IN THE SUPERIOR COURT OF JUDICATURE

IN THE COURT OF APPEAL

ACCRA AD. 2023

CORAM:

H/L Justice Poku-Acheampong, JA (Presiding)

H/L Justice Adjei-Frimpong, J.A.

H/L Justice Dr. E.Owusu-Dapaah, J.A.

Suit No.:H1/88/2023

Date: 11th May, 2023

AUDIO VISUAL RIGHTS SOCIETY : PLAINTIFF/RESPONDENT

VRS

FIESTA ROYALE HOTEL : DEFENDANT/APPELLANT

J U D G M E N T

Adjei-Frimpong, J.A:

This suit raises an issue of some procedural law importance. In the main, it turns on a claimant having capacity to sue but losing such capacity after the action has been commenced. What should be the effect of such loss of capacity on the claim being pursued?

It is axiomatic that capacity to sue or locus standi is always a crucial matter in any civil suit when challenged. For a suit to be competent for adjudication by a court, there must be at least a competent Plaintiff and a competent Defendant in the sense that both were juristic persons with locus standi to sue and be sued. Where the existing Plaintiff or Defendant lacks competence, it renders the action incompetent regardless of the merits and the court is robbed of its requisite jurisdiction to determine the underlying claim.

That the Plaintiff/Respondent (herein 'Plaintiff') was clothed with capacity at the commencement of the instant action at the trial court became common ground. The Defendant/Appellant (herein 'Defendant') launched the challenge on the basis that the Plaintiff lost its capacity after the commencement of the suit and was disabled from pursuing the action. This contention did not find favour with the learned trial judge hence, this appeal.

The antecedent events unfolded this way. The Plaintiff, at the material time a company limited by guarantee claimed to be a Collective Management Organization (CMO)

mandated by law to collect on behalf of its members, royalties from commercial entities that publish, display and exhibit audiovisual works.

It alleged that the Defendant had published, displayed and exhibited audiovisual works within its hotel premises to enhance its business for which it was obliged to pay royalties in accordance with the Copyright Act, 2005 (Act 690). The default period was said to be from 2015—2021. The Plaintiff wrote to the Defendant in February 2021 to make a demand for payment. Without success, it proceeded to the trial court where its claim was simply couched as follows:

(a) *A declaration that Defendant owes the Plaintiff an amount of GHC 60,362.00 in default payment of Royalties for the period 2017—2021.*

(b) *An order directing the Defendant to pay immediately to Plaintiff an amount of GHC60,362.00.*

(c) *Interest on (b) till date of final payment.*

(d) *Costs of litigation.*

The point of substance contained in the Defendant's initial statement of defence was that it did not owe the royalties as claimed which position the Plaintiff resisted in a reply. Issues were therefore joined and set out in an application for directions. The Defendant subsequently obtained leave of the trial court to amend the statement of defence. Having successfully done so, he challenged the Plaintiff's capacity by introducing the following paragraph in the amended statement of defence:

> *"4. In further defence to the action, the Defendant avers that the Plaintiff had no valid certificate of approval from the Attorney General to operate as a collective management organization as of the date of commencement of this action."*

Not stopping at that, the Defendant launched a counterclaim against the Plaintiff to recover with interest, a sum of GHC 22, 908.00 which it had earlier paid to the Plaintiff, as it claimed, erroneously on the latter's pretension that it was operating as an approved Collective Management Organization. The Plaintiff resisted the counterclaim and maintained its position as a full legal entity and a duly certified Collective Management Organization. Subsequently, the Defendant filed a motion praying the trial court for an order to compel the Plaintiff to prove its capacity.

To us, the said application was simply inappropriate. By the successful amendment of the statement of defence in which the Plaintiff's capacity was challenged and the reply thereto, the issue arose on the pleadings for determination and the learned trial judge was to deal with it as he deemed appropriate without any application. Nonetheless, the trial judge proceeded to hear the application together with the application form directions. Although this approach, for the reason just stated was inexpedient, for what we consider a remedial step, an order was in the end made, setting down the point of capacity for a preliminary trial. The two intertwined issues on the point, were couched thus:

1. *Whether or not the Plaintiff has capacity to sue, and*

2. *Whether or not the Plaintiff has a valid certificate of approval to operate as a Collective Management Organization.*

At the direction of the trial judge, both sides filed written legal submissions to address the issues and the decision as indicated, went in favour of the Plaintiff. To state by way of highlights, the learned trial judge found that by the Plaintiff's certificate of incorporation in evidence as Exhibit AVR1, there was conclusive evidence of its due

incorporation in terms of Sections 14 and 15 of the Companies Act. The Plaintiff was therefore a legal person capable of suing and being sued.

The learned judge further found by the Plaintiff's Exhibit AVR3 and reference to Regulations 20, 21, 22 and 24 of the Copyright Regulations, 2010 (L.I 1962) that, it was issued with a Certificate of Approval as a Collective Management Organization by the Minister (Minister of Justice) on 3rd April 2017 for a period of five years to expire on 2nd April 2022. He held that since the Plaintiff's action was filed on 4th March 2022, it could not be said that the Plaintiff did not possess a valid Certificate of Approval at the time the action was instituted. He noted that in the action, the Plaintiff was recovering royalties for the period between 2015 and 2021 during which the Certificate was subsisting and the Plaintiff's right to bring the action, intact.

He also referred to a prayer in the Defendant's submission that the counterclaim for the refund be granted as the Plaintiff could not prove capacity and held on authority that, if the Plaintiff's action was to collapse for want of capacity, then the counterclaim must also collapse. He however ruled that both the claim and counterclaim were viable to be determined on merit.

The Defendant's appeal before us, dissatisfied with the foregoing findings and conclusions of the learned trial judge, are on the following grounds:

(i) *The learned High Court Judge erred in holding that the Plaintiff has capacity to pursue the action as a collective management organization (CMO) when its certificate of approval (Exhibit AVR3) expired on 2nd April 2022 during the pendency of the case.*

(ii) *The learned High Court judge erred in law when he relied on Exhibit AVR4: a letter addressed to the Copyright Administrator as evidence of Plaintiff's renewal application.*

Particulars

a. *By Regulations 21 and 22 of the Copyright Regulation, 2010 (L.I 1962) such application shall be made to the Attorney General.*

b. *No evidence exists on record that the statutory prescriptions of making such applications to the Attorney General has been delegated to the Copyright Administrator pursuant to Section 75 of the Copyright Act, 2005 (Act 690).*

c. *Exhibit AVR4 is a self-serving document of the Plaintiff with no evidence of actual submission to the Attorney General or actual submission to the named Copyright Administrator.*

d. *Regulation 22(4) of L.I 1962 is inapplicable to automatically renew the certificate of approval of the Plaintiff when no evidence exists as to the actual submission of Exhibit AVR4 to the Minister or its delegate.*

e. *Exhibit AVR4 is a document generated after the Defendant had challenged the capacity of the Plaintiff to 'prosecute' the action as a collective management organization without a valid certificate of approval.*

(iii) *The learned High Court Judge erred in holding that, if it dismissed the action, the Defendant's counterclaim cannot be pursued against the Plaintiff, whose incorporation status is different from its capacity to operate as a collective management organization.*

(iv) *The learned trial judge erred in conflating the Plaintiff's incorporation status to commence an action with the Plaintiff's lack of capacity to 'prosecute' a case as a collective management organization without a valid certificate of approval.*

(v) *The learned High Court judge erred in not averting his minds the [sic] Defendants exhibits attached to the motion filed on 04/10/2022.*

It is at once, right to dismiss the ground (v) above as incompetent. It is vague and does not disclose a reasonable ground of appeal. It is impermissible in terms of Rule 8(6) of C.I 19 (as amended). Without hesitation, we strike it out.

Grounds (i) and (ii) and (iv) by their generality, bear on the subject of capacity, the paramount issue of this appeal. For the sake of convenience, we propose to determine them together and thereafter touch on ground (iii) which relates more to the trial judge's decision on the effect the dismissal of the Plaintiff's action would have had on the Defendant's counterclaim.

Dealing with the grounds of appeal, we keep in mind what at the beginning of this discourse, we determined as the issue of primacy in this appeal; the loss of capacity during the pendency of an action and its effect on the claim being pursued. This translates into the loss of the Plaintiff's capacity after it filed the suit and its effect on the claim.

To begin with, we suppose it will pay to set out in some detail the regulatory regime governing the issuance of approval to operate a Collective Management Organization in this country.

Section 74 of the Copyright Act, 2010 (Act 690) empowers the Minister to make Regulations to give effect to the provisions of the Act. It was pursuant to this power that the Copyright Regulation, 2010 (L.I 1962) was passed.

Regulation 20 prohibits the operation of a Collective Management Society without approval. It provides:

> *"(1) A person shall not operate a Collective Administration Society without the approval of the Minister in writing.*
>
> *(2) Where a society operates in furtherance of copyright and related rights without approval, each member of the governing body of the society and every director, manager, secretary or similar officer of the society is deemed to have committed the offence and is liable on summary conviction to a fine of not more than one hundred and fifty penalty units or imprisonment to a term of not more than twelve months or to both."*

Regulation 21 provides for application for approval as follows:

> *"(1) An application for approval to operate as a society shall be made to the Minster in the form specified in the Fourth Schedule.*
>
> *(2) An application under sub regulation (1) shall be*
>
> *(a) signed by two principal officers of the society*

(b) accompanied with a certificate of registration of the society issued by the Registrar-General's office, and

(c) accompanied with a fee determined by the minister in consultation with the Minister for Finance

Regulation 22 on Grant of approval states:

1. *In furtherance of processing the application, the Minister may cause an audit or inspection of the applicant's records and facilities to be conducted for the purpose of verification.*
2. *The audit or inspection of the applicant's records and facilities shall be carried out within fourteen days after the receipt of the application.*
3. *The Minister shall---*
    a) *grant the approval and give notice of the grant in writing to the applicant if the minister is satisfied that the applicant has fulfilled the conditions for the grant of the application, or*
    b) *refuse to grant the approval and give notice of the refusal in writing to the applicant if the Minister is satisfied that the applicant has failed to fulfill the conditions for the grant of an approval.*
4. *The approval or refusal shall be communicated by the Minister within twenty-one days after the receipt of the application for approval.*

Regulation 23 on conditions for approval states:

The Minister shall not grant approval for a society to operate unless that society

a) *Is a body corporate registered as a company limited by guarantee under the Companies At, 1963 (Act 179)*

b) *If it is a music, audiovisual rights, performers rights or literary rights society, provides evidence of having functional presence in at least two regions as follows:*

c) *Keeps a national and regional register and provides evidence of these registers,*

d) *Provides evidence where*

   (i) *the society is a music rights or performers' rights society that it has at least twenty members in each of the regions in which it has a functional, or*

   (ii) *the society is a literary rights or audiovisuals rights, that it has at least fifty members at the national level,*

   (iii) *and each member has at least one published work or holds the entire economic rights on one published work.*

Regulation 24 which provides for Duration, Renewal and Revocation of approval states:

(1) *A grant of approval to a society is for a period of five years and is renewable every five years.*

(2) *An application for the renewal of an approval shall be subject to the same conditions as the first grant of approval under regulation 22.*

(3) *The Minister may suspend or revoke an approval if a society breaches any of the conditions for the grant of approval or any of the provisions of these Regulations.*

(4) Where a grant of approval is suspended, the Minister shall give notice in writing to the affected society and in the notice of the suspension, state the breach which has caused the suspension and specify the time within which the society shall remedy the breach.

(5) The Minister shall not revoke an approval unless

(a) Notice of the intended revocation has been served on the affected society at least fourteen days before the effective date of the revocation.

(b) The affected society has been given the opportunity to appear for a hearing to determine whether or not the approval of the affected society deserved to be revoked.

(6) The Minister shall cause to be published in the Gazette and in a newspaper which has a wide national circulation, notice of every suspension and revocation under this section.

(7) A society which continues to operate after its licence has been suspended or revoked commits an offence and is liable to the penalty under regulation 22(2).

As the learned trial judge found, the Plaintiff's approval to operate as a Collective Management Organization, Exhibit AVR3 which was granted for five years on 3rd April 2017 expired on 2nd April 2022. The approval is renewable upon an application under Regulation 24. Although, there is no provision as to when a renewal application may be presented, it is reasonable to suppose that an applicant would present the application in good time before the subsisting approval expires. A holder of an approval should not wait till the subsisting approval expires before an application is presented. This, we think is a matter of common sense and pragmatism. Waiting for the approval to expire before putting in renewal application could spell a doom to a society's authority to operate.

In our considered view, an expired approval means the authority to operate as a Collective Management Organization has lapsed and the organization or society is prohibited by law from operating. In terms of Regulation 20, a society is prohibited from operating without an approval. Not only is it prohibited, but operating without approval is criminalized. Additionally, by the provision in Regulation 24(2) which makes a renewal subject to the same conditions as a first application, the holder of an expired approval reverts to the status of a fresh applicant. There is authority to support this view.

In an analogous situation under the Electronic Communication Regulations, the Electronic Communication Tribunal in the case of ***GIBA VRS NATIONAL COMMUNICATIONS AUTHORITY, Suit No. ETC/APP/002/2017*** held of the status of an expired Authorization by the NCA to media houses to operate thus;

> *"When the Authorization expires, the former holder of it reverts to the same position as a fresh applicant for it…"*

This court in the case of the ***REPUBLIC VRS NATIONAL COMMUNICATIONS AUTHORITY, EX PARTE MULTIMEDIA GROUP LIMITED & ANOR, Suit No. H1/132/2020*** followed the decision in ***GIBA VRS NCA***. In the unreported decision of this court, I observed:

> *"Every Authorization has a duration, and by law, it expires at the end of it unless renewed. When it does expire, the applicant reverts to the position of a fresh applicant. We dare say that should be the position irrespective of the statutory formalities that precede the issuance of such licences or Authorizations. We uphold the Tribunal's position in GIBA VRS NCA as the proper legal position."*

In the instant case, the Plaintiff's renewal application, Exhibit AVR4 is dated 28th July 2022. This was almost four months after the subsisting approval Exhibit AVR3 had expired. We hold that upon the expiration of the subsisting approval on 2nd April 2022, the Plaintiff's authority to operate as a Collective Management Organization lapsed and it could not have lawfully operated as a society under the law.

As to whether the above had the effect of truncating the Plaintiff's claim or scuttling the action which had already commenced and was thus pending, is an issue we shall deal with in a short while.

In the meantime, there are a few issues concerning Exhibit AVR4 raised before us which we propose to deal with presently. Whereas the Plaintiff seeks shelter under the said document, the Defendant launches a scathing attack on it.

For the Plaintiff, Exhibit AVR4 should be accorded the value of having given rise to a constructive approval of the Minister in its favour. The sheet anchor of the argument is Regulation 22(4) which mandates the Minister to communicate its approval or refusal to approve within 21 days upon receipt of the application. According to the Plaintiff, in the event the Minister does not respond to the application within the time specified, a presumption of approval/constructive approval arises in favour of the applicant who submitted the application and has therefore done its part as far as the requirement for the renewal is concerned. Counsel for the Plaintiff relies on a definition from a legal blog *Lawinsider.com/dictionary* of constructive approval thus:

> *"…deemed approved by the failure of the granting authority to issue a decision or determination within the time prescribed".*

Contrariwise, the Defendant attacks Exhibit AVR4 on several fronts. In summation, it is contended, first, that contrary to the Regulations, the application was made to the

Copyright Administrator instead of the Minister when there is nothing to show that the power of the Minister has been delegated to the Copyright Administrator pursuant to Section 75 of the Copyright Act, (Act 690). Second, that Exhibit AVR4 is a self-serving document as there is nothing to show that it has indeed been presented at all. Thirdly and closely related to the above, Exhibit AVR4 was generated during the action and after the Defendant had challenged the Plaintiff's capacity to sue. Finally, that Exhibit AVR4 does not automatically renew the expired approval.

To start with, Regulation 21(1) is unambiguous that an application for approval to operate as a society shall be made to the Minister in the form specified in the Fourth Schedule and the Minister is to grant the approval based on the conditions set out under Regulation 23. There are other provisions in the Regulations assigning responsibilities to be discharged by the Minister just as other responsibilities are assigned to the Copyright Administrator by other provisions.

On our reading of the Regulations as a whole, there seems a clear distinction in the allocation of responsibilities between the Minister on one hand and the Copyright Administrator on the other. For instance, under Regulations 1, 2 and 3, the responsibility to receive application to register a copyright is vested in the office of the Copyright Administrator and the authority to issue a certificate of registration of a copyright is vested in the Copyright Administrator.

In other parts of the Regulations, where the Minister is to share the exercise of a particular responsibility with any person, the provision is clear. An instance is Regulation 5(1) where the Minister for purposes of designating and approving a security device to be affixed to sound recordings and audiovisual works is to act in

consultation with the Copyright Management Team established under Section 50 of the Act.

Given the separate and distinctive allocation of responsibilities in the Regulations, we are clear in our minds that the Copyright Administrator cannot assume the role of the Minister and vice versa unless there is provision in the Regulations or the Act to that effect.

It is instructive to note that, by the provision in Section 75 of the Act, it is clearly envisaged that when necessary, the Minister may delegate his/her function under the Act to the Copyright Administrator or any other public officer. Such a delegation of function is to be in writing. The Section states:

> *"The Minister may delegate any power of the Minister under this Act in writing to the Copyright Administrator or any other public officer."*

As pointed out by the Defendant, there is no evidence on record to show that the Minister has delegated his power concerning the grant of approval, in whole or in part under Regulations 20, 21 and 23 to the Copyright Administrator.

Indeed, that the Minister performs the responsibility concerning the grant of approval in person is amply evidenced by the contents of Exhibits AVR2 and AVR3. They depict the following:

> *"…CERTIFICATE OF APPROVAL OF COLLECTIVE MANAGEMENT ORGANIZATION"*
>
> *"I hereby certify that* ***Audiovisual Rights Society of Ghana (ARSOG)*** *having complied with the provisions of Regulations, 20,21 and 23 of the Copyright Regulations*

2910, L.I. 1962, is hereby given approval to operate as an Audiovisual Rights Collective Management Organization.

Given under my hand in Accra this …. Day of …. 20…

Signed……

Attorney-General and Minister for Justice."

On the whole we find sufficient factual and legal basis to accept the Defendant's argument that the submission of Exhibit AVR4 to the Copyright Administrator for purposes of renewal of the expired approval was unwarranted by the provisions of the Regulations.

The Defendant's contention also that Exhibit AVR4 is self-serving makes sense to us. As noted, Exhibit AVR4 is dated 28th July 2022. By then, the challenge to the Plaintiff's capacity contained in the amended defence dated 20th July 2022 which was founded on the allegation of expired certificate of approval had been launched. The Plaintiff's Exhibit AVR3 had expired as far back as 2nd April 2022. So, what could have prompted the writing of Exhibit AVR4 close to four months later if not for the challenge to capacity? In any event, what shows that Exhibit AVR4 has actually been presented assuming *arguendo* that the Copyright Administrator was the proper person to present the application to?

In the end, we reach the decision that, not satisfying the requirements in the Regulations for applying for renewal of approval, Exhibit AVR4 did not pass for any valid renewal application and was thus, far from carrying any effect of an approval to operate as a Collective Management Organization. In the result, the Plaintiff's *'constructive approval argument'* based on Regulation 22(4) collapses on the basis that by

its own showing, his supposed application in Exhibit AVR4 was sent to the Copyright Administrator and not the Minister as required by the Regulations. For the foregoing reasons we resolve ground (ii) in favour of defendant.

That said, what is the effect of the expiration of the approval on the pending action which was commenced at the time the Plaintiff had capacity and which is for a claim covering the period of 2015-2021 when the approval, Exhibit AVR3 was valid and subsisting?

The nub of the Defendant's argument is that because the Plaintiff's approval expired on 2nd April 2022, it ceased to have capacity as a Collective Management Organization to pursue the claim. Counsel's submission on this point is as follows:

> *"My Lords, a party's capacity to sue implicates that party's capacity to pursue the action to its logical conclusion. It is for this reason that the words 'sue' and 'pursue' are important in pending legal matters such as this. It follows that a party may have capacity at the commencement of an action, but when that capacity expires/lapses during the pendency of the action, that party loses its capacity to pursue the case to its logical conclusion."*

Reference is made to the case of ***KESSEKE AKOTO DUGBARTEY SAPPOR & 2 OTHERS VRS SOLOMON DUGBARTEY SAPPOR & 4 OTHERS [J4/46/2020]*** where the Supreme Court per Prof Mensa-Bonsu JSC observed:

> *"What is capacity? The Black's Law Dictionary defines 'capacity' or 'standing' as "A party's right to make a legal claim or seek judicial enforcement of a duty or right. Thus, one's ability to appear in Court to make a claim, hinges on whether one is recognized in law as having sufficient interest in any matter to seek a hearing on any particular issue.*

The sufficient interest must remain throughout the life of the case, or one's legal ability to stay connected with a case making its way through the Courts would be lost."

The Plaintiff's response to the above stands on two limbs. The first is that the Plaintiff was an incorporated legal entity which could sue and be sued, hence, the expiration of the approval did not take away the capacity to pursue the action to its logical conclusion. The second is that, at the time the action was commenced, the approval was valid and subsisted to cover the period for which the claim was being made (2015-2021), hence the action could be pursued notwithstanding the expiration of the approval on 2nd April 2022.

The first limb of the Plaintiff's argument does not find favour with us. It was not the legal personality of the Plaintiff as a corporate body that founded the action. It was the approval to operate as a Collective Management Organization that gave the Plaintiff the standing to sue. We think a distinction must here, be drawn between capacity and standing even though both are mostly used interchangeably. The legal personality of a corporate body is about its juristic persona which is conceptually different from its locus standi, or standing to pursue a particular claim founded on a peculiar legal interest.

In LUCA & ANOTHER VRS SAMIR AND OTHERS (J4/49/2020 [2021] GHASC 4, 21st April 2021, the distinction is expressed by the Supreme Court Per PWAMANG JSC relying on ***AKRONG VRS BULLEY (1965) GLR 469*** as follows:

"It is pertinent to recognize that though capacity and locus standi are closely related and in many instances arise together in cases in court, they are separate legal concepts. Capacity properly so called relates to the juristic persona and competence to sue in a court of law and it becomes an issue where an individual sues not in her own personal right but states a certain capacity on account of which she is proceeding in court. But

locus standing relates to the legal interest that a party claims in the subject matter of a suit in court. This may be dependent on the provisions of the statute that confers the right to sue such as the Fatal Accident Act in AKRONG VRS BULLEY…"

It will be seen from Regulation 23(a) that being a body corporate registered as a company limited by guarantee is one of the conditions the Minister shall consider to grant approval for a society to operate. It is after the approval has been granted that the society or organization can exercise its powers to enforce the rights of its members under Regulation 29. Regulation 29 which is on Powers and Rights of Societies provides:

"(1) A society approved under these regulations may on behalf of its members

(a) Receive royalties and other moneys which its members are entitled,

(b) Take measures that the society considers appropriate for the collection of royalties and any payments to which members of the society are entitled,

(c) Enforce the rights of its members by,

(i) Entering into contracts, and

(ii) Reviewing contracts in the works of its members,

(d) Either acting alone or with other appropriate institutions

(i) Seize works which infringe the rights of its members,

(ii) Cause the arrest of persons who infringe the rights of its members, and

(iii) Institute legal action against persons who infringe the rights of its member

(2) A society approved under these Regulations shall retain portions of money due its members as agreed by the members for the administration of the society."

Considering the provisions in Regulation 23(a) and 29(1), one should observe that it is the approval of the Minister that grants the locus standi and not being a corporate legal person. Corporate legal personality is one of the requirements to be met for the grant of the Ministerial approval. In other words, a society cannot exercise any of the powers and rights under Regulation 29 by merely being a corporate legal person. The approval which vests the statutory locus standi must first be obtained.

Perusing the decision of the learned trial judge, he seems to have been driven, at least in part, by the Plaintiff's corporate legal personality to reach the decision that the action could be pursued notwithstanding the expiration of Exhibit AVR3. It seems to us that, to the extent that, he relied on the corporate personality of the Plaintiff to sustain the action, the learned trial judge was in error. The Defendant's contention that the learned trial judge conflated the Plaintiff's incorporation status with its lack of capacity to prosecute the matter as a Collective Management Organization without approval has some merits and by that, ground (iv) also succeeds.

However, the second limb of the Plaintiff's response we think, finds sound basis in law. If one thing is clear about the passage of the learned Supreme Court Judge in the KESSEKE AKOTO DUGBARTEY SAPPOR case (supra), it is that one's ability to appear in Court to make a claim, hinges on whether one is recognized in law as having sufficient interest in any matter to seek a hearing on any particular issue.

Once a party in court is recognized in law as having sufficient interest or claim in a matter to be resolved by the court, the party has standing or locus standi and is entitled to pursue same. Whether or not the loss of the initial standing should truncate the claim

must depend upon the compass of the cause of action or the legal interest being pursued.

The passage in KESSEKE AKOTO DUGBARTEY is not understood to mean and does not make a rule that in every case that a party's capacity or standing is lost, the claim being pursued is automatically truncated. One implication of it is that, one's locus standi is linked with the cause of action being pursued.

A well-recognized principle dictates that locus standi or standing, is inextricably linked with cause of action since the cause of action ultimately defines the locus standi. By cause of action is meant the entire set of circumstances giving rise to an enforceable claim or the aggregates of facts which give rise to a right to sue. ***READ VRS BROWN (1888)22 QBD 128; LETANG VRS COOPER (1965)1 QB 222 at 242.***

The Learned Nigerian Writer on Civil Procedure, Fidelis Nwadialo, in his work *Civil Procedure in Nigeria* 2nd edition, page 43 notes thus;

> *"[Locus Standi]… is also linked with the cause of action because it is the cause of action that one has to examine to ascertain whether there is disclosed a locus standi."*

The cases cited by the author includes ***SENATOR ADESANYA VRS PRESIDENT OF NIGERIA (1981)2 N.W.L.R***. where Obaseki JSC is reported to have said;

> *"it is the cause of action that one has to examine to ascertain whether there is disclosed a locus standi or standing to sue."*

In another case ***BURAIMOH OLORIODE & ORS VRS SIMEON OYEBI & ORS (1984)5 SC 1,*** the same judge observed:

"When a party's standing to sue is in issue in a case, the question is whether the person whose standing is in issue is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable."

The American case of ***FLAST VRS COHEN 392 US 83 88 S.Ct. 1942*** was one of the cases relied upon by the Nigerian Supreme Court in the BURAIMOH OLORIODE case. The following statement from the opinion of Chief Justice Warren in FLAST VRS COHEN is instructive:

"The various rules of standing applied by federal courts have not been developed in the abstract. Rather, they have been fashioned with specific reference to the status asserted by the party whose standing is challenged and to the type of question he wishes to have adjudicated. We have noted that, in deciding the question of standing, it is not relevant that the substantive issues in the litigation might be non-justiciable. However, our decisions establish that, in ruling on standing, it is both appropriate and necessary to look to the substantive issues for another purpose, namely, to determine whether there is a logical nexus between the status asserted and the claim sought to be adjudicated."[Emphasis added]

If the facts of the instant case are placed within the context of the foregoing principle, then it becomes necessary to define the nexus between the Plaintiff's standing which was based on Exhibit AVR3 and the cause of action pursued which was for royalties for the period between 2015 and 2021. We note that exhibit AVR3 does not stand alone in this context. There is Exhibit AVR2 which was the Plaintiff's approval for the period between 2011 and 2016. In effect, the Plaintiff had approval of the Minister between 2011-2021 cumulatively. That clearly captures the 2015-2021 default period.

In our considered view, since the claim sought to be adjudicated covered the period when the Plaintiff's approval was valid and intact, the Plaintiff is perfectly entitled to pursue the action to its logical conclusion notwithstanding the loss of standing or capacity occasioned by the expiration of Exhibit AVR3. The situation would have been different and we would have taken a contrary view if the Plaintiff's claim was to recover royalties for the period beyond 2nd April 2022 when the approval expired and the standing was lost.

We come to this standpoint because by our appreciation of the principle, even where a party's locus standi is lost whilst an action is pending, it should be possible, indeed permissible for the party to pursue the matter to its logical conclusion so far as the cause of action or the legal interest being claimed falls within the compass of the party's standing. This is because in that case, there will be a nexus between the status or standing of the party and the claim sought to be adjudicated.

We are content to assume for purposes of this discourse that not going by this approach could potentially work injustice. For, if indeed, the Defendant is truly indebted, it would have illicitly benefitted from the works of the copyright owners without paying for them and succeeded in escaping liability by what we consider to be a technical argument. We deem it right, unless there is genuine reason to do otherwise, to take a course that will ensure that the merit of the matter is gone into.

For the foregoing analysis, we think the learned trial judge was right on his conclusion that the matter be pursued to its logical conclusion. Let it be added quickly that, this is not on the basis that the Plaintiff was a corporate legal person, but because of the nexus between Exhibits AVR 2 and AVR3 and the cause of action that spanned between 2015 -

2021. On this note, ground (i) fails which failure must result in the dismissal of the appeal.

The conclusion also implies that ground (iii) which was about the trial judge's decision on whether the counterclaim of the Defendant could be pursued if the Plaintiff's claim was dismissed turns moot and is struck out.

In effect, this court affirms the decision of the trial judge that the matter be tried on merits and to its logical conclusion. The appeal is accordingly dismissed.

Costs of GH¢6,000 to the Respondent.

(SGD)

RICHARD ADJEI-FRIMPONG

(JUSTICE OF THE COURT OF APPEAL)

(SGD)

I agree, **ALEX B. POKU-ACHEAMPONG**

(JUSTICE OF THE COURT OF APPEAL)

(SGD)

I also agree, **DR. ERNEST OWUSU-DAPAA**

(JUSTICE OF THE COURT OF APPEAL)

COUNSEL:

1. Regina Martin Peprah for Appellant.
2. Victor Lassey for Respondent.