

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

(CORAM: MSOFFE, J.A., OTHMAN, J.A. And MJASIRI, J.A.)

CIVIL APPEAL NO. 101 OF 2008

ALBEILA INTERNATIONAL LIMITED APPELLANT

VERSUS

1. NATIONAL BANK OF COMMERCE LIMITED 2. DR. FAUZ TWALIB 3. AMOUR RASHID	} RESPONDENTS
--	---	--------------------------

**(Appeal from the Judgment of the High Court of Zanzibar
at Vuga)**

(Mshibe, J.)

dated the 26th day of February, 2008

in

Civil Case No. 2 of 2007

RULING OF THE COURT

1 & 2 December, 2008

MJASIRI, J.A.:

This is an appeal from the decision of the High Court of Zanzibar at Vuga (Mshibe, J.). The appellant was represented by Mr. Ajar Patel, learned Advocate, and the Respondents were represented by Mr. Salim Mnkonje, learned Advocate.

The background to this matter is as follows. The Appellant filed a claim in Court seeking various reliefs.

The Defendants denied the claim. A Notice of Preliminary objection was filed by the Defendants on 19th March, 2007 raising the following points of law.

- 1. The suit is incompetent for lack of locus standi by the Plaintiff.*
- 2. The plaint does not disclose any cause of action.*
- 3. The affidavit in support of the application is defective for containing legal and argumentative matters.*

The Appellant filed various applications subsequent to the Notice of Preliminary Objection.

The trial judge heard preliminary objections raised in one of the applications filed in court and upheld the said preliminary objection dismissing the Application. The Ruling was dated June 16, 2007 but was delivered by the Registrar of the High Court on 22 June, 2007.

On 31 January, 2008 Mshibe, J. made the following orders which are reproduced as under:

"Since the Applicant were told by this Court on 22 June, 2008 that they don't have a locus standi to sue, they have automatically no locus to file an application as they did. To be allowed to sue or file an application, they have to find the locus standi before making anything. For that therefore the application is dismissed as prayed.

The trial Judge subsequently made the following Order on 26 February, 2008.

"Since the Plaintiff/Applicant has got no locus standi to sue because the Receiver has been appointed, in the same manner the main suit is dismissed."

Interestingly, this order dismissing the suit was made by the trial judge without inviting Counsel to make any submissions. The trial judge did not deal with the Notice of Preliminary Objections filed by the Defendants prior to the applications on 19.03.2007. If he had done so both parties would have been given an opportunity to address the Court before the trial Court arrived at a decision. An objection which raises a pure point of law if argued as such will

dispose of the suit without any need to call for evidence to prove the fact. In the case of **Mukisa Biscuit Manufacturing Co. Ltd. v West End Distributors Ltd.**, (1969) EA 696 Law J.A. stated as follows at page 700:

"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit."

When the appeal was called on for hearing the Court *suo motu* invited both Counsel to address the Court on the propriety of the High Court judgment, and on the sequence of events and the resulting orders.

Both Counsel conceded that the orders of the trial Judge were indeed strange and seemed to have no basis in law. Both Counsel invited the Court to use its revisional powers to nullify the proceedings and to set aside the Ruling and Orders made by the High Court Judge.

We entirely agree with Mr. Patel and Mr. Mnkonje and are of the view that the only way out of this unprecedented situation is to nullify the proceedings and set aside the Rulings and Orders of the High Court.

For the reasons stated hereinabove, the proceedings before Mshibe J. are declared a nullity. The Ruling and Orders made are hereby set aside and the file is remitted to the High Court in order to proceed with the preliminary objections raised by the Defendants, and filed on 19 March, 2007.

As none of the parties were at fault, we make no order as to costs.

DATED at ZANZIBAR this 2nd day of December, 2008.

J. H. MSOFFE
JUSTICE OF APPEAL

M. C. OTHMAN
JUSTICE OF APPEAL

S. MJASIRI
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



(P. B. KHADAY)
DEPUTY REGISTRAR