

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**MISCELLANEOUS LAND APPLICATION NO. 48 OF 2018**

*(C/F Land Case No. 68 of 2017)*

**GURMIT SINGH BACHU.....APPLICANT**

**VERSUS**

**MEET SINGH BACHU .....1<sup>ST</sup> RESPONDENT**

**RELI ASSETS HOLDING COMPANY .....2<sup>ND</sup> RESPONDENT**

**RULING**

**12 NOVEMBER, 2018**

**MWENEMPAZI, J.**

The applicant is asking this court to issue an order to join the applicant as an interested party or 2<sup>nd</sup> Defendant in the High Court Land Case No. 68 of 2017. He prays also for cost of this application. He has brought this application by way of Chamber Summons supported with an affidavit affirmed by the applicant. The application is brought under Order I Rule 10(2) of the civil Procedure Code, Cap 22 R.E. 2002.

In the affidavit specifically paragraphs 8 and 9 the applicant avers that he has interest in the suit property as a shareholder of Arjan Construction Limited and one of the beneficiaries of the estate of the deceased Gurbax Singh Bhachu who owned majority shares in Arjan Construction Limited by Virtue of Judgment and decree in Probate and HCCNo.9 of 2013 and thus a proper and necessary party for proper adjudication of Land Case No. 68 of 2017.

In this same affidavit, at paragraph 3 the applicant has averred that the suit property in Land Case No.68 of 2017, that is Plot No.118 Unga Limited – Arusha was originally to be registered in the name of Arjan Construction Limited as per letter dated 16<sup>th</sup> August, 1984 with reference No. ER/ARS/1. Originating from the Office of Tanzania Railways Corporation to the Director, Arusha Municipal Council and a letter dated 6<sup>th</sup> November, 1981 with reference number MD/CL.2/1/126 from the Director's Office, Arusha Municipal Council to the General Manager of Tanzania Railways Corporation. The latter was written asking the Tanzania Railway Corporation to return the portion of land which has been rented to Arjan Construction Limited so that the same may be considered for allocation to the said company which had already applied

to be allocated that piece of land. The two letters therefore are not by themselves a confirmation of the statement in paragraph 3 as asserted.

In the application, the applicant is represented by Mrs. Aziza Shakale Esq. Advocate the 1<sup>st</sup> Respondent is being represented by the Mr. Colman Ngalo advocate and the 2<sup>nd</sup> Respondent is enjoying the services of the Solicitor General of the United Republic of Tanzania. The first Respondent's counsel raised a point of Preliminary objection that the applicant has no *locus standi* to initiate these proceedings, and that the application should be dismissed with cost. This court on the 24<sup>th</sup> day of September, 2018 ordered parties to this application to dispose hearing of the Preliminary objection by way of written submission.

Counsel for the 1<sup>st</sup> Respondent has commenced his written submission in support to the preliminary objection by breaking down and summarizing the averment in the affidavit affirmed by the applicant as follows, that: -

- (a) The subject matter of the suit namely Plot No.118 Unga Limited Arusha was originally to be registered in the name of Arjan Construction Limited;

- (b) The 1<sup>st</sup> Respondent (who is the plaintiffs in this suit) in league with Gurbax Singh Arjan Ram fraudulently obtained a letter of Offer in the name of Gurbax Singh Arjan Ram instead of Arjan Construction Limited;
- (c) The said Plot No.118 Unga Limited Arusha was registered in the name of the 1<sup>st</sup> Respondent in 1992;
- (d) The said Plot was developed by using funds of Arjan Construction Limited;
- (e) The applicant is a shareholder of Arjan Construction Limited.

Then, the counsel for the 1<sup>st</sup> Respondent has submitted that *locus standi* means the right to appear in court of justice and be heard on a particular subject. This means that a person who wants to appear and be heard must show his link or interest in the subject which is before the court. The applicant claims that he has interest in the property by virtue of him being a shareholder of Arjan Construction Limited. According to the applicant the rightful owner of the Plot is Arjan Construction Limited. Since a Liability Company is a legal person, the application ought to have been made by the Company and not the applicant who has no *Locus standi*, whatsoever.

The 1<sup>st</sup> Respondent has no claim against the applicant regarding Plot No.118 Unga Limited and cannot join the applicant as the defendant because there would be no cause of action. The applicant's intention is to be joined as a defendant so that he can counter claim for ownership of the land allegedly because the 1<sup>st</sup> Respondent acquired the said plot of land through fraud. Yet the applicant does not say why he has kept quiet twenty six years if at all he has a genuine claim on the property. To join him in the suit would completely change the nature of the case which is pending in court. The applicant has no *locus standi* to enable him to be joined as a plaintiff because there is no common right to relief as between the applicant and the 1<sup>st</sup> Respondent. So the application is devoid of any merit and it should be dismissed with costs.

The applicant on his part has submitted that in paragraph 8 of the affidavit he has explained how his interest in the dispute land is involved. The dispute in this case is also a dispute in High Court Civil Case No.17 of 1998 against the 1<sup>st</sup> Respondent and Arjan Construction Co. Limited now pending before the Court of Appeal of Tanzania in which, he has made allegations of misappropriation and fraud against the 1<sup>st</sup> Respondent in

respect of the said property among other properties of Arjan Construction Limited.

The applicant has thus pointed out that similar objection was raised by the 1<sup>st</sup> Respondent in High Court Civil Case No.17 of 1998 and the same was overruled by the High Court [Hon. Judge Rutakangwa – the then trial Judge]; The applicant submits therefore, that this issue is *res judicata*. The 1<sup>st</sup> Respondent cannot be permitted to reopen the same objection in respect of the same property.

The applicant has submitted further that to determine the issue of ownership, the court will have to inquire into the element of fraud and misappropriation, which issues can only be decided after hearing the evidence from all interested parties. For the reason, the applicant, has submitted that, the point of *locus standi* of the applicant whose interest may be jeopardized, if it is not heard should not be entertained. In this case, the applicant submits, the issue of *locus standis* not a pure question of law but a mixed question of law and fact and, therefore, it ought not to be decided as preliminary objection. The preliminary issue of *locus standi* without receiving evidence will seriously affect the interest of the applicant.

In the rejoinder the 1<sup>st</sup> Respondent counsel has submitted that the counsel for the applicant, in her reply submission has not offered explanation why it is not the company which wishes to be joined as a party. As in paragraph 7 of the affidavit, the applicant has averred that Arjan Construction Limited is the owner of the structures situated on plot No.118 Unga Limited. Earlier on in paragraph 2 the applicant states that the property was originally to be registered in the name of Arjan Construction Limited. The applicant states that he has interest in the property because he has interest in the property because he is a shareholder of the Company. However, being a shareholder of the company does not give one the rights of the Company. From the applicant's own affidavit it is the company which can claim ownership of the land not the applicant.

On the submission that the issue of the applicant's *locus standis res judicata* by virtue of the Ruling in High Court Civil Case No. 17 of 1998 between Gurmit Singh versus Meet Singh and Arjan Construction Ltd, the 1<sup>st</sup> Respondent has submitted that *Res judicata* applies only where the parties in the former suit are the same parties in the present suit. That is

not the position here. Secondly, for *Res judicata* to be invoked, the suit must have been heard and finally decided by the court.

The 1<sup>st</sup> Defendant submitted that the plaintiff in Civil Case No. 17 of 1998 was seeking reliefs inter alia for payment of various sums of money from the defendants and a declaration that Plots No. 58 and 59 Them area, Plot No. 31 Them Hill and Plot No. 118 Unga Limited belong to the Company. A preliminary objection was raised that the Plaintiff had no *locus standi* to file a suit against the Company. The court rejected the objection; according to the learned counsel for the 1<sup>st</sup> defendant, the court acted in a right way to overrule the objection as the plaintiff's prayer were for a declaration that the properties belong to Arjan Construction Limited. This was part of what happened in the case and it can be misleading. In another application, Misc. Civil Application no.188 of 2013, the plaintiff applied for orders that the respondent be restrained from using, renting or selling the property, namely Plots No.58 and 59 Them Area, Plot No.31 Them Hill and Plot No.118 Unga Limited. The court held that the applicant had no *locus standi* and the application was struck out with cost.



According to the 1<sup>st</sup> Defendant's Counsel, the cases cited, 21<sup>st</sup> Century **Food and Purchasing Ltd Versus Tanzania Sugar Producers Association and 2 others**, Civil Appeal No. 91 of 2003, Court of Appeal of Tanzania, at **Tanga and Pascal Elias Mallya Versus The Building Center Establishment and 3 others** Revision No. 18 of 2004, High Court (DSM (both cases are unreported), are not relevant to support the applicants arguments and or application.

I have read the application and the depositions in the affidavit I have also read the counter-affidavit affirmed by the 1st Respondent. The Applicant seeks an order to be joined in the main suit as one of the the necessary and proper party on the reason that he is one of the shareholders of Arjan Construction Ltd. and beneficiary of the estate of the late Gurbax Singh Bhachu who owned majority shares in the said Arjan Construction Company Ltd. The 1st Respondent however, is opposing the application on reason that the applicant has no *locus standi* and so, if he wishes, he should move the company to sue 1st Respondent. The reason given is that the 1st Respondent has no cause of action against the applicant, the 1st Respondent being the plaintiff in the main suit.

The applicant in tackling the arguments of the 1<sup>st</sup> Respondent, has raised the argument that the objection is *res judicata* since it was raised and overruled in the civil case No.17 of 1998 between **Gurmit Singh versus Meet Singh and Arjan Construction**. This argument, however has been responded to by the 1<sup>st</sup> Respondent that the doctrine is not applicable in this application as parties in that suit are different from parties in this application. In the case of **G.R. Mandavia versus Rattan Singh (1965) 1 E.A 118** the court held that

*“in the doctrine of res judicata, the court declines to exercise its jurisdiction to allow the parties to re-litigate a matter when it is satisfied that the same parties are suing in the same capacity and that the issue before it is the same as that alleged to have been the subject of adjudication in previous proceedings.”*

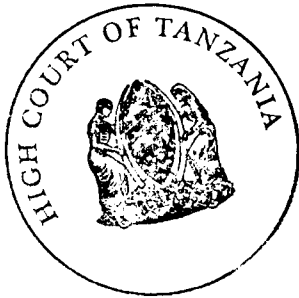
Looking at the facts of the two cases, Civil Case No. 17 of 1998 and the present application, parties are different and also issues for consideration are also different as submitted in the rejoinder by the 1<sup>st</sup> Respondent as reproduced above. In that way, the argument lacks merit and so we have to look at the merit of the objection raised.

In the case of **21<sup>st</sup> Century Food and Purchasing Ltd.**Case (supra), the court had the opinion that in determining whether the applicant is a necessary and proper party, the court should look at the plaint of the suit in which a party seeks to be joined and the reliefs and see as to whether there are averments in it touching the applicant.

According to the plaint, the core claim is against the Defendant(Reli Assets Holding Company) for an order of permanent injunction to restrain the Defendant, its servants and or agents or by whomsoever from entering uponthe plaintiff's land being plot No. 118 Block B Unga Limited Industrial Area Arusha and for payment of general damages for trespass. The base of this player is that the 1<sup>st</sup> Defendant (Respondent) in this application, claim ownership of the dispute plot whereby he was issued with a certificate of title on the 9<sup>th</sup> October, 1990. A copy of a certificate of title is also annexed. In any case, it is difficult to see the nexus of the applicant and the said Land Case No. 68 of 2017 as the 1<sup>st</sup> Respondent prima facie has a cause of action against the defendant (2<sup>nd</sup> Respondent in this case). I find the 1<sup>st</sup> Respondent is Right in arguing that joining the applicant would completely change the nature of the case which is

pending in court. I accordingly hold that this application is devoid of any merit. It is therefore dismissed with costs.

It is so ordered.



  
**T. M. MWENEMPAZI**

**JUDGE**

**12<sup>TH</sup> NOVEMBER, 2018**