plaint, Mr. Welwel submitted that the list was only meant to demonstrate that those villagers were part of the original complaints, and not for any other purpose. Thus, he submitted, the appellants did not

file the suit in a representative capacity. Mr. Qamara added that in any event, in the matter before the High Court, no reliefs were being claimed on behalf of those villagers, therefore the appellants could not have been suing on their behalf.

Mr. Nyoni, PSA was strongly opposed to the learned submissions by counsel for the appellants. He began by submitting on the 10ths ground of appeal involving the issue of *locus standi*. First, he took the view that annextures are part of the pleadings therefore the appellants must be taken to have been litigating on behalf of over 400 villagers whose names are listed in the annextures. Second, he submitted that the appellants ought to have petitioned for a Judicial Review because theirs is a complaint against administrative decisions. Then he went on to submit that as the appellants cite articles of the Constitution in their submissions, they should have invoked the Basic Rights and Duties Enforcement Act [Cap 3 R.E 2002]. Third, the learned Principal State Attorney submitted that the appellants appear to recognize that Tloma, Gyekrum Arusha and Ayalabe villages still exist. That being so, he submitted, the suit should have been preferred by those villages under section 26 of the Local Government (District Authorities) Act [Cap 287 R.E. 2002].

As regards the contemporary view of *locus standi* as decided in the **Rev. Christopher Mtikila** case (supra), Mr. Nyoni submitted that the case is irrelevant to the present case because that one was a constitutional petition whereas this one is not.

It is convenient for us to determine this issue upfront. In deciding this ground of appeal, we shall combine it with the issue we raised in the course of hearing this appeal, that is, whether the appellants' action by way of an ordinary suit was maintainable and whether the High Court had the requisite jurisdiction. With respect, first of all we agree with Mr. Qamara and Mr. Welwel that over the years, the narrow view of *locus standi* in human rights issues has given way to a broader view, so that one need not plead personal interest in the matter. See for instance, **Federation of Mines Associations of Tanzania and 2 Others v. Africa Gem Resources (AF GEM) and 7 Others** [2003] T.L.R. 294.

All the same, it is still the duty of a plaintiff in a civil suit to establish standing and also that the court before which he presents his case has jurisdiction, in line with Order VII Rule 1 (e) and (f) of the Civil Procedure Code [Cap 33, R.E. 2002] hereafter, the CPC. In **Lujuna Shubi Ballonzi, Senior v. Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203, the plaintiff had instituted a suit by a plaint claiming from the

defendant political party, payment of the money it had allegedly acquired from the people through compulsory contributions when it was the sole political party in the country. The High Court stated in part: -

> *"In this country, locus standi is governed by the common law. According to that law, 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".*

In our case at hand, even by randomly selecting some paragraphs from the 39 - paragraph plaint, the cause of action is unmistakable. We shall demonstrate by reproducing paragraphs 17, 19 and 21: -

> *"17. That, on 17th August, 2009, the 3rd Defendant issued another letter which was directed to Chair-persons of Ayalabe and Tloma villages stating that, on 17th September, 2004, vide GN No. 205 of 2009, the Government of the United Republic of Tanzania established 90 Town authorities including the 4th Defendant and that thereafter the 3rd Defendant vide its resolution dated 30th May, 2009 in Minute No. 180/FUM/05/2009 resolved to establish the 4th Defendant with effect from 1st August, 2009.*
>
> *19. That, on the 17th August, 2009, when the above referred letter was issued by the 3rd Defendant to*

the Chairperson of Tloma Village, the 1st Plaintiff was the sitting Village Chairman of Tloma Village, the 2nd Plaintiff was Tloma village Council's member and 3rd Plaintiff was a villager of Tloma Village in Karatu District, Arusha Region, whom together with other villagers were duly notified by their village Chairman and consequently they lodged their objection with the 3rd Defendant against establishment of the 4th Defendant. Annexed hereto and marked "PA-5 (a) & (b)" collectively are copies of the 1st to 3rd Plaintiffs' identity cards and their objection lodged dated 16/10/2010, attesting the above stated facts for which leave of this Honourable Court shall be craved to refer to it as part of this plaint.

21. *That, the above referred decision of the 3rd Defendant of dissolving Ayalabe and Tloma Villages was unlawful for being made without power to do so and for being based on GN No. 205 of 2009 dated 26th June, 2009 which provides for the list of registered villages by 2009 and not for the establishment of the 4th Defendant, as claimed by the 3rd Defendant. Annexed hereto and marked "PA – 7" is a copy of GN No. 205 of 2009 dated 26th June, 2009, attesting the above stated facts for which leave of the Honourable Court shall be craved to refer to it as part of this plaint".*

From those paragraphs of the plaint and others which we have not reproduced, and from the submissions of the learned counsel for the appellants, it is obvious that the appellants took upon themselves the duty of protecting property belonging to their villages and did so by challenging the authority that abolished those villages as well as the authority that established the 4th respondent. The question is whether the High Court sitting as an ordinary court had the jurisdiction to determine that cause of action.

It is a well-known principle that jurisdiction of courts is conferred by statute, as we have stated in many of our decisions. See the case of **Aloisi Hamsini Mchuwau and Another v. Ahmad Hassan Liyamate**, (supra). On that basis, it was imperative for the appellants to indicate and establish that sitting as an ordinary court, the High Court had the requisite jurisdiction just as it was also the duty of the court to ascertain this aspect. This is because although the Constitution gives a person wide powers of protecting the rights under it and seeking redress in courts of law, such rights musts be enjoyed according to law as it is clearly stipulated in Articles 13 (6) and 26 (2) of the Constitution.

In line with the above, in the case of **Federation of Mines Workers Associations of Tanzania** (supra), a bench of three Judges

of the High Court observed the following in holding No (i) to which we subscribe: -

> *"While we are aware of the well-established modern-approach to human rights matters that provisions of law relating to human rights have to be construed liberally, with elasticity and not restrictively or rigidly, that does not mean that a party in a human right case can disregard compliance with legal requirements with impunity."*

The suit from which this appeal arises intended, inter alia, to invalidate decisions of the Minister of Local Governments and Regional Administration, (second respondent), decisions of the District Council for Karatu (the third respondent) and those of the Registrar of Villages. As correctly submitted by Mr. Nyoni, the suit aimed at questioning administrative actions of officials of the Government because that is evident from the pleadings by which the appellants must be bound. The appellants' claims, though actionable under some other laws of the land, do not fall under a branch of ordinary civil suit. We are keenly aware that what the appellants were pursuing at the High Court falls under the realm of public law and could not be pleaded under the CPC which deals with private law. It is, undoubtedly, settled that where the law provides for a special forum, ordinary civil courts should not entertain such matters. See

the cases of **Mohsin Somji v. Commissioner for Customs and Excise and Commissioner for Tax Investigations** [2004] T.L.R 66, **Tanzania Revenue Authority v. Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009; and **Commissioner General Tanzania Revenue Authority v. JSC Atomoredmetzoloto (ARMZ)** consolidated Civil Appeals Nos. 78 and 79 of 2018 (both unreported).

We agree with Mr. Nyoni again that the case of **Rev. Christopher Mtikila** (supra) is of no assistance to the case at hand because unlike the instant case, that was a constitutional case.

As for the issue whether or not the suit was a representative one, the appellants have categorically stated that it was not. Certainly, the procedure for instituting a representative suit as stipulated under Order 1 Rule 8 of the CPC has not been followed, therefore this could not have been a representative suit. But then, one wonders why did the appellants attach that long list of names of fellow villagers, knowing that such annextures are part of the pleadings, under Order VII Rule 14 of the CPC. All this considered, it makes it hard for us to place the appellants' suit under any known category.

In the circumstances we shall dismiss this appeal for mainly two reasons that are intertwined. First, for the suit being unmaintainable

because it sought to question administrative actions of government bodies through an ordinary court by a suit. Secondly, within the same suit, it sought to enforce constitutional rights of the appellants to protect public property by way of an ordinary suit. We think for the two reasons alone, the suit from which this appeal arises was misconceived and the trial court erred in entertaining it.

The appeal is hereby dismissed in its entirety, with costs.

DATED at **ARUSHA** this 24th day of February, 2021.

A. G. MWARIJA
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

R. J. KEREFU
JUSTICE OF APPEAL

The Judgment delivered this 25th day of February, 2021 in the presence of Mr. Peter Qamara, learned advocate for the Appellants and Mr. Peter Musetti, learned Senior State Attorney for the Respondents, is hereby certified as a true copy of the original.

H. P. NDESAMBURO
DEPUTY REGISTRAR
COURT OF APPEAL