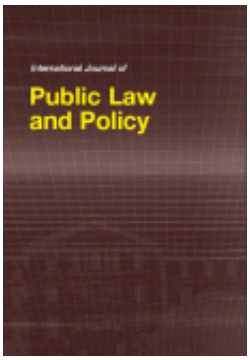

International Journal of Public Law and Policy

ISSN online: 2044-7671 - ISSN print: 2044-7663
https://www.inderscience.com/ijplap

Multi-party suits in Tanzania: a case for class actions

Naufal Kitonka

DOI: 10.1504/IJPLAP.2023.10058650

Article History:

Received:	11 August 2022
Last revised:	02 April 2023
Accepted:	02 April 2023
Published online:	16 December 2024

Multi-party suits in Tanzania: a case for class actions

Naufal Kitonka

School of Law,
University of Dodoma,
Dodoma, Tanzania
Email: naufal.kitonka@udom.ac.tz

Abstract: Multi-party suits in Tanzania can take different forms such as joinder, representative actions and public interest actions. However, representative actions are currently the main procedures for handling claims for compensation involving large groups of similarly affected victims. Generally, multi-party procedures have the great potential to provide parties with an effective remedy. However, in order for these procedures to effectively play that role, they should be convenient, properly managed and clearly provided for in the legislation. This article examines the legal framework in Tanzania concerning multi-party procedures. It shows that strict adherence to the same interest and locus standi requirements makes multi-party procedures too restrictive to interested parties who wish to litigate suits on behalf of others. In order to guarantee the proper management of multi-party suits, a case for class action rules is made, which in this study are used in a narrow sense to mean procedures that provide flexibility of locus standi to numerous parties, both known and unknown, with common issues in fact or law. Finally, a reform of the legal framework is recommended so that class action rules are enacted in the form of regulations or a specific law.

Keywords: multi-party suits; Tanzania; representative suits; class action suits.

Reference to this paper should be made as follows: Kitonka, N. (2025) 'Multi-party suits in Tanzania: a case for class actions', *Int. J. Public Law and Policy*, Vol. 11, No. 1, pp.18–42.

Biographical notes: Naufal Kitonka is currently an Assistant Lecturer and a PhD candidate at the School of Law, University of Dodoma. He is enrolled with the Tanganyika Law Society as an Advocate and Commissioner for Oaths. He received his Master of Laws from the University of Dar-es-salaam and Bachelor of Laws from Mzumbe University.

1 Introduction

A suit is 'any proceeding by a person (party) or persons (parties) against another or others in a court of law in which the plaintiff pursues the legal remedy or redress for injury caused to him or her by the defendant'.[1] In Tanzania, these proceedings are instituted or commenced by way of a plaint or other methods prescribed by the rules made under the Civil Procedure Code.[2] A multi-party suit, on the other hand, refers to a suit where there is more than one claimant and/or one defendant. A multi-party suit involves numerous parties to the proceedings, who can be either plaintiffs or defendants. While plaintiffs are legal subjects who directly claim a subjective right against another or others, defendants

are persons or parties against whom a right in law is claimed. The right in question is not a moral right but a legal right – a right in law.[3] In order to claim such a right, a party must "show that he has a fair question as to the existence of a legal right".[4] In that regard, "the existence of such legal rights is an indispensable prerequisite for initiating any proceedings in a court of law".[5] In a nutshell, a suit normally involves four elements – the opposing parties, the subject in dispute, the cause of action and the demand for relief.

Parties to suits claiming for or against a right in law can be grouped into two categories, namely, necessary parties and proper parties. A necessary party is one that is privy to the same act, transaction or cause of action. For example, in suits pertaining to the recovery of land sold to a third party, the buyer has to be joined with the seller as a necessary party.[6] Parties from whom relief is sought from must be joined as necessary parties. If no relief is sought from any party then he is simply a proper party. Secondly, a necessary party is one whose presence is necessary or indispensable for the purpose of determining legal questions of liability in the case. Stated simply, a necessary party is one whose presence is necessary in order for the court to effectively and completely adjudicate on the issues in the suit.[7] Thus, for the purpose of ascertaining whether or not a party is necessary, the determining factor is always whether an effective decree can be issued in his absence.[8] On the other hand, a proper party is one whose presence is not necessary for the court to issue an effective decree but whose presence is important.[9] Thus, for example, where the major issue in a suit of trespass between A and B revolves around whether the house was in fact sold to B by C, then for an effective disposal of the suit, party C has to be joined as a necessary party because the two causes of action relating to trespass and contract of sale have to be tried together.[10]

This article examines the procedures of parties bringing claims in a court of law, which might be necessary parties or proper parties, although it focuses on another category of parties to the suit, namely interested parties. Normally, interested parties are associations or organisations like non-governmental organisations or human rights interest groups that file cases on behalf of the affected persons. It is not mandatory that interested parties must have suffered damage personally. This article seeks to submit that this category of parties is often overlooked or paid less attention than it deserves in Tanzania, in that multi-party procedures in Tanzania do not adequately accommodate the position of interested parties in a suit.

Hence, the article examines multi-party procedures in Tanzania, such as joinder, representative actions and public interest actions, focusing on class actions. Generally, a class action in the sense of collective redress refers to a procedural tool whereby a large number of people can claim injunctions and compensation collectively under one proceeding. However, a class action should be differentiated from a representative action[11] in the sense that, under a class action, a suit is filed by a party or parties on behalf of himself/themselves and on behalf of other persons known/ascertained as well as unknown and unascertained[12] against a common defendant(s). In a representative action, parties are ascertainable and known (named members).[13] In addition, under class actions, members only need to have an interest, whereas in a representative action, members must have the same interest.[14] Further, under class actions, cases can be filed on behalf of victims even when the parties litigating the suit are not directly or personally affected by the actions. Furthermore, under class actions, all members, including absent class members, are bound by the judgement (*res judicata* effect of judgement)[15] unless they specifically decide to opt out of the case (not to benefit individually from the outcome of

the judgement).[16] Although the general term 'collective redress' encompasses both a representative action and a class action,[17] this paper treats the meaning of a class action as a special procedure different from that of a representative action as already described.

Specifically, the article:

- examines the multi-party procedures in Tanzania regarding their suitability for entertaining the claims of interest groups such as associations or organisations
- examines the ideal legal approach to recognising class actions in Tanzania.

To address these specific objectives, doctrinal legal research was employed, for it is valuable for doing a systematic analysis of legal rules or principles found in statutes or cases by logical reasoning.[18] The aim of doing a qualitative analysis is to find out the extent to which the law provides for and recognises multi-party procedures. The data were collected mainly from statutes (Civil Procedure Codes), case laws[19] and related literature. In assessing the legal principles found in these statutes, cases laws were employed to determine the meaning (interpretation), scope and application of these principles.[20] The data obtained from all these sources were analysed through thematic and content analysis. Along with the doctrinal method, lessons were drawn from other jurisdictions in Kenya, South Africa, Nigeria and India, which have the same common law legal system as Tanzania. Lessons were also drawn from the USA due to its track record of using class action procedures to litigate mass claims. This method was used in order to explore the best legal approach to recognising or guaranteeing class actions in Tanzania, based on the track record of other jurisdictions.

2 Multi-party procedures in Tanzania

Multi-party procedures are specific procedures or sets of rules for bringing, handling, litigating or legally resolving claims relating to groups of people or parties.[21] These are litigation devices enabling classes of individuals to sue or be sued collectively. Similarly, they enable persons or associations to be made parties to a suit.[22] Multi-party procedures in Tanzania are in the form of joinder of parties, representative actions and public interest actions.

2.1 Joinder of parties

Joinder of parties is the first procedural device that can be used to entertain numerous parties in a suit. It entails the joining together in one suit all persons or parties who claim the same rights or relief as either co-defendants or co-plaintiffs.[23] Joinder of parties is provided for in Order I, rule 1 and 3 of the Civil Procedure Code,[24] meaning that parties should be joined if they are necessary parties to the suit or if they are entitled to joint relief. It follows therefore that, for joinder of parties to be applicable, two legal conditions must be met before the court can order joinder of parties. To begin with, there should be joint interest in the subject matter, and then, the joint interest should arise from the same act or transaction. Claims arising from the same transaction mean claims involving the same set of facts or involving the same parties. Accordingly, these claims should be adjudicated in the same proceeding to avoid multiplicity of suits.[25]

For example, in the case of *Barclays Bank v. Patel*[26] two guarantors were involved, each guaranteeing two different third parties. Since the cause of action arose from two different or separate contracts of guarantees, joinder of parties could not be applied, meaning that the two guarantors could not be jointly sued as co-defendants. Similarly, in the case of *Yohana v. Lunjo Estates Ltd*,[27] there were two separate contracts of tenancy but notice to quit the premises was issued to all the tenants. When the tenants instituted a joint suit against the landlord in one action, it was held that the question of tenancy gave rise to different principles of law as these plaintiffs were not joint tenants. Hence the joinder of plaintiffs in this case offended rule 1 of order 10 of the code.

In *Stanslaus Kalokola v. Tanzania Building Agency and Mwanza City Council*,[28] the plaintiff failed to implead the Government of Tanzania as a necessary party in accordance with the provisions of the Government Proceedings Act.[29] In this case, the appellant, a city treasurer employed by Mwanza City Council, lawfully purchased a house from Tanzania Buildings Agency (TBA), took possession of it and leased it to a tenant. However, Mwanza City Council allegedly trespassed upon the house claiming to be its lawful owner and forced the tenant out. When the plaintiff sued the defendants, the issue of non-joinder of parties arose. By suing TBA, a government entity, Stanslaus ought to have joined the government in accordance with the Government Proceedings Act. The parties to the agreement, which forms the basis of the appellant's case, were the Permanent Secretary, Ministry of Works, the seller, the appellant and the purchaser. The first respondent, TBA, was not a party to the contract in question, and so the appellant ought to have sued the government in accordance with the Government Proceedings Act. In the case of *Austack Alphonce Mushi v. Bank of Africa Tanzania Ltd. and Mabunda Auction Mart Co. Ltd*,[30] the appellant was a shareholder and a director of Masalani Linner Company Ltd. (MLCL). MLCL entered into a loan agreement with the Bank of Africa Tanzania Ltd., which was secured by a legal mortgage on the appellant's landed property. When the company failed to repay the loan, the bank instructed Mabunda Auction Mart (second respondent) to advertise in the newspaper that the mortgaged property was up for sale at a public auction. The appellant disputed this action. The main issue in this case was whether the appellant was a party to the loan agreement enabling him to be entitled to sue the respondents. It was observed that MLCL, being the borrower, was a necessary party to the suit. Therefore, MLCL ought to have been joined to the suit, short of which, the suit ought to have been struck out, or a joinder or substitution of parties should have been ordered. It was also observed that the appellant, not being a party to the loan agreement, had no standing to sue the respondents on the loan agreement.

Similarly, in the case of *Farida Mbaraka and Farid Ahmed Mbaraka v. Domina Kagaruki*,[31] the respondent claimed ownership of a house which she purchased from the government through the Tanzania Housing Agency. The second appellant's claim on the house was derived from the liquidation of the house by another company. However, the respondent, who was originally the plaintiff, had not impleaded the Tanzania Housing Agency. The court observed that the respondent as plaintiff could not be compelled to sue a party she did not wish to sue, but determination of the suit could not be effective without the Tanzania Housing Agency being joined. The government being a necessary party ought to have been joined as a matter of convenience and expediency. The suit was held to be unmaintainable for non-joinder of the government.

In the case of *Johari Ibrahim Chata v. Mpanda Municipal Council, Donalt Lessery Tarimo and the Attorney General*,[32] the plaintiff sued the defendants over the land she

had sold to Daudi Kagome. It was observed that the plaintiff had no *locus standi* to sue (and therefore lacked cause of action against the defendant because she had no title to the land she had sold to the person who was not a party to the suit. Daudi Kagome, being the title holder, was a necessary party and it was he who was the right person to sue and not Johari Ibrahim Chata. For there to be effective disposition of the suit, Daudi Kagome had to be joined as a co-plaintiff. It was stated that the non-joinder of necessary parties effectively vitiated the proceedings.[33] In the case of *Oilcom Tanzania Limited v. Christopher Letson Mgalla and others*,[34] the applicant filed for a temporary injunction, claiming to be the lawful owner of a farm registered under a certificate of title. The first respondent also claimed ownership of the same piece of land but with another title number. It was observed that this kind of suit required the government departments to be joined as necessary parties, as long as the court was satisfied that no prejudice would be occasioned, meaning that the applicant should not suffer more loss or inconvenience than the respondent.

It has to be borne in mind that where there is non-joinder of parties, the court may at any stage of the proceeding order the joinder of parties. In the case of *Conrad Berege v. Registrar of Cooperative Societies and the Attorney General*,[35] Clement Conrad Berege was the chairman of the management committee of Morogoro Region Co-operative Union. A Special General Meeting of the Union was convened by the Registrar of Co-operative Societies. The meeting resolved to dissolve the management committee and replace it with a caretaker committee, which took over until a new committee was formed according to the union's by-laws. One of the reasons for disbanding the management committee was that Conrad Berege, as the chairman, did not have the necessary qualifications for holding that office. However, Conrad Berege disputed this move and alleged that his removal was done *ultra vires* in breach of principles of natural justice. However, in suing the Registrar of Co-operative Societies for order of *certiorari*, he did not join the attorney general as a necessary party. It was reiterated that "the court may at any stage of the proceedings, even when formulating a judgement, either upon or without application of either party, order that the name of any person, who ought to have been joined, be added".[36] Nonetheless, there are exceptions when the court may not order joinder of parties, firstly, when it may be too cumbersome to try the suit as one by joining all the plaintiffs, or secondly, when the court is of the opinion that by trying the suit as one, the defendants will be inconvenienced by being sued by several plaintiffs simultaneously, in which case they may be unable to deal with the various claims in one trial. Thirdly, the court may also order separate trials if it is of the view that by trying the suit as one will result in a long trial or injustice to the parties.[37]

It follows therefore that, a joinder suit is appropriate only when parties have the same or joint interests in the subject matter of the suit and when the issues regarding the subject matter, such as a sales agreement or trespass, arise from the same transaction. Due to the same transaction rule, this procedure is not suitable for interested parties like human rights associations, which seek to represent the victims, because these associations are, in most cases, not part of the acts that arose from the same transaction.

2.2 Representative actions

A representative action involves numerous persons with the same interests, whereby one person can sue the defendant on behalf of the others. A representative action is provided under Order 1 Rule 8(1) and (2) of the Civil Procedure Code which provides that:

> (1) Where there are *numerous persons having the same interests in one suit*.
>
> (2) One or more such persons, with the permission of the court, may sue or be sued, or may defend in such suit, on behalf of or for the benefit of all persons so interested. However, the court in this case shall give, at the plaintiff's expense, notice of the institution of the suit to all such persons, either by personal service or, because of the number of persons or any other reason why this is not practicable, by public advertisement, as the court in each case may direct.
>
> (3) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule 1 may apply to the court to be made a party to the suit.

This kind of wording is a hybrid provision in the sense that it permits a representative action generally, but, it is also akin to the provision normally governing class actions. This is due to the fact that the provision requires other members to be given notice and that parties to the suit should seek leave of the court before one is appointed as a representative of the other members. However, the fact that this provision is silent on whether unknown or unidentified members can become parties to the suit means that it was intended to govern representative suits only. Indeed, case laws in Tanzania suggest that this provision was meant to govern the application of representative suits.

It is submitted that the purpose of this provision is to enable the adjudication of questions or issues, in which a large number of persons are involved.[38] However, according to the provisions of Order 1 Rule 8 of the Civil Procedure Code, in order to sue in a representative capacity, a number of legal conditions must be met before the court can give order for a representative suit, which are that:

1 numerous persons must be involved

2 who must have the same interest in the suit

3 permission of the court must be sought and granted, which has to be mentioned in the body of the plaint or petition

4 notice must be issued to the parties concerned.[39]

The rationale for these conditions is that the person seeking to represent others in a suit should show that the members actually exist, that those represented are not dead, non-existent or fictitious (hence known and determinable) and that the representative has been authorised to do so.[40] For example, according to the case of *Kiteria Menezes and 33 Others v. Mra Engineering Works Ltd*,[41] the plaintiff filed a case seeking to challenge the sale of a building. However, the suit was filed without first seeking leave of the court to file a representative suit. The court observed that seeking and obtaining leave of the court is a precondition for filing a representative suit, and any suit that is filed before seeking such leave is filed prematurely and hence inadmissible. In the case of *Sonko and others v. Haluma and another*,[42] the two plaintiffs who sued the defendants purported to sue on behalf of 21 infants without having obtained permission of the court. Mandatory provisions of Order 1 Rule 8 were not complied with. It was held that "in the absence of a representative order, the claim on behalf of unnamed plaintiffs could not stand and would be struck out". Similarly, in the case of *Nestory Kilala Ngulla, Godfrey Kambenga, Benedicto Raphael and Ernest Kangwa v. the President, Trade Union's Congress of Tanzania (TUCTA) and Trade Union's Congress of Tanzania (TUCTA)*,[43] the applicants

filed an application seeking the court to grant an order of temporary injunction against the respondents from holding an election for TUCTA's Secretary General, claiming that the election was in breach of its constitution. The first applicant was the secretary general, who had been terminated from that position. Therefore, the second order the applicants sought was for the court to reinstate him in his position, claiming he had been terminated unlawfully. However, the application was sworn by the first applicant only and so there was no proof that the other parties had in fact authorised him to swear on their behalf. The court concluded that this omission caused doubts at to whether the complainants have the same or any interest in the matter, especially because the suit combined two separate causes of action. While the first cause of action arose from organisational rights relating to non-compliance with the constitution of TUCTA, the second cause of action related to the applicant's employment rights. This was against the principle that the relief claimed must arise from the same transaction.

It follows therefore that, like joinder suits, representative actions are appropriate only when parties have the same interest and the relief claimed arises from the same transaction. In this sense, it is difficult for an association or organisation to sue on behalf of others, because it is usually not in a similar situation claiming relief.

2.3 Public interest actions

Generally, a public interest action simply means litigation for the protection of public interests, and is defined as an action brought by a "plaintiff who, in claiming the relief he or she seeks, is moved by a desire to benefit the public at large or a segment of the public".[44] Similarly, it has been defined as "an action instituted by a representative in the interests of the public generally, or in the interests of a section of the public, but not necessarily in that representative's own interests".[45] These types of procedures are suitable when anyone seeks to enforce legal obligations of the executive or legislature. Because a public interest action originates from the power of judicial review, it is commonly used to challenge the administrative acts or decisions of public authorities to ascertain whether or not they are lawful. It is generally used to safeguard collective or public interests and not individual interests.[46] Public interest actions in Tanzania are governed by Section 66(2) of the Civil Procedure Code and Article 26(2) of the Constitution. Public interest actions are also permitted in respect of environmental issues under Section 202(d) of the Environmental Management Act, which reads:

> An individual or association may bring an action and seek appropriate relief…
>
> (d) *in the public interest*; (public interest actions) and
>
> (e) in the interest of the environment or other habitats.[47]

In this type of action, a person can sue in the individual's interest or both in the individual's interest and the public's interest. For instance, in the case of *Felix Joseph Mavika and 4 others v. Dar es Salaam City Council and Ilala Municipal Council*,[48] also known as the Vingunguti waste case, these two respondents dumped solid and liquid waste in Vingunguti area. People living there complained that this polluted the water and endangered the health and lives of their families. Hence, the rights of the community were at issue, such as the right to a clean and safe environment and the right to health. As a result, Felix and four others sued on behalf of 353 others seeking orders of a temporary injunction to restrain Dar es Salaam City Council nd Ilala Municipal Council from

dumping solid and liquid waste in Vingunguti area. The applicants sued under Section 66(2) of the Civil Procedure Code and the doctrine of public interest litigation enshrined in Article 26(2) of the Constitution.

Moreover, in *Joseph D. Kessy and others v. Dar es Salaam City Council*,[49] residents of Tabata instituted a public interest action to restrain the Council from dumping garbage in Tabata area, as it emitted smoke and a foul smell, thereby polluting the environment. The orders for prohibition were granted because this activity threatened the right to life as well as the environment. Similarly, in *Festo Belegele & 749 Others v. Dar es Salaam City Council*,[50] members of Kunduchi Mtongani instituted a public interest action for orders of certiorari, prohibition and mandamus to quash the decision of Dar es Salaam City Council to use Kunduchi Mtongani area as a dumping site for waste, which allegedly caused pollution, thereby threatening the right to health and life as well as the environment.

Therefore, the main purpose of a public interest action is not only to protect the personal interests of the plaintiff, but also to protect the interests of the public at large. In this regard, the relief sought in public interest actions are injunction (prohibition order), mandamus (mandatory order) or certiorari (quashing order), which automatically benefits the public by restraining or invalidating a government action.[51] Notably, no monetary compensation is given under public interest action, as the court has no power to award damages.[52] However, in certain cases, public interest actions can result in non-compensatory damages, such as punitive, or nominal damages.[53] The judgement given in a public interest action does not bind the people in whose interest it is brought. In other words, the judgement is not *res judicata* against all interested members, and where the government is vindicated, the doctrine of *stare decisis* rather than *res judicata* applies to deter similar future attacks by other members.[54]

It follows therefore that public interest actions are suitable for cases regarding fundamental human rights, constitutional cases and environmental rights.[55] However, these tools or procedures are unsuitable when one intends to seek monetary compensation for victims as a way to deter future violations. In a similar vein, these tools are limited to filing cases against the government, and so they cannot be used to sue non-governmental organisations, like multinational companies, when such organisations are responsible for human rights violations.

3 Weaknesses of existing multi-party procedures

For multi-party procedures to be effective, they have to be clearly provided for, viable and convenient for parties, so that they lead to an effective remedy for all the wrongful actions against the defendant. However, multi-party procedures in Tanzania face legal challenges in that regard.

3.1 Unprogressive nature of the constitution

Generally, multi-party procedures are mainly provided for under the Civil Procedure Code of Tanzania, although they are covered by other pieces of legislation as well. Importantly, applying the constitution of a country is the best procedure for seeking redress in a court, thereby protecting the various rights of citizens. The Constitution of

the United Republic of Tanzania provides access to remedy via Article 13(1), (3), (6) which reads:

> (1) All persons are equal before the law and are entitled, without any discrimination, to protection and equality before the law.
>
> (3) The civic rights, duties and interests of every person and community shall be protected and determined by the courts of law or other state agencies established by or under the law.
>
> (6) To ensure equality before the law, the state authority shall make procedures which are appropriate or which take into account the following principles, namely:
>
> (a) when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned.

In addition, Article 26(2) of the Constitution states that citizens have the right to take legal action, in accordance with the procedure provided by the law, while Article 30(3) confers the right to institute proceedings for redress in the High Court for persons who claim that a provision of the Constitution has been violated. These provisions have generally been interpreted as granting citizens the right to remedy.[56] However, multi-party procedures require some special protection. In order to get this legal protection, procedures for instituting cases should, *prima facie*, be specifically mentioned and recognised. In that regard, the Constitution of Tanzania does not expressly provide for multi-party procedures, including public interest actions, with the result that the Constitution is unprogressive. It is the view of this paper that multi-party procedures need to have a constitutional basis, as they would receive far greater protection if they had been specifically recognised under the Constitution rather than merely under the Civil Procedure Code.

3.2 Same interest requirement

The same interest requirement or test is normally used in joinder and representative actions. Generally, courts normally require 'personal, sufficient and direct' interest before a litigant is accorded standing in a court.[57] The landmark interpretation of the 'same interest' requirement was given by McNaughten in *Duke of Bedford v. Ellis* that "given a common interest and a common grievance, a representative suit was in order if the relief sought was in its nature beneficial to all whom the plaintiff proposed to represent".[58] Although this is a UK case, it applies in Tanzania, because similar provisions from statutes imported from other countries with a common law should be interpreted similarly. In this regard, this landmark interpretation was illustrated in the case of *K.J. Motors and 3 Others v. Richard Kishamba and Others* to mean that "the representative(s) must be suing or defending the case not on his/their behalf but on the behalf or for the benefit of all persons interested in the suit".[59]

In these cases, 'same interest' has traditionally been interpreted to include "a common interest, a common grievance and a remedy which is beneficial to all the plaintiffs".[60] In effect, this means that "only the party who has suffered a legal injury personally may approach the court for relief".[61] Indeed, for persons to be joined in one action as plaintiffs or defendants,[62] or for representative actions to be instituted, it is not enough that the

plaintiff to the suit should be connected with the same subject matter, but that "the intervener must also be directly and legally interested in or affected by the answers to the questions involved in the case".[63] For example, in *Austack Alphonce Mushi*,[64] the appellant was a director of the company but it was the company that had entered into a loan agreement with the bank. The fact that the appellant was not a party to the loan agreement meant that he could not prove he had the same interest under the suit, because on the principle of separate personality under company law, a person and a company are treated as two separate entities. Similarly, in the case of *Johari*,[65] she had no title to the land she was claiming against the defendants in the suit. In that sense her claim did not meet the same interest requirement because her cause of action did not arise from the same transaction.

The case of *Omary Yusuph v. Albert Munuo*[66] offered an interpretation of the term *locus standi* to mean "directness of a litigant's interest in proceedings which warrants him or her to prosecute the claim asserted". This case originated from Mburahati Ward Tribunal as the court of first instance. It reached the court of appeal as a third appeal. The case concerned a dispute over who was the lawful owner of the house (suit premises). The late Yusuph Haji (husband of Halima Omari) bought the house from the National Housing Corporation (NHC) under a tenant purchaser agreement in 1971. Before he completed the purchase under that arrangement he leased the house to Albert Munuo, the respondent, in 1983. When Yusuph Haji died in 1997, Halima collected rent from the respondent for some time but later the respondent refused to pay it, claiming that he had bought the house from Yusuph. One pertinent fact in this case is that during a family meeting, Mwanaisha Yusuph Hahi was appointed as the legal representative of the deceased Yusuph Haji, but it was Halima Omari, the wife, who sued the respondent at the Mburahati Ward Tribunal. On appeal, it was observed that Halima Omari, who commenced the suit, was not the legal representative, instead it was Mwanaisha Yusuph Haji who was the legal representative of the late Yusuph Haji (administratrix of the estate). According to the law, only the lawfully appointed legal representative of the deceased could commence and litigate the suit. In that regard, Halima Omari did not meet the same interest test as she could not prove that she was personally and legally affected by the fact in issue.

Similarly, in *Lujuna Shubi Ballonzi v. Registered Trustees of CCM*,[67] the plaintiffs filed a suit under representative action challenging the ruling CCM party over the misuse or mismanagement of funds and properties. These funds were collected from compulsory contributions by millions of people, including even those, like the plaintiff, who were not members of the party. The court stated that the applicant failed to adhere to the rules regarding the filing of a representative action, such as same interest requirement.[68] In dismissing the case, it was stated that:

> 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. Locus standi in Tanzania is governed by common law which is made applicable by virtue of Section 2(2) of Judicature and Application of Laws Act, Cap 453. Under it, to maintain an action before it, a litigant must assert interference with or deprivation of or a threat of interference with or deprivation of a right or interest which the law takes cognizance of.[69]

Notably, the same interest requirement is detrimental to cases involving mass claims like human or environmental rights,[70] or constitutional issues where, for example, an administration or a private organisation acts unlawfully. In this instance, "no individual

or organisation's interest is affected to such an extent that it qualifies as being sufficiently direct and substantial".[71] Strict adherence to "sufficient identity of interest or same interest requirement" means that "only a few actions can be brought under the representative actions rule" or joinder. Doing so will not meet the mandatory provision of order 1 rule 8, which dictates that the same interest requirement must be met or else the case will be dismissed.[72] It is the view of this article that, to overcome the restrictiveness of the same interest requirement,[73] civil procedures should only insist on members having an 'interest' in the suit but not necessarily the 'same interest' as other members. This advantage will only be realised through the formal introduction of a class action procedure, which emphasises on 'interest' and not 'same interest'. To require proof of only 'interest' will mean that even associations or other interested parties will be able to file cases on behalf of victims. These associations will simply have to demonstrate that they have an 'interest' in the case but not necessarily the 'same interest' as other members.

3.3 Locus standi in public interest actions

The third weakness of multi-party procedures in Tanzania relates to the issue of standing or *locus standi*. Standing or *locus standi* is the term used to denote "the ability of a party to demonstrate to the court sufficient connection to and harm from the law or action challenges to support the party's participation in the case".[74] Similarly, according to the case of *Lujuna Shubi Ballonzi, Senior v. Registered Trustees of Chama Cha Mapinduzi*[75] Samatta, J.K. made the following remarks about *locus standi*:

> Because a court of law is a court of justice and not an academy of taw, to maintain an action before it a litigant must assert interference with or deprivation of, or threat of interference with or deprivation of, a right or interest which the law takes cognizance of. Since courts will protect only enforceable interests, nebulous or shadowy interests do not suffice for the purpose of suing or making an application.

Thus, two factors are important for determining whether a litigant has standing. The first requires proof of harm or injury to the litigant. The second involves whether a litigant has a legally protected interest or legal standing.[76] In this regard, the test of *locus standi* is now the major hurdle in the institution of public interest suits. Public interest actions in Tanzania have recently been limited to persons directly affected by the impugned government action. This means that any person or association that wishes to institute such a public interest action must first prove that his personal interests were directly affected. The Written Laws (Miscellaneous Amendment) Act,[77] passed to amend the "Basic Rights and Duties Enforcement Act",[78] requires under Section 4(2) that:

> a litigant who files a petition before the court challenging the constitutional validity of an act of the executive or an act of parliament should *state in his affidavit accompanying the petition the extent to which the contravention of a fundamental right has affected such person personally*.[79]

In this regard, the act unreservedly imposes a crucial hurdle on interested parties like associations to bring suits on behalf of affected parties because it is difficult for such associations to prove they are personally affected. This acts as a barrier to accessing justice when seeking collective redress.[80] It is noteworthy that Tanzania's judiciary has not always interpreted the test of standing in a liberal manner. Instead, judges have

routinely taken a cautious approach to standing and so have interpreted it cautiously or restrictively.[81] There are many cases which have consistently required the plaintiff to prove that he was personally affected. In *Mulbadaw Village Council & 67 Others v. National Agricultural and Food Corporation (NAFCO)*[82] rights over 1,830 acres of arable land were claimed in Mulbadaw village, occupied by the pastoral Barabaig and the Maasai. NAFCO claimed the whole area and began operations. However, the village council claimed to be the lawful owner of the disputed piece of land and thus sued NAFCO for trespassing on their land. The High Court held that "the village members held rights over the disputed land, and were thus entitled to compensation from the company due to the destruction of crops and property".[83] However, on appeal, the decision was overturned on "technical grounds of *locus standi*". It was observed that, although 66 villagers had in fact authorised the others, in writing, to represent them and act on their behalf, only five of these 66 villagers testified. Hence, it was specifically stated that each villager had to prove his own case because each claim was different from the other, in terms of date of possession, acreage, the method of acquisition, and so on. Hence, the court viewed them as individual claims.[84]

The same situation applied in the case of *Lekengere Faru Parutu Kamunyu & Others v. Minister of Tourism, Natural Resources and Environment & Others*.[85] The appellants were 55 Maasai pastoralists who claimed ownership of customary land in the whole Game Reserve, including Mkomza area (which was the land in dispute). They were forcefully evicted from this land. The High Court ruled that the Maasai community had limited title to some of the land in the reserve. However, it limited its judgement to only those appellants who had given evidence at the trial, and granted them compensation. On appeal, the villagers sought an order of restitution and re-asserted their claim to title of all the land. It was held, among other things, that "the appellants had no *locus standi* to start proceedings on behalf of the Maasai community".[86] However, other cases have interpreted *locus standi* more liberally. In *Mtikila & 3 Others v. the Republic*,[87] the petitioner challenged the prohibition against independent candidates standing for elections. Justice Lugakingira stated:

> The orthodox common law position regarding *locus standi* no longer holds good in the context of constitutional litigation… In the circumstances of Tanzania, if a publicly spirited individual springs up in search of the Court's intervention, the Court, as guardian and trustee of the Constitution, must grant him standing.[88]

Lugakingira adopted a broad approach to standing and hence declared that the prohibition against independent candidates was unconstitutional. In the process, Justice Lugakingira interpreted Article 26(2) of the Constitution of Tanzania[89] broadly to grant individuals the double standing to sue.[90] Again in the case of *Legal and Human Rights Centre v. Attorney General*,[91] the respondents challenged the constitutionality of provisions that allow certain amounts of money or money in kind (hospitality) to be given by candidates to the electorate during a campaign. These provisions were popularly known as *takrima*. It was held that:

> If a publicly spirited individual (and we add a corporation like the petitioners) spring up in search of the Court's intervention against legislation or actions that pervert the Constitution, the Court as guardian and trustee of the Constitution must grant him (her/it) a standing;

> Furthermore, the court was of the opinion that *locus standi* is vested in every person in the capacity of an individual by virtue of Articles 12 to 24 of the Constitution, and for body corporate in the capacity of a member of the community by virtue of Articles 25 to 28 of the Constitution. For that reason, since body corporate is also persons, they have sufficient interest in public interest litigation.

In this instance, the High Court adopted a broad approach to *locus standi* of affected persons and allowed the residents to sue. This is similar to the cases discussed above, such as *Festo Balegele and 749 Other v. Dar es Salaam City Council*[92] and *Joseph D. Kessy v. Dar es Salaam City Council*,[93] in which the issue of *locus standi* did not arise.

However, the trend was recently reversed in the case of *Legal and Human Rights Centre and Tanganyika Law Society v. Hon. Mizengo Pinda and the AG*,[94] (the famous Mizengo Pinda case), when *locus standi* was invoked. In this case, the petitioners challenged the constitutionality of remarks made by the honourable Mizengo Pinda (then the Prime Minister) while addressing the National Assembly in one of its sessions. The Prime Minister had remarked that those who caused disorder in society and are warned not to do so, but are obstinate and continue causing disorder or disturbance, should be beaten up because there are no other means. However, the petitoners were held to have no *locus standi* to institute the suit.

Therefore, despite some cases adopting a liberal interpretation, the issue of *locus standi* remains a procedural hurdle. This has rendered public interest litigation in Tanzania unpredictable and uncertain because it has always depended on the judicial activism and discretion of respective independent judges.[95] In order to overcome the obstacle of *locus standi*, a procedural tool requiring mere 'interest' in the suit and not 'direct interest' should clearly be made available to litigants.

3.4 Individual damages

Another weakness of the existing representative action is that it is unsuitable for those who seek to claim individual damages. Separate or individual damages are those losses incurred by the plaintiff as a result of the defendant's wrongful conduct, but such losses are peculiar to one plaintiff over and above the common grievance suffered by all members.[96] Most mass claims, like human rights or environmental rights, are unsuitable for being litigated by way of representation because individual or separate damages cannot be claimed for people who do not suffer equally. For instance, in the Nigerian case of *Amos v. Shell BPP.D.C. Ltd*,[97] a country which has the same legal system as Tanzania, one of the issues was "whether special damages could be claimed in a representative action, when the plaintiffs suffered unequal losses, or whether the plaintiffs as the general public could claim for losses suffered by them individually". In dismissing the claim it was held that:

> 1 Since the creek was a public waterway, its blocking was a public nuisance and no individual could recover damages, unless he could prove that interference with a public right caused damage peculiar to himself.
>
> 2 Since the interest and losses suffered by the plaintiffs were separate in character and not communal, they could not maintain an action for special representative capacity.[98]

Therefore, the same interest requirement in representative suit is appropriate for common grievances to be resolved collectively, but is inappropriate for those members who suffered different individual losses. In order to claim individual damages, they would have to prove those losses specifically.

3.5 Ineffective right to remedy

In view of the above, multi-party procedures do not constitute an effective right to remedy. According to the effectiveness criteria of Pillar III of the United Nations Guiding Principles,[99] the right to an effective remedy entails the victim's right to equal, adequate, effective and prompt reparation for the harm suffered.[100] Importantly, this right entails having practical and meaningful access to a procedure that is capable of not only ending human rights violations but also repairing the effects of such violations as well.[101] Put simply, the remedy should be affordable, convenient and timely.[102] Further, according to the principles of the African Commission on Human and People's Rights (ACHPR), "everyone has the right to effective justice by the Constitution, by law or by the Charter".[103] This means that to be regarded as effective justice, there should be a judicial remedy which can "lead to a prompt, thorough and adequate reparation, including, restitution, compensation, satisfaction, rehabilitation and a guarantee of non-repetition".[104] In that regard, multi-party procedures in Tanzania do not meet such criteria because they are unclear and incomprehensive. Furthermore, interested parties like associations do not have the right to remedy due to strict adherence to *locus standi* or same interest requirement. This means that such organisations cannot litigate cases on behalf of citizens who are poor or otherwise unfamiliar with technicalities of mass human rights cases.

4 The case for class action in Tanzania

A class action, being a legal procedure which permits one or more persons or parties to sue other persons or parties on behalf of a number of other persons (the class),[105] is flexible in the sense that it requires a "common interest but not necessarily a similar interest in the subject matter of the suit".[106] In addition, class members might either be known/identified or unknown/unidentified. Lastly, class members are bound by the outcome of the judgement, whether or not it benefits them. This accords parties a wider legal standing in the sense that even a suitable representative like an association or a foundation (not individual class members), who has no cause of action, can initiate and litigate class action.[107]

In that regard, a class action is suitable when seeking to represent parties who are indigent and cannot afford the costs of litigation, or who are unaware of their rights. A class action enables claimants to 'pool resources thereby reducing the litigation costs'.[108] Simply stated, a class action is meant to achieve judicial economy, access to justice and behaviour modification.[109]

4.1 Legal position of class action in Tanzania

Class actions in Tanzania are permitted under the Environmental Management Act, which allows proceedings 'in the interests of or on behalf of a group or class of persons whose interests are affected',[110] meaning that class action suits in Tanzania are permitted only as far as environmental issues are concerned. This is a constitutional discrimination. There is collective access to justice for environmental cases but not for non-environmental cases. The Environmental Management Act has left it to the courts or minister to develop an efficient procedural framework to implement this procedure, but so far no rules have been formulated. This means that no specific piece of legislation exists for governing class action procedures. In particular, no law has been passed by parliament or rules set by courts not only to regulate class action procedures but also to guide courts on how to manage a class action.[111]

4.2 Comparative analysis of legal approaches to recognising class actions

This part shows the different legal approaches to recognising class actions in a legal system. In particular, it shows how the procedures governing the application and management of class actions are provided for in formal rules. It is noteworthy that different jurisdictions use different legal options or avenues to recognise class actions,[112] such as those in South Africa, Kenya, Nigeria and India, which have the same legal system as Tanzania. Looking at these approaches, this paper assesses the most viable approach that Tanzania could adopt in governing the application of class actions.

4.2.1 Constitutional approach

The Constitution of a given country is the first approach or basis on which all multi-party procedures can be recognised and pursued. This removes constitutional discrimination whereby class actions are only available for a certain sector, say for example the environment and not for other sectors as well. Instead, a class action is made available to whatever area of the law which has been breached.[113] For example, the South African Constitution and the Kenyan Constitution explicitly recognise all multi-party procedures, including class actions and public interest actions under one umbrella provision. Section 38 of the South African Constitution of 1996 which echoes Section 7(4) of the old Constitution, 1993, reads as follows:

> Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are:
>
> Anyone acting in their own interests; anyone acting on behalf of another person who cannot act in their own name; anyone acting as a member of, or in the interests of, a group or class of persons; anyone acting in the public interest; an association acting in the interests of its members.[114]

Similarly, the constitution of Kenya of 2010, under Article 22(1) and (2), recognises all multi-party procedures, including class action suits. The Constitution of India, on the other hand, specifically permits public interest actions under Articles 32 and 226. However, it does not explicitly recognise class actions. Generally, although recognising class actions under the constitution is important, this must be complemented by another

legal approach. For instance, where a particular jurisdiction has recognised class actions under the Constitution, this has to be followed by a specific legislation or a judicial decision detailing this procedure.

4.2.2 Specific act approach

Under this approach, a specific piece of legislation not only permits the institution of class actions but would also details the procedures for managing them. Having a comprehensive legislation articulating clearly the procedure for managing class actions is a better approach for many respects.[115] Mainly, according to Mulheron, an established class action statutory regime brings about a formally defined structure.[116] The USA is the best example of this approach. Rule 23(a) of the "US Federal Rules of Civil Procedure" provides for class actions. India has clarified class actions through its Civil Procedure Code (via 1976 Amendments), which interpreted the phrase 'numerous persons having the same interest', to mean that "it is not necessary that parties must have the same cause of action".[117]

Meanwhile, Nigeria gave formal recognition to class action through Order 9 Rule 4 of the Federal High Court Civil Procedure Rules 2009, Order 13 Rule 13 (1) of the Lagos State High Court Civil Procedure Rules 2012. Generally, application of representative actions is by virtue of Order 15 Rule 12, High Court of Lagos State (Civil Procedure Rules) 2019 which reads:

> (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued on behalf of or for the benefit of all persons so interested.
>
> (2) Where there are numerous persons having the same interest in one suit and they seek to defend the action, a judge may allow one or more such persons to defend the action on behalf of or for the benefit of all persons so interested.

However, immediately after this provision follows a separate provision on class actions under Order 15 Rule 13, which clearly differentiates a representative action from a class action. Order 15 rule 13 on 'representation of persons or class of persons in certain proceedings' reads:

> (1) The Judge may, if satisfied with any proceeding concerning
>
> a The administration of an estate;
>
> b Property subject to a trust;
>
> c Land held under customary law as family or customary property; or
>
> d The construction of a written instrument including a statute;
>
> i The person, class or members of the class interested cannot be ascertained or cannot readily be ascertained or if ascertained cannot be found,
>
> ii The person or the class and the members of the class can be ascertained and found but it is expedient that one or more persons be appointed to represent that person or class or some members of the class,
>
> make an order appointing one or more persons to represent such person, class or members of the class.

> (2) The decision of the Judge shall be binding on the person or class of persons so represented, and notice of the appointment made under this rule, including that all processes filed in court, shall be served on any person so appointed.

Generally, having a specific legislation providing for class actions has several advantages. To begin with, it provides a broad scope, thereby permitting class actions to be filed for almost every lawsuit that exists. In that respect, it has a trans-substantive scope in terms of subject matter to be adjudicated. This means class action proceedings can be permitted not only for bill of rights cases but can extend to non-bill of rights cases as well, such as consumer cases, labour disputes, tort cases, insurance cases, securities cases, antitrust/competition cases, and many others. Thus, class actions are used to enforce non-constitutional rights.[118]

On the question of who has standing to institute class action, a specific piece of legislation will normally make it clear that a representative of the class "need not be a member of the class and thus need not have a direct interest in the relief sought. Instead, he only needs to be a suitable person appointed to adequately represent the best interests of members of the class".[119] In this regard, these provisions envisage the possibility of interested parties, like associations, non-government organisations and civil society organisations, instituting and litigating cases. As stated in the Nigerian case of *Abraham Adesanya v. President of Federal Republic of Nigeria* "a suit known as class action is permitted when a litigant has only a minor personal interest but is acting for a large number of persons in a particular situation".[120]

On the question of who the class members are and how they should be determined, this differs depending on the jurisdiction. One scheme is mandatory with an opt-out class action scheme as in the USA, while others adopt opt-in and opt-out class actions.[121] In the opt-in scheme, "potential class members must expressly opt into the class proceedings by taking procedural steps in the time stipulated".[122] On becoming a member, the doctrine of *res judicata* applies in that "he will be bound by the outcome of the judgment on common issues, whether favourable or adverse".[123] In the mandatory and opt-out scheme, "persons who hold claims concerning questions of law or facts raised in class proceedings are bound as members by the judgment unless they take an affirmative step to indicate that they do not wish to be included in the action and resulting judgment".[124] This practice seeks to protect claimants from the "running of time prescribed by limitation of action laws".[125]

With regard to mandatory procedural requirements, the first and necessary preliminary procedural step is to seek the permission of the court to certify the process as a class action. In other words, the court must grant leave in order for the matter to proceed as a class action suit. The court will satisfy itself that there are common issues of fact or law necessitating a class action.[126] In the USA, a class action suit must have four basic ingredients, which are commonality, adequacy, numerosity and typicality.[127] Rule 23(a) of the "US Federal Rules of Civil Procedure" provides that the "prerequisites for a class action" are that:

> the class is so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the claims or defences of the representative parties are typical of the claims or defences of the class; and the representative parties will fairly and adequately protect the interests of the class.[128]

Concerning the remedies available in the class action and how damages should be determined, a class action is more flexible and expansive with regard to remedies, ranging from damages to equitable relief to injunctive relief, like anticipatory injunctive orders. Importantly, to determine the amount of damages under class action, the court may make an aggregate assessment or individual assessment. This means that the court may identify a certain amount for certain individuals only.[129]

All these details regarding scope, standing, how members are determined, remedies, mandatory procedural requirements of notice, opt-in or opt-out go a long way to determining the success or otherwise of a class action regime. These details are usually articulated under a specific legislation in order to bring about clarity and consistency.

4.2.3 Sectoral approach

A sector-specific approach involves having procedures that only make class actions applicable to claims originating from specific sectoral laws, such as those dealing with the protection of the environment and human rights, competition, or privacy. These laws only cover injuries incurred as a result of a failure to fulfil obligations under those laws.[130] Sometimes this approach is akin to having piecemeal laws permitting class actions for certain types of cases only, like those involving consumers. The sectoral approach is not ideal because it causes the fragmentation of procedural rules, meaning that they are found partly in civil procedural laws and partly in other laws.[131] While the main civil procedure law is silent, class action rules are provided under a specific sectoral law, like the Environmental Act in Tanzania. This approach leads to confusion and makes the procedure unclear and discriminatory.

4.2.4 Judicial approach

Under the judicial approach, it is the courts or the judiciary with their inherent power that pronounce class action procedures. For example, South Africa does not have a specific statute or court rules providing formal procedures for managing class actions. Instead, the judiciary there has filled that gap by pronouncing key requirements governing class actions.[132] These were pronounced in the case of *Trustees for the Time Being of the Children's Resource Centre Trust v. Pioneer Food (Pty) Ltd (Legal Resources Centre as Amicus Curiae)*.[133] According to this case, the following criteria must be considered in class actions in South Africa.

> There must be a class, identifiable by objective criteria. There must be a cause of action raising a triable issue. There must be issues of fact and/or law common to all the members of the class. The relief sought or damages claimed must flow from the cause of action and must be ascertainable and capable of determination. If the claim is for damages, there must be an appropriate procedure for allocating damages to the class members. The proposed representative must be suitable for being permitted to conduct the action and to represent the class. It must be shown that a class action is the most appropriate means of adjudicating the claims of the class members.[134]

However, these are not held to be jurisdictional facts and so are not meant to act as a precedent for accepting or refusing an "application for certification".[135] The presence of class actions has been advantageous to the South African community, because it has enabled mass claims pertaining to violations of human or environmental rights to be

litigated. For instance, in the case of *Bongani Nkala and 68 Others v. Harmony Gold Mining Company Limited and 31 Others*,[136] (also known as the *Silicosis litigation*),[137] class actions suits were litigated on behalf of local community, especially gold miners, who contracted an incurable silicosis disease, after inhaling silica dust from gold-bearing rocks. This case resulted in a landmark class action settlement for the claimants.[138] It shows that class action suits are an appropriate mechanism for obtaining an effective remedy and deterring future violations.

This paper holds the view that in order to have an efficient administration of justice and an effective right to remedy, multi-party procedures should be clearly articulated by an Act of Parliament and guaranteed under the Constitution. In this regard, this study advocates for a neo-institutional perspective, which is about having formal rules not only establishing the rights and obligations but also the procedures explaining how to access such rights. This will bring about certainty, efficiency and predictability in the way judicial officers like judges apply multi-party procedures.[139]

5 Conclusion and suggestions

This article submits that multi-party procedures in Tanzania, such as joinder, representative action and public interest action, are very limited due to the same interest requirement and cautious approach to *locus standi*. The paper submits that strict adherence to the same interest requirement prohibits interested parties, such as associations or human rights groups, from acting on behalf of people whose rights have been infringed and who might be unable to access the court because they cannot afford the litigation costs or they lack the requisite knowledge to enter into litigation concerning highly technical claims. For such people, it would be prudent to allow a group of citizens or non-governmental organisations to sue on their behalf. However, such organisations do not meet the same interest requirement because they do not have a direct interest in the case, but only a common interest in the environment along with other citizens.[140] Countries like South Africa, Nigeria, Kenya, the USA and India have respectively developed a framework to guide class actions through either a statutory regime or judicial framework, from which Tanzania might be able to learn the best approach to adopting class actions. This paper submits that the best approach to formally adopting class actions is through the Constitution, together with having formal rules under the civil procedure legislation. This complementary approach makes the class action procedure viable and clear.

Acknowledgements

The article is partly based on the researcher's PhD Thesis at the University of Dodoma entitled "An Examination of the Legal Framework on the Protection of the Rights of Communities Hosting Mining Investments in Tanzania".

Notes

1 Black, H.C. (1968) *Black's Law Dictionary*, 4th ed. rev., West Publishing Co., St. Paul, Minn, p.1603.

2 *Musoma Town Council vs Kassam* (1971) HCD n. 188; *Mansion House Ltd v. Wilkinson* (1945) EACA 98; Section 22 and order IV of Civil Procedure Code [Cap. 33 revised edition 2019].

3 ICLG (2021) *Canada: Class and Group Action Laws and Regulations 2021* [online] https://iclg.com/practice-areas/class-and-group-actions-laws-and-regulations/canada (accessed 18 June 2022).

4 *Agency Cargo International v. Eurafrican Bank (T) Ltd*, Civil Case No. 44 of 1998, High Court of Tanzania at Dar es Salaam, (Unreported).

5 *Omary Yusuph v. Albert Munuo*, Civil Appeal No. 12 of 2018, Court of Appeal of Tanzania at Dar es Salaam (Unreported), p.6 [online] https://tanzlii.org/tz/judgment/court-appeal-tanzania/2021/605 (accessed 21 January, 2023).

6 *Juma B. Kadala v. Laurent Mnkande* [1983] TLR 103.

7 *Massawe and Company v. Jashbai P. Patel & 18 others* [1998] TLR 445.

8 *Oilcom Tanzania Ltd v. Christopher Letson Mgalla*, Land Case No. 29 of 2015, High Court of Tanzania, at Mbeya, (unreported) at page 23-24; at https://tanzlii.org/tz/judgment/high-court-tanzania/2021/9471. (accessed 21 January, 2023).

9 *Suryakant D. Ramji v. Savings and Finance LTD and 3. Others* [2002] TLR 121 at 128.

10 *Juma B. Kadala v. Laurent Mnkande* [1983] TLR 103.

11 On the differences between a class action and a representative action, see *Olumide Babalola* (Representing himself and Users of Iphone 6 and Iphone 6 Plus in Nigeria in a class action) v. *Apple Inc.*, Appeal No. CA/L/1300/2017, Court of Appeal in Lagos Judicial Division (Judgment delivered on 6th December, 2019), p.17.

12 Jolowicz, J.A. (1980) 'Representative actions, class actions and damages: a compromise solution?', *The Cambridge Law Journal*, Vol. 39, No. 2, pp.237–239.

13 Hutchinson, D.W. (1983) 'Class actions: joinder or representational device?', *The Supreme Court Review*, Vol. 1983, pp.456–507.

14 Mulheron, R.P. (2004) *The Class Action in Common Law Legal Systems: A Comparative Perspective*, p.3, Hart Publishing, Oxford.

15 Pinna, A. (2008) 'Recognition and *Res Judicata* of US Class Action Judgments in European Legal Systems', *Erasmus Law Review*, Vol 1 No. 2, pp.31–61.

16 Ibid, p. 58.

17 European Law Institute (ELI) *Business and Human Rights: Access to Justice and Effective Remedies (with input from the EU Agency for Fundamental Rights, FRA)*, Report, p.29 [online] https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Business_and_Human_Rights.pdf.

18 Vibhute, K. and Aynalem, F. (2009) *Legal Research Methods: Teaching Material, Justice*, pp.69–71, Legal System Research Institute [online] http://chilot.wordpress.com (accessed 21 October, 2021).

19 Cases were accessed mainly via the online TANZLII (Tanzania Legal Information Institute) website which provides up-to-date cases. Reported cases were accessed via law reports.

20 Case laws were resorted to because the Tanzanian legal system is based on a common law system whereby the doctrine of precedence dictates that similar cases should be decided on similarly. Tanzania imported common law through Section 2(3) of the Judicature and Application of Laws Act Cap. 358. However, common law is only applicable where there is a gap and also based on the principle that similar statutes (parimateria) must be interpreted similarly. See *Oilcom Tanzania Ltd v. Christopher Letson Mgalla*, Land Case No. 29 of 2015, High Court of Tanzania, at Mbeya, (unreported) at page 6. This position was stated in

Tanzania Electric Supply Company (TANESCO) v. Independent Power Tanzania Limited (IPTL) and 2 Others [2000] TLR 324.

21 ICLG, *supra*, note 3.

22 Harvard Law Review (1961) 'Developments in the law: multiparty litigation in the federal courts', *Essays on Civil Procedure*, pp.879, 928, Harvard Law Review Association, Cambridge.

23 Black, supra note 1, p. 971.

24 Cap. 33 Revised Edition 2019 [Hereinafter referred to as the Civil Procedure Code].

25 CanLii (2021) *Joinder of Claims and Parties 2021: Rules of Civil Procedure Chapters, Parties and Joinder, Rule 5* [online] https://www.canlii.org/en/commentary/doc/2021CanLIIDocs1989#!fragment/zoupio-(accessed 9 February 2023).

26 (1959) E.A 214.

27 (1959) E.A 319.

28 Civil Appeal No. 45 of 2018 (unreported); [2019] TZCA 412 (06 November 2019).

29 Cap 5 R.E 2019.

30 Civil Appeal No. 373 of 2020, Court of Appeal at Mbeya (Unreported).

31 Civil Appeal, No. 136 of 2006 (unreported).

32 Land case No. 4 of 2021, High Court of Tanzania at Sumbawanga District Registry, Sumbawanga. (Unreported).

33 *Hemed Omary Lweishanga v. Tanzania Electric Supply Co. Limited*, Miscellaneous Land Application No. 83 of 2017, High Court of Tanzania, Mwanza District Registry.

34 Miscellaneous Land Application No. 101 of 2021 High Court of United Republic of Tanzania Mbeya District Registry at Mbeya [online] https://tanzlii.org/tz/judgment/high-court-tanzania/2021/9471 (accessed 1 February 2023).

35 *Conrad Berege v. Registrar of Cooperative Societies and the Attorney General* [1998] TLR 22.

36 *Ibid*.

37 Order 1 rule 2 of the Civil Procedure Code ; also see *Hamisi Salum Kizenga v. Moses Malaki Sewando and 18 Others*, Land Appeal no. 51 of 2019, in the High Court of the United Republic of Tanzania (Land Division) at Dar es Salaam at pp.8–9.

38 Judiciary of Tanzania (2019) *A Bench Book for Judges in Tanzania*, p.12, Judiciary of Tanzania with support of World Bank [online] https://www.judiciary.go.tz/web/index.php?r=useful-attachments%2Fbenchbooks, (accessed o8 February, 2023).

39 *Ibid*, p.13.

40 *K.J. Motors and 3 Others v. Richard Kishamba and Others*, Civ App No. 74 of 1999, High Court of Tanzania at Dar es Salaam (unreported) [online] https://tanzlii.org/tz/judgment/high-court-tanzania/1999/8 (accessed 22 January 2023). See also *Kirigiti Sasi v. Genkuru Village Manager & 6 others*, Misc Civ. App. No. 74 of 2003, High Court of Tanzania at Mwanza, (unreported); *Abdallah Mohamed Msakandeo & Others vs. The City Commission of Dar es Salaam* [1998] TLR 439; *Christopher Gasper and Others v. Tanzania Harbours Authority* [1997] TLR 301.

41 [1998] TLR 434; *Kiteria Menezes and 33 others v. Afra Engineering work Ltd and Others*, Civil Case 297 of 1997, High Court of Tanzania at Dar es Salaam [online] https://tanzlii.org/tz/judgment/court-appeal-tanzania/1998/6 (accessed 22 January 2023).

42 (1971) E.A 443.

43 Application No. 8 of 2010, Labour Division at Dar es Salaam, 02/02/2011. Case No. 4 Labour Court Digest 2011–2012.

44 South African Law Commission (1998) *The Recognition of Class Actions and Public Interest Actions in South African Law*, Project Report 88 (SALC Report) [online] http://www.law.wits.ac.za/salc/salc.html, (accessed 8 June 2021), p. 6.

45 *Ibid*, 23.

46 Public Law Team (2004) *Monetary Remedies in Public Law: A Discussion Paper*, Law Commission of UK, London [online] https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/04/Monetary_Remedies_Paper.pdf.

47 Section 202 (c) of the Environmental Management Act.

48 Civil case No. 316 of 2000, High Court of Tanzania at Dar es Salaam (unreported).

49 *Joseph D. Kessy and Others v. The City Council of Dares Salaam*, Civil Case No. 299 of 1988, High Court of Tanzania at Dar es Salaam, (Unreported).

50 *Festo Balegele & 749 Others v. Dar es Salaam City Council*, Civ Appeal No. 90 of 1991 (unreported).

51 South African Law Commission, *supra note* 44, pp.6, 23–24.

52 Public Law Team, *supra note* 46, p.4.

53 Janecek, V. (2020) 'Public interest damages', *Legal Studies*, Vol. 40 No. 4, pp.589–608, https://doi.org/10.1017/lst.2020.2.

54 *Ibid*, 6.

55 Alexander, J.C. *An Introduction to Class Action Procedure in the United States*, Debates over Group Litigaiton in Comparative Perspective, delivered at Geneva, 21–22 July 2000, p.2. Available at An introduction to Class Action Procedure in the United States | Class Actions Lab. (accessed 2 April 2023). Also see South African Law Commission, *supra* note 44, pp.6, 23–24.

56 See *Peter Ng'omango v. Gerson M.K. Mwangwa and the Attorney General*, Civil Case No. 22 of 1992 High Court, of Tanzania at Dar es Salaam (unreported).

57 The Law Reform Commission of Hong Kong (2012) *Class Actions*, p.11, Law Reform Commission report [online] http://www.hkreform.gov.hk (accessed 9 June 2021).

58 [1901] AC 1, 8.

59 *K.J. Motors*, *supra* note 40.

60 Lord MacNaughten famous statement in *Duke of Bedford v Ellis*, [1901] AC 1, 8.

61 South African Law Commission, *supra* note 44, pp.23–24.

62 Order 1 rule 2 of the Civil Procedure Code.

63 An Indian case of *Sampat Bai v. Madhu Singh* (A.I.R.) 1960.

64 Alphonce, *supra* note 30.

65 Johari, *supra* note 32.

66 Civil Appeal No. 12 of 2018, Court of Appeal in Tanzania at Dar es Salaam (Unreported).

67 [1996] TLR 203.

68 Onyango, O.J. (2015) 'Human rights and public interest litigation in east africa: a bird's eye view', *The George Washington International Law Review*, Vol. 47, p.19 [online] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3621124 (accessed 9 June 2021).

69 Ballonzi, *supra* note 67.

70 Mmadu, R.A. (2013) 'Judicial attitude to environmental litigation and access to environmental justice in Nigeria: lessons from Kiobel', *Journal of Sustainable Development Law and Policy*, Vol. 2, No. 1, p.161.

71 Ibid.

72 Ballonzi, *supra* note 67.

73 South African Law Commission, *supra* note 44, pp.23–24.

74 Sanchez, B., (2018) *Class Action Law Suits in South Africa*, Blog [online] https://lawfirmsinthenews.com/class-action-law-suits-in-south-africa/ (accessed 17 June 2019).

75 Ballonzi, supra note 67.

76 Albert, L.A. (1974) 'Standing to challenge administrative action: an inadequate surrogate for claim for relief', *The Yale Law Journal*, Vol. 83, No. 3, pp.425–497.

77 Act No. 3 of 2020.

78 Cap 3 of Revised Laws of Tanzania.

79 Shivji, I.G. *Tanzania abolishes Public Interest Litigation: A comment on the amendment of Basic Rights and Duties Enforcement Act* [online] https://muckrack.com/issa-shivji/articles (accessed 9 June 2021).

80 Albert, *supra* note 76, p.427.

81 Onyango, *supra* note 68, pp.11–14.

82 1984 TLR 15 (TZHC).

83 *Ibid*.

84 *National Agricultural and Food Corporation vs Mulbadaw Village Council and Others* [1985] TLR 88 (TZCA).

85 Civil Appeal No 53 of 1998, Court of Appeal of Tanzania at Arusha (unreported).

86 *Ibid*.

87 [1995] TLR 31.

88 [1966] EA 514.

89 The article states that "every person has the right to take legal action to ensure the protection of this constitution and the laws of the land".

90 Onyango, *supra* note 68, pp.18–19.

91 [2006] TLR 240.

92 Miscellaneous Civil Cause No. 90 of 1991, High Court of Tanzania at Dar es Salaam (Unreported).

93 Lugakingira, J., Civil Case No. 299 of 1988, High Court of Tanzania at Dar es Salaam, (Unreported).

94 Misc. Civil cause no. 24 of 20013, High Court of Tanzania at Dar es Salaam, (Unreported) [online] https://tanzlii.org/tz/judgment/high-court-tanzania/2014/1 (accessed 2 February 2023).

95 Onyango, *supra* note 68, pp.18–19.

96 *Amos v. Shell BPP.D.C. Ltd* (1974) 4 ECSLR 48.

97 *Ibid*.

98 Mmadu, *supra* note 70, at p.162.

99 United Nations (2011) *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*, United Nations Human Rights Office of the High Commissioner, New York and Geneva.

100 Principal 11, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" UN Doc A/RES/60/147 (21 March 2006).

101 Principles 2(b), 3(c), 11(a), 12, 19, UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc A/RES/60/147, 21 March 2006.

102 Committee on Economic, Social and Cultural Rights, General Comment 9: The domestic application of the Covenant, UN Doc E/C.12/1998/24, 3 December 1998, para 9.

103 African Commission on Human and People's Rights, *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*, Principle C(a) [online] http://www.achpr.org/instruments/fair-trial/ (accessed 9 June 2022).

104 Skinner, G., McCorquodale R. and De Schutter, O., (2013) 'The third pillar: access to judicial remedies for human rights violations by transnational business', *ICAR, CORE, ECCJ*, p.30.

105 Mulheron, *supra* note 14, at p 3.

106 Ibid.

107 Jolowicz, *supra* note 12, pp.237–239.

108 South African Law Commission, *supra* note 44, pp.12–14.

109 Broodryk, T. (2018) *Why South Africa Needs Formal Rules for Class Action Lawsuits* [online] https://theconversation.com/why-south-africa-needs-formal-rules-for-class-action-lawsuits-90702 (accessed 2 September 2021).

110 Section 202(c) of Environmental Management Act.

111 *Ibid*, Section 230(2)(j) and (s) which empower the Minister for environment to make regulations or rules for the purpose of effecting the right to compensation for those who suffer damages.

112 Scarchillo, G. (2022) *Class Action. Dalla Comparazione Giuridica alla Formazione del Giurista: Un Caleidoscopio per nuove Prospettive*, 2nd ed., pp.1–224, Torino, Giappichelli, ISBN: 978.88.921.222239.

113 European Law Institute (ELI), *supra* note 17, p.6.

114 Section 38 of the South African Constitution, 1996.

115 Gerald M.S. and Parring, R. (2019) *United States: The Difficulties of Class Action Claims in South Africa* [online] https://www.mondaq.com/unitedstates/class-actions/821906/the-difficulties-of-class-action-claims-in-south-africa (accessed 2 June 2022).

116 Mulheron, *supra* note 14, p.5.

117 Sharma, V. *Representative Suit under the Code of Civil Procedure, 1908* [online] https://www.legalserviceindia.com/legal/article-2393-representative-suit-under-the-code-of-civil-procedure-1908.html (accessed 3 December 2022).

118 The Law Reform Commission of Hong Kong, *supra* note 57, p.6.

119 South African Law Commission, *supra* note 44, pp.12–14.

120 (1981) 5 S.C 69.

121 Pace, N.M. (2007) *Class actions in the United States of America: an Overview of the Process and the Empirical Literature*, Report, pp.6–8, RAND Institute for Civil Justice, Santa Monica, California [online] https://www.classactionslab.ca/library/class-actions-in-the-united-states-of-america-an-overview-of-the-process-and-the-empirical-literature/.

122 The Law Reform Commission of Hong Kong, *supra* note 57, p.6.

123 Pinna, *supra* note 15, pp.31–61.

124 The Law Reform Commission of Hong Kong, *supra* note 57, p.6.

125 *Ibid*.

126 *Ibid*, pp.48, 56–59.

127 Dasani, N.N. (2006) 'Class actions and the interpretation of monetary damages under Federal Rule of Civil Procedure 23(b)(2)', *Fordham Law Review*, Vol. 75, p.167 [online] https://ir.lawnet.fordham.edu/flr/vol75/iss1/5.

128 Rule 23(a) of the 'US Federal Rules of Civil Procedure'.

129 South African Law Commission, *supra* note 44, pp.22–24.

130 European Law Institute (ELI), *supra* note 17, p.6.

131 Utz, C. (2021) *Class Actions in Australia – Frequently Asked Questions*, 6 July [online] https://www.claytonutz.com/knowledge/2021/july/class-actions-in-australia-frequently-asked-questions (accessed 4 February 2023).

132 Mojapelo DJP and Vally J. in *Bongani Nkala and 68 Others v. Harmony Gold Mining Company Limited and 31 Others*, Consolidated Case Number: 48226/12, High Court of South Africa Gauteng Local Division, para 238.

133 2013 1 All SA 648 (SCA).

134 *Ibid*.

135 Broodryk, T. (2017) *Developing a Structure for the Adjudication of Class Actions in South Africa*, pp.14–15, Doctor of Laws thesis, The Faculty of Law, Stellenbosch University [online] https://scholar.sun.ac.za (accessed 13 February 2022).

136 *Bongani Nkala and 68 Others*, *supra* note 132.

137 *Gold Miner Silicosis Litigation (re So. Africa)* [online] https://www.business-humanrights.org/en/latest-news/gold-miner-silicosis-litigation-re-so-africa/ (accessed 8 February 2023).

138 Reuters, *First Claimants Paid in South African Silicosis Settlement* [online] https://www.reuters.com/article/uk-safrica-mining-silicosis-idUSKCN2AU1FX (accessed 2 September 2021).

139 Reategui, R.M. et al. (2022) 'Efficiency and administrative regulation: the case of electoral systems in Peru and Ecuador', *Int. Journal of Public Law and Policy*, Vol. 8, No. 1, pp.17, 32–33.

140 Mqingwana, B. (2011) *An Analysis of Locus Standi in Public Interest Litigation with specific reference to environmental law; A Comparative Study between the Law of South Africa and the Law of the United States of America*, LLM thesis, Faculty of Law, University of Pretoria.