

IN THE HIGH COURT OF TANZANIA

(AT DAR ES SALAAM)
LAND CASE NUMBER 48 of 2011

RESCO (T) LIMITED.....PLAINTIFF

VS

**NATIONAL HOUSING
CORPORATION.....1ST DEFENDANT
MUHARAKA TRADING CO. LTD.....2ND DEFENDANT**

RULING

Date of last Order: 11-05-2012

Date of Ruling: 25-06-2012

JUMA, J.:

This Ruling arises from preliminary points of objection which the National Housing Corporation (first defendant) raised in its Written Statement of Defence contending that the Plaintiff has neither the cause of action against the first defendant nor *locus standi*.

The background facts trace back to 28th June 2011 when the Plaintiff RESCO (T) LIMITED filed this suit claiming that the first and second defendants should pay the plaintiff company compensation for loss occasioned by forceful eviction from Plot No. 480/158 along Nkrumah Street Dar es Salaam. According to the

Plaintiff, the plot from which he was evicted was subject of a lease agreement between the Plaintiff Company and Muharaka Trading Co. Ltd (second defendant). In the suit, the Plaintiff company would like this Court to issue an order to terminate the existing lease agreement between the National Housing Corporation and Muharaka Trading Co. Ltd. In their respective Written Statements of Defence, defendants opposed the suit. The second defendant pointed out that the contract Muharaka Trading Company had entered with the Plaintiff Company had ended way back on the 30th October 2010.

Hearing of the Preliminary Points of objection proceeded by way of written submissions. The Legal Department of the National Housing Corporation filed the submissions in support of the objection. The Plaintiff's replying submissions to oppose the objection were filed by Didace & Co Advocates. I have read the written submissions of the both sides on the points of objection. I have also considered the established principles of law guiding the determination of preliminary points of objection raised in the celebrated case of **Mukisa**

Biscuit Manufacturing Company Ltd. v. West End Distributors Ltd. (1969) EA 696 which are applicable in Tanzania. Amongst the settled principles include the one that a preliminary point of objection must from pleadings before the court raise pure point of law which is argued on the assumption of correctness of all the pleaded facts. It is an established legal principle that no pure point of law arises for the purposes of preliminary points of objection if any fact still has to be ascertained by evidence.

For determination of the preliminary points of objection before me, I shall be guided by the questions whether the facts in the pleadings before me unequivocally show that the Plaintiff has neither the *locus standi* nor cause of action against the National Housing Corporation, and there is no need for any further proof on these two issues. The Court of Appeal in the case of **John M. Byombalira V. Agency Maritime International (1983) TLR 1** provides a useful definition of what is meant by "cause of action" at page 4 where it noted that the expression cause of action is not defined under the Civil Procedure Code, but it may be taken to

mean essentially facts which it is necessary for the plaintiff to prove before it can succeed in the suit. I understand the words "*locus standi*" means the right or capacity which a person has, to bring an action or to appear in a court.

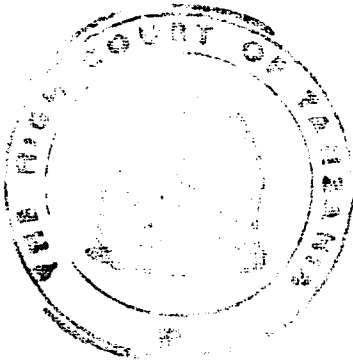
Applying the facts in pleadings to principles guiding the determination of preliminary objections, I do not with all due respect think that the objections have any merit. Pleadings clearly show that the plaintiff company has real cause to feel aggrieved by both the first and second defendants. Pleadings show that the aggrieved plaintiff was evicted from the plot of land which belonged to the National Housing Corporation. According to paragraphs 7 and 8 of the Plaint, the first defendant National Housing Corporation had carried out a verification exercise to ascertain the identities of tenants including the Plaintiff Company who was occupying its housing estates. As a tenant in the premises owned by the National Housing Corporation, the Plaintiff company participated in the verification exercise, which was carried out through

questionnaires/form described as "FOMU YA KUHAKIKI UPNGAJI KATIKA NYUMBA ZA SHIRIKA".

In my opinion, the facts showing how the plaintiff company found itself in the plot owned by the National Housing Corporation are not ascertainable from pleadings and parties shall be called upon to bring further evidence. Similarly, evidence is still needed to establish the claim by the second defendant contending that its contract with the plaintiff company ended way back on 30th October 2010. This court cannot therefore on the basis of contested facts shown in the pleadings as they stand, determine whether the plaintiff company was a trespasser on the first defendant's plot number 480/158 along Nkrumah Street Dar es Salaam.

Consequently, the preliminary points of objection do not raise pure points of law and are hereby dismissed with costs.

DATED at DAR ES SALAAM this 25th June, 2012




I.H. JUMA
JUDGE