

**IN THE HIGH COURT OF TANZANIA  
(DAR ES SALAAM DISTRICT REGISTRY)  
AT DAR ES SALAAM  
LAND CASE NO 14 OF 2019**

**ABDALLAH IBRAHIM PAZI** (Legal representative of  
LEILA GODFREY CHIHEKWE.....**PLAINTIFF**

**VERSUS**

**IBRAHIM ALLY YUSUPH**.....**1<sup>ST</sup> DEFENDANT**

**BALBIR SINGH SAIN**.....**2<sup>ND</sup> DEFENDANT**

**RULING**

**MASABO, J.L.:-**

This is ruling in respect of a preliminary objection on two points of law raised by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, to wit, (i) the Plaintiff has no locus standi and (ii) the suit is bad in law for being res sub judice. The plaintiffs Abdallah Ibrahim Pazi being a legal representative of one Laila Godfrey a widow to one is suing the defendants for the following orders: the declaration that the suit property situated at Gerezani area, Ilala District Dar es salaam form part of the deceased's properties which Laila Chihekwe entitled to inherit; eviction of the 2<sup>nd</sup> defendant from the suit property; damages amounting to Tanzania 50,000,000/- for disturbances and loss of use of the suit property and a declaratory order that the sale agreement between the 1<sup>st</sup> and 2<sup>nd</sup> defendant is null and void.

For a better appreciation of the points raised, the brief facts leading to this suit are that the Plaintiff claims to be a holder of power of attorney for one Leila Godfrey Chihekwe, a widow to the late Ally Yusuph who died interstate in 1998 leaving behind a widow and 10 children from 3 different mothers other than the widow. The administration of his estate has since then remained contentious and there are currently two matters pending in court. The suit property which forms part of the estate has allegedly been sold by the 1<sup>st</sup> Defendant who is the administrator of the estate to the 2<sup>nd</sup> Defendant.

When the matter was called for hearing the plaintiff appeared in person whereas the Respondent were represented by Advocate Salha Hamis. The preliminary objections were disposed of by way of written submissions to accommodate the Applicant who relies on legal assistance from the Legal and Human Rights Centre.

In support of the 1<sup>st</sup> preliminary objection which states *the plaintiff has no locus standi* counsel for defendants submitted that the suit contravenes Order III Rule 2(a) of the Civil Procedure Code [Cap 33 R.E 2002] which requires the Plaintiff to have a special power of Attorney. She argued that although the plaintiff has a power of attorney special power of attorney granted to him in respect of **Probate case No 102 of 2005**, the said power of Attorney cannot be used in this case. In support he cited the case of **HANS NAGORSEN VS BP TANZANIA LIMITED** [1987] TLR 175 where it was held that party "*authorization to settle a claim is not the same as*

*authorization to appear, apply or do any act in court.*”That, in the context, the Plaintiff’s instituted the suit without authority hence he has no locus.

Regarding the 3<sup>rd</sup> preliminary objection the Defendants counsel submitted that the suit is bad in law for being res subjudice to civil Appeal No.52 of 2017 and Civil Appeal No 60 of 2017 currently pending before Mgonya J. therefore the same should not be proceeded before this Honourable Court. In his reply, the plaintiff did not dispute the requirement for a special power of attorney but submitted that the suit property is part of the estate of the late Yusuph Mpore which were adjudicated in **Probate Cause No. 102 of 2005**, therefore the power of attorney granted to him gives him a locus stand in the present case which deals with the property involved in **Probate Cause No. 102 of 2005** being one of the deceased’s property which is subject to an administration. On the 3<sup>rd</sup> preliminary objection he submitted that the suit is not res *subjudice* to Civil Appeal No 60 of 2017 and Civil Appeal 52 of 2017 because and the current case deal with different subject matters in that the first two cases dealt with the issues concerning an appointment of an administrator of the estate of the Late Ally Yusuph and the distribution of the deceased estate whereas the latter is about the illegal and fraudulent sale of the property by 1<sup>st</sup> Defendant without any authorization.

Having considered the rival submissions, the matter for determination are two namely whether the plaintiff has locus standi and two, whether or not the suit is res subjudice. On the first issue, it is principle of law for a person

to institute a suit he/she must have a locus stand. This principle was well stated in the landmark case of **Lujuna Shubi Balonsi Snr vs Registered Trustees of CCM** [1996] TLR, 203 where it was stated that:

“Locus standi is governed by Common Law, according to which a person bringing a matter to court should be able to show that his rights or interest has been breached or interfered with”

The law however sanctions a person other than a person with a direct interest on the matter to instate a suit on behalf of that other person. That in law, a person may file a suit in person or may do so through his recognized agent or an advocate whom he has dully instructed as per **Order 3 rule 1 of the Civil Procedure Code** Cap 33 which provides inter alia that:

1. *“Any appearance, application or act in or to any court, required in person, by recognized agent or by advocate or authorized by law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person or by his recognized agent or by an advocate duly appointed to act on his behalf .....*

2. The recognized agents of parties by whom such appearances, applications and acts may be made or done are-

(a) persons holding powers-of-attorney, authorising them to make appearances or applications and to do such acts on behalf of such parties

Interpreting this provision, Mapigano J in **Parin A.A. Jaffer & Another V Abdulrasul Ahmed Jaffer & Two Others** 1996 TLR 110 held that:

“....power of attorney is a formal instrument by which one person empowers another to represent him or act in his stead for certain purposes. Under Order 3 Rule 2(a) CPC a grantee of such power is competent to go to law and make application on behalf of the grantor, providing that the instrument gives him such authority, and I am acutely aware that the terms of such instrument should receive a strict construction as giving only such authority as it confers expressly or by necessary implication.....

On the other hand it is imperative under Order 3 Rule 2(a) that all applications, acts and appearances be made or done by the attorney on behalf of and in the name of the principal.”

As held in this case, the power of attorney to institute a suit, must as per the above rule be specifically provided. It is in this spirit that in **Hans Nagorsen vs BP Tanzania Limited** [1987] TLR 175 the court held that *"authorization to settle a claim is not the same as authorization to appear, apply or do any act in or to any court with the meaning of those words used in Order III Rule1 CPC"*

When the above authorities it is applied to the instant matter, it is vivid that the plaintiff is devoid of a special authorization to institute this suit. The record would reveal that the Plaintiff is a holder of two powers of attorney granted by the said Leila Godfrey Chihekwe, namely: A special power of Attorney dated 2<sup>nd</sup> June 2015 authorizing him to receive, process and sign on behalf of the said Leila for *Probate No. 102 of 2015 of the late Ally Yusufu Mpore* and the second one dated 23<sup>rd</sup> February 2016 authorizing to

*"processing and signatory for Misc Civil Application No. 73 of 2016 and High Court of Tanzania at Dar es Salaam and Inspection Case No. 13 of 2015 of Ilala District Court at Samora."* The authorization granted to the plaintiff in these two documents are very specific and ineligible for the interpretation which the Plaintiff purports to import. The court is of the opinion that the plaintiff is full aware of this requirement and that is a reasons he procured a special power of Attorney in respect of Misc Civil Application No. 73 of 2016 and Inspection Case No. 13 of 2015 although the subject matter of these two matters have a bearing on Probate No. 102 of 20015 for which he was already a guarantee of a power of Attorney. On this ground I have found merit on the first preliminary objection.

Having sustained the first issue and considering that the files of cases alleged to be subjudice to the instant case were not availed to me, I will not labour on the second issue. Suffice it to mention that the principle of res sub judice as provided for under **Section 8 of the Civil Procedure Code Cap 33 R.E 2002**

*"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court"*

This principle has been interpreted in numerous decisions including in **Judva Karsan V Harman Singh Bhogal** (1953) 20 EACA 74; **Ibrahim S Kajembo V Commissioner of Land, Attorney General and Mary Marealle** (Civil Case No 365 of 2002) [2006] TZHC 28; and **Wengert Windrose Safaris (Tanzania) Ltd V Minister for Natural resources and Tourism and the Attorney General** Miscellaneous Commercial Cause No 89 of 2016. Considering that there may be matter in the instant a case that are somehow intertwined with the cases currently pending in court, the Plaintiff may have to give a due regard to the interpretation of this section so as to be clear on whether or not the matter at hand falls under the scope of section 8 of CPC.

The suit is struck out for incompetence.

DATED at DAR ES SALAAM this 29<sup>th</sup> day of October 2019.



**J.L. MASABO**

**JUDGE**

Judgment delivered this 29<sup>th</sup> day of October 2019 in the presence of the Plaintiff and the Appellant, all appearing in person.



**J.L. MASABO**

**JUDGE**