

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

DISTRICT REGISTRY OF MOROGORO

AT MOROGORO

MISC. LAND APPLICATION NO. 38 OF 2023

MOA GENERAL TRADING CO. LTD APPLICANT

VERSUS

CHRISAK FARMS 1ST RESPONDENT

DIMITRA HATZIS (ADMINISTRATOR OF PIERINA

CALAVRIAS DECEASED) 2ND RESPONDENT

ESTHER SHAURI MARO T/S MEM AUCTIONEERS AND

GENERAL BROKERS 3RD RESPONDENT

ANTONIO ROMANO @ MANGOROMA 4TH RESPONDENT

MANGOROMA CONSTRUCTION CIVIL AND

ENGINEERING COMPANY LIMITED 5TH RESPONDENT

MW RICE MILLERS LIMITED 6TH RESPONDENT

COMMISSIONER FOR LAND 7TH RESPONDENT

ASSISTANT REGISTRAR OF TITLES

OF MOROGORO REGION 8TH RESPONDENT

ATTORNEY GENERAL 9TH RESPONDENT

RULING

Date of last order: 13/06/2023

Date of Ruling: 14/06/2023

MALATA, J

The applicant herein approached this court seeking for interim restraint order against the respondents in particular the 8th respondent from transferring landed property with certificate of Title No. 90222 registered in the name of Chrisak Farms Limited within Morogoro Municipality from 1st respondent to 6th respondent.

The interim restraint order is sought pending expiry of ninety (90) days' notice of intention to sue the Government pursuant to section 6 (2) and (3) of the Government Proceedings Act, Cap.6 R.E.2019. The notice to the Government was issued on 15th April, 2023. The applicant's reliefs are sought to protect its interest on the landed properties following notice of transfer of the landed property in question issued by the Registrar of Titles of his intention to transfer ownership from 1st respondent to 6th respondent on expiry of thirty (30) days' notice issued on 15th May, 2023 referred to as annexure BMA-9 of the documents attached to applicant's affidavit. The notice which triggered to the applicant's application was issued to Mohamed

Ali Ahmed who is not a party complaining to have been affected thereby. Further, there is another notice by the 8th respondent issued to Chrisak Farms Limited who is also not the applicant herein.

However, the instant application before this court, has been preferred by **Moa General Trading Co. Ltd** who has shown no link of interest of the landed property with certificate Title No. 90222 registered in the name of Chrisak Farms Limited which is about to be transferred as per the issued notice by the Registrar of Titles.

In the course of hearing the preliminary objection raised by the 6th respondent, in particular, in reply thereof, this court confirmed beyond sane of doubt that, the notices issued by the 8th respondent had nothing to do with the applicant and no interest ever demonstrated.

This court, suo motto, raised a point of law on the locus standi of the applicant who was seeking interim restraints order in particular against the acts of the 8th respondent to transfer the landed property from Chrisak Farms Limited to 6th respondent.

In view thereof, parties were invited to address on the locus standi of the applicant herein.

To start with, the court invited Mr. Thomas Mathias, learned counsel for the applicant, who succumbed that, I have noted that there is no notice expressly issued to Applicant herein. In the circumstances, the application has been preferred by the applicant who has neither issued nor served with any notice by the Registrar of Titles.

Therefore, the application herein has been lodged by a stranger to the transaction involving the issued notice by the Registrar of Titles. However, Mr. Thomas submitted, the mischief is not fatal under Order I Rule 10 (3) of Civil Procedure Code. Cap.33 R.E.2019. Also Order 1 Rule 9 of CPC. This court has power to order that the suit which has been preferred by bonafide mistake be rectified.

He was also of the opinion that, the admitted mischief can be cured by overriding objective principles, he thus referred this court to decision in the case of **Dar express Co. Ltd Vs. Mathew Paul Mbaruku, Civil Appeal No. 132 of 2021** and Section 3A of the CPC. Additionally, he submitted that, the court can as well invoke Order 6 Rule 17 of CPC and order for amendment of the application.

Finally, he submitted that, for the interest of justice and since the point of law was raised by the court, for whatever this court will find appropriate be

issued without costs. This court however ask Mr. Thomas as to what should be the remedy in circumstances, he submitted that the remedy may be order for amendment or striking out the application.

The reply thereof commenced with Mr. Hemed Mkomwa, learned State Attorney, who submitted that, based on the documents on record, it is clear that, the notices were addressed to Mohamed Ali Ahmed who is not a party to this application and the notice being a paramount reason which trigged the present application, shows that, Mohamed Ali Ahmed is the one who was affected and required to file application if aggrieved. Further, another notice was issued to Chrisak Farms Limited which did not prefer any application of the kind. This proves beyond sane of doubt that, they are not affected thereto.

Mr. Mkomwa further submitted that, the application has been brought by a party who has no interest over the matter thus, the applicant has no right to bring this matter. In other words, the applicant has no locus standi to bring this matter. He referred this court to decision in the case of **Lujuna Shubi Balonzi Vs Registered trustees of CCM (1996) TLR 203.**

He submitted that it is trite law that, overriding principle is not applied to matters touching the substantive matters in the case. Based his argument

on the case of **Agast Green Mwamanda (Adm. of Estate of Abel Mwamanda Vs Jana Martin, Misc. Land Appeal No. 40 of 2019.**

The raised issue goes to the very foundation of the issue that is locus standi and stated that applying overriding Principle will result into miscarriage of justice. Finally, he prayed for dismissal of an application with costs.

Mr. Heri Zuku learned counsel and Mr. Jackson Liwewa Advocate subscribed to the submission by Mr. Hemed Mkomwa and finally, prayed for dismissal of the applicant's application with costs.

Mr. Emmanuel Mbuga learned counsel subscribed to what Mr. Hemed Mkomwa submitted and further added that, on the cited orders by Mr. Thomas Mathias learned counsel for the applicant, all of them are inapplicable as they deal with suit and not application.

Went further that; the instant application has to suffer dismissal as the point of law touches substantive matter not falling within a mere procedure. Maintained his position that striking out is remedy to an incompetent application while the present application is on locus standi, we thus submit that the appropriate remedy is to dismiss the matter. Mr. Mbuga prayed for costs for the reasons that, the respondents in attendance filed counter

affidavits by paying filing fees and appeared in court as per this court's order, thus they deserve costs.

Mr. Thomas Mathias learned counsel for applicant by way of rejoinder stated that, given the nature of the complained incompetence, the appropriate remedy is to strike out and not to dismiss. As to issue of costs, he submitted that, since point of law was raised by court then each party should bear its costs.

Having carefully consider the submission by all counsels in attendance, this court is now placed to determine on whether the applicant has locus standi to make the instant application.

To Start with, it is undisputed that, **one**, the applicant, **Moa General Trading Co. Ltd** filed the instant application, **two**, the application is seeking interim restraint orders, **three**, application was triggered by notice of transfer of landed property with certificate Title No. 90222 registered in the name of Chrisak Farms Limited issued by the 8th respondent to Chrisak Farm Limited and one Mohamed Ali Ahmed, **four**, neither Chrisak farms Limited nor Mohamed Ali Ahmed are applicants, **five**, the notice by the 8th respondent was neither served nor copied to applicant, **six**, neither Mohamed Ali Ahmed nor Chrisak farms Limited complained to the 8th

respondent the notices issued to them, **seven**, the application was filed by a stranger to the transaction between Mohamed Ali Ahmed, Chrisak farms Limited and the 8th respondent, and **eight**, the applicant has demonstrated no interest over the landed property with certificate Title No. 90222 registered in the name of Chrisak Farms Limited which is about to be transferred to 6th respondent and **nine** no document attached to the application stating that, the landed property with certificate Title No. 90222 registered in the name of Chrisak Farms Limited did fall under ownership of the applicant, through any means of acquiring ownership that is to say by way of inheritance, gift, purchase, adverse possession, clearing of bush, allocation by Government authorities.

In that regard, this court was satisfied beyond sane of doubt that, locus standi is vital matter which need to be established. Locus standi is defined by the Black's Law Dictionary 9th Edition to mean;

"The right to bring an action and be heard "

I am of the settled opinion that there are some factors through which Locus standi is required to be demonstrated by a claimant through; **one** showing his interest or rights on the matter in dispute, **two**, the way as to how he acquired such interests or rights; inheritance, gift, purchase, adverse

possession, clearing of bush, allocation by Government authorities, **three**, attainment of such interest or rights must be legal, **four**, that the interests or rights are existing, **five**, that, the interests or rights are about to be jeopardized. The above factors though not spelled out specifically in the case of **Lujuna Shubi Balonzi Vs Registered trustees of CCM (1996) TLR 203**, but principally those are some of the factors to be considered in the determination of the locus standi.

Considering, what is stated in the instant application, in the absence of notice from the 8th respondent naming the applicant in the said notice, the applicant, **Moa General Trading Co. Ltd** was unable to vividly demonstrate as how it developed interest, thus filing the application seeking for interim restraint order.

The above position was echoed by the Mr. Thomas Mathias learned counsel for the applicant that, they have not demonstrated how they developed interest in the transaction as such feeling affected by the 8th respondent thence, the instant application. He further, submitted that, the application was preferred by a stranger to the transaction.

As such, I am inclined to agree with both counsels of the applicant and respondents that, the applicant is really a stranger to the transaction and has failed to point out where the locus standi arise from.

It should be noted that, issues of locus standi goes to root of the matter and to ones right to sue. As such, this is not a procedural matter but a substantive matter to the court and party filing any proceedings before the court, it cannot in any way be saved through the suggested ways. Holding otherwise will create a havoc thus allowing busybodies to institute cases without any genuine cause.

This court therefore has no reasons to differ from the above position, as such, I accordingly hold that, the applicant has established no locus standi.

The learned counsels from both sides did hold horns with divergence opinions on the fate of the instant application given what they entirely agreed upon.

While the applicant's counsel opined that, this application be saved by this court exercising its discretionary powers under Order I Rule 10 (3), Order 1 Rule 9 of CPC, Order VI Rule 17 all the Civil Procedure Code Cap.33 R.E.2019 and finally stated that, it can as well be saved in the exercise of section 3A CPC, the counsels for the respondents were all in the opinion that, the cited

provision by the applicant's counsel are of no use for being inapplicable to application save for suits. As to prayer to allow amendment and join the other applicants, they submitted that, it is untenable as the matter at hand is in respect to locus standi by the applicant which issue cannot be resolved by amendment.

On the application of the oxygen principle, they submitted that, it does not apply to the matters touching substantive issues including locus standi.

This court will be guided by the principles of this court and court of appeal on the same. To start with, in the case **Mondorosi Village Council and Two Others Versus Tanzania Breweries Limited and Four Others Civil Appeal No. 66 Of 2017** where the court of appeal principled that;

"Regarding the overriding objective principle, we are of the considered view that, the same cannot be applied blindly against the mandatory provisions of the procedural law which go to the very foundation of the case. This can be gleaned from the objects and reasons of introducing the principle under section 3 of the Appellate Jurisdiction Act [CAP 141 R.E. 2002] as amended by the Written Laws (Miscellaneous Amendments) (No. 3) Act No. 8 of

2018, which enjoins the courts to do away with technicalities and instead, should determine cases justly."

Also, in the case **Agast Green Mwamanda (as Administrator of the Estate of the late ABEL MWAMANDA vs. Jena Martin, supra** where this court held that;

*"Nonetheless, the above-mentioned principle of overriding objective cannot be applied blindly or mechanically to suppress other significant legal principles, like the one discussed above, the purposes of which are also to promote justice and fair trials. This is the envisaging that was recently articulated by the CAT in the case of **Mondorosi Village Council and 2 others v. Tanzania Breweries Limited and 4 others, Civil Appeal No. 66 of 2017, CAT at Arusha** (unreported). In that case, the CAT declined to apply the principle of Overriding Objective amid a breach of an important rule of procedure.*

*Indeed, in the said **Mondorosi case** (supra) the CAT categorically held that, the principle of "overriding objective" cannot be applied blindly against the mandatory provisions of procedural law which go to the very foundation of the case. In so deciding, the CAT*

*followed its previous decision in **Njake Enterprises Limited v. Blue Rock Limited & Another, Civil Appeal No. 69 of 2017** (unreported). It thus, distinguished the **Yakobo Magoiga case** (supra) which had applied the Overriding Objective principle. I am therefore, settled in mind that, the principle must work in tandem, and not in friction with such other legal principles like the one under discussion, which are vital for justice dispensation. I consequently, distinguish the said **Yakobo Magoiga Case** (supra) from the case at hand for the reasons shown above."*

Based on the foretasted principles, this court is satisfied beyond sane of doubt that, the matter in question being one the issue touching locus standi it is incapable of saved in any of the suggested ways by the applicant herein. The reasons being that, it deals with substantive matter in which one to establish interest for moving the court to what is asked for.

All said and done, I am in total disagreement with the applicant's position on the matter, as such, this court is persuaded by the position of the respondents which fall squarely with the principles in the afore cited cases. Consequently, this matter suffers dismissal.

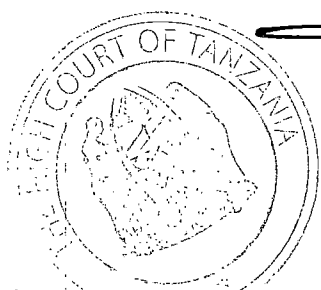
As to the costs, it is trite law that the same are granted in exercise of court's discretion which however has to be done judiciously. Parties were in indifference on the issuance of costs on the ground that, it is not amenable as the point was raised by the court suo motu while the respondents claimed for payment of costs as they did spend costs in traveling, filing documents and attending court session.

Having considered the circumstances this court hereby exercises its discretion grant costs accordingly.

In the final result the applicant's application is dismissed with costs.

IT IS SO ORDERED

DATED at MOROGORO this 14th June, 2023

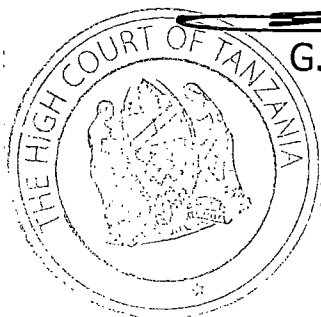



G. P. MALATA

JUDGE

14/6/2023

Court: Ruling delivered in chambers in the presence of counsels save for the 3rd, 4th and 5th respondents who are absent.




G. P. MALATA

JUDGE

14/6/2023