IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(MOSHI DISTRICT REGISTRY)
AT MOSHI
LAND CASE APPEAL CASE NO.34 OF 2022

(c/f District Land and Housing Tribunal for Moshi at Moshi in Land Case No. 10 of 2018)

EMMANUEL LYAMUYA.....APPELLANT

VERSUS

THE REGISTERED TRUSTEES OF
WORD FOUNTAIN MINISTRY .....1ST RESPONDENT
STEPHEN ERASTO MSHOMI.....2ND RESPONDENT

JUDGMENT

Last order: 1/11/2022
Judgment: 13/2/2023

MASABO, J.:-

Before me is a first appeal. It emanates from the District Land and Housing Tribunal (DLHT) for Moshi before which the parties herein litigated over ownership of a parcel of land located at Njia Panda Himo in Moshi. The abbreviated factual background of the appeal is as follows. The appellant and the 2nd respondents are clerics. In 2000's, together with other people, they co-founded the 1st respondent, a gospel ministry based at Himo Njia panda and conducting its business in a parcel of land which is the subject of this appeal. Later on, a misunderstanding ensured between them fueled by, among other things, ownership of the suit land and as a result of which they parted ways. The appellant established a new ministry whereas the 1st respondent continued to minister through the 1st respondent.

The duo and the Registered Trustees of the Word Fountain Ministry all claim ownership of the suit land. At the conclusion of the hearing, the tribunal found the evidence rendered by 2nd respondent heavier and declared him the owner of the suit land. Aggrieved by this decision, the appellant has knocked the doors of this court armed with the following grounds of appeal:

1. The trial tribunal erroneously dealt with the application before it by condoning a tricky by the second respondent who initially pleaded ownership for the 1st respondent and later on turned himself into the second respondent at the trial pleading ownership over the same land unsuccessfully;
2. That, the trial tribunal erred in deciding in favour of the 2nd respondent while his testimony as to the description of the disputed land did not match with the land pleaded by the first respondent which he admitted in his written statement of defence;
3. That, the orders contained in the judgment of the tribunal and the decree are at variance with the pleadings something which creates impossibility in execution;
4. That, the trial tribunal condoned failure by the 1st and 2nd respondent to join a necessary party one Hubert Leon Riwa pleaded as the seller to both the Appellant and the 2nd respondent;
5. That, the trial tribunal was wrong in entertaining an application whose verification clause was fatally defective;
6. That it was wrong for Hon. Kinyerinyeri to pick the application at the point of composition of judgment while he never heard any witness

something which hindered him to test the credibility of witnesses and evaluate evidence on record properly;

7. The trial tribunal erred in law and in fact by ordering amendments which were contrary to law thereby affecting the rights of being heard of the Appellant; and
8. That the trial tribunal erroneously entertained an application filed by a nonexistent entity.

The hearing proceeded in writing with consent of all the parties. The appellant and the 1st respondent had representation. For the appellant, it was Mr. Henry Njowoka and for the 1st respondent it was Mr. Elikunda E. Kipoko, both learned counsels. The 2nd respondent has no representation. All the parties duly complied with the schedule by filling their respective submissions which I have thoroughly read. I commend each of them for their industry in preparing their submissions which are not only lengthy but are quite insightful and of great assistance to the court. It is not my intention to reproduce them here. I will summarize them while dealing with the specific ground of appeal.

Before I proceed further let me point out at this outset that my major task in determining this appeal is to re-assess the evidence on record and make an independent finding on the correctness or otherwise of the DLHT's findings. However, from the grounds of appeal, I have deciphered that there is an additional task. As vividly demonstrated through the 4th, 5th, 7th and the 8th grounds of appeal, the appellant has questioned the competence of

the trial court proceedings for reasons that: there was a non-joinder of a necessary party; the verification clause of the application which instituted the proceedings in the tribunal was fatally defective; the tribunal wrongly permitted amendments that were prejudicial to the appellant and last, the application was instituted by a nonexistent entity. By their nature, these questions need be resolved before moving to the main task above stated**.**

That said, I will now move to the 8th ground of appeal which I prefer to start with. In this ground of appeal, the appellant has alleged that the application was filed by a non-existent entity. Submitting in support of this point, Mr. Njowoka has passionately argued that one of the issues framed by the DLHT as an issue for determination was whether the applicant was registered under the Registration of Societies Act, Cap 337 and, implicitly in the counsel's view, whether it has *locus standi*. This issue was not determined on merit, it was struck out by the tribunal. It is Mr. Njowoka's view the issues was wrongly struck out as there was credible evidence that the 1st respondent was not registered. He has argued that, in their testimonies before the tribunal, the appellant and the 2nd respondent joined hands that the 1st respondent was unregistered. Besides, he argued that, no registration certificate was tendered to show that the 1st respondent was registered by the Registrar of Societies and there was evidence (Exhibit D3) showing that the 1st respondent was not registered by the Registrar of Churches and the content of this letter was not objected. Based on this he argued that the application was incompetent for being filed by a nonexistent party and the tribunal erroneously entertained it as the applicant is devoid of *locus standi*.

He proceeded that, the issue of *locus standi* goes to the root of the jurisdiction of the court. Thus, it is important that it be determined. In support of his submission, he cited the decision of the Court of Appeal in **Registered Trustees of SoS Children's Village Tanzania v Igenge Charles & Others,** Civil Application No. 426 of 2018 and prayed that the appeal be allowed, the proceedings of the tribunal, its judgment and decree be quashed and set aside.

Responding to this issue, Mr. Kipoko for the 1st respondent, replied briefly that the said issue was correctly struck out by the tribunal as it was not emerging from the pleadings and the appellant did not object to have it struck out. His lamentation is an afterthought and should not be entertained. Moreover, he argued that the pleadings raised only one issue, namely who is the lawful owner of the suit land. Therefore, the tribunal did not err in striking out the issue. The 2nd respondent did not reply on this issue. The appellant rejoined briefly that this is a pertinent point of law and much as it has been lately raised, it cannot be ignored.

The arguments as to the time or stage at which an issue on *locus standi* can be raised has landed me into the decision of the Court of Appeal in **Peter Mpalanzi v Christina Mbaruka,** Civil Appeal No. 153 of 2019 which dealt extensively with this. The Court stated thus:

> "Simply defined *locus standi* is the right or legal capacity to bring an action or to appear in a court. In **Lujuna Shubi Ballonzi v. Registered Trustees of Chama Cha Mapinduzi** (1996) TLR

203, Samatta, J (as he then was) had the following to say on *locus standi:*

> *"Locus standi is governed by common taw according to which a person bringing a matter to court should be able to show that his right or interest has been breached or interfered with. The High Court has the power to modify the applied common law so as to make it suit local conditions."*

Locus standi is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject matter. Unless a person stands in a sufficient close relation to the subject matter so as to give a right which requires protection or infringement of which he brings the action, he cannot sue on it- see **Godbless Lema v. Mussa Hamis Mkanga and 2 Others,** Civil Appeal No. 47 of 2012 (unreported). Further, *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 is raised. In the instant case, the High Court Judge, was, with respect, wrong when he brushed aside the issue of *locus standi* once raised before him. **The issue ought to have been considered by the High Court regardless of having been improperly raised or raised at a late stage**."

From these decision and decisions from the Court of Appeal, it is now settled that an issue of *locus standi* being rooted in the jurisdiction of the court can be raised at any time. Therefore, the argument that this ground of appeal should not be entertained as *locus standi* has been improperly rised at an appeal stage is seriously wanting.

Turning to the merit of this ground, Regulation 3(1) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, G.N No. 174 of 2003 which governs institution of applications before DLHTs states that, a proceeding before the tribunal shall be commence by an application filed by the applicant or his representative. In the present case, the applicant is identified as the Registered Trustees of Word Fountain Ministry. As stated earlier on, the appellant has ardently argued that the application was incompetent as the Registered Trustees of Word Fountain Ministry which purports to be a cooperate body had not been registered under the Registration of Societies Act, Cap 337. Thus, it had no legal personality from which to derive the *locus standi*.

From the record, it is discerned that, as correctly argued on behalf of the appellant and the 1st respondent, this is not the first the present issue is being raised. It was raised before the DLHT and placed under the list of issues for determination appearing on page 29 of the DLHT's proceedings but was not determined on merit. As per page 61 of the proceedings, it was struck out under Order XIV rule 5(2) of the Civil Procedure Code [Cap 33 R.E 2019] after the tribunal held that, it was not directly linked to the pleadings. Two issues emerge from the submissions, that is, procedural propriety and accuracy of the order striking out the issue.

Regarding procedural propriety, since the parties did not question the powers of the DHLT to strike out the issue, I am made to assume that they are all conversant with the provision of Order XIV rule 5(1) and (2) of the

Civil Procedure Code [Cap 33 RE 2019] from which the powers to amend the issues by striking out an issue(s) wrongly framed. As per the law, the presiding court/tribunal can exercise these powers at any time before passing the decree. Mr. Njowoka has reasoned that there was a procedural impropriety in the exercise of these powers while in Mr. Kipoko's view, there was none as the parties had an opportunity to address the court and by consensus, they prayed that the issue be struck out.

It is indeed trite that amendment of issues should not proceed without affording the parties the right to be heard. In my scrutiny to discern the procedural impropriety, I have observed that, before striking out the issues, the presiding chairman invited the parties to address him. Interestingly, Mr. Kipoko who was riding two horses on the same day, that is to say, appearing for the applicant and holding brief for Mr. Semali who was the counsel for the 1st respondent, conceded and prayed that the same be struck out and so is the 2nd issue which sought to interrogate whether the 1st Respondent's ownership of the suit land was with consent of the Administrator General. The second respondent who was self-represented also followed suit and prayed that the two issues be struck out. To this extent, I agree with Mr. Kipoko that the procedural impropriety alleged is unfounded as the procedure for sticking out the 3rd issue was followed. The Appellant's counsel, acting through Mr. Kipoko in whom he had entrusted his brief, participated and consented to have the issue struck out. I find it weird and quite incomprehensible how Mr. Njowoka can accuse Mr. Kipoko for ridding two horses while Mr. Semali who was then representing the appellant is the

one who entrusted his horse and its riding gears on Mr. Kipoko with instructions that he ride it. He cannot, on similar reasons, fault the tribunal for acting on the submission made by Mr. Kipoko while holding Mr. Semali's brief.

With regard to the correctness of the order striking out the contested issue, it is my considered view that, as correctly submitted by Mr. Njowoka, the issue struck out by tribunal had intended to question not only whether the 1st respondent was registered under Cap 337 but, impliedly, whether it was a corporate body with *locus standi*. Based on my previous observation that *locus standi* is rooted in the jurisdiction of the court or tribunal, I agree with Mr. Njowoka that the tribunal had duty to resolve this issue as it raised a fundamental point of law which can be raised *suo motto* by the tribunal/court. Accordingly, I have no hesitation in holding that the tribunal materially erred in striking out the said issue as the commission to determine it on merit left a decisive legal issue unresolved. To correct the anomaly, I will now step into the shoes of the trial tribunal and do what it ought to have done.

From the submissions by the parties and the evidence on record, it is gathered that arguments over registration revolve around two statutes, that is, the Trustees' Incorporation Act, Cap 318 and the Societies Act, Cap 337. The Trustees' Incorporation Act provides for incorporation of trusts. Section 3 of this Act provides for compulsory incorporation of trusts that hold property for and on behalf of religious, educational, literary, scientific, social

or charitable purposes. Once incorporated the trust will be issued with a certificate of incorporation under section 5(1) and as per section 8(1) of the same Act, it will acquire legal personality with the right to sue or be sued in its name. Section 8(1) states that:

> 8(1) Upon the grant of a certificate under subsection (1) of section 5 the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have–
> (a) perpetual succession and a common seal;
> (b) power to sue and be sued in such corporate name;
> (c) n/a

It is my observation that there was no dispute regarding the 1st respondent's incorporation under The Trustees' Incorporation Act. Much as the certificate of registration was not produced in court, there were two pieces of evidence reliably demonstrating that the 1st respondent is duly incorporated. These comprised of PW1's testimony as ably corroborated by Exhibit D2 which was produced by the appellant himself. The latter is a letter from the Administrator General dated 23rd January 2019, with Ref. No. ADG/T.1/3174/4 addressed to the appellant showing that the Applicant was duly incorporated under Cap 318 on 21st November 2008. And, upon incorporation, it was issued a certificate with registration number 3174. As per the provisions above and in the absence of any proof that of cancellation of the certificate, there can be no doubt that 1st appellant is a body cooperate with the right to sue or be sued in its own name.

The second statute, the Societies Act, Cap 337, provides for registration of societies. As per the evidence on record, the 1st respondent has not been

registered under this law. In view of the finding above, it is not my intention to dwell much on the niceties of registration under this Act but, assuming that registration under this Act is mandatory, would the 1st respondent's non registration vitiate its incorporation and legal personality acquired through the Trustees' Incorporation Act? The answer is certainly in the negative. Whether mandatory or not registration under the Societies Act is independent from incorporation under the Trustees' Incorporation Act. Accordingly, non-registration under the Societies Act cannot take away the 1st respondent's cooperate personality. The argument by Mr. Njowoka is thus without merit as it is predicated on a lucid misapprehension of the two laws. The 8th ground of appeal consequently fails and is dismissed.

Closely related to the point above, is the 5th ground of appeal to which I now turn. In this ground of appeal, the appellant has asserted that the verification clause contained in the application which instituted the proceedings in the tribunal was fatally defective as it was wrongly verified by an advocate who stated that the facts contained in the application "are true to the best on information received from the Applicant." He proceeded that the 1st appellant being a corporate body obviously operates through natural persons who are either its principal officers or trustees but none of these appears in the application. In fortification he cited the case of **Ushirika wa Wakulima wa Mboga na Matunda Ubiri Lushoto (ULU) vs Bakari Shemshumu,** DC Misc. Civil Appeal No. 06 of 2016 (HC at Tanga). He proceeded that as the application is in the name of the Registered Trustees it was crucial for the

Trustee in whom the powers to institute the proceeding rests, to verify the information contained in the application.

Amplifying his point further, he has argued that, as per PW1's evidence, the 1st respondent has the following trustees: Sifuniel Fanule Mlacha, Stephene Erasto Mshomi (Chairman), Elizabeth Meela (Treasurer), John Chao (Deputy Secretary) and John Estomih Mamuya (Deputy Chairman) but none of these verified the application. He concluded that the omission and the absence of any resolution by the Board of Trustees authorizing the institution of the application presupposes that whoever instituted the application had no authority. The decision of the Court of Appeal in **Ilela Village Council v Ansar Muslim Youth Centre & Anothe**r, Civil Appeal No. 317 of 2019 and **Bakari Salum Matandika & 3 Others** (Misc. Land Application No. 190 of 2021 (HC, Tanga) which emphasized on the authority to sue and verification of pleadings by Members of the Board of Trustees were cited.

For the 1st respondent Mr. Kipoko submitted that the application was correctly verified by the 1st respondents advocate based on information received from the Registered Trustees of the Word Fountain Ministry. He argued that the anomaly, if any, was cured by the testimony of PW1, Sifuniel Fanuel Mlacha, who testified in support of the application as one of its registered trustees. Therefore, there is nothing to fault the trial tribunal. The 2nd respondent argued briefly that the verification clause had no defect. In the alternative it was argued that, if it was any how defective, the defect ought to have been raised and resolved at the trial stage. In rejoinder, the

appellant reiterated the defect and argued that the point raised is a legal point and can be raised at any time.

By clear implication, this point demands that I refer to the provisions of Order VI rule 15 of the Civil Procedure Code which deals verification generally and Order XXVIII rule 1 of the same law which specifically deals with verifications in suits by or against corporations. Needless to emphasize, a verification clause is vital in any pleading because apart from verifying the truthfulness of the facts relayed in the pleading, in proceedings commenced by cooperate bodies such as the present one it is of great assistance in ascertaining whether the application was commenced by a right person. Such ascertainment is remarkably vital because unlike natural persons cooperate beings do not act by themselves. As argued by the appellant's counsel, much as corporations are clothed with powers to commence legal proceedings, they can only exercise such powers through natural (authorized) persons normally directors and principal officers. It is from this background, Order XXVIII rule 1 of the Civil Procedure Code specifically lists the persons who can verify pleadings for and on behalf of a corporation. It states thus:

> In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Therefore, when a suit is instituted by a corporation it is crucial to ascertain whether the person who instituted the proceedings has the authority or not. When a suit is for or against a registered trustee as the present one further

guidance could be sought from the decision of the Court of Appeal in **Ilela Village Council v Ansar Muslim Youth Centre & Another** (supra) where it held that:-

> Principally, the Registered Trustees of Ansar Muslim Youth Centre is a separate legal entity person with its own legal identity distinct from the 1st respondent. In that respect, the application and the appeal ought to have been brought or filed in the name of the Registered Trustees of Ansaar Muslim Youth Centre **by one of the members of the Board of Trustees**. We have stated herein that Mr. Abubakar Ally Abubakar who posed as a principal officer of the 1st respondent instituted the application before DLHT. **Mr. Abubakar Ally Abubakar being not a member of the Board of trustees of the Registered Trustees of Ansaar Muslim Youth Centre had no authority and power to file the application and the appeal for and on behalf of the Registered Trustees of Ansaar Muslim Youth Centre. It is only members of the Board of Trustees who have powers and mandate to transact in the name of the Registered Trustees of Ansaar Muslim Youth Centre**. Since the application before the DLHT was filed by a person who had no authority to bind the Registered Trustees of Ansaar Muslim Youth Centre, we find merit in the first ground of appeal.[emphasis added]

From this authority it is deciphered that, it is not sufficient for a suit for and on behalf of a registered trustee to be commenced in the name of the registered trustees. It must, as a rule, be instituted by a member of the board of the registered trustees in whom the powers to transact in the name of the registered trustee vests. Institution of proceedings in a name other than the registered trustee's name and commencement of proceedings by

an unauthorized person(s) is fatal anomaly and renders the proceedings incompetent.

Since the application which commenced the matter before the DLHT verified by Pamela Mdee who is identified as an advocate, it is presupposed that she is the one who commenced the proceedings. Going by the principle above, I am inclined to agree with Mr. Njowoka that the verification clause was incompetent and so was the application as the advocate had no capacity to commence a proceeding for and on behalf of The Registered Trustees of Word Fountain Ministry as she is not in the list of the registered trustees. In the foregoing, it is obvious that the application was incompetent for being brought by a person with no authority.

The argument by Mr. Kipoko that the verification clause was competent as the counsel relied on information obtained from the 'Registered Trustees of the Word Fountain Ministry' lacks merit as the 'Registered Trustees of the Word Fountain Ministry' being an artificial being could not have relayed information to the advocate. Such information must have been relayed to her by a registered trustee whose name was for unknown reason omitted. In the absence of the name of such person, the source of the information verified cannot be ascertained and it would be a lucid misdirection to hold that the verification was sound. Similarly misconceived is the argument that the anomaly, if any, was cured by PW1's testimony because a court order or decree cannot be executed against a witness. In the foregoing, the fifth ground of appeal is upheld for being meritorious.

As the finding in this ground of appeal sufficiently disposes of the entire appeal, I find no need to proceed to the remaining grounds of appeal. Based on this sole ground the appeal is allowed. The proceedings, judgment and decree of the trial tribunal are nullified, quashed as set aside for being predicated on an incompetent application. Costs to follow event.

DATED and DELIVERED at MOSHI this 13th day of February, 2023.

X

Signed by: J.L.MASABO

J.L. MASABO

JUDGE

13/2/2023