

**IN THE HIGH COURT OF TANZANIA  
(MWANZA REGISTRY)  
AT MWANZA**

**PC.CIVIL APPEAL NO.10 OF 2015**

*(Arising from (PC) Land Appeal No. 9 of 2014 in District Court of Serengeti,  
Original PC.Civil Case No. 30 of 2013 of Mugumu Urban Primary Court)*

**CHACHA NYAGEKO.....APPELLANT**

**VERSUS**

**MONICA ALEX.....RESPONDENT**

*Last Order: 27/07/2017*

*Exparte Judgment: 24/11/2017*

**JUDGMENT EX PARTE**

**MAKARAMBA, J.:**

This is Judgment exparte on an appeal from the decision of the District Court of Serengeti at Mugumu in **Civil Appeal No. 9 of 2014** dated **23/10/2014** before **Hon. A. Kahimba, Esq RM.**

Briefly, in **2013, MONICA ALEX**, the Respondent herein, instituted a suit before the Urban Primary Court of Mugumu in **Civil Case No. 30 of 2013** against **CHACHA NYAGEKO**, the Appellant herein, claiming for payment of **Tshs.754,500/=** being taxes which ought to have been collected from the Appellant's guest houses on behalf of Serengeti District Council. The Respondent was awarded with a tender by the Serengeti District Council to collect taxes from guest houses on behalf of the Council. The Appellant refused to pay taxes from his two guest houses. The

Respondent in her name instituted a suit against the Appellant before the Urban Primary Court of Mugumu which ended in favour of the Respondent. The Appellant was dissatisfied with the decision of the Urban Primary Court of Mugumu, unsuccessfully, appealed before the **District Court of Serengeti at Mugumu** in **Civil Appeal No. 9 of 2014**. The appeal was dismissed in its entirety. This is therefore a second appeal. Before this Court, the Appellant is seeking for an order of this Court that, the decision of the **District Court of Serengeti at Mugumu** be quashed and set aside.

In the present appeal, the Appellant has lodged the following grounds namely;

- 1. That, the 1<sup>st</sup> Appellate Court erred on point of law when it failed to find that the Primary Court had no jurisdiction to try the case.*
- 2. That, the 1<sup>st</sup> Appellate Court erred on point of law when it failed to find that the Respondent had locus stand in the matter.*
- 3. That, the 1<sup>st</sup> Appellate Court erred on point of law when it failed to find to that evidence on records, and that was produced by the Respondent then Plaintiff, contradicted her own case to the extent of rendering the same not proved according to law.*

The Appellant prayed before this Court for orders that;

- (i) Decision of the District Court be quashed and set aside.*
- (ii) Appellant be found to be owing nothing to the Respondent.*

*(iii) Costs be born by the Respondent.*

In arguing the appeal, the Appellant, **Chacha Nyageko**, appeared in person and fended for himself. However, despite the Respondent being duly served with summons as per the return of service, the Respondent defaulted by failing to enter appearance to answer to the appeal. On **27/07/2017**, upon prayer by the Appellant this Court granted him leave to proceed *ex parte* hence against the Respondent. The Appellant argued the appeal by way of written submissions.

In the course of his written submissions, the Appellant elected to abandon the first and third grounds of appeal and proceeded to argue on the second ground of appeal only that, the 1<sup>st</sup> Appellate Court erred on point of law when it failed to find that the Respondent had no locus stand in the matter.

The Appellant submitted that, the 1<sup>st</sup> Appellate Court failed to observe that the Respondent from the beginning had no *locus standi* to prosecute the case. In support of his submissions, the Appellant referred this Court to the decision in the case of ***Lujuna Balonzi Senior v. Registered Trustee of CCM [1996] TLR 203*** where it was observed that;

*"Locus in Tanzania is governed by common law and in this law, for one to maintain proceeding successful, an applicant or plaintiff or any party involved in a suit of which he claims certain rights must show that the court not only has power to*

*determine the issue but also that the claimant is entitled to bring the issue or matter before it (court)."*

The Appellant submitted further that, the proceeding involving a party lacking *locus standi* is as good as nothing. The Respondent alleges to be a tax collector of the Council. According to the Appellant, the Respondent had no any identification card from the Council that authorized her to collect tax. It was wrong to be allowed to prosecute case while she lacks *locus standi*.

The Appellant stated further that, if the 1<sup>st</sup> Appellate Court had properly directed its mind on the issue of the *locus standi* of the Respondent, it would have found that the decision of the Primary Court was *null* and *void* for reason that the Respondent who was the Applicant had no *locus standi*. Rather the 1<sup>st</sup> Appellate Court proceeded to uphold the decision of the Mugumu Urban Primary Court wrongly.

On the submissions by the Appellant, this Court finds that, as the Appellant rightly submitted; the Respondent did not have *locus standi* to institute a suit against the Appellant in her personal capacity. The Court record shows that, the Respondent was awarded a tender by the Serengeti District Council to collect tax from guest houses located at **Rung'abure Village**. If that being the case, the Respondent could have instituted a suit on behalf of the District Council or may have caused the Serengeti District Council to institute a suit against the Appellant. If the Respondent was awarded a tender to collect Government revenue, it is rather absurd, that the

Respondent elected to institute a suit against the Appellant in her personal name to collect Government Revenue. In the circumstances, the Respondent having clothed herself with a capacity she did not have, it would appear as if she was collecting her own money thus risking loss to the Government of its revenue. In the instance a Decree was to be issued in the name of the Respondent and not the District Council for which she was its agent, it would have been difficult for the District Council to enforce it against the Appellant. Since the Respondent was collecting taxes on behalf of the Government, it was the Government which ought to have instituted a suit against the Appellant. This was a clear case in which the District Council, the principal, ought to have instituted a suit against the Appellant. A District Council has capacity to sue and be sued in its own name under section 12(1)(a) of the Local Government (District Authorities) Act [Cap.287 R.E 2002]. The Respondent being merely an agent of the Government she lacked the *locus standi* to institute a suit in her own name against the Appellant.

In the premise, this Court finds that, the proceedings and decision by the lower courts are a complete nullity. The appeal has merits. It is accordingly allowed.

In the whole and for the above reasons the appeal succeeds.

The proceedings and decision by the District Court of Serengeti in **Civil Appeal No. 9 of 2014** and also the proceedings and decisions from the Mugumu Urban Primary Court in **Civil Case No. 30 of 2013** are hereby quashed and set aside.

Considering the nature of this suit, I shall not make any order as to costs. Each party shall bear its own costs in this appeal. It is so ordered.

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**R.V. MAKARAMBA**  
**JUDGE**