

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

DAR ES SALAAM SUB REGISTRY

AT DAR ES SALAAM

CIVIL CASE NO. 93 of 2018

AMBASSADOR SECONDARY SCHOOL.....PLAINTIFF

VERSUS

MAXINSURE TANZANIA LIMITED..... DEFENDANT

RULING

Last Order: 26/07/2022

Ruling:26/08/2022

MASABO, J:-

Ambassador Secondary School has filed the present suit seeking to enforce an insurance policy agreement between her and the defendant. She is claiming a total of Tshs 376,664,804.9 being compensation arising from a fire accident which seriously damaged the properties she had insured with the defendant. After completion of the preliminary stage, hearing of the suit commenced but in its midst the defendant's counsel, Ms. Mboransia John, sought leave of this court to raise a point of law which she alleged it is premised on the jurisdiction of this court.

Although improperly raised, this court while mindful that it is now trite that a point on jurisdiction can be belatedly raised and determined at any stage of the suit even on appeal (**M/S Tanzania China Friendship**

Textile Co. Ltd vs. Our Lady of the Usambara Sisters [2006] TLR70, Tanzania **Revenue Authority vs. Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009), granted her prayer. The point she raised after obtaining this leave is to the effect that, the suit before this court is incompetent as the plaintiff, Ambassador Secondary School, is not a corporate body hence cannot sue/institute this suit against the defendant in its own name as it has no *locus standi*.

When allowed to address the court in support of this point, Ms. John, made reference to paragraph 1 of the plaint where the plaintiff is identified as an education institution registered under the National Education Act. She proceeded that, section 26(3) of the National Education Act, 1978 [Cap 353 RE 2002] provides for registration of private schools. After being registered, a school is issued a certificate of registration which does not confer corporate personality on the school. For a school to acquire corporate personality it should be incorporated under Section 3 of the Trustees Incorporation Act [Cap 318 RE 2002] which caters for incorporation of education and charitable organizations. She argued further that, after incorporation the school will acquire a legal personality and become capable of suing and being sued under its own name pursuant to section 8(1) (b) of the Trustees and Incorporation Act. In

conclusion she argued that, as the plaintiff has no *locus standi*, the matter is incompetent and this court lacks jurisdiction to entertain it.

Responding, Mr. Jackson Komba, counsel for the plaintiff conceded to the anomaly but termed it as trivial and curable. He argued that much as the point has a bearing on the jurisdiction of the court it should not be entertained as it has been wrongly raised after the completion of pleadings. He cited the case of **NOREMCO Construction vs. Dar es Salaam Water & Sewarage Authority**, Commercial Case No. 47 of 2009 in fortification of his point.

Rejoining, Ms. John submitted that, an objection on jurisdiction can be raised at any stage even on appeal stage. In regard to the merit of the preliminary objection, she argued that since the plaintiff's counsel has conceded, the matter should be struck out. Regarding the authority cited by the plaintiff's counsel, Ms. John argued that as, unlike the objections in the said case, the objection in the present suit is on *locus standi* which is substantive and goes to the root of the suit as it is premised in the jurisdiction of the court.

I have heard the rival submissions by the counsels. The main issue for determination is whether the instant suit is incompetent for want of *locus standi*. Before I advent to this point, I agree with Mr. Komba that notices of preliminary objection are traditionally raised in the course of filing of pleading. However, as argued by Ms. John, this rule is not cast on a stone. The law allows flexibility when the point concerned explicitly or implicitly touches upon the jurisdiction of the court. As stated in preface, it is now a settled principle that because of its very nature, an objection on jurisdiction can be belatedly raised and determined at any stage of the suit even on appeal (see **M/S Tanzania China Friendship Textile Co. Ltd vs. Our Lady of the Usambara Sisters** [2006] TLR 70 and **Tanzania Revenue Authority vs. Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009).

In the present case, the objection raised in on locus standi, conceptually understood as the right to seek a remedy/institute a proceeding before a court of law (**Chama Cha Wafanyakazi Mahoteli Na Mikahawa Zanzibar (horau) vs. Kaimu Mrajis Wa Vyama Vya Wafanyakazi Na Waajiri Zanzibar, Civil Appeal No. 300 of 2019**, CAT (unreported)). Apart from being a common area of litigation in our courts, *locus standi* has been acknowledged and termed as a jurisdictional issue.

This was propounded by the Court of Appeal in **Godbless Jonathan Lea vs. Mussa Hamis Mkangaa & others**, Civil Appeal No. 47 of 2012 (unreported) when it cited with approval the decision of the Malawi Supreme Court of Appeal in **The Attorney General vs. The Malawi Congress Party & Another**, Civil Appeal No. 32 of 1996 which stated that *locus standi* is jurisdictional issue. On the strength of this authority, I decline the invitation to follow the authority in **NOREMCO Construction vs. Dar es Salaam Water & Sewarage Authority** (supra). As argued by Ms. John, in the said case the objection was on the verification clause not one on jurisdiction hence distinguishable.

Regarding the merit of the objection, section 26 of The National Education Act, deals with registration of private schools and provides that:

- 26.-(1) Subject to subsection (2), upon receipt of an application for registration of a private school, the Commissioner shall, subject to sections 27 and 28, and if he is satisfied that the requirements of this Act have been or will be complied with, either register the school or state the conditions upon compliance with which that school shall be registered. Registration of private schools.
- (2) A school registered under this section shall be in the name which the Commissioner approves, and the

commissioner shall not, save with the consent of the Minister, approve any name which contains the English word "University" or the Kiswahili words "Chuo Kikuu", or any similar word or combination of words in any language calculated to suggest that the 6crfdschool is a University.

- (3) Upon the registration of a private school, the Commissioner shall issue to the owner or the manager of that school a certificate of registration in the prescribed form, and the owner or manager to whom it is given shall cause that certificate to be kept exhibited in a conspicuous place in the school.

The omission to state the legal status of the school so registered presupposes that, the registration and the certificate issued does not confer into the school any cooperate personality which would enable the school to sue in its own name. To acquire the legal personality, it is incumbent for the school to apply for registration under the Trust and Incorporations Act, whose section 2 provides for incorporation of associations of education, religious, scientific and other civic associations. Upon registration, the association becomes a body cooperate with a common seal, perpetual succession and automatically acquire the right to sue in its name (see section 3 read together with section 8 of the Act). Now that the plaintiff's counsel has admitted that indeed there is an

anomaly as the school has not been incorporated under the Trust and Incorporations Act, there can be no good reason for sustaining the suit as it is very obvious that it is incompetent for want of *locus standi*.

The foregoing of the above is that, the preliminary objection is sustained. The suit is found incompetent for want of *locus standi* and it is struck out with costs.

It is so ordered.

Dated at **Dar es Salaam** in this day of 26th August, 2022.

X



Signed by: J.L.MASABO

J.L. MASABO
JUDGE

