

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA
LAND CASE NO. 14 OF 2017**

USA RIVER CHILDREN CENTRE.....PLAINTIFF

VERSUS

USA RIVER TOWNSHIP AUTHORITY.....1ST DEFENDANT

MERU DISTRICT COUNCIL..... 2ND DEFENDANT

JUDGMENT

Last Order.....13/08/2020

Judgment delivered..10/11/2020

GWAE, J

The Plaintiff, **Usa River Childen Centre** a non-governmental Organization registered in United Republic of Tanzania in the year 2003 and it was issued with a certificate of compliance on the 12th day of December 2005 after the transfer of ownership of the land from Usa River Village Council on the 17th April 2003 to Usa River Day Care. The plaintiff's aimed at supporting unprivileged and or vulnerable children within Arumeru District in Arusha Region by providing them with education shelter and other basic needs.

Relying on the purpose of its establishment, the plaintiff applied for and was granted a parcel of land on which she could operate its business on Plot No. 728

Block 'A' Ngarasro Usa River with certificate of Title No. 19464 (suit land). After acquiring the land, the plaintiff consequently built some buildings for shelter as well as education on that piece of land.

On 21.2.2017 the plaintiff through one **Daud Lezyle** instituted this case against the defendant alleging that, the defendants have unlawfully and unjustifiably trespassed and make interference from April 2015 her land claiming to be the owner of the plot aforementioned and eventually in the year 2016, the District Commissioner accompanied by other Meru District Officials ordered the plaintiff to hand over her properties including Certificate of Title of the suit land. To rescue the situation or deprivation of his land by the defendants, the plaintiff filed a caveat with the Assistant Registrar of Titles at Moshi. Through his plaint, the plaintiff is praying for judgment and decree against the defendants as follows

1. An order declaring the plaintiff to be the lawful owner of the land in dispute
2. An order requiring the defendants to return to the plaintiff the Certificate of Title of land in dispute
3. Payment of the general damages as may assessed by the court
4. An order of payment of costs of this suit
5. Any other relief (s) that the court deems fit and just to grant

In his written statement of defence, both defendants have patently denied having caused any disturbance to the plaintiff and vehemently stated that the

plaintiff has violated the purpose of its establishment and she has started doing other business other than keeping children from vulnerable areas.

During hearing, both parties were duly represented throughout the trial by Mr. Aman Jackson Nyari and Mr. Jonathan Kiama who appeared in the capacity of an advocate and a law officer for the plaintiff and both defendants respectively. Before commencement of the trial, the following issues were consensually framed;

1. Whether the plaintiff was authorized by its Board Members
2. Whether the plaintiff is the lawful owner of the suit land on Plot No. 728 Ngarasero Usa River
3. Whether the defendants were justified to enter into possession of the suit land
4. Reliefs that parties are entitled

In establishing its suit, the plaintiff summoned a number of five witnesses and tendered six documents (letter of offer-PE1, a letter from the 2nd defendant directing the plaintiff to hand over the suit land and its structures to the 1st plaintiff-PE2, plaintiff's caveat filed with the Assistant Registrar's office deterring any transfer by the defendants-PE3, plaintiff's demand notice-PE4, a min- sheet (Board resolution) authoring institution of this case-PE5 and a copy of the certificate of occupancy-PE6 . In essence the plaintiff is seriously claiming to be the owner of the suit land and the developed structures thereof and in addition she is alleging that the purported eviction by the defendants is unlawful.

On the other, the defendants who summoned five witnesses during their defence and tendered its two (2) exhibits namely; village meeting minutes-DE1, Plaintiff's Constitution-DE2. The defendants' witnesses testified to the effect that, the structures that were built of allocation to the former Centre (Day Care Centre) were to remain the property of the defendants after censure of the operation. The defendants further adduced their evidence that the plaintiff's representative (PW1-David) had not authority to institute a case on behalf of the plaintiff adding that the PW1 was after sale of the Centre that is why the defendants opted to evict.

After closure of the parties' evidence, the court visited the locus in quo whereby the land in question and its structures were found to have been occupied by Government Offices such as Arusha Water Supply and other public offices.

Parties' representatives sought and obtained leave to file their respective closing submissions which were subsequently filed in accordance with the court schedule. I shall respect and consider the parties' final submissions in the course of determining each issue.

Regarding the **1st issue** above, it is the assertion of the plaintiff that one Daud Lezyle who duly signed the plaint was a proper person to institute this case as the Board of Trustees consented to this institution. The plaintiff has further testified that there is an authorization to file this case through the Board of Trustees, PW2, Aminieli Kundaali as a Board Chairperson and PW1 as the plaintiff's secretary inclusive whereas the defendants' stance in respect of the locus standi

of the PW1, Daud is that the said Daud is neither the plaintiff's secretary nor is he a principal officer nor is he the plaintiff's Board Member.

In principle, an institution of a case by a legal entity must pertain with an authorization by Board Members of such entity. There must be resolution as to a filing of case on behalf of the entity notwithstanding that the entity in our case a non-governmental organization is capable of suing and being sued as provided under section 8 (2) (b) of the Written Laws (Miscellaneous Amendments (No. 2) Act 2005 which amended section 11 of the Non-Governmental Organization Act. In the case of **Lujuna Shubi Balonzi, Senir vs. Registered Trustee of Chama Cha Mapinduzi** (1996) TLR 203 it was held;

"In this county , locus standi is governed by the common law, According that law, in order to maintain proceedings successfully, a plaintiff or an applicant must show not only that the court has power to determine the issue but also that he is entitled to bring the matter before the court"

Also in the case of **Hall Bakery Supply Company vs. Frederick Muigai Wangoe [1959] EA 474**, it was held that the effect of the decision in a suit by a non-existent person is a nullity and a nullity cannot be amended even by substitution.

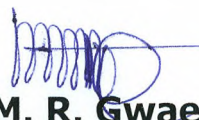
According to PE2, it is evident that, there was an established and registered organization which is the plaintiff and according to DE2, constitution of the plaintiff, there are names of board members namely; Kuvavanaeli Urrio, Gladness Kisanga

(DW2), Geert Lassen. (PW3), Mayasa Khalfani and Aloyce Lyimo (DW2). On the other hand, the plaintiff also has filed a resolution letter (PE5) deemed to be the plaintiff's new members but in the absence of the plaintiff's new constitution whose members' names would be indicated in that new constitution. Worse enough the purported resolution by the board members contains names which are different from those listed in the plaintiff's constitution as Board of Trustees and above all the same is not dated. That being the case, the said letter is not worth of the court to rely.

The institution of these proceedings is not therefore backed by the law taking into account that the plaintiff is a registered non-governmental organization whose registration is patently indicated in the DE2 (certificate of Title) but nothing like deregistration of the same. The said Daud Lezyle is found to have not duly instructed by the plaintiff's Board members or Board of Trustees as rightly argued by the defendants. Having answered the 1st issue as herein I find myself not bound to proceed determining other issues since the 1st issue is capable of disposing of this case.

In the upshot, this suit is hereby struck out with no order as to costs




M. R. Gwae
Judge
10/11/2020

Court: Right of appeal fully explained



M. R. Gwae
Judge
10/11/2020

