

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY**

AT DAR ES SALAAM

CIVIL CASE NO 122 OF 2013

UMOJA WA WACHINJA KITIMOTO (UWAKITE).....PLAINTIFF

VERSUS

TEMEKE DISTRICT COUNCIL.....DEFENDANT

Date of Last Order: 27/6/2014
Date of Ruling: 12/09/2014

RULING

BONGOLE,J.

On the 1st day of July in the year of Our Lord 2013 MR LAMECK JOSEPH OWITI drew and filed a plaint before this court baring the names of the parties UMOJA WA WACHINJA KITIMOTO (UWAKITE) as plaintiff and TEMEKE DISTRICT COUNCIL as defendant.

The plaint discloses that the plaintiff applied to the defendant for an approval of slaughtering pig project which the defendant sanctioned/Approved but when the plaintiff commenced the project having constructed the requisite infrastructure the defendant cancelled the project. The plaintiff before this court prays for Judgement and decree against the defendant as follows:-

- (a) The defendant be ordered to pay the plaintiff specific damages amounting to Tshs. 321,600,000/= being the actual loss it suffered.
- (b) Interest on specific damages from the date of Judgment of this suit until payment in fully.
- (c) General damages at the tune of Tshs. 1,168,567,900/=.
- (d) The defendant be ordered to revoke its decision to conceal the project.
- (e) Interest on decretal sum from the date of judgement till payments in full
- (f) Costs of this suit
- (g) Any other relief's as the court may deem fit to grant.

The plaint is signed by PLAINTIFF conversant with the facts; verified by LAMECK JOSEPH OWITI being the done of the plaintiff that all that is stated in the plaint is true to the best of his knowledge and belief.

Upon service of the plaint to the defendant, the defendant filed a written statement of defence along with a notice of preliminary objections on points of law to wit:-

1. That the suit is incurably defective for the reason that it has been drawn and filed by a legally incompetent person.
2. The plaintiff has no locus stand to institute this suit.

The defendant pray for the dismissal of the suit with costs.

Before this court, Mr LAMECK JOSEPH OWITI of P.O BOX 45917 MAARIFA HOUSE OHIO STREET OPOSITE ATC HOUSE DAR ES SALAAM Tel. +255784 477 088 appeared on behalf of the plaintiff and Mr. Joshua Sanga Municipal Solicitor Temeke appeared for the defendant.

With the permission of this court, parties were allowed to dispose the preliminary point of objection by filing written submissions.

Arguing the first ground/point, Mr. Sanga submitted that the person who drew, filled a suit and appears before this honourable court as an Advocate identified in the suit as LAMECK JOSEPH OWIT is a legally incompetent person as he is neither qualified person in law (advocate) nor legally appointed by the plaintiff to act for the same before the court. That S.2 of the Advocate Act (Cap. 341 R.E 2002) defines on Advocate as:-

"Any person whose name is duly entered as an advocate upon the role". He said the same is also reflected under S.4 of The Interpretation of Laws Act Cap. 1 R.E 2002 which defines an advocate as *"a person entitled to practice as an advocate in the High Court or counts subordinate....."*

That the law strictly prohibits any unqualified person in law from engaging completely in all legal matters while he/she wears the shoes of qualified person to the contrary. In support of his argument, he cited the writings of Lord Denning in his book. *"The Road to Justice"* (1955) pg 24 where he said:-

"The law is the science which requires long study and experience before a man attains proficiency in it, and the ordinary citizen cannot properly but

his arguments before the Judge except with the assistance of trained lawyer"

He at last submitted that the name person above has no authority to step into the shoes of an advocate/a legally qualified person in law for been absolutely disqualified by law thus the plaint needs to be dismissed with costs.

In response, the plaintiff argued that the person who appeared before this court is identified in the above suit as a party and representative of the suit and he is legally competent person to pursue the case and appear for the plaintiffs'.

That the plaintiffs and there representative LAMECK JOSEPH OWITI is not an advocate as there is no any law which prevent any person to put on white shirt and black trouser (suit). That being a representative of UWAKITE he is legally competent person in law to represent UWAKITE in this matter.

At the outset, I must point out that Mr LAMECK JOSEPH OWITI is wrong and Ignorant of the law. He could have been allowed to represent UWAKITE in any suit if he could have complied with the mandatory and Perimtory Provisions of Order 1 rule 8 of the Civil Procedure Code Cap. 33 R.E 2002.

It provides:-

"8. One person may sue or defend on behalf of all in same interest

(1) Where there are numerous person having the same interest in one suit, one or more of such persons may, with the permission of the