

**IN THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF DODOMA**  
**AT DODOMA**

**LAND CASE NO. 14 OF 2022**

**MWENGE SUNFLOWER OIL MILLS LTD.....PLAINTIFF**

**VERSUS**

**NATIONAL MICROFINANCE BANK PLC**

**ADILI AUCTION MART LIMITED**

**.....DEFENDANTS**

**RULING**

**30<sup>th</sup> August & 07<sup>th</sup> October, 2022**

**MDEMU, J:.**

On 28<sup>th</sup> April, 2022, the Plaintiff instituted this suit praying for judgment and decree against the Defendant as follows:

- i. Restraint order be issued against the Defendants, their agents or workmen restraining them from selling Plaintiff's properties pledged as security for loan.*
- ii. That the Plaintiff be given extension of time to service her account as agreed in the loan agreement.*
- iii. The loan agreement be scheduled so as extension of time be fixed to complete loan agreement.*

iv. *Costs of this suit be provided for.*

v. *Any other relief (s) deemed fit and just to be granted by this Hon. Court.*

On 13<sup>th</sup> June, 2020, the first Defendant filed his written statement of defence comprising of a notice of preliminary objection that the Plaintiff has no *locus standi* and want of cause of action.

Parties to this case have legal representation. Plaintiffs are represented by Mr. Emmanuel Sululu, learned Advocate while the Defendants were represented by Mr. Robert Melea Owino, learned Advocate too. The preliminary objections were argued by way of written submissions. Both parties complied with a scheduling order.

Submitting in support of the preliminary objection raised, Mr. Owino filed his written submissions on 16<sup>th</sup> of August, 2022 arguing each point separately. On the first point of objection he argued that, the Plaintiff has no *locus standi* to sue in respect of the property in dispute against the first defendant. He cited Black's Law Dictionary, 9<sup>th</sup> edition on the definition of *locus standi* to mean: the place of standing; the right to bring an action or to be heard in a given forum. The said definition was also considered in the case of **Lujuna Shubi Balonzi vs. Registered Trustees of Chama cha Mapinduzi [1996] T.L.R. 200.**

He argued further that, the Plaintiff has instituted a suit against the first defendant claiming right over certificate of Title No. 27615 – DLR registered in the name of Salehe Hamis Hongoa. According to the loan agreement annexed to the Plaintiff's plaint (annexture MW1) under item 88 1(c), the facility was secured by first charge mortgage over commercial property plot 1456 Block "s" located at Hungukia street, Singida Municipal. He said therefore that, the Plaintiff cannot step into the shoes of Salehe Hamis Hongoa to sue the Defendants. On this he cited the case of **Salum Mateyo vs. Mohamed Mateyo [1987] T.L.R. 111.**

On the second point of preliminary objection, the learned counsel argued that, the Plaintiff has no cause of action to sue the first Defendant. According to him, paragraph 5 (iii) of the plaint implies that, the Plaintiff's complaint is on breach of contract by failing to honour payment schedule as stipulated in the loan contract. On this he cited the case of **National Bank of Commerce Limited vs. Stephen Kyando T/A Asking Intertrade, Civil Appeal No. 162 of 2019** (unreported); **Abdallah Yusufu Omos vs. The People's Bank of Zanzibar and Another [2004] T.L.R. 399** and the case of **Mashado Game Fishing Lodge Ltd and Two Others vs. Board of Trustees of Tanganyika National**

**Park (TANAPA) [2006] T.L.R. 255** where in **Mashado's case**, was held that:

*"A person is said to have a cause of action against another where that person has a right and the other person has infringed or breached that right with the result that the person with the right suffers materials loss or any other loss"*

It was his submissions therefore that, the Plaintiff breached the term of the loan contract as stipulated therein since the parties entered into valid loan contract which cannot be interfered by any authority including this Court. Hence, the 1<sup>st</sup> Defendant is entitled to enforce her right as stated in the loan agreement.

In reply, learned counsel for the Plaintiff filed his written submissions on 30<sup>th</sup> of August, 2022 that, Salehe Hamis Hongoa, the owner of the property with title No. 27615 DLR is also a shareholder of the Plaintiff's Sunflower Mills Limited. He said therefore, cannot be spared when one talks of the Plaintiff. He argued that, the said property was used as security for loan issued to by the 1<sup>st</sup> Defendant to the Plaintiff. He said therefore that, the Plaintiff has *locus stand* to sue the 1<sup>st</sup> Defendant.

Submitting on the second point of preliminary objection, the learned counsel argued that, the case of **National Bank of Commerce Limited**

**vs. Stephen Kyando T/A Asking Intertrade** (supra) cited by the 1<sup>st</sup> Defendant is distinguishable because in that case, there was an agreement entered between the parties on rescheduling the modality of payment while in this case there was no such an agreement. Referring to the cited case of **Mashado** (supra), the learned counsel stated that, the Plaintiff has a cause of action against the first Defendant because by selling the property so mortgaged, the Plaintiff will suffer irreparable loss as his sunflower mills will definitely collapse hence, loss to be incurred by the Plaintiff cannot be compensated through damages. The Defendant had no written rejoinder.

I have considered the contending submissions by the learned counsels from both sides. The issue to be determined is whether the two raised objections on *locus standi* and want of cause of action have merits.

To start with the first point of objection, *locus standi* is a common law principle and therefore a rule of equity in which a person cannot maintain a suit or action unless he has an interest in it. It raises a jurisdictional issue which as a matter of law has to be determined at the earliest possible stage of the matter. In the case of **Godbless Lema vs. Mussa Hamis Mkanga and Two Others, Civil Appeal No. 47 of 2012** (unreported), the Court of Appeal cited with approval the Malawian

Supreme Court decision in the case of **The Attorney General vs. The Malawi Congress Party and Another, Civil Appeal No. 22 of 1996**

where the Court observed thus: -

*"Locus standi is a jurisdictional issue. It is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say he stands in a sufficient close relation to it as to give a right which requires prosecution or infringement of which he brings the actions."*

Similar position to the above holding was also held by the Court of Appeal in **Peter Mpalanzi vs. Christina Mbaruka, Civil Appeal No. 153 of 2019** (unreported) where the Court had this to say: -

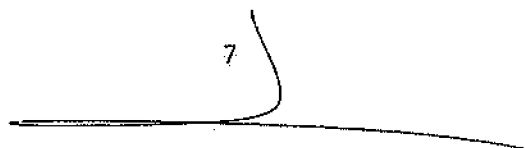
*"Locus standi is a point of law rooted into jurisdiction. It is for that reason that it must be considered by a Court at the earliest opportunity or once it raised."*

Applying the above cited principles to the facts at hand where the issue is whether the Plaintiff is the owner of the suit property, I find that, the issue of *locus standi* as raised by the first Defendant cannot be determined at the stage of preliminary objection for want of proof of evidence to that effect. I would add that, the same be properly determined on merits in the course of hearing this suit. The objection

therefore is not on pure points of law. Thus, the first point of objection is overruled.

On the second point of objection, that is, wanting of the cause of action, Order VII, Rule 1 of the Civil Procedure Code, Cap. 33 requires the Plaintiff who moves the Court by a suit to plead particulars in their plaint to disclose a cause of action. Briefly, cause of action can be defined as a set of facts which gives a person (Plaintiff) a right to a judicial redress or a relief against another (Defendant). See **Stanbic Finance Tanzania Limited vs. Giuseppe Trupia and Another [2002] TLR 217** and **John Byombalilwa vs. Agency Maritime International (T) Limited [1983] T.L.R. 1**. To be able to establish if the statement of claim establishes the cause of action, resort has to be made to the contents of the statement of the claim together with their accompanying attachments. See **Antony Leornard Msanze and Another vs. Juliana Elias Msanze and Two Others, Civil Appeal No. 76 of 2012; Zebedayo Mkondya vs. Best Microfinance Solution Limited and Four Others, Commercial Case No. 95 of 2016** ( both unreported). The position in the cited decisions was pronounced by the defunct East Africa Court of Appeal in **Jeraj Sharrif and Sons vs. Chotai Fancy Stores [1960] E.A 375** where it was stated as follows: -

7



*"The question whether a plaint disclose a cause of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it and upon the assumption that any express or implied allegations of facts in it are true."*

The first Defendant alleged that there is no cause of action against her because under paragraph 5(ii) of the plaint, the plaintiff admitted that he has not honoured the contract. The plaintiff on her part stated that, there is a cause of action against the first Defendant as the same arose upon her assigning the second Defendant to sale the security of loan advanced by the Plaintiff without first affording a right to be heard and the fact is that, the contract has not expired. It comes to an end on 12<sup>th</sup> July 2023.

As observed from the pleadings, the Plaintiff breached the agreement in servicing the account as agreed by the first Defendant. The first Defendant wrote a letter requiring the Plaintiff to service the account as agreed. This letter was not attached in the plaint. It followed that, on 09<sup>th</sup> April, 2021, the Plaintiff through his Advocate Mr. Cheapson Lupondo Kidumage replied such a letter explaining what made the Plaintiff not to service her account. There was no other reply from the first Defendant

rather the Second Defendant was ordered to sell the mortgaged property subject to this application on 19<sup>th</sup> September, 2021.

From the above sequence of events, I find that, the Plaintiff had a cause of action against the first Defendant in two aspects. **One**, according to the pleadings, the contract was to expire on 12<sup>th</sup> July, 2023, the act of selling the mortgaged property before such time was a breach of contract. **Two**, the act of not replying back the letter dated 09<sup>th</sup> April, 2021 by the Plaintiff not to service the account, infringes her right to be heard as the first Defendant didn't acknowledge if she received the letter or not and the response towards it.

All that said and done, this Court finds that, the preliminary objections raised are therefore without merits and are hereby dismissed with costs. The suit be heard on merits.

It is so ordered.



**Gerson J. Mdemu**

**JUDGE**

**07/10/2022**

**DATED at DODOMA** this 07<sup>th</sup> day of October, 2022.



**Gerson J. Mdemu**

**JUDGE**

**07/10/2022**