

**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

(CORAM: GALEBA, J.A. KAIRO, J.A. And AGATHO, J.A.)

CIVIL APPEAL NO. 76 OF 2025

**EMMANUEL WILLIAM MWAKYUSA t/a
ROYAL EMMARENE INVESTMENT..... APPELLANT
VERSUS**

EQUITY BANK (T) LIMITED..... RESPONDENT

**(Appeal from the Judgment and Decree of the High Court of Tanzania
at Morogoro)**

(Ngwembe, J.)

dated the 4th day of July, 2022

in

Civil Appeal No. 13/15 of 2022

JUDGMENT OF THE COURT

5th November & 24th December, 2025

GALEBA, J.A.:

In February 2019, Emmanuel William Mwakyusa, t/a Royal Emmarene Investment, the appellant, accessed a business loan facility of TZS. 10,000,000.00 from Equity Bank (T) Limited, the respondent. The loan was recoverable in twelve months installments of TZS. 1,025,000.00 and was secured by two security assets, one of which was the appellant's motor vehicle, make Nissan X-Trail, with registration No. T931 DHS (the motor vehicle). The terms and conditions of the lending, were detailed in the loan agreement dated 30th January, 2019 (the loan agreement, or exhibit PE1). However, for reasons that are not relevant

to this judgment, the appellant failed to service the loan in strict observance with the terms of the loan agreement.

On 23rd September, 2019, the appellant visited the respondent's office, with a view to requesting the latter to consider rescheduling of the loan repayment modality. Nonetheless, when he reached there, the motor vehicle was seized by the respondent's officers and was accordingly impounded at her premises. Subsequently, the respondent appointed Nutmeg Auctioneers and Property Managers Co. Ltd (the auctioneers), to auction the motor vehicle, in order to liquidate the defaulted loan facility. The auctioneers advertised for disposition of the said vehicle, at a public auction to be carried out on 19th November, 2019, but it appears the vehicle was not sold at that auction. That is so because the next day, on 20th November, 2019, the appellant paid TZS. 7,244,083.50 to the respondent in clearing his debt. Thereafter, the appellant went to the respondent to repossess his motor vehicle, but found the same with a malfunction in the radiator, so he demanded that it be repaired to roadworthiness, so that he can take it.

It transpired however that, the respondent did not repair the defective motor vehicle, so much so, that on 21st February, 2020, the appellant approached the District Court at Morogoro (the trial court), and lodged Civil Case No. 9 of 2020, praying for orders that the

respondent be ordered to pay him TZS. 14,000,000.00 as the market value of the vehicle. Alternatively, he moved the court to order the respondent to give him a roadworthy motor vehicle of the same brand. The appellant also prayed for transportation costs, general damages and costs of the case.

According to the respondent, the appellant was not entitled to any relief because, upon liquidation of the loan facility on 20th November, 2019, it was the appellant who willfully refused to take possession of his motor vehicle, in which case, he had himself to blame for his own inaction.

After a full hearing of the case, the trial court found it with merit to a larger extent, and ordered the respondent to pay the appellant TZS. 9,000,000.00 as reinstatement value for his motor vehicle, TZS. 4,000,000.00 as general damages, and costs of the suit. The respondent was dissatisfied with the above judgment and lodged Civil Appeal No. 13/15 of 2022 before the High Court of Tanzania at Morogoro (the first appellate court), raising five grounds of appeal, one of which being the following:

"The trial court erred in law and fact for holding in favour of the respondent Emmanuel William Mwakyusa, a stranger to the loan agreement

(exhibit PE1), without proof of locus standi to sue on behalf of Royal Emmarene Investment."

In resolving that ground of appeal, the first appellate court observed at pages 207 and 208 of the record of appeal, that:

"I therefore agree with arguments of the learned advocate for the appellant that, the respondent (the present appellant) had no locus standi to sue based on the loan agreement. The respondent remained a stranger to the loan agreement..."

Then the court, at pages 209 and 210 of the record of appeal, concluded:

"In totality, and for the above reasons, [] this appeal is meritorious, [the] same is allowed. I proceed to set aside the judgment and decree of the trial court. The respondent (the present appellant) is a stranger to the loan agreement. Costs of this appeal is granted to the appellant."

The above finding did not accord well with the appellant. He lodged this appeal, initially predicating it on two grounds of appeal. However, at the hearing Mr. Ignas Seti Punge learned advocate, acting for him, abandoned one of the grounds and retained the following complaint, upon which determination of this appeal is based:

"That the High Court erred both in law and fact for holding that the appellant was a stranger to the contract and had no locus standi to sue, while Royal Emmarene Investment is not a legal entity and thus could not sue on its own."

In supporting the above ground of appeal, Mr. Punge contended that, it was wrong for the High Court to have held that, the appellant had no *locus standi* to claim his motor vehicle which had illegally been detained after the loan was fully repaid. He added that, being a business name, there is no way Royal Emmarene Investment could have sued as a standalone legal entity like a limited liability company or a natural person. He therefore prayed that the appeal be allowed with costs.

In reply, Mr. Godfrey Mapunda learned advocate who appeared for the respondent, strongly resisted the appeal. His point was that, the appellant was a stranger to the loan agreement, because a party to it, was Royal Emmarene Investment and not the appellant. His other point was that, the appellant would have been right, had he sued the respondent as a guarantor of the financing. Based on those points, the learned advocate implored us to dismiss the appeal with costs.

In this judgment, we have considered the record of appeal and the arguments of counsel, and think that determination of this appeal

oscillates around a single issue of whether the appellant had *locus standi* to sue the respondent.

The concept of *locus standi* simply put, is the legal capability of a party, to initiate and maintain a law suit against another party. Therefore, for a law suit to be legally maintainable against the defendant, the plaintiff must have *locus standi* to sue the defendant. That is to say, the plaintiff must be a natural person or a body corporate, and it must be demonstrable that such person's legal right or enforceable interest has been interfered with by the defendant. See this Court's decision in the case of **Lujuna Shubi Ballonzi Senior v. The Registered Trustees of Chama Cha Mapinduzi** [1996] T.L.R. 203 at 208, where on the concept of *locus standi*, this Court, stated:

"In this country, locus standi is governed by 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."

With that concept clear in our mind, we will now turn to this case and examine whether the appellant had *locus standi* to institute a legal action against the respondent. A close reading of the pleadings and the

evidence that was tendered by both sides, reveals at least four significant realities. **One**, the appellant, Emmanuel William Mwakyusa was a natural person and had his business identified as Royal Emmarene Investment. **Two**, the appellant borrowed TZS. 10,000,000.00 from the respondent in order to finance the said business, and pledged his motor vehicle to guarantee repayment of the loan. He defaulted to repay the loan and the pledged motor vehicle was seized by the respondent. **Three**, the loan was fully repaid on 20th November, 2019, and; **four**, upon clearance of the debt due, the respondent readily permitted the appellant to take away the motor vehicle, but the latter refused to take it on account of mechanical malfunctions. And **lastly**, the law suit was filed in the trial court to recover the functioning motor vehicle or its value.

In paragraphs 1 of the plaint and of the written statement of defence, parties agree that the appellant was a natural person but was running his business under the name Royal Emmarene Investment. Therefore, Emmanuel William Mwakyusa was trading as Royal Emmarene Investment. In this regard, paragraph 1 of the plaint states:

*"That the **plaintiff is a natural person**
trading in the business name of Royal*

Emmarene Investment in Morogoro and his address of service..."

[Emphasis added]

In reply to that paragraph, the respondent stated in paragraph 1 of the written statement of defence as follows:

"That, [the] contents of paragraph 1 of the complaint are noted."

[Emphasis added]

Thus, parties were at one on the status of the plaintiff, as being a natural person although had his business called Royal Emmarene Investment. A business name is defined under section 2 of the Business Names (Registration) Act (the Act), as:

"the name or style under which any business is carried on, whether in partnership or otherwise."

Therefore, a business name, even when registered, is just "a style" or "an outfit" that the owner of the business desires to have it identified. Unlike in incorporation of a limited liability company under the Companies Act, which upon registration, a new juristic person is created separate from its shareholders, registration of a business name under the Act, just registers the name; it does not create any new legal entity with a separate personality independent of its proprietor or proprietors.

In other words, Royal Emmarene Investment was never a separate legal entity, it was just a name of the business that the owner wanted it to be known as. It was an “external packaging of the business”. That is to say, Royal Emmarene Investment was an unincorporated “entity”. Legally, an “unincorporated entity” has no legal capacity (*locus standi*) to initiate a maintainable law suit, see this Court’s decision in **African Store Consumer Cooperative Society v. Said Lupinda**, Civil Appeal No. 16 of 1989 (unreported). Similarly, a legally nonexistent entity cannot maintain an action under our laws, see this Court’s decision in **Change Tanzania Limited v. Registrar, Business Registration and Licencing Agency**, Civil Appeal No. 3 of 2021 (unreported). And so was Royal Emmarene Investment, which was both unincorporated and legally a nonexistent entity, thus with no capacity to sue.

In this case, a party to the loan agreement was the appellant who borrowed the money based on that agreement and repaid it. It was therefore, the appellant who had *locus standi* to sue for recovery of the vehicle and not otherwise. Thus, we dismiss Mr. Mapunda’s contention that it was Royal Emmarene Investment, which had *locus standi* to sue the respondent. Accordingly, the issue framed of whether the appellant had *locus standi* to sue the respondent is answered in the affirmative.

In which case, we find merit in the only ground of appeal raised and hereby allow it.

Finally, this appeal succeeds; it is allowed with costs, and the judgment of the High Court is hereby set aside.

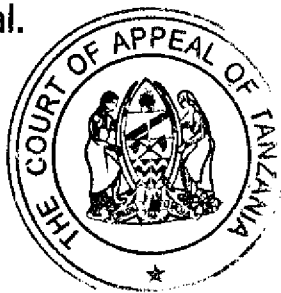
DATED at DODOMA, the 15th day of December, 2025.


Z. N. GALEBA
JUSTICE OF APPEAL

L. G. KAIRO
JUSTICE OF APPEAL

U. J. AGATHO
JUSTICE OF APPEAL

Judgement delivered this 24th day of December, 2025 in the presence of Mr. Ignas Seti Punge, learned counsel for the appellant, Miss. Glory Francis, learned counsel for the Respondent and Miss. Thabitha Daniel, Court Clerk, is hereby certified as a true copy of the original.




C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL