

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

**(IN THE DISTRICT REGISTRY OF KIGOMA)**

**AT KIGOMA**

**(ORIGINAL JURISDICTION)**

**LAND DIVISION**

**LAND CASE NO. 11 OF 2021**

**ULIMWENGU S/O HAMIS KABWE..... PLAINTIFF**

**VERSUS**

**NATIONAL HOUSING CORPORATION .....1<sup>st</sup> DEFENDANT**

**MAJEMBE AUCTION MART .....2<sup>nd</sup> DEFENDANT**

**BAYANA S/O HILALY FERUZI .....3<sup>rd</sup> DEFENDANT**

**THE ATTORNEY GENERAL .....4<sup>th</sup> DEFENDANT**

**R U L I N G**

15<sup>th</sup> & 15<sup>th</sup> September, 2021

**A. MATUMA, J.**

When this suit came for hearing the Preliminary Objection regarding time limitation which was earlier on raised by the 1<sup>st</sup> and 4<sup>th</sup> defendants in their joint Written Statement of defence, the learned Counsels for those defendants Mr. Allan Shija learned State Attorney and M/S Ndigwako Joel learned Senior legal officer of the 1<sup>st</sup> defendant further raised an issue relating to the competence of the suit itself.

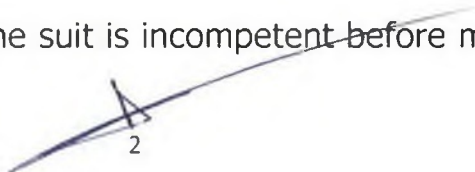
The learned Counsels submitted that the signature of the Plaintiff appearing on the special power of attorney is quite different to that of the

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Plaintiff in the Plaint. In that regard they doubted whether it was the Plaintiff who initiated and filed this case or the same was instituted by a third party impersonating the plaintiff.

With such concern I asked the Plaintiff who was present in person whether it is him who signed the Plaint. He honestly stated that it was not him but he had given power of attorney to Mussa Abdallah Mohamed who signed it. The said Mussa Abdallah Mohamed was present in court, I asked him whether it is him who signed the plaint. He also honestly replied that it was him. That he did so on power of attorney he obtained from the Plaintiff.

When I looked on the said Power of Attorney I also found as rightly observed by the learned counsels for the Defendants that the signature of the **Donee** Mussa Abdallah Mohamed was again different from his signature in the plaint which he himself admitted. I asked him and he conceded that it was not him who signed that power of attorney but the same was given to him by the Plaintiff already endorsed on both places for the Donor and for the Donee. I then invited Mr. Ignatius Kagashe learned advocate for the Plaintiff to submit on the competence of this suit in the circumstances of the facts herein. The learned advocate without much ado, conceded that the suit is incompetent before me. He argued

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that since Mussa Abdallah Mohamed did not sign the Power of Attorney, such power did not come to him and therefore he wrongly endorsed the Plaintiff. He prayed that the suit be struck out but they should not be condemned costs.

Mr. Allan Shija learned State Attorney and M/S Ndigwako Joel pressed for costs as they have incurred a lot and the defects are plainly clear sufficiently to have been avoided.

I agree with both parties that this suit is incompetent. The same does not show that it was instituted by Mussa Abdallah Mohamed under special Power of Attorney. The Plaintiff is indicating that the Plaintiff is Ulimwengu Hamis Kabwe instituted by himself and not in his behalf. Also, in the verification clause it is him who verified the Plaintiff by disclosing that;

***' I Ulimwengu Hamis Kabwe being the plaintiff do hereby verify that all what is stated in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 (i, ii and iii) and 14 above is true to the best of my knowledge'***

Unfortunately, he who endorsed the verification clause is not him but someone undisclosed until when we discovered that it was Mussa Abdallah Mohamed at the time of hearing the Preliminary Objection. Otherwise, the



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signature thereof purports to be that of Ulimwengu Hamis Kabwe, the Plaintiff. In that respect the suit was initiated by a third party, it is him who instructed the learned advocate to institute this suit in the name of the Plaintiff but without disclosing that fact in the Complaint itself.

By the time Mussa Abdallah Mohamed initiated all those acts and endorsed the Complaint he had no power to do so because the purported Special Power of Attorney was as well forged. It was a fake document because it was the Donor thereof who changed his signature purporting to show that it was his Donee who signed while he knew it was not true. The Donor therefore committed a criminal offence of impersonating the Donee. Likewise, Mussa Abdallah Mohamed committed a Criminal offence by signing the Complaint as Ulimwengu Hamis Kabwe which was an act of impersonation. For the purpose of this suit both the Complaint and the Special Power of Attorney are forged documents incapable of being acted upon. It renders the suit incompetent and accordingly struck out.

As in respect of costs, I have no good grounds to deny the Defendants their costs. As rightly submitted by the learned counsels for the Defendants, the wrongs committed by the Plaintiff are not technical. It was a malicious calculated move to deceive the court that it was the Plaintiff in person who signed the Complaint and again that it was Mussa

Abdallah Mohamed who signed the Power of Attorney as the Donee. That illegal collusion between them are not condonable. It was as well expected that their advocate could have detected that the Special Power of Attorney presented to him was fake. Either he knew the forgery and decided to collude with them or he did not act diligently. I therefore award costs to the Defendants against the Plaintiff. It is so ordered, and the right of appeal is fully explained.



  
**A. Matuma**

**Judge**

**15/09/2021**

**Court:** Ruling delivered in the presence of the Plaintiff and his advocate Mr. Ignatius Kagashe in the presence of Mr. Allan Shija learned State Attorney and M/S Ndigwako Joel (Senior Legal Officer of the 1<sup>st</sup> Defendant) for the 1<sup>st</sup> and 4<sup>th</sup> Defendants, in the presence of Wazir Mohamed Regional Manager for the 2<sup>nd</sup> Defendant and in the absence of the 3<sup>rd</sup> Defendant. Right of appeal explained.

**Sgd: A. Matuma**

**Judge**

**15/09/2021**