

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

CIVIL CASE NO 100 OF 2019

SALVATORY RWEYEMAMU..... 1st PLAINTIFF
JENERALI ULIMWENGU.....2nd PLAINTIFF
JOHNSON MWAMBO.....3rd PLAINTIFF
**DR. GIDEON J SHOO As Administrator of the estate
of late JOHN RUTAYISINGWA.....4th PLAINTIFF**
DR. GIDEON J. SHOO.....5th PLAINTIFF
SHABAN KANUWA.....6th PLAINTIFF
JOHN BWIRE.....7th PLAINTIFF
BABY SHOO.....8th PLAINTIFF
RAMADAHAN KANUWA.....9th PLAINTIFF
**SALVATORY RWEYEMAMU As Administrator
of the estate of BRIAN RWEYEMAMU.....10th PLAINTIFF**
JOSEPHINE ULIMWENGU.....11th PLAINTIFF
J MBWAMBO.....12th PLAINTIFF
**DR. GIDEON SHOO As Administrator of the estate
of the late PIERRE CLAVER MUTAMBUKA.....13th PLAINTIFF**
FRANCIS CHIRWA.....14th PLAINTIFF

VERSUS

THE REGISTRAR OF COMPANIES.....1st DEFENDANT
ISENEGEJA LIMITED.....2nd DEFENDANT
HASSAN HAYDAR OMARI.....3rd DEFENDANT

GULAM ABDULRASUL CHAKAA.....4th DEFENDANT

DIMBA NEWS PAPER LIMITED.....5th DEFENDANT

COMMERCIAL BANK OF AFRICA(TANZANIA).....6th DEFENDANT

RULING

25th November 2020 & 28th January 2021

A.K Rwizile. J

Before parties were afforded a full hearing of this case, for the 2nd, 3rd, 4th and 5th defendants, 4 points of objection were raised which I am as of now required to determine. The points in *lamine* hinged on three key issues of Jurisdiction of this court to entertain this suit, *locus standi* of the plaintiffs to bring this suit and time limitation. When Mr. Nyika and Urasa learned counsel of IMMA advocates appeared for the 2nd, 3rd, 4th and 5th, the 6th defendant was in the service of Elisa Abel Msuya learned counsel of Trustmark Attorneys. The plaintiffs are represented by Mr. Mashaka Ngole learned counsel of Ngole and Associates Law Chambers.

The objections were heard by written submissions, the 1st defendant did not appear or file any submissions. For the purposes of brevity, I will not reproduce submissions of the parties but will only make reference to specific parts of their respective submissions which I will consider fit and the basis for determination of the preliminary objections.

First objection is styled thus; *to the extent that the plaintiffs' claim is founded on alleged failure by the 2nd, 3rd and 5th defendants to pay relevant taxes for transfer of shares in the 5th defendant or involve Tanzania revenue authority for such purpose, then this court does not have jurisdiction to preside over the matter.* This objection stems from paragraph 21 of the plaint where the plaintiffs claimed that transfer of share was fraudulently made. Tanzania Revenue Authority (TRA) was not involved for purposes of paying gain taxes. Submitting on this point, Mr. Nyika was of the view that jurisdiction to handle civil case relating to tax administration is as a matter of law vested in the Tax Revenue Appeals Board as under section 7 of the Tax appeals Act [Cap. 408 R.E 2019]

On capital gains tax, the learned counsel was of the submission that the same is governed by section 90 of the Income Tax Act [Cap 332. R.E 2019]. To support his argument, he referred this court to the case of **TRA vs Kotra Co. Ltd**, Civil Appeal No. 12 of 2009, and **TRA vs New Msoma Textile Ltd**, Civil Appeal No.93 of 2009 CA, (Unreported). Upon considering submission on this point, it is important to note here that the cause of action as stated in the plaint is not created in one paragraph. We have to consider and look at the entire document to establish the basis of the claim. Mr. Ngole for the plaintiffs submitted that since there is a specific statement on jurisdiction as held in the case of **Arusha Art Ltd vs Reliance insurance Corporation Ltd**, Commercial Cases No. 12 of 2011, then this court has jurisdiction. With respect, I do not share Mr. Ngole's view suggesting that, specific statement on jurisdiction vests jurisdiction on the court.

What is important as I have said is to look at the nature of pleadings establishing the cause of action. In this matter, what is stated in para 21 does not mean that the plaintiffs are claiming for taxes. What is pleaded is that shares were transferred with fraud by the defendants. To show so, the plaintiffs were of the view that upon official search as per para 18 of the plaint, it was found that even Government revenues were not paid. In my view and as submitted by the plaintiffs, the claim here is not based on tax claims, but rather on the alleged illegal transfer of shares and trespass to land. This has been rightly agreed throughout the submissions of both parties, that the claims are solely based on tort. To say the least therefore, the first point of objection is baseless. It is overruled.

The second and third objections are based on illegal occupation of the suit property on plot No. 5 Block C at Sinza with certificate No. 28772. I will therefore determine the two points together as they are categorical on *locus standi*

Submitting on *locus standi* Mr. Nyika took off by what is agreed in paragraph 14 of the plaint that the premises in question belong to the 5th defendant. With clarity of expression, Mr. Nyika was as clear as crystal that in elementary company law, the company, a body corporate, 5th defendant, is existent independent of its shareholders. Here, he referred to the case of **Solomon vs Solomon** [1897] AC 22. He was finally of the view that *locus standi* in Tanzania is a common law doctrine. Courts, according to him, have to first

determine whether they are vested with jurisdiction to hear the matter and as well that the plaintiff has powers to bring the action in court. Therefore, he held, the plaintiffs have no *locus* to sue on the property that belongs to the 5th defendant.

He then cited the case of **Lujuna Shubi Ballonzi Senior vs Registered Trustees of Chama Cha Mapinduzi** [1996] TLR 203. He submitted, it was not proper for the plaintiffs to claim interest on property registered in the name of the 5th defendant as under section 33 of the Land Registration Act [Cap 334.R.E 2019], since the same was not illegally mortgaged to the 6th defendant.

For the plaintiffs, it was submitted and I am in agreement that the plaintiffs being shareholders and directors of the 5th defendant may have the right under the property. The plaintiffs have claimed that there is fraud in transfer of shares done by the 2nd 3rd and 4th defendants. In that connection therefore, there are such allegations of fraud, which, if proved would render as submitted by the plaintiffs, the mortgage by the 5th defendant on the said plot of land ineffectual. To prove all that in my view cannot be done at this stage, since to do will be inviting evidence in record prematurely. While I agree with the defence that *locus standi* is a point of law within the meaning of the same in **Mukisa Biscuits Manufacturing Company Ltd vs West End Distrubutors Ltd** [1969] EA 696. I do not agree with the defence that the plaintiffs have no *locus standi*. I think, this point of object lacks merit. It is overruled.

The last objection dwells on time limitation; it is agreed as submitted by Mr. Nyika that the plaintiffs' suit is based on illegal transfer of shares and fraudulent mortgaging of the property and so illegal occupation of the same, which is therefore an issue of tort. It has been submitted that the cause of action arose in 2013 when the same was mortgaged. According to Mr. Nyika this action was therefore filed out of prescribed time of 3 years as per item 6 part I of the Schedule to the Law of Limitation Act. [Cap 89 R.E 2019]

On Mr. Ngole's view, which I also share, in this matter, the cause of action arose on the date the plaintiffs became aware. It has been pleaded under para. 15 of the plaint. This is important to hold so basing on the nature of the case. It is shown before that case

dwells on fraud. In all circumstances, fraudulent transactions are made in secret. If it is held that the plaintiff's discovered fraud before that time, as it has been submitted by Mr. Nyika, one has to have evidence to prove so. The plaintiffs therefore have taken recourse on the provisions of section 26 of the Law of Limitation Act as submitted. I do not think, Mr. Nyika's rejoinder on this matter is correct basing on the nature of this matter, that section 26 of the Act does not apply. This point also is overruled. After saying what I have said, I hold that the points of objection raised are all overruled. The matter should be heard on merit. Costs of in the cause.

A.K. Rwizile

**JUDGE
28.01.2021**

Ruling delivered in the presence of Laurian Magaka and Mary Brown for the 2nd, 3rd, 4th and 5th defendants, Irene Mchau and Ndehurio Ndesamburo for 6th defendant, the plaintiffs are absent and not represented.

A.K. Rwizile

**JUDGE
28.01.2021**



Recoverable Signature

X

A handwritten signature in blue ink, appearing to be 'A.K. Rwizile', written over a horizontal line.

Signed by: A.K.RWIZILE

