LOCUS STANDI AS SEEN IN RELATION TO THE VARIOUS REMEDIES IN ADMINISTRATIVE LAW

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ABBREVIATIONS

LAW REPORTS

1. ALL E.R. - ALL ENGLAND REPORTS
2. A.C. - APPEAL CASES
3. CH.D - CHANCERY DIVISION
4. C.P. - CARRINGTON AND PYNE
5. D.L.R. - DOMINION LAW REPORTS
6. E.A. - EAST AFRICA LAW REPORTS
7. I. R. - IRISH REPORTS
8. K. B. - KINGS BENCH
9. LLOYD'S REP. - LLOYD'S REPORT
10. N.Z.L.R. - NEW ZEALAND LAW REPORTS
11. Q.B. - QUEENS BENCH
12. T.L.R. - TIME LAW REPORTS.
13. W.L.R. - WEEKLY LAW REPORTS

ARTICLES

1. HARV. L. REV - HARVARD LAW REVIEW
2. L.Q.R. - LAW QUARTERY REVIEW

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LOCUS STANDI AS SEEN IN RELATION TO THE VARIOUS REMEDIES IN ADMINISTRATIVE LAW:

INTRODUCTION

Administrative Law is rife with controversial topics such as the one on remedies, judicial review of administrative actions and Locus Standi as seen in relation to the various remedies in administrative law has been no exception. Locus Standi is very much linked with the remedies and as such cannot by itself form an area of discussion but a lot can be said when discussed along with the administrative law remedies.

Locus Standi simply means a "standing", a right to sue for a wrong done. The question revolves around the extent to which a person can be wronged so as to have this standing. In criminal cases the state can be said to have an inherent Locus Standi to sue a wrondoer. This is not so in administrative law. In order to get an injunction, certiorari, mandamus prohibition or a declaration, you must show that a right of yours has been infringed. A problem that has troubled most most Judges and scholars has been what they should regard as sufficient to constitute a right so as to be able to grant any of the remedies.

Inevitably therefore, my discussion on Locus standi will have to revolve around these remedies. I will first discuss the so called prerogative remedies of certiorari, mandamus and prohibition and their treatment of Locus standi. Injunction and declaration will then follow and will be treated likewise.

A study of this nature cannot be complete without an indepth analysis of the decided cases on this area of study. It is true that we derive our most

branches of law from English law e.g. Land Law principles of registration, Equitable Principles, Criminal law and even our law of Succession. It is therefore understandable if we deal with English decisions on this area of law and after that we focus our attention to East African cases. The future of Locus standi and suggestions for reform will terminate my discussion.

CHAPTER ONE

THE REMEDIES: A GENERAL SURVEY

Administrative law rests solely on the effectiveness of the remedies awarded to an aggrieved person. Unfortunately, these remedies are surrounded by technicalities and inconsistencies. These renders the award of these remedies more intricate than they ~~all~~ are meant to be. This discussion will attempt to portray these technicalities and inconsistencies that are prevalent in these remedies.

In this discussion no attempt will be made to link the remedies with Locus standi. The main idea is to grasp on understanding of the remedies and it is only where ~~all~~ it is unavoidable that Locus standi will be mentioned. The understanding of the remedies will better the understanding of the topic of locus standi and that is the main reason why I take the trouble of discussiong this much discussed topic of remedies.

In brief, there are remedies in private law that have permeated into public law. Such remedies include damages, injunctions and declaratory judgements. Besides these are the "prerogative" remedies of certiorari, Mandamus, prohibition and habeaus corpus.

In the letter category, the ones most used today are the first three while habeaus corpus (which was used by a higher tribunal to show cause why a certain person has been detained) has been almost discarded. Indeed, this is no wonder because it is the oldest common law remedy.

In a nutshell, certiorari calls a public authority to account for exceeding or abusing its power. Mandamus calls for a proper discharge of some public

duty and is available against ministers as well as other public authorities. It is therefore a very important remedy in administrative law. Prohibition prohibits an administrative authority from exceeding its jurisdiction.

These remedies have been described as the bulwark of Liberty but others see them as a hindrance to justice and its proper administration. K. C. Davis discusses the ancient rules surrounding them only as an "imaginary system cunningly designed for the evil purpose of thwarting justice and maximizing fruitless litigation."(1) He continues in the same article and in similar vehemence and hostility, "my own view is that either parliament or the law lords should throw the entire set into the river Thames heavily weighed with sinkers to prevent them from ever coming up again." Indeed no stronger words could be used with regard to these prerogative remedies. Davis is not alone in his disapproval of the many technicalities that abide in these remedies.

At this juncture it is imperative that I undertake to discuss isolated remedies but I will first of all focus my attention on what are usually called private law remedies that have found their way into administrative law. These remedies have been seen as "new and up-to-date machinery replacing the old pick and shovel methods"(2). It should here be mentioned that what Denning refers to as the old pick and shovel methods are the prerogative remedies and especially the technicalities surrounding them. In the private law remedies was seen a new and upcoming departure from the rigours of the prerogative remedies but on closer examination, it will be seen that even these remedies are also encumbered by their own peculiar technicalities.

The fact that ordinary remedies of injunction, damages and declaration also play a role in administrative law adds to the truism that this branch of law is not different from the other branches of law and can be enforced by ordinary courts. Many instances have arisen where damages have been awarded to an aggrieved person due to a government official's negligence or unlawful action. This shows that ordinary tort actions can be brought against officials of the government. A case in point here is COOPER-v-WANDSWORTH BOARD OF WORKS[3] When the local authority at Wandsworth demolished a building because the person who had built it had had not given the notice required by statute, they were held to have acted wrongly because, although the statute gave them a power of demolition, such a power could not be exercised without first giving the offender an opportunity to be heard in his own defence. Since damage had already been done, the owner simply brought an action for trespass against the local authority just like he would have done against any private person if that person had done unlawful damage to his property. He succeeded and damages were accorded accordingly. We realize here that the damage had already been done and the aggrieved party had no other alternative. He could not have taken recourse to the other remedies of administrative law and could not even have prayed for an injunction because the harm had already been done, thus the most appropriate remedy were damages and to them he wisely resorted.

Another important case illustrating the extent to which an aggrieved party can go to his claim for damages is RONCARELLI-v- DUPLESIS.[4] An action was brought against the prime minister of Quebec for directing cancellation of a liquor licence because the licencee supported the sect called Jehova's Witnesses which he was entitled to do. This had nothing to do with the licencing. The licensee was awarded damages for this wrongful cancellation

of his licence. However, the action for damages is uncertain and unsuitable for dealing with large classes of administrative acts. In practice, apart from isolated cases here and there it plays a relatively small role. Its importance however cannot be under-estimated. The negligence of government officials cannot be allowed and has to be curbed and an action for damages against the negligent official can act as a deterrent.

The injunction is another private law remedy. Basically, it is an order requiring some person to refrain from breaking the law by committing a tort or breach of contract. It is enforced by imprisonment or fine for contempt of court or by attachment of property.

I will not go into the intricacies of the various kinds of injunctions that is, interim and perpetual injunctions or mandatory injunctions (though I think this later to be of no great importance in administrative law because we have the prerogative remedy of mandamus). But to give instances where the injunction in general has been used to restrain an authority from committing a tort or the continuance of one.

The area where this character of the injunction has been most discernible is in the prevention or continuance of nuisances. A good case in point is the case of PRIDE OF DERBY AND DERBYSHIRE ANGLING ASSOCIATION LTD - v - BRITISH CELLANESE LTD.(5) Here, owners of fishing rights in a river brought an action against three separate bodies, an industrial company which was discharging chemicals and overheated water, the Derby corporation which was fouling the rivers with its sewage and the British electric Company which was overheating the water. The court accordingly issued injunctions to restrain the authorities from invading the private rights of the water fisheries. Indeed what is discernible here is that the courts will issue

an injuction even to a statutory body. If it infringes the rights of others without express authorization of the statute creating such body.

Lord Denning is unsympathetic with governmental authorities and activity will be stopped or slowed down if injuctions could issue to such bodies. In ENFIELD L. B.C. -V- BRADBURY(6), he was emphatic on the point that the courts should not listen to pleas of administrative inconveniences, "Even if chaos should result, still the laws should be obeyed."

The courts have also imposed another restriction on the injuction. It must not interfere with the process of parliament. If an injuction seeks to intervene to prevent a matter being brought before Paliament, then the courts will not encourage this.

A good case here is BILSTON CORPORATION -V- WOLVER HAMPTON CORPORATION(7) The wolverhampton corporation had contracted with the Bilston Corporation that it would not oppose any application to Parliament by the Bilston corporation for a local act of Parliament for obtaining a water-supply from any area outside the wolverhampton corporation's area. The Wolverhampton Corporation opposed such an application and were held to be in a breach of their contract. The count, however, refused to restrain them by an injunction, because that would have prevented Parliament from hearing all sides of the question in determining whether, as a matter of public policy, the Wolverhampton Corporation ought to be released from their obligation by statute. Indeed in this case where would the other party have gone for a remedy? We realise here the defects of these remedies. The court here has refused to grant the only remedy available. An observer therefore would be right if he said that the aggrieved party would not have any other remedy and therefore was remediless. This indeed is a flaw in the administration of justice.

Apart from the uses of the injuction we have seen where it is used by the individual against another individual or against a government department, it could also be used by the government under the instigation of the Attorney General, as a weapon against an individual or a private company to prevent the abuse of a statute. The Attorney-General representing the government department concerned, can ask the count for an injunction to prevent repeated contravention of a statute, or abuse of statutory rights by an offending person. It is therefore used as a sword by the government. In ATTORNEY GENERAL -V- BASTOW[8], the defendant had repeatedly broken the provisions of the town planning act by using his land as a site for caravans without permission and where he refused to pay fines and was eventually sentenced to imprisonment for the above, the local planning authority also moved the Attorney General to apply for an injunction to prohibit illegal use

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of the land and the injunction was granted. It was, in addition said that although the statute had provided for its own punishment, this did not fetter the Attorney General's discretion, as an administrative matter, to ask for an injunction either as an alternative to or in addition to the statutory penalties. This is a great help to the government.

Declaration is another private law remedy. Where parties are not very sure of what their Legal position is or their legal rights, they might ask the court to declare their respective rights before any harm is done to one of these two parties. This, can be seen is a very useful remedy. Despite its importance it is of recent origin. The courts had over a long period refused to declare the rights of parties where they would not give any other relief. It is a discretionary remedy and this is because the courts want to discourage busybodies and people without sufficient interest from suing over a case that will eventually lack any foundation.

If a court declares that a certain governmental action is ultra-vires, that concludes the matter between the offended and the offender, the plaintiff and the defendant. The fact that the courts declaration has portrayed the invalidity of the act will entitle the party aggrieved to get his property if it had been taken illegally. If an order had been made against him he can ignore it without any ill consequences.

A case that is considered as the landmark of delcarations and their operation was decided in 1910. This case is DYSON - v - ATTORNEY GENERAL[9]. Landowners were required to tender their annual returns to the inland Revenue officers showing the value of their land. This was a very improper

move and indeed the Inland Revenue officers were acting beyond their powers. A Landowner objected to the tendering of his returns and he instituted proceedings claiming that the officers were acting beyond their powers. The court made a declaration accordingly. He had taken the initiative and the court did not agree with the crown that the objector would have waited until he was sued for lack of compliance with the demands. Lord Justice Fletcher Moulton said, " so far from thinking that this action is open to objection on that score, I think that an action thus framed is the most convenient method of enabling the subject to test the justifiability of proceedings on the part of permanent officials purporting to act under statutory provisions. Such questions are growing more and more important, and I can think of no more suitable or adequate procedure for challenging the legality of such proceedings. It would be intolerable that millions of the public should have to choose between giving information to the Commissioners which they have no right to demand and incurring a severe penalty."

This remedy, as is evident from the above, is granted against the crown. This is an improvement of the injunction. Likewise, the declaration can be granted against crown servants." The only qualification here is that the action should be brought against the specific government department and there is no need of going through the Attorney-General. An important use of the declaration is the determination of Nationality. The case of ATTORNEY GENERAL - v- PRINCE OF HANOVER[10], The Prince wanted to establish his claim to British nationality during the reign of Queen Ann and he sought a declaration which was accordingly granted. He was declared to be a British citizen who could enjoy the priviledges and the immunities enjoyed by British citizens.

The declaration can also be sought and is usually granted where other authorities have by-passed their legal limits. Of course if it can be successfully be used against the crown we would be surprised if it was unavailable for other authorities. However, courts have not been prepared to grant a declaration where the relationship has been that of Master and servant or where it is merely contractual. The question in each case should be whether the public authority is acting as an ordinary employer, who has power to dismiss his employers subject to payment of damages for any breach of contract or whether it has only a statutory power of dismissal which is restricted by statute. We realize that it is in the latter case that declarations are very readily granted by the courts. In the case of PRICE -v- SUNDERLAND CORPORATION(11), a declaration was granted against the dismissal by the Sunderland Corporation of school teachers who had refused to collect money for pupils' meals, since the education act provided that teachers could not be required to act as collectors.

Like all the remedies, the declaration has its shortcomings and limits. Some of these are that a declaration merely declares and has no place where the damage has already been done. However, this is only useful where the action of the organ is Ultra-vires because that time it is stripped off all its legal force. There are instances therefore where it is not useful just to declare something as illegal. Where there is an error on the face of the record, the act is still intra-vires. If it is delcared that there is an error on the face, the legality still has not been affected and a party therefore cannot be helped. The only remedy that can quash such a decision is Certiorari.

Now we are in a position to delve into the "prerogative" remedies which I introduced earlier. A quick survey will be necessary to grasp the importance of these remedies, their shortcomings and their operation.

The old remedy of Habeaus Corpus must be given first priority. Essentially, it was used and can be used to test the validity of a person's imprisonment or detention. If the prisoner has been imprisoned by an administrative process that is ultra-vires the remedy is available to the prisoner to help him be free. It is a remedy therefore that emphasizes the importance of personal liberty. If a person has been imprisoned by a tribunal which did not adduce enough evidence to support its facts, then habeaus corpus will come in handy. The detaining authority must in all cases prove all the facts that justify the prisoner's imprisonment or the detainee's detention. It is a remedy that had played an important role in England where the Justices of the peace could order a lower tribunal to acquit a person who it had detained unnecessarily or without proper procedure.

The next writ in this line is prohibition which was used primarily to prohibit an inferior tribunal from continuing to exceed its jurisdiction. A government authority might have exceeded its jurisdication and an order for certiorari is prayed for by an aggrieved party. After the quashing of the decision by Certiorari as the case may be, prohibition comes in to prohibit the authority from further continuing exceeding its jurisdiction. It is discernible therefore that these two go hand in hand and are not very much unlike injunction and the declaration in their operation. After discussing Certiorari, we shall be in a better position to appreciate their similarities.

Like in all the other remedies dealt with, I will not go into the details of certiorari but because of its importance, it merits a little more discussion than the others. A line of cases have been decided which very clearly show the operation of certiorari and its various characteristics and shortcomings.

A decision might be intra-vires but there might be an error which is discernible on the record. Certiorari can quash such a decision not-withstanding that it is intra-vires and not ultra-vires. This shows us clearly that it can be used where other remedies for example prohibition cannot be used.

Now having seen these two prerogative remedies we must show how restricted they are in their operation. The most serious encumberance to the smooth operation of these remedies is the notion of "count" and "judicial". However, it should be realized that this controversy of "judicial" functions and what is not judicial emanated from the historical function of the remedies. In that early age, the chief organs of Local government were the Justices of the peace who had the sole duty of judicial administration together with their day to day administrative duties and general overseers in other constructive works such as bridge-building.

Maitland said this of them, "whatever the Justice has had to do, he has soon become the exercise of a jurisdiction, whether he was refusing a licence or sentencing a thief, this was the exercise of a jurisdiction, an application of the law in a particular case. Even if a discretionary power has allowed him, it was nonetheless to be exercised with a "judicial discretion". It was not expected of him that he should have any policy. Rather it was expected that he should not have any policy. This shows us the historical basis of the word "judicial" and "non-judicial."

The seriousness of the above can be realized from the fact that some people were denied relief simply because the tribunal was deemed not to be acting in a "judicial" manner. Administration therefore can be seen to have had a strong judicial origin.

However the courts have bypassed all these requirements because of the realization that continued insistance on the authority conforming strictly to judicial function could lead to an aggrieved person not being awarded a remedy he so much deserves and therefore injustice being done. It has now been established beyond any doubt that provided a body is determining the rights of persons it is acting in a Judicial capacity or ought to act Judicially. The classic statement in this regard was made by Judge Atkin in R -v- ELECTRICITY COMMISSIONERS[12] "Wherever any *body of persons having Legal authority to determine questions affecting* the rights of subjects, and having the duty to act judicially, act in excess of their duties and legal authority, they are subject to the controlling jurisdiction of the Kings bench .....". We realize here that Atkin's statement was unfortunate in that later Judges and academics looked at whether the authority in question was acting in this "Judicial" capacity and no wonder many aggrieved parties went without remedy after the decisions affecting their lives by tribunals were considered to be "non-judicial".

All this confusion about "administrative" and "judicial" acts were put to test in a case decided in 1964[13]. The case involved natural justice. The house of Lords stated that a chief constable could not be dismissed by the watch committee without being accorded a fair trial and hearing. Lord Reid stated; "Whenever there is Legal authority to

determine questions affecting the rights of subjects, which really means wherever there is power to make a decision or order, there is also "a duty to act judicially". The power and the duty go hand in hand. Lord Atkin might therefore have said, ... and accordingly having the duty to act judicially .....". This statement has indeed saved us a lot of problems.

Because of the procedural difficulties inherent before an aggrieved person is granted these prerogative remedies e.g. the one requiring that after six months have elapsed you cannot go to court and ask for certiorari, Lord Denning, characteristically, has said, "just as the pick and shovel is no longer suitable for the winning of coal, so the procedure of mandamus, certiorari and actions on the case are not suitable for the winning of freedom in the new age. They must be replaced by new and up-to-date machinery by declarations, injunctions and actions for negligence ..... . The courts must do this. Of all the tasks that lay ahead, this is the greatest."(14)

Mandamus is a prerogative remedy for compelling the performance of a duty. This duty should be public. It is supposed to be a command from the King or crown requiring that an authority perform its statutory duties. It is, like the rest, a discretionary remedy and the court can award it in suitable cases and refuse to grant it in others. It is like a mandatory injunction. Failure to comply with this order might lead to imprisonment.

Mandamus can be used by one public body against another. This was illustrated by the case of THE KING - v - POPLAR BOROUGH COUNCIL[15]. The council of Poplar in London on one occasion refused to pay their statutory contributions to the London county council for rates. The County council obtained a mandamus ordering the proper payments to be paid and moreover, when the payments were not forthcoming they obtained writs of attachment for imprisonment of the members of the Poplar Council who had disobeyed the mandamus. Apart therefore from being used by individuals against public authority it is useful as a vehicle towards the enforcement of performance of duties by a statutory authority towards another.

Mandamus has not had the encumberances encountered by certiorari and prohibition. It can be said to have an indiscriminate function which makes it far superior to the other remedies. Mandamus can be used to order an inferior tribunal to hear a case which it has refused to hear if it has jurisdiction. However, mandamus will not issue to a private arbitrator or to a tribunal voluntarily acting as arbitrator under a government contract. There must be the element of public duty as was illustrated by the case of R -v- INDUSTRIAL COURT[16].

Mandamus can be used side by side with certiorari as was the case in BOARD OF EDUCATION -v- RICE[17], where the decision of the board was quashed by certiorari since they had addressed themselves to the wrong questions. They were then ordered by mandamus to consider the right questions, and determine them according to law.

It might appear as if mandamus does not have limitations as far as its operation is concerned but one of its most serious disadvantages is that it cannot issue where the deciding body/authority has a descretion in the matter. The rationale of this is that this is a matter of power and not duty. It will not lie against the crown and it will not lie if parliament has provided some other remedy. This latter point was illustrated by the case of PASMORE -v- OSWALD TWISTLE (18). The owner of a paper mill tried to force the Local authority to build sewers adequate to the discharge of effluent from his mill. Under the public health act 1875 the local authority had the duty to provide such sewers as might be necessary for effectually draining their district. The act also had a provision to the effect that if a complaint was made to the local government board about failure to provide sewers, the board after duly enquiring into the case might order performance of the duty within a fixed time, and might enforce their order by mandamus, or else appoint some person to perform the duty. The scheme of enforcement was held to bar the right of a private person from seeking a mandamus on his own account, since the act implied that his right course was to complain to the board.

The afore-said shows that even mandamus is not wholesale in its operation. The rationale used for saying that mandamus cannot be used against the crown is that since the order of mandamus emanates from the crown, how then can the sovereign command itself to do something or to perform a duty? I consider this to be paving the way for misuse of power and a ready path for crown to be tempted to misuse power.

Hopefully, the discussion has provided the reader with an understanding of what these remedies are and their operation and defects. I could not, I regret provide a thorough discussion in this area because the purpose of my discussion is to introduce the problem of Locus standi which cannot be studied in isolation without an understanding of the remedies.

I am hoping that the curiosity aroused by this chapter will be fulfilled by my second chapter which will feature the remedies again but Restricted specifically to Locus standi. The following chapter should be seen as a continuation of the first. That is the only way that the difficult problem relating to locus standi and the remedies can be understood.

FOOTNOTES FOR CHAPTER ONE:

(1) Columbia Law Review (1966) v. 66 p. 635.

(2) Denning: Freedom under the law 1949 Edition.

(3) (1863) 14 C. B. (N.S) 180

(4) (1959) 16 D.L.R. (2nd) 689

(5) (1953) ch. 149

(6) (1961) 1 W.L.R. 1311

(7) (1942) ch. 391

(8) (1957) 1 Q. B 514

(9) (1911) 1 K. B 410

(10) (1957) A.C. 436

(11) (1956) 1 W.L.R. 1253

(12) (1924) 1 K.B 171 at 205

(13) RIDGE -v- BALDWIN (1964) AC 40.

(14) FREEDOM UNDER THE LAW: Page 126 1949 Edition.

(15) (1922) 1 K.B 72 at 95.

(16) (1965) 1 Q.B. 377

(17) *(1911) A.C. 179*

(18) U.D.C. (1898) A.C 387

CHAPTER TWO

ENGLISH DECISIONS ON "LOCUS STANDI": THE CONTROVERSY

The complexity and the controversy surrounding this area of administrative law is well illustrated by the decided cases. I will start with the "prerogative" remedy of certiorari. The leading authority on Locus standi in certiorari is R -v- SURREY JUSTICE.(1) In this case an inhabitant of the parish concerned, successfully applied to quash orders of the justices certifying that certain roads in the parish were no longer liable to be repaired at its expense. The learned judge said, "in other cases where the application is by the party grieved, ...we think that it ought to be treated.... as ex-debits justitiare; but where the applicant is not a party grieved (who substantially brings error to redress his private wrong) but comes forward as one of the general public having no particular interest in the matter, the court has a discretion and if it thinks that no good would be done to the public by quashing, it is not bound to grant it at the instance of such a person."(2)

The true position therefore could be that where the applicant is a stranger, it is entirely for the discretion of the court whether to grant relief to him, while if he is a "person aggrieved" then he is entitled to the prerogative order unless there are special factors which the court in its discretion may take into account to refuse him certiorari.

A "person aggrieved" indeed has been given very wide interpretation in some cases. This makes it easier for people who are remotedly concerned to be able to obtain a remedy. In R -v- GROOM EXPARTE COBBOLD[3] the divisional court granted certiorari on the application of brewers, trade rivals of the company to whom the justices had given a provisional licence. C.E. Jones for the applicant of the licence, argued that the brewers who owned public houses in the borough were rivals in trade and therefore had no interest in the particular house in respect of which the licence has been granted and, "persons aggrieved". However, the court was of the view that these brewers had an interest in the licence and a certiorari was issued accordingly to quash the decision of the licencsors.

D.C.M. YARDLEY[4] put it thus, "Could it be that, infact, there is no problem of Locus standi and that the distinction between a "person aggrieved" and a stranger to the suit applying for a certiorari is purely an artificial one created by the courts to express the truth which they have not realized themselves, namely that the whole question of whether or not a certiorari will issue is entirely within their own very wide discretion whoever may be the applicant?".

The distinction between an application by a party aggrieved and one who comes merely as a stranger to inform the court was discussed in ARTHUR -v- COMMISSIONER OF SEWERS where one of the judges said,"that a certiorari was not a writ of right, for if it was, it would never be denied to grant it, but it has often been denied by this court, who, upon consideration of the circumstances of cases, may deny it or grant it at discretion so that it is not always a writ or right.

It is true where a man is chosen in an office or place, by virtue whereof he has, a temporal right, and is deprived thereof by an inferior tribunal who proceed in a summary way. In such a case he is entitled to a certiorari because he has no other remedy being bound by the Judgement of the inferior judicature".

All said, the Attorney General on behalf of the crown has always has had the standing as a matter "of course" as far as certiorari is concerned. This was illustrated in the case of R -v- EATON[5] where it was said that the King has a right to remove proceedings by certiorari as a matter of course, but where a defendant makes an application of this sort, he must always lay a ground for it before the court.

However, this does not mean that it is a matter"of course" for the Attorney-General to be granted a certiorari to quash a decision of a lower tribunal. All it means (and this is important) is that he can ask the court to remove the venue of a trial from a lower court to a higher one. Like I have noted elsewhere, the former depedns on judicial discretion while the latter is a matter of course.

Regad must also be had to one case which depicts the view that a "stranger" has standing-in R -v- NEW BOROUGH[6], it was held that the grant of certiorari was discretionary and that it would be refused if its grant was futile. Certiorari here was sought by certain rate payers to quash an order of a County Treasurer under which payments had been made to special constables and which payments had been approved at a petty session. The court refused to grant the remedy on the grounds

that the quashing of the order would not benefit the applicants since the money was not recoverable. The Court ruled that certiorari was discretionary. We could say therefore that the rate payers here did not have an interest. The futility of granting an order of certiorari was also taken into account.

Lord Denning in R -v- THAMES MAGISTRATE COURT EX-PARTE GREENBAUM[7] said, "..... when application is made by a stranger, it (Court) considers whether the public interest demands its intervention. In either case, it is a matter which rests ultimately in the discretion of the court". All these cases derive their validity from the case of R -v- SURREY JUSTICES (Ante).

Some cases have decided that a person should have an interest to be accorded standing. One of the earliest cases on this point is R -v- NICHOLSON where residents in the neighbourhood of the premises for which a licence to operate a public house was granted, sought to have the grant quashed on the ground that no proper notice of the application for the licence was given as required by statute. Vaugham Williams, L. J. stated, "There has been a good deal of argument as to whether the prosectuors are persons aggrieved by what has been done. This is not a case in which any statute has said that the persons who apply for a writ should be persons who are aggrieved, but it is a case in which by practice of the courts it has always been insisted upon that the persons applying should be persons who are aggrieved"[8]. Lord Campell's words in R-v-DENBIGSHIRE[9] where he said that the courts "authority must only be exercised if we see that complainant has been substantially aggrieved" bear witness to the above.

The word "aggrieved" was defined in the case of R-v-DRUNRY[10]. Here, a rate payer was held to be an aggrieved person within the meaning of the statute which empowered any person aggrieved by any allowance, disallowance or surcharge by an auditor to apply for certiorari. The court said, "A rate payer is clearly aggrieved ..... he is not the less so because he shares his grievance with a certain class of rate payers. It cannot with any show of reason, be said that he or they are in the position of the general public. The general public are not aggrieved at all. It is the man and every one of the men whose interests were directly prejudiced that were aggrieved."

Generally therefore, though Surrey's case has been used to show that a stranger can be accorded standing it is true that in more cases than not a person must at least have an interest.

Like in Certiorari, so do we have different views when we look at Mandamus. One view is that, in order to be clothed with a title to ask for a mandamus, an applicant must show that the duty which is sought to be enforced is "owed to himself and not to the public at large."[11] It is necessary in order to appreciate the various meanings attached to the word "Legal right". This can only be done by examining the various cases which have dealt with this problem. A few cases will suffice.

In R- v -REGISTRAR OF TITLES EXPARTE MOSS[12] in which the registrar of titles had refused to register an unregistered transfer of land upon it being lodged by a mortgagee who had taken it as a security

for a mortgage and the mortgagee applied for mandamus to compel the registrar to perform his duty. The application was rejected on the ground that the mortgagee had no specific legal right at stake, but merely an equity as assignee from an unregistered transferee. The court rejected this argument and stated, "The force however of the expression "legal specific right, I think lies mainly in the specific nature of the right, and not in whether it would be enforced in a court of law or equity.... The right which the law gives the applicant is that of mortgagee in good faith and for value of the equitable interest in the property belonging to the holder of an unregistered transfer.... which comes within the term "Legal specific right" as I understand it."

This equitable right was distinguished from specific legal right" as enunciated in R-v- LEWISHAM UNION[13] where the court stated, "... the applicant in order to entitle himself to a mandamus, must first of all show he has a legal specific right to ask for the interference of the court ..... this court would be far exceeding its proper functions if it were to assume jurisdiction to enforce the performance by public bodies of all their statutory duties without requiring clear evidence that the person who sought its interference had a legal right to insist upon such performance."

In R-v- LORDS COMMISSIONERS OF THE TREASURY[14] where mandamus was sought to compel the respondents to issue a treasury minute authorizing the payment of a sum of money for a purpose for which monies had been appropriated to the crown and paid to the treasury, the court formulated the issue before it as whether it can be shown that in any way a duty is cast upon the lords of the treasury towards third persons, not merely a duty to the queen to advise, but a duty to third persons to issue this minute which it is the object of mandamus to make them issue. Here we

we realize that the Judiciary insisted that the duty must be owed to the applicant.

A line of cases is also discernible where the issue of Locus standi does not even arise because the question of standing is clear. In R-v-WATT EXPARTE SLADE an applicant for a licence who had complied with the statutory conditions prescribed, compliance with which rendered the grant of the licence mandatory, was held entitled to a mandamus to direct the licensing authority to perform its duty. In such cases the duty being enforced is correlative to individual rights and, rightfully, are most most vocal on the question of Locus standi. In such cases, the question arises as to who is competent enough among the general public to apply for mandamus to compel the performance of the duty. In such cases, since it is desirable that the failure to perform a public duty should not go unchecked the courts have conceded standing to any person who can show that he is prejudiced to a greater extent than the general public. R-v- MANCHESTER CORPORATION(15) is a case in point. Lord Alverstone stated that the applicant "having procured the insertion in the bill of a special clause for the protection of the general public, and through them of their own trade interests also, are in a superior position to that of a common informer".

In THE STATE -v- DUBLIN CORPORATION(16) the applicants based on their standing on the ground that the failure of the respondents to draft and submit a planning scheme after their resolution to embark on town planning was detrimental to their business. This was upheld by the court which stated, "All owners of property are in theory affected by

by the decision of the council to prepare and submit a planning scheme. It is clear however, that an individual owner would not be entitled to apply for mandamus. The prosecutors however, ... have shown that they have in fact been affected by the action taken by the corporation in the exercise of their powers of interim control and that they have suffered by the failure of the council to make and submit a planning scheme ..... The prosecutors have shown that they are prejudiced to an extent greater than other property owners in the planning district. In the view of this Court it has been shown that they have a sufficient interest to entitle them to apply for an order of Mandamus."

It is indeed without question that the controversy and uncertainty that surrounds Locus standi of an applicant for mandamus can be largely attributed to the many formulaes employed by the courts describing the nature of the interest required to support an application for mandamus.

However, it should be appreciated that in as much as words are used to create this great confusion one thing remains clear that there should be a "legal right". All the other terminologies of "special interest" special legal interest" are just but specifications and of course a stranger who does not have a duty to enforce or a right that has been intringed would not have locus standi to ask the court to grant mandamus.

The other "prerogative" remedy is prohibition. In WORTHINGTON -v- JEFFRIES (17) it was decided that where a superior court was clearly of opinion, both with reference to the facts and the law, that an inferior court was exceeding its jurisdiction, it was bound to grant

prohibition whether the applicant was the defendant below or a stranger. As with the case with certiorari, it may be suggested that anyone may apply for prohibition, but that its issue is within the discretion of the court, except where the crown applies, in which case it issues as a right.

The content of this remedy and that of certiorari is the same perhaps its worthwhile to summarize the prerogative remedies by asserting that if a complete stranger came to court and asked for one of the prerogative remedies or orders, the court would probably want to know why he, rather than someone else connected with the matter at issue was applying and it might even send him away. This is where the court's discretion becomes operative. It might indeed either decide to listen to him (~~but he must in the case~~) or send him away as it deems fit!

The injunction and the declaration have virtually the same rules with regard to Locus standi. The injunction is a remedy for the protection of private legal rights adapted rather than modelled for the control of illegal administrative action. There are severe limitations on a private individual's ability to employ it for the purpose of restraining the administration. The classic statement of the requirements a plaintiff has to satisfy is contained in the Judgement of Buckley J. In BOYCE -v- PADDINGTON B.C.[18] a plaintiff can sue without joining the AG in two instances:

1. Where the interference with the public right is such that his private rights have at the same time been interefered with .....
2. Where no private right is interfered with, but the plaintiff in respect of his public right, suffers special damage peculiar to himself from the interference with the public right.

Injunction have been granted in some cases to persons who appear to lack locus standi on a strict interpretation and formulation of the word. In BRADBURY -v- ENFIELD[19] an injunction was granted to restrain the implementation of a plan to reorganize schools on a comprehensive basis at the instance of nine plaintiffs eight of whom were rate payers, and one a limited company representing objectors to the scheme. Generally however, an injunction will lie only to protect private rights of the plaintiff or it may be claimed by a private individual if he has suffered special damage. In order to surmount these problems, the Attorney General may claim an injunction to secure compliance with the law at the relation of a private individual.

One of the earliest uses of the injunctions in public law was to restrain the commission of or continuance of a public nuisance. Excess of power by public bodies such as corporations has been properly restrained by injunctions. The public has an interest in the proper discharge by public organs of their statutory powers, ~~for~~ breach of which the Attorney General may properly sue on its behalf. Where the guardians of the poor have made payments out of rate funds to persons not entitled to the relief, an injunction has issued to restrain the payment forthwith[20].

The public has also got an interest in the observance of duties imposed on persons for the benefit of the public since the corollary to the imposition of such duties is the conferment of corresponding rights on the public. The courts have granted injunctions in innumerable cases at the instance of the Attorney General to restrain infractions of statutes and by-laws. It has been asserted, "It is for the Attorney General to determine whether he should commence litigation, but it is for the courts to determine what the result of the litigation should be."[21]

Private individuals can bring an action for injunction without involving the aid of the Attorney General. This usually occurs where there is a statutory right vested in the plaintiff which has been invaded. This invasion constitutes an invasion of a private right which would result to special damages being granted to the plaintiff. The locus classicus of this is the case of BOYCE -v- PADDINGTON BOROUGH COUNCIL[22]. Most of these cases concern torts committed by - statutory body against a private individual's property.

Injunctions have been granted to restrain acts of the administration although such acts were not redressible by an action for damages. In STATE OF TRIPURA -v- PROVINCE OF EAST BENGAL[23] an injunction was sought to restrain the issue of a notice of assessment by an income tax officer on the ground that the statute was invalid. The issue here was whether this constituted "an actionable wrong" which could be restrained by an injunction. An injunction was accordingly granted the court holding that an act may be tortious if no damages ere grantable, and yet be actionable in the sense that it is illegal and hence amenable to an injunction.

It must be realized that an injunction, being a private law remedy and aquitable as such is is of course subject to all the qualifications inherent in equitable remedies e.g. A plaintiff must come with clean hands.. etc. It is therefore discretionary.

So far my discussion on the injunction has not dealt with what is called 'actual damage test' or the 'pecuniary loss test' in the granting of injunction. This I hope to do now in not so many words. Whenever a public right is violated, there is the damage that accrues to the cummunity

at large. However, the plaintiff might sustain some special damage which is more acute than that obtaining to the other members of the community. This is defined as actual damage or damage involving pecuniary loss to an individual. The actual pecuniary loss as opposed to that accruing to the other members of the community will form the gist of the private action. According to this test any person who sustains actual injury measurable in terms of money has the locus standi to sue in respect of public nuisance like obstruction

The 'pecuniary loss test' has it that whether a person has sustained particular damage depends on whether he has suffered some new kind of injury, however, slight not shared in common with the public, and the only basis for determining whether a new kind of injury has been sustained is the incurrence of pecuniary loss. Most of the cases where an individual has locus standi to commence a case for an injunction fall within this test.

This pecuniary loss test has certain disadvantages leading to the already overwhelming confusion on locus standi. It has been said that it is too narrow in operation as it ignores those cases where the courts have characterized damage different in degree from that of the general public as special damage and where no precuniary loss was involved. The case of CHICHESTER -v- LETHBRIDGE[24] illustrates this point. It was held in this case that the obstruction of a carriage on a highway, where continued and deliberate, and where the defendant resisted attempts by the plaintiff to remove the obstruction, gave rise to particular damage and an injunction accordingly awarded. What is contrary to the "pecuniary loss test"in this case is that the plaintiff's passage was not interfered with in the course of his business and hence the injury he sustained was no different from that sustained by other highway users.

The courts have consistantly denied trade rivals standing to restrain public bodies from exceeding their statutory powers on the grounds that financial loss resulting from illegal competition is merely damnum sine injuria. Rate payers have also been denied standing as que rate payers. In the case of COLLINS -v- LOWER HUY CITY CORPORATION(25) where two rate payers were denied standing to challenge the validity of a flouridation scheme embarked on by the defendant corporation. The court held, "what the plaintiffs are in fact here assertingis not the infringement of a private right to obtain a supply of pure water, but a right, if it exists, common to all ratepayers in the lower Hutt District. Any wrongfull affection is not peculiar to the plaintiffs themselves, but in common, if it is an affection, to all rate payers receiving the supply of flouridated water". of course where a person has been given standing by statute then the courts likewise have to accord him locus standi.

So far I have discussed the remedies of certiorari, mandamus injunction and I do not propose to discuss the remedies of declaration or statutory remedies. The reason for this is that what obtains to injunction almost wholly obtains to the declaration as far as Locus standi is concerned. The chapter has tried to be as precise and specific as possible. A lengthy discussion of the various contradicting cases in case of injunctions cannot be possible in a work of this length and scope but hopefully the landmarks of the requirements of a plaintiff who seeks an injunction or the prerogative remedies have been successfully hit.

CHAPTER THREE

"LOCUS STANDI": THE EAST AFRICAN EXPERIENCE

The two Chapters have hopefully enlightened the reader on the intricacies prevalent in the subject of Locus Standi and it is no accident that East Africa has had no better luck. The line of cases in East Africa dealing with the various remedies in Administrative Law don't deal specifically with the question of Locus Standi as such. By that I mean that a plaintiff is usually an aggrieved party although again degrees of "being aggrieved" vary. It is therefore unfortunate that we don't get very clear cases dealing with Locus Standi in East Africa but this can be traced back to the late development of this area of law in East Africa.

Administrative law in England and Britain generally did not develop as early as the other branches of law e.g. Criminal Law, Family Law, Law of Evidence. This is because the development of Administrative Law can only come about where we have large Governmental organisations, tribunals or parastatal bodies that interact and affect the lives of individuals and groups. It is during the time of industrial revolution that the Government started encroaching into the lives of the populance. Pollution Legislation and traffic, communication legislation required that bodies should be formed in England to deal with these matters. It is inevitably meant that the seclusion in which an individual had lived over the ages was being shattered by direct governmental intrusion. It was therefore, necessary to have a body of Law that would provide for relief against unfair use of this power vested in these authorities. This necessitated the need of what today is referred to as Administrative Law.

East Africa, always a recipient of Law during the early year of 19th Century cannot be said to have had an Administrative law before the colonialists came. This trend continued even after a long time of their stay here. Its administrative law developed slowly over the colonial period with the introduction of the Colonial Administrative Machinery and Capitalist economy. The East African Railways and harbours, the Liquor Licensing Boards, the administrative tribunals (in the Colonial period we had native tribunals to look into native affairs).

With the advent of independence, the East African countries started off with the Westminister model of constitution which meant therefore East Africa was to be governed in the English way. The administrative bodies were theref ore, more or less similar to those in England although they were fewer in their composition and of course limited in their operation this being an area where social, economic and political development was still in its embryonic stages.

If therefore, Lord Reid could say that England did not have a developed system of administrative law in 1964, what can be said of East Africa which borrowed its administrative law from the former? This question of course leads us to the conclusion that although we have had in our courts decisions dealing with Administrative Law and specifically the remedies, a full discussion of any one particular topic has not been witnessed and its no wonder therefore that Locus Standi or the element of standing in the granting of adminiinistrative law remedies-in East African Courtrooms has not had a heyday. East African Administrative law is developing and we inevitably will be able to have full discussions on this topic of law in our courts like they have done in England and else where.

This area of law shall have to be developed by case law because there is not much in legislative enactments on this area of Locus Standi. There is a possibility th at the legislature did not envisage situation in future which might require a definition of what "standing" really is and avoid using the ambinguous term of "aggrieved" as the English decisions have already shown.

One of the cases that touch on the standing of the Attorney-General was the case of THE ATTORNEY GENERAL OF KENYA - V - BLOCK AND ANOTHER.(1) In this case the Attorney General of Kenya appealed against a decision by the supreme court dismissing with costs a claim against the respondents for an order that the defendants do and each of them does forthwith maintain the roads on certain land in Nairobi to the satisfaction of the Nairobi City Council, Counsel for the respondents argued, as in the court below, that the Attorney General did not have Locus Standi and no effective cause of action. Sir Kenneth O'Connor P. asserted, "The Result seems to be that while the court has no right to question the AG's decision to sue, or to sue for mandatory injuction in preference to persuing other remedies -------- it retains its discretion to grant or refuse the injunction asked for and must still have regard to the matters to which it usually has regard in considering whether or not it will grant the type of relief".(2)

It can be mentioned from that assertion of O'Connor, P. therefore, that the Attorney General just like in the other English decisions has standing where he finds that the lower court has not justly disposed off the case. The AG as the public prosecutor, has an interest bestowed on him by the public to make sure that no wrong decision is reached by the courts.

He can therefore always appeal. Arguments as to whether he is a party to the case in court are disheartening as he has an overwhelming interest to see that non who is guilty shall go unpunished and non who is innocent shall be punished.

The question of interest as establishing standing for a plaintiff has also taken root in East Africa. The problem here is that there has not been a case that has conveniently defined the limits of this interest and the writer is of the opinion that this vague situation only proliferates the problems surrounding the question of Locus standi.

In the case of HAJI YUSUFU MUTENDA AND OTHERS -v- HAJI ZAKALIYA AND OTHERS[3], interest was mentioned. The plaintiff here claimed a mandamus to command the defendants, who were the registered trustees of an association, known as the African Muslim Community to convene a general meeting (extraordinary) of this association was granted a certificate of registration as a corporate body under the trustees (in-corporation) ordinance, 1939 and this ordinance imposed a duty on the defendants to carry out the trust according to the conditions and directions inserted in the certificate of registration including compliance with the rules of the Association. The defendants stated in their defence that they had complied with the rules of the association and that it was and always had been managed in compliance therewith. They further stated that as the plaintiff had failed to avail themselves of the remedy contained in the rules of the association, the remedy of mandamus did not lie. The court held inter-alia, "in cases where there is a duty of a public or quasi public nature or duty imposed by statute, in the fulfillment of which some other person has an interest, the court has jurisdiction to grant a mandamus to compel fulfillment."

What I was interested in here is the vagueness of the term "interest." Indeed we realize that the court would have gone further and said to what extent this interest should be, otherwise in the situation we would be left wondering whether even a creditorof the said company could have standing to bring the matter to court praying for the remedy of mandamus for the enforcement of the said duty to a general meeting because, he too had/has an interest thereof.

Perhaps a case that could enlighten us on what kind of interest is required in order to get the remedies from the courts would be opportune to look at the case of MATALANGARO AND OTHERS -v- AG[4]. The plaintiffs, as representatives of an incorporated association sued the defendant for a declaration that certain government employees must be treated equally on the grounds that they were being discriminated against, and for an order that the directors of personnel review and rectify salary structures. The defendant applied to strike out the plaint on the grounds that the claim for a declaration was not justifiable and that the order applied for was in effect a mandatory injunction. The court held that before a declaration can be granted there must be a real and not a theoretical question in which the person raising it must have a Real interest and there must be someone with a present interest in opposing it. Mandatory injunction cannot issue against a government official and therefore cannot be made against the defendants.

Here again my focus is on the word interest. Clearly, we realize that the people who had sued the defendants in this case were representatives of the incorporated Corporation. We are not told what type of

representatives they were but hopefully, people who were used to be representatives of the mentioned corporation. This case brings an all important issue as to whether a representative or an agent of a corporation or any other body for that matter including a human being has the standing to sue on behalf of the principle. Here apparently, he does'nt as this case portrays. We are again left wondering what kind of interest a person should have so as to be said to have Locus standi to bring a case to court. For a Declaration to be granted there must be 'real' interest as this case shows. What I understand by this is that the interest must be directly affecting the party sueing.

Infact most of the decided cases in this area of the law have been clear cut cases where the applicant for a remedy has an interest in the matter at hand and therefore disturbing questions of Locus standi do nor arise or have not as yet arisen. In SHAH -v- A.G. OF UGANDA[5]. The applicant had obtained judgement against the government for Sh. 67,000/= interest and costs. The government failed to pay, and the applicant then brought the motion for an order of mandamus directed to the officials responsible for making payment, to pay an amount of the Judgement. Mandamus was accordingly issued to the Treasury officer of accounts to compel him to carry out the statutory duty to pay. This case was clear because of course the applicant was an aggrieved party who had Real interest in the proceedings of the case. I can envisage the kind of problems that would ensue if the applicant had directed one of his partners in business to sue and claim the money from the treasury official in charge of accounts. On failing to get the money could he have had the Locus standi to sue and ask for a mandamus to compel the performance of the duty thereof? This is an area of law that has not been exploredmuch in East AFrica but

according to the authority of MATALANGARO AND OTHERS -v- A.G. (Ibid) it would appear that if this could be the case for declarations it is difficult to imagine why it should also not be the case in mandamus. If that is so therefore great injustice could be accassioned.

Where a court has no jurisdiction to try a case then prohibition can be issued. The person asking for this remedy must definitely be an aggrieved party and not any otherbusybody who thinks that because the person unfairly tried has been his friend, he should ask for this remedy. However where a person has been adversely affected by the decision he can be awarded the remedy as a matter of Right. In the case of MASAKA DISTRICT GROWERS CO-OPERATIVE UNION -v- MUMPIWAKOMA GROWERS SOCIETY LTD AND FOUR OTHERS[6] it was held that prohibition is a discretionary remedy and the court may interpose, by reason of the conduct of the party or if there is a doubt in fact or law whether the inferior tribunal was acting without Jurisdiction; and there was such a doubt in this case. On appeal the court also held that the appellant was entitled to an order of prohibition as of right as there was patent lack of jurisdiction. Here the applicant has Locus standi and in the absence of any other factor that might disable him from being granted a remedy, he must get it.

In cases where Certiorari has been asked for questions of standing as such do not arise as most of the parties involved have an interest or parties to the suit. In RE an application by the GENERAL MANAGER OF THE EAST AFRICAN RAILWAYS AND HARBOURS ADMINISTRATION[7] the General Manager of the East African Railways and Harbours administration objected to an award by the Industrial Court to the employees of the said organisation claiming that administration did not have Legal Peasonality

and that the authority should have been the proper party. He wanted the order of the Industrial Court quashed but the court said inter-alia that he was a proper party and was bound by the award of the Industrial Court. The order to quash was therefore refused. What was of interest here is that the court directed us to another aspect of Locus standi. A person cannot simply sue another for the sake of sueing. It must be established that the party being sued must have done something infringing on the others rights. Could we not therefore assert strongly that the fact that you have infringed another's right or have failed to perform a duty renders you capable of being sued gives you the Locus standi or the standing for that matter? Here the General Manager could be sued because he was a party involved and he could therefore not be granted Certiorari to quash the order of the Industrial Court.

Like I have already pointed out, East Africa does not offer very good examples of the intricate nature of Locus standi. The elements of "interest", "aggrieved", "substantial harm" are absent in our law reports. What is clear however is the fact that all those parties who have been granted Certiorari, Mandamus injunction, declaration are parties that can be said to be aggrieved in the real meaning of the term. Where a party is far removed from the matters leading to the litigation, then in more cases than not, he is not granted a remedy. All that can be said is that this is brought about by lack of complete development in our administrative law and also our administrative process. Our Industrial and Legal institutions are still in their infant stages and I submit that there are times in future when the courts will be forced by the complications and complexities in legal and social relationships to discuss and direct

direct their minds to the question of Locus standi and all the fine distinctions between "aggrieved" party, a party with "substantial" interest, a party with "real"interest or one who is harmed. That time we shall have reached the position in Britain.

CONCLUSION AND SUGGESTIONS

L. Jaffe has termed the rules governing standing as comprising "a hodge-podge of special instances and contradictions."[8] This is true. In BOYCE -v- PADDINGTON BOROUGH COUNCIL[9], despite the well-established proposition that a private individual may sue to restrain illegal government action if his private right is infringed or alternatively if he has sustained special damage, a proposition extended to the declaration by the house of Lords in LONDON PASSENGER TRANSPORT BOARD -v- MOSCROP[10], cases are numerous in which courts have denied standing because a plaintiff has failed to make out a legal right or a cause of action eg. the declaration case of WILSON, WALTON INTERNATIONAL -v- TEES PORT AUTHORITY.[11]

In mandamus cases, where the standing test has been framed to require proof of a "specific Legal right", it has been discovered that an interest falling short of a legal right has often been held adequate to vest a mandamus applicant with standing as illustrated by the case of R -v- RUSSEL, EXPARTE BEAVERBROOK NEWSPAPERS LTD.[12]

On examination of the cases, I submit that the "stranger" in prohibition and certiorari was a person who was not a party to the litigation but all the same was affected in some way. The cases that tend to show that a "stranger" should be granted standing should be viewed with great caution.

It should be realized that prohibition and certiorari were originally writs which issued to prevent the usumpation of the royal prerogative and hence the courts were generally more inclined to their award, while they might have been more reluctant to issue mandamus to compel the performance of a duty. This, however has changed over the years and the development of administrative law has led to both prohibition and certiorari moving from their historical function as protectors of the Royal prerogative towards the protection of individual rights.

The general trend in the cases reveal that a person seeking mandamus should be having a "specific Legal interest", "sufficient" or special interestor "adversely affected". In the case of an injunction an applicant must establish "a private right", "special damage" or "special interest."

In East Africa, it is hoped that the law in this area will not import the contradictions - inherent in English law. I would therefore suggest that a re-statement in this area of the law be undertaken by people well versed in this branch of administrative law and clear announcements made as to what kind of person should be able to seek the all important remedies in administrative law in a bid to seeing that the individual's rights are not encroached upon by the administrative bodies. In the granting of certiorari and prohibition, the term "stranger" should be scrapped off and provision made defining who is an "aggrieved" person.

The words "specific legal right" "sufficient" or special interest"in the granting of mandamus should be consolidated and one phrase used.

I would suggest the use of the word "adversely affected". Anybody who is affected in whatever way by an administrative decision should be able to be granted a remedy. This will ensure that justice is done. Otherwise the use of all the phrases above might lead to thwarting of Justice because different Judges might have different interpretations of the phrases.

A wider and generous avenue of the granting of these remedies would make the bodies that be more careful in dealing with the public in general. Words that seem clear and precise but are infact vague and uncertain such as the ones I have mentioned in regard to mandamus should never be used in determining standing because they only increase the confusion that is already inherent in this branch of the law.

Finally, the reinstatement Committee should make sure that all the other uncertainities in administrative law remedies are done away with. Its only then can we say proudly that the committee is serving for the ends for which it was formulated; Justice. As for injunctions and declarations, its only after the restrictions have been removed that we can say with Lord Denning that they are the "new and upcoming machinery replacing the old pick and shovel methods."(13)

FOOTNOTES FOR CHAPTER THREE

(1) (1959) E. A. 180

(2) (1959) E. A. 180 at 181

(3) (1957) E. A. 391

(4) (1971) E. A. 391

(5) (1970) E. A. 543

(6) (1968) E. A. 258

(7) (1966) E. A. 110

(8) L. JAFFE: Standing to secure Judicial Review : Private actions. 75 Hav. LAW REV. at page 258 (1961).

(9) (1903) 1 ch. 109 at 114.

(10) (1942) A.C. 332

(11) (1969) 1 LLOYD'S Rep. 120

(12) (1969) Q.B. 342

(13) Lord Denning: Freedom under the LAW 1949 page 126.