

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(DAR ES SALAAM SUB REGISTRY)  
AT DAR ES SALAAM**

**CIVIL CASE NO. 173 OF 2023**

**SHENAZ HALARI ..... PLAINTIFF**

**VERSUS**

**1. MINISTER OF LIVESTOCK AND FISHERIES .....1<sup>ST</sup> DEFENDANT**

**2. ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**RULING**

14<sup>th</sup> Dec. 2023 & 23<sup>rd</sup> Feb, 2024.

**KIREKIANO, J.:**

The plaintiff herein has filed a plaint against the defendants claiming for payment of Tshs 422,940,000/= as principal amount and interest amounting Tshs 515,842,000/=. She also claims for general damages, costs and other reliefs deemed necessary. The core of the plaintiff claims is that, on 20<sup>th</sup> February 2017, the plaintiff alleges that the first defendant officers; from fishery department illegally confiscated plaintiff goods which were fishing gears worth Tshs 422,940,000.

Upon service of the copy of the plaint the defendants raised preliminary point of objection on one point thus, the suit is untenable in law as the plaintiff lacks locus stand.

This objection was heard by way of written submission; the plaintiff had service of Mr. Elphace Rweshabura learned advocate while the defendants had service of Miss Lilian Samson Mirumbe learned state attorney.

Submitting in support of the objection, Miss Mirumbe hinted that she was cognizant of the principle governing preliminary objections. This is as laid down in the decision in **Mukisa Biscuit Manufacturing Ltd Vs West End Distributors Ltd [1969] ITEA** that is; a preliminary objection shall consist of point of Law which have been pleaded or which arises by clear implication out of pleadings and which if argued may dispose of the suit.

It was Miss Mirumbe contention that, the plaintiff claims emanate from properties which do not belong to the plaintiff personally. Instead, the properties belong to the company which has its own rights and liabilities. She said the annexure in the plaint introduce the plaintiff as a director and shareholder of Imara Fishnet (T) Ltd whose illegal fishing gear were seized by the fishery department in Dar es Salaam. In this state of affairs Miss

Mirumbe said, the company could seek redress in its corporate capacity. She cited **Foss Vs Harbottle [1843] HARE 461** in support of her argument.

Miss Mirumbe maintained that considering that the properties seized were properties of Imara Fishnet (T) Ltd the company in which the plaintiff is a director and shareholder the plaintiff lacks locus stand. In support of this view, she cited decisions in **James F. Gwagilo Vs Attorney General [2004] TLR 161 CAT** and **Joel Demay Vs Kristian Gwahu** land Appeal No. 40/2022 and **Godbless Lema Vs Musa Hamisi and two others** to the effect that, locus stand is a jurisdictional issue and that a person cannot maintain a suit or action unless he shows that he has power to determine the issue.

Concluding her submission, she argued that the overriding objective under section 3 of the Civil Procedure Code cannot salvage the anomaly on the right and liability of the company. This is in view of **Mondarosi Village Council and two others vs Tanzania Breweries and 4 others** can't appear as 66 of 2017.

On his part Mr. Rweshabura for the plaintiff responded appreciating the decision in **Mukisa Biscuits** on principle governing preliminary objections.

However, regarding defendant counsel submissions that the illegal fishing gear that were seized by the fisheries department were properties of a body corporate IMARA FISHNET (T) LTD, he took a stance that the objection raised was not worth it because the same need facts finding to ascertain whether the properties at issue are properties of the plaintiff or a body corporate namely IMARA FISHNET (T) LTD.

To buttress his position, he cited decision is **Dirshad Othman Hassan and two others Vs Kariakoo Auction Mart Co Ltd Misc Civil Cause** number 596 of 2021 to the effect that a pure point of law does not arise if there are contention on facts yet to be ascertained by evidence.

The defendant did not file rejoinder submissions.

On my part I have considered the contending submissions by the parties. It is common ground that, firstly, preliminary objection capable of disposing the matter must be a pure point of law.

I also agree with the counsel for the defendant that locus stand is a point of law and a jurisdictional issue, which as a matter of law has to be established or determined at the earliest possible stage of the matter. This was the position in the cited cases of **Godbless Jonathan Lema** but also **Peter**

**Mpalanzi vs Christina Mbaruka, Civil Appeal No. 153 of 2019 CAT**

**<https://tanzlii.org/>**

The question of locus stand in this suit is centered on the ownership of the fishing gears. The defendant stance is that it is the company in which the plaintiff is a managing director that can sue and not the plaintiff in her name. In addressing this aspect my attention has been on the plaint as presented by the plaintiff. The facts as can be decerned from the plaintiff plaint, according to paragraph 5 avers thus;

*On 20<sup>th</sup> February 2017 several armed persons claiming to be fishery officers forcefully broke and entered to the plaintiff premises at Chamazi Msufini area and broke the storage containers and removed good worth 422, 940,000.*

*Para 25 states*

*The plaintiff submitted to the minister of livestock and fisheries and department of fisheries a statutory notice, of ninety days .... Copy of the notice and marked SH-5.*

Reading closely the above averment in the plaint, it would appear that the plaintiff claims the same goods in her own name. Looking from other angle, paragraph 25 of the plaint, the plaintiff notified the defendants on her intent to sue. A clear scrutiny of this annexure that is annexure **SH-5** it was stated

that the plaintiff issued a demand note to the defendant as a director of the Imara Fishnet Co Ltd. This is the defendant bedrock in the objection.

From these depositions in the plaint, it is clear that the question of ownership of the goods has two scenarios each with consequence. First if the owner is a limited company that is Imara Fishnet Co Ltd, then the plaintiff cannot have locus to sue in her name, secondly if the owner is the plaintiff in her name then it will be incumbent to the plaintiff to prove her claim. The two scenarios combined poses mixed issues of fact and law. Having reflected on the plaintiff averment in the plaint and the plaintiff points of objection, I am of settled view that the same contains matters of facts needing evidence. This is to say the objection raised pose both points of law and facts.

In a similar scenario in **Shose Sinare Vs Stanbic Bank Tanzania Ltd and another Court appeal no 89/2020** Court of Appeal found that there were two mixed points of fact and law and held at page 18 thus;

*'High Court's observation, on the other hand, means that the appellant did not have a cause of action against the first respondent, which is a matter of evidence. That is why we said, the judge decided a point of mixed law and fact as if it was a single pure point of law, which was not the case'*

Citing **Mohamed Enterprises (T) Limited v. Masoud Mohamed Nasser, Civil Application No. 133 of 2102** (unreported), The court observed that;

*"Where a preliminary objection raised contains more than a point of law, say law and facts, it must fail"*

In the end and basing on the foregoing reasons, this court is of the conclusion that, the preliminary point of objection raised by the respondent lacks merit, the same is overruled. The plaint shall proceed to be tried on merit. Costs shall be in the final determination of the suit.



**A. J. KIREKIANO**

**JUDGE**

**23. 02. 2024.**

## **COURT**

Ruling delivered in chamber in the presence of Miss Lilian Mirumbe State attorney for the defendants also holding brief of Mr. Elphace Rweshabura for the plaintiff.

**Sgd.**

**A.J. KIREKIANO**

**JUDGE**

**23. 02. 2024**