

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DAR ES SALAAM SUB REGISTRY)**

**AT DAR ES SALAAM**

**CIVIL CASE NO. 973 OF 2024**

**BANK M (TANZANIA) LIMITED ..... 1<sup>ST</sup> PLAINTIFF**  
**SANJEEV KUMAR PURUSHOTHAMAN ..... 2<sup>ND</sup> PLAINTIFF**  
**BHASKARAN KRISHNANKUTTY MENON NAIR..... 3<sup>RD</sup> PLIANTIFF**  
**NIKITA VIMAL MEHTA..... 4<sup>TH</sup> PLAINTIFF**  
**NOBLE AZANIA INVESTMENTS LIMITED ..... 5<sup>TH</sup> PLAINTIFF**  
**AFRICARRIERS LIMITED..... 6<sup>TH</sup> PLAINTIFF**  
**EQUITY & ALLIED LIMITED ..... 7<sup>TH</sup> PLAINTIFF**  
**CHRISTOPHER MWITA GACHUMA ..... 8<sup>TH</sup> PLAINTIFF**  
**KISHAN DHEBAR ..... 9<sup>TH</sup> PLAINTIFF**  
**CHINTAN MAGANLAL KAKKAD ..... 10<sup>TH</sup> PLAINTIFF**  
**RAMESH NARANBHAI PATEL ..... 11<sup>TH</sup> PLAINTIFF**  
**ADVENT CONSTRUCTION LIMITED ..... 12<sup>TH</sup> PLAINTIFF**  
**S.S. HOLDINGS LIMITED ..... 13<sup>TH</sup> PLAINTIFF**  
**TRIDEA COSMETICS LIMITED ..... 14<sup>TH</sup> PLAINTIFF**  
**SEAN PATRICK BRESLIN ..... 15<sup>TH</sup> PLAINTIFF**  
**GULABCHAND PUNAMCHAND SHAH ..... 16<sup>TH</sup> PLAINTIFF**

**SIMON DAVID GREGORY & ROISIN GREGORY ..... 17<sup>TH</sup> PLAINTIFF**  
**CAITRIN BRESLIN ..... 18<sup>TH</sup> PLAINTIFF**  
**VIMAL DILSUKHRAI MEHTA ..... 19<sup>TH</sup> PLAINTIFF**  
**SHILPA VIMAL MEHTA ..... 20<sup>TH</sup> PLAINTIFF**  
**SHIVA SANJEEV KUMAR ..... 21<sup>ST</sup> PLAINTIFF**  
**GISSINGS DIRECTORS PENSION SCHEME ..... 22<sup>ND</sup> PLAINTIFF**  
**SUMARIA PROPERTIES LIMITED ..... 23<sup>RD</sup> PLAINTIFF**  
**HENRY HERMAN MOSHA ..... 24<sup>TH</sup> PLAINTIFF**  
**ANOUSHKA MEHTA ..... 25<sup>TH</sup> PLAINTIFF**

**VERSUS**

**BANK OF TANZANIA ..... 1<sup>ST</sup> DEFENDANT**  
**THE ATTORNEY GENERAL OF TANZANIA ..... 2<sup>ND</sup> DEFENDANT**  
**AZANIA BANK LIMITED ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

**S.M. MAGHIMBI, J:**

The second to twenty fifth plaintiffs were the shareholders of the first plaintiff whose business and assets were transferred to the 3<sup>rd</sup> Defendant. The suit beforehand was lodged by the 25 plaintiffs claiming against the defendants for a declaration that:

1. The transfer of the 1<sup>st</sup> Plaintiff's business and assets to the 3<sup>rd</sup> Defendant was untenable for being unlawful;
2. An order for payment of Tshs 242,848,195,659.00 being the expropriated value of the 1<sup>st</sup> Plaintiff's business and assets; interest on the said sum of Tshs. 242,848,195,659.00 at the rate of 20% from 30<sup>th</sup> of June 2023, the date of valuation of the expropriated business, up to the date of judgment;
3. An order for payment of general damages as may be assessed by the Court but not less than Tshs 100,000,000,000.00;
4. An order for payment of punitive and exemplary damages at the rate to be assessed by the Court but not less than Tshs 15,000,000,000.00 for each of the Plaintiffs;
5. An order for payment of costs of the suit; interest at Court's rate from date of judgment to the date the decree is fully satisfied;
6. And any such order or orders as the Honourable Court may deem fit and just to grant based on the circumstances of this case.

While filing their Written Statement of Defence ("WSD") the defendants raised three points of preliminary objection that:

1. The suit is untenable for being filed in court which not clothed with jurisdiction to entertain the suit which tends to challenge acts/ decisions of the 1<sup>st</sup> Defendant.
2. The plaintiff has no locus standi to institute a suit for want of Banking Licence and also she is no longer under existence in terms of Section 58(2) (g)
3. The suit unmaintainable and untenable for containing reliefs which are time barred.
4. The suit is defective for contravening provision of Order VI Rule 14 of the Civil Procedure Code, Cap 33 R.E 2019.

On the day of the hearing, Ms. Deborah Mcharo, learned Senior State Attorney appeared for the defendants while Mr. Emanuel Welwel represented the plaintiffs. In her submissions to support the application, Ms. Mcharo addressed the points one by one while combining the first and third points of objection and argued them together. The two points were that the suit is untenable for being filed in court which not clothed with jurisdiction to entertain the suit which tends to challenge acts/ decisions of the 1<sup>st</sup> Defendant and the third point of objection is that the suit is untenable for containing reliefs which are time barred.

Starting with the nature of the claim, Ms. Mcharo submitted that looking at the claim that is brought by the plaintiffs, the nature of the claim is that the plaintiff seeks to challenge the decision of the 1<sup>st</sup> defendant issued on 02/08/2018. The decision led to the takeover of all activities of the 1<sup>st</sup> plaintiff in relation to banking business and the reason for takeover is detailed in the letter which was failure to meet liquidity conditions of the bank for its operations. She elaborated that the decision followed the authority of the 1<sup>st</sup> defendant under Section 56(1)(g)(iii) of the Banking and Financial Institutions Act, 2006 ("BFIA") and that it was a decision of an administrative organ of the Government from the 1<sup>st</sup> plaintiff's failure to meet the conditions set out in the licence issued to her. She then argued that as per the laws of this country, if a person wishes to challenge the decision of any organ of the Government, there is a procedure prescribed by the law and not by instituting a Civil suit as done by the plaintiff. Her reason was the decision of this court may quash the decision made by the 1<sup>st</sup> defendant and that is why this court has no mandate to quash and set aside a decision of the 1<sup>st</sup> defendant. She then cited the provisions of Section 17(1) of the Law Reforms (Fatal Accidents and Misc. Provisions) Act, Cap 310 R.E 2019 which provides:

*"The High Court shall not, whether in the exercise of its civil or criminal jurisdiction, issue any of the prerogative writs of mandamus, prohibition or certiorari."*

She then submitted that the Section has always been clarified and supported by many decisions of the CAT in similar circumstances where parties intended to challenge decisions of administrative organs. She cited the case of Eliezer Zacharia Mtemi & 12 others Vs. A.G & 3 others, Civil Appeal No. 177 OF 2018, whereby at page 12 and 13 the court asked whether the claim that was before it could be determined by an ordinary court and held at page 13:

*The suit from which this appeal arises intended, inter alia, to invalidate decisions of the Minister of Local Governments and Regional Administration, (second respondent), decisions of the District Council for Karatu (the third respondent) and those of the Registrar of Villages. As correctly submitted by Mr. Nyoni, the suit aimed at questioning administrative actions of officials of the Government because that is evident from the pleadings by which the appellants must be bound. The appellants' claims, though actionable under some other laws of the land, do not fall under*

*a branch of ordinary civil suit. We are keenly aware that what the appellants were pursuing at the High Court falls under the realm of public law and could not be pleaded under the CPC which deals with private law. It is, undoubtedly, settled that where the law provides for a special forum, ordinary civil courts should not entertain such matters.*

Ms. Mcharo then submitted that the court dismissed the appeal for reason that the suit was unmaintable. She reiterated her submission that the first defendant made the decision according to the law that gave it a mandate to make the decision and she did so as an administrative organ of the Government hence the decision cannot be challenged in this court by way of a Civil Suit.

Referring to the plaint from page 19, she submitted that the claim so outlined is on challenging the decision made by the 1<sup>st</sup> defendant, defending her line of argument on the principle that a preliminary objection should be determined by looking at the pleadings so as to find out whether there are elements of non-compliance with the law in bringing an action before a court. She argued further that the issue of jurisdiction is crucial before a court may know if it is allowed to determine a matter, the aim being to save time of

the court instead of having a matter heard to its finality and then found that it is of no use. She supported her submission by citing the case of **Commissioner General TRA & Another Vs Milambo Limited, Civil Appeal No. 62 of 2022**, where at pg 17 the Court cited with approval a holding of the Halsbury's Laws of England, Vol 10 whereby jurisdiction was defined and held:

*"At the outset, we borrow a leaf from the Halsbury's Laws of England, Vol 10 whereby jurisdiction is defined in paragraph 314 as follows*

*"the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decisions. The limits of this authority are imposed by statute...under which the court is constituted, and may be extended or restrained by similar means. A limitation may be either as to the kind and nature of the claim, or as to the area which jurisdiction extended, or it may partake of both these characteristics."*



That the Court further cited with approval the case of **Fanuel Mantiri Ng'unda Vs Herman Mantiri Ng'unda & 20 Others**, Civil Appeal No. 8 of 1995 (unreported) where the Court stated:"

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature... The question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position and the commencement of the trial....it is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case."*

From the cited authorities and the holding of the court, Ms. Mcharo prayed that this case is dismissed for want of proper forum unless the plaintiffs prove that there is no forum to address the issue according to the law.

On the 2<sup>nd</sup> limb, Ms. Mcharo challenged the jurisdiction of this court on the ground that the suit is time barred. She submitted that the plaintiffs have confused the court on what is actually claimed before it. That the reliefs sought in this suit amount to tort which limitation to bring an action is three

years. That there is also a claim for compensation in which time limitation is one year therefore the claims herein being time barred, it ousts jurisdiction of this court to entertain the claim. On those two lines of argument, Ms. Mcharo concluded that this court has no jurisdiction to entertain the matter, praying that the suit be struck out so that it can be filed in a proper forum.

In reply Mr. Welwel submitted that it is undisputed fact that there is a decision of the first defendant dated 2<sup>nd</sup> August 2018, related to take over of the first plaintiff's banking business and that the background to this decision is set out in the plaint. His argument was that when read holistically, the plaint does not seek to challenge or reverse the decision of the 1<sup>st</sup> defendant takeover and that the background information is provided only for the purposes of putting facts into perspective and forming the basis for the quantum claimed as compensation. He emphasized that the decision in itself is not at issue, arguing that for this reason alone, the first point of objection should fail because the administrative decision of the first defendant is not in question.

Mr. Welwel then submitted that going through the reliefs in the plaint, there is no prerogative writ which is sought and for this reason reference to Cap 310 of the laws is unfounded. Likewise, he distinguished the decision of

the Court of Appeal in the cited Civil Appeal No. 177/2018 on the ground that in that case and amplified at pg 15, the suit was challenging the administrative action of the Government and was seeking to enforce right to protect public property namely Village Properties. That in the current case, the plaintiffs seek to enforce right to private property namely their investment in the equity of the first plaintiff hence there is no way these cases can relate. He further distinguished the cited case of Commissioner General TRA as that was a case purely on tax decision but there are no tax issues in this case. That the law governing tax matters do not govern relationship of the parties before this court.

On Ms. Mcharo's reference to para 19-27 of the plaint suggesting that this is an administrative matter, Mr. Welwel argued that she is being selective as the plaint has to be read in whole which outlines clearly that there were administrative decision to take possession of the 1<sup>st</sup> plaintiffs business and to revoke her licence. He then submitted that when that administrative process was complete, the plaintiffs suffered in that the residual value or remaining value of their assets apart from the ceased banking business was taken away without being compensated. That the plaintiffs are in court to enforce the right to private property which is enshrined in the Constitution

of Tanzania in Article 24(1)&(2) which prohibits expropriation of property without adequate compensation. As such, he concluded that the plaintiffs have a cause of action and they are properly before this court as this is not an administrative matter.

In rejoinder, Ms. Mcharo submitted that the advocate had admitted that the decision of the 1<sup>st</sup> defendant was to take over the bank, but his argument is that the case is for compensation on the residual value of the assets. Her claim was that the plaintiff cannot claim for that before he can prove as to what has caused the dissolution. That for the court to make order that the plaintiffs be compensated, the administrative must be reversed hence the claim cannot be granted unless the decision to revoke is quashed.

On the cited case of Commissioner General of TRA which Mr. Welwel had distinguished, Ms. Mcharo's reply was that she is not dealing with the facts, rather the principle that is set therein. In that decision, she pointed, the issue was on the jurisdiction of the court to determine what is before it. Therefore although the issue there was tax, the principle set therein is relevant.

On the issue of reliefs that were sought before the court whereby Mr. Welwel argued that the defendants did not identify the reliefs which are time barred,

she replied that the claim was on the residual compensation and that the same should have been made within a year of the cause of action while the claim beforehand was lodged four years later. She emphasized that all the reliefs that are sought in this case are time barred, pointing for instance, in the 1<sup>st</sup> prayer the plaintiffs are attacking the transfer of the assets to be unlawful hence they cannot say that they are not challenging the decision while it is a relief sought. On damages at the rate to be ascertained by the court, she argued that this is an issue that purely falls under tort and it is time barred.

Having heard the parties, my determination will also take the same flow, I will determine jurisdiction in terms of what the court is moved to determine on the one hand and on whether the claim is filed within the time prescribed by the law. It is trite law jurisdiction of the courts is a creature of statutes and of paramount importance is that before the court penetrates into determining the issue in controversy before it, it must first satisfy itself that it is properly clothed with jurisdiction to do so. I am in one with the cited case of **Commissioner General TRA & Another Vs Milambo Limited, Civil Appeal No. 62 of 2022**, where at pg 17 the Court cited with approval

a holding of the Halsbury's Laws of England, Vol 10 whereby jurisdiction was defined and held:

*"the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decisions. **The limits of this authority are imposed by statute...under which the court is constituted, and may be extended or restrained by similar means. A limitation may be either as to the kind and nature of the claim, or as to the area which jurisdiction extended, or it may partake of both these characteristics.**"*

This position was laid by the Court of Appeal in the case of **Commissioner General Tanzania Revenue Authority vs Jsc Atomredme TZoloto (armz) (Consolidated Civil Appeals 78 of 2018) [2020] TZCA 306 (9 June 2020)**, whereby at page 26 The Court cited with approval the case of his Court in **Faniel Mantiri NG'UNDA Vs Herman Mantiri NG'UNDA & 20 others (CAT) Civil Appeal No. 8 of 1995** (unreported) where it was held:

*"The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases*

*of different nature. The question of jurisdiction is so fundamental that courts must as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial.*

Therefore as argued by Ms. Mcharo, the issue of jurisdiction is crucial before a court may know if it is allowed to determine a matter, in order to save time of the court instead of having a matter heard to its finality only to find that the court had no jurisdiction making the whole process a nullity. In the cited case of Fanuel Ngúnda, the Court orchestrated the risk the court takes to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case. Having the above in mind, I will now determine the objection raised by the respondent in order to satisfy myself whether I am clothed with jurisdiction to determine this matter. The determination will be inline with the principles set in the celebrated case of

To begin with I have noted with emphasis Mr. Welwel's submission that the plaintiffs do not intend to challenge the decision of the 1<sup>st</sup> respondent on its substance, their claim is on the residue value or remaining value of their assets apart from the ceased banking business was taken from the plaintiffs without being compensated. This is also featured at para 21 of

the plaint whereby the plaintiffs termed the decision as without a plan of action, irregular and wrong. Their main claim is however on para 22 of the plaint in which the basis of the first prayer of the plaint lies, this is the management of the 1<sup>st</sup> plaintiff after the decision to take over whereby the plaintiffs plead that the 1<sup>st</sup> defendant wrongly managed the affairs of the 1<sup>st</sup> plaintiff thereby prejudicing and causing damages to the plaintiffs. In their first prayer, the plaintiffs are moving the court for declaratory orders that the transfer of the plaintiff's business and assets to the third defendant was untenable for being unlawful. From the face of it, reading the prayer in literal meaning, what aggrieved the plaintiffs is the transfer of the business and assets of the 1<sup>st</sup> plaintiff to the 3<sup>rd</sup> defendant whom the plaintiffs claim to be a competitor.

Ms. Mcharo's argument is that the decision of the 1<sup>st</sup> defendant to take over the business of the 1<sup>st</sup> plaintiff followed the authority of the 1<sup>st</sup> defendant under Section 56(1)(g)(iii) of the BAFIA hence it was a decision of an administrative organ of the Government from the 1<sup>st</sup> plaintiff's failure to meet the conditions set out in the licence issued to her. She then argued that as per the laws of this country, if a person wishes to challenge the decision of any organ of the Government, there is a procedure prescribed by



the law and not by instituting a Civil suit as done by the plaintiff. Her reason was the decision of this court may quash the decision made by the 1<sup>st</sup> defendant and that is why this court has no mandate to quash and set aside a decision of the 1<sup>st</sup> defendant.

With respect to Ms. Mcharo, the context upon which her argument is founded does not fit in our current case. Indeed, challenging administrative decisions of the Government calls for a Judicial Review, the main question at this point is whether what was done by the 1<sup>st</sup> defendant and a claim by the plaintiff is that which is done as an organ of the Government that qualified the shelter from the umbrella of Judicial Review as opposed to a Civil Suit. The status of the 1<sup>st</sup> defendant is provided for under the law which establishes it, the Bank of Tanzania Act, 2006 ("the BoT Act"). Section 4(1) of the BoT establishes the Bank and Section 4(2) declares the Bank as a Corporate Body capable of suing and being sued. The Immunity of the Bank is defined under Section 66 of the same Act which provides:

*"66. Notwithstanding anything to the contrary in any written law, where any judgement or order has been obtained against the Bank, no execution or attachment or process in whatever nature, shall be issued against the Bank or against any property or asset*

*of the Bank, but the Bank shall cause to be paid such amounts as may, by judgement or order, be awarded against the Bank to the person entitled.”*

Therefore, as per the cited Section, by implication, a judgment or order may be issued against the bank, only that no execution or attachment process in whatever nature shall be issued against the Bank. Up until this point, there is nowhere in the law that establishes the Bank which defines a particular jurisdiction of a court on which the 1<sup>st</sup> defendant can or cannot be sued or excluding an action being brought against the Bank.

The next task is to look at the nature of the decision consequence of which is sought to be challenged because this is where the foundation of the defendant's objection lies. Ms. Mcharo argued that the decision made under Section 56(1)(g)(iii) of the BAFIA is administrative and cannot be challenge in this court. Unfortunately, she did not cite any law which so prohibits because as I held earlier, jurisdiction is a creature of statute. An example of jurisdictional restrictions would be Section 33(1) of the Public Service Act, Chapter 298 which prohibits legal proceedings in any court on the ground that any regulations made under that Act have not been complied with. This clearly ousts the jurisdiction of the normal civil and criminal courts. As for

this case, it is undisputed that the decision of the 1<sup>st</sup> defendant was done under Section 56(1)(g)(iii) of the BAFIA which reads:

*"56.-(1) The Bank may take possession of any bank or financial institution if –*

*(g) in the opinion of the Bank–*

*(iii) the bank or financial institution is conducting its business in violation of any law or regulation, or is engaging in any unsafe or unsound practice that is likely to cause insolvency or substantial dissipation of assets or serious prejudice to the interests of depositors or the Deposit Insurance Fund."*

The powers of the 1<sup>st</sup> defendant to transfer the business and assets of a Bank to another financial institution is prescribed under Section 58(2) of BAFIA which provides:

*(2) The Bank's powers shall include powers to–*

*(a) continue or discontinue operations as a bank or financial institution, notwithstanding that its licence has been revoked;*

*(b) stop or limit the payment of its obligations;*

*(c) employ any necessary staff;*

*(d) discontinue employment of any staff of a bank or financial institution;*

*(e) execute any instrument in the name of the relevant bank or financial institution;*

*(f) initiate, defend and conduct in its name any action or proceeding to which the bank or financial institution may be a party;*

***(g) merge the bank or financial institution with another bank or financial institution;***

***(h) transfer any asset or liability of the bank or financial institution, including assets and liabilities held in trust, without any approval, assignment or consent with respect to such transfer; and***

*(i) reorganize or liquidate the bank or financial institution in accordance with the provisions of this Act.*

Therefore what the plaintiffs seek to challenge as unlawful is the action that the 1<sup>st</sup> defendant took under the provisions of Section 58 (g)&(h) of the BAFIA and a claim for compensation of the residual value after the take over and not the decision to take over the bank. This is where the crucial question

lies, what is forum available for an aggrieved party in relation to any action taken by the 1<sup>st</sup> defendant in exercising its powers under the cited Section? The answer to this question is found by scrutinizing the provisions of Section 62 of the BAFIA. The marginal note in this section is "Judicial Review" and the Section provides:

*"No proceedings commenced in court seeking a review of any action taken by the Bank pursuant to the provisions of this Part shall restrain the doing or nullify any action done or taken before an order of the court to the contrary was issued."*

The provision, read in its clear context, clearly provides for a forum upon which an aggrieved party may challenge the decision of the 1<sup>st</sup> defendant under Part IX of the BAFIA which is the main subject tabled by the plaintiffs for determination before me under the first prayer. That being the case, pursuant to the provisions of the Section 62 of the BAFIA, the remedy available for the aggrieved shareholders herein is to challenge the decision of the 1<sup>st</sup> respondent by way of Judicial Review, this is if the decision to take over the 1<sup>st</sup> plaintiff Bank is what aggrieved the plaintiffs and they intend to have a declaration of its nullity and re-possess the business. This

is based on the fact that first a judicial review application is limited, it is only a means within which the courts can control the excesses of power by public officials. It allows parties to challenge the legality or constitutionality of decisions made by public bodies on Illegality, Irrationality and Procedural impropriety. Secondly, in an application for a Judicial Review, the remedial orders therein including quashing or setting aside an unlawful decision; prohibit and restrain a party from pursuing an unlawful course of conduct. The courts may also declare the rights of the parties and subsequently ordering compensation or restitution as appropriate and may also issue interim measures pending the determination of a matter.

However, as submitted by Mr. Welwel, going through the reliefs in the plaint, there is no prerogative writ which is sought and for this reason reference to Cap 310 of the laws is unfounded. Further to that, the plaintiffs are not seeking compensatory orders upon nullification of the decision of the 1<sup>st</sup> respondent. They are moving the court on specific damages that they allege to be residual value of the assets and business of the first plaintiff. They are seeking for what is remaining after the procedures under 61(2) of the BAFIA have been complied with by the 1<sup>st</sup> defendant. Since the prayers sought can only be litigated under private law as opposed to public law under

prerogative orders. That being the case, the issue cannot be determined at this preliminary stage. This first line of objection is hereby overruled.

The second line of objection challenging jurisdiction was an issue of time limitation. Ms. Mcharo's argument was that the plaintiffs have confused the court on what is actually claimed before it as the reliefs sought in this suit amount to tort which limitation to bring an action is three years. Further that there is also a claim for compensation in which time limitation is one year therefore the claims herein being time barred, it ousts jurisdiction of this court to entertain the claim.

On his part Mr. Welwel argued that there were administrative decision to take possession of the 1<sup>st</sup> plaintiffs business and to revoke her licence and what they claim is after that administrative process was complete hence an issue which requires evidence. He submitted that the plaintiffs suffered in that the residual value or remaining value of their assets apart from the ceased banking business was taken away without being compensated, hence it needs evidence to be adduced.

On my part, I find that the issue of time limitation in this case requires evidence. In order to determine as to when the cause of action arose, the court must find out as to when the process under Part IX was completed by

the 1<sup>st</sup> defendant. Under the principle set out in the celebrated case of **Mukisa Biscuits Manufacturing Limited Vs. West End Distributors Limited, 1969 Vol. 1 EA 696** particularly the holding by Sir Charles Newbold at page 701 which reads:

*"a preliminary objection is in the nature of what used to be a demur, it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. **It cannot be raised if any fact has to be ascertained** or if what is sought is exercise of judicial discretion"*  
*(Emphasis is mine).*

As held above, a preliminary objection cannot be determined if evidence is required to ascertain certain facts. The case is the same in this case whereby the court has to ascertain as to when the process of take over matures the cause of action of the plaintiff as against the first defendant. Therefore that line of argument cannot be determined at this stage without evidence being adduced. Consequently, the determination of this objection is deferred at this point, it will rather form part of the issues to be framed for determination should the other objections be overruled and



the matter reached to the Final Pre Trial Conference where issues will be framed.

Going to the second objection raised, the defendants are challenging the 1<sup>st</sup> Plaintiff's locus stand to institute the suit for want of banking licence. Mr. Mcharo's argument was based on the undisputed fact that the Defunct Bank M no longer exists after her licence was revoked in terms of Section 58 (2) (g) and (h) of the BAFIA. That the first plaintiff has no locus because the main objectives that she was issued a licence for was to conduct banking business and that after the decision of the 1<sup>st</sup> defendant to take over the bank, it means the plaintiff lost her locus standi or legal legs to claim against the 1<sup>st</sup> defendant on any banking issues. She argued that even if the company is registered, but for the purpose of banking business, it is as good as the 1<sup>st</sup> plaintiff does not exist and in case of any claims, the shareholders should be the ones to claim against the bank. Apart from that, she submitted, Bank M as a company registered with BRELA has ceased to exist as it did not file annual returns for about 8 years since 2016. She hence concluded that as per Section 128 and 132 of the Companies Act, Cap. 12 R.E 2002 ("The Companies Act"), a company is required to file annual returns on every year.

On the legal principles to locus standi, Ms. Mcharo submitted that the law is clear that for a party to have a right to sue, she must have an interest or rights which have been interfered. She reiterated her argument that Bank M has no interest or right to bring an action to court. She supported her argument by citing the case of **Omari Yusuph (legal representative of the late Yusuph Haji) Vs. Albert Munuo, Civil Appeal No. 12 Of 2018**, at page 6 where the CAT cited with approval the decision of the High Court in the case of **Lujuna Shubi Ballonzi, Senior Vs Registered Trustees Of Chama Cha Mapinduzi [1996] TLR 203 (HC)** where it was stated that:

*"Locus standi is governed by Common Law, according to which a person bringing a matter to court should be able to show that his rights or interest has been breached or interfered with"*

From the cited holding, the CAT held:

*Apart from fully subscribing to the cited decision, it is our considered view that the existence of legal rights is an indispensable pre-requisite of initiating any proceedings in a court of law.*

From the cited authority, she argued that the 1<sup>st</sup> plaintiff has no locus standi to institute this suit, praying that the suit be struck out against the first plaintiff.

In his reply, Mr. Welwel was in agreement that Section 58(2)(g)&(h) of the BAFIA provides the powers of the 1<sup>st</sup> defendant to merge a bank or to transfer any assets or liabilities of the bank, he however argued that it does connect to how these powers alienate the locus of the first plaintiff to sue. He then submitted that what the first defendant is entitled to do is to take possession of the banking business, merge or transfer the banking business of the bank which has been ceased and to revoke license. In cognizant that those powers are provided by law, he emphasized that the plaintiffs have no issues because the aim is to protect the depositors which aim they all support. His argument was that the point of departure between the parties is that, after the first defendant has protected the depositors, the residual value of the assets of the plaintiffs remains the property of the plaintiffs. He pointed that it is in respect of that residual value that the plaintiffs seek compensation for their properties. That the reliefs are sought from both the first defendant who transferred the assets and the third defendant who benefited from the transferred positive value of the assets.

He further pointed that the first plaintiff was not insolvent and therefore from insolvency perspective it has locus to sue.

On the argument of revocation of the licence of the 1<sup>st</sup> plaintiff which Ms. Mcharo argued to amount to non-existence of the 1<sup>st</sup> plaintiff, that by revoking the licence the first plaintiff died, Mr. Welwel opposed that point of view on grounds that in first place, no law has been cited to suggest that by revoking the licence the first plaintiff has died. To the contrary, he argued, in terms of Section 8 of the BAFIA, an applicant of a banking licence is first a limited liability company and a limited liability company is not incorporated by the 1<sup>st</sup> defendant. It is incorporated under the Company's Act by the Registrar of Companies and that the defendant has not showed that the Registrar of Companies has de-registered the 1<sup>st</sup> plaintiff. In fact, he submitted, in their defence they have attached a search report from the registrar of companies confirming that the 1<sup>st</sup> plaintiff actually exists hence the suggestion that she does not exist is unfounded.

On the cited Section 108 of the Companies Act whereby Ms. Mcharo submitted that the first plaintiff has not filed annual returns and to that effect the company is non-existing, Mr. Welwel had two responses in this regard. His first line of submission was that Section 128 does not say if a company

does not file annual return then it is non-existent or it dies. Secondly, he submitted that filing of annual returns or otherwise is a question of fact for which evidence will be required. He also pointed out that in the reply to the WSD it is pleaded that the 1<sup>st</sup> defendant is responsible for filings of the annual returns because it is possessed with the corporate file of the plaintiff. He concluded that the question of annual return and the status of the 1<sup>st</sup> plaintiff at the registrar of companies is a question of fact which must be reserved for trial, to be raised at this stage is prejudicial and premature for want of evidence.

On the cited e case of **Omar Yusuph Vs. Albert Munuo, Civil Appeal No. 12/2018** to reinforce their submissions on locus standi, his reply was that he is in agreement on the definition of locus standi. He however argued that the authority does not help the case at hand because it related to matter completely different. It delas with landed rights and capacity to sue in land which facts are completely divorced from the current status. He then submitted that in the case before me, the 1<sup>st</sup> plaintiff has alleged right and interest, the defendants have disputed that right hence it is impossible to resolve these questions by way of a PO, it has to be by trial and ultimately judgment.

He further submitted that the submission of Ms. Mcharo is self-defeating, on the one they suggest that the 1<sup>st</sup> plaintiff does not exist and on other hand it is suggested that the first plaintiff has no interest arguing that you cannot have both. He reiterated his submission that the first plaintiff does exist and that she and other plaintiffs have asserted right to property and have claimed compensation for the property, an interest which is capable of being pleaded. Further that it would have been different if the 1<sup>st</sup> plaintiff wanted to reverse the decision to cancel banking licence but since the licence is not in question, the right to property can properly be ascertained in a suit like this one in hand.

In rejoinder, Ms. Mcharo reiterated her submission in chief that the licence is revoked and hence the 1<sup>st</sup> plaintiff has no locus to sue the defendants herein. In order to have interest, she argued, the 1<sup>st</sup> plaintiff must have had a licence to run a banking business.

This objection should not detain me much. As pointed out by Mr. Welwel, the defendants have attached to their WSD a current search from BRELA which shows that the plaintiff is an existing company registered under the Companies Act. What has been revoked is her licence to conduct banking business and not de-registration from the Registrar of Companies. This

means the plaintiff has retained her right to sue and be sued as a company.

The objection is therefore lacking in merits and it is hereby overruled.

The last objection is that the suit is defective for contravening provisions of Order VI Rule 14 of the Civil Procedure Code, Cap 33 R.E 2019. The objection is based on the fact that one of the plaintiffs. The 11<sup>th</sup> plaintiff did not sign the plaint. It was Ms. Mcharo's argument that according to the provisions of Order VI Rule 14, all plaintiffs must sign the plaint and verify it while the plaint in this court is signed by all the plaintiffs save for the 11<sup>th</sup> plaintiff which is contrary to the provisions of Order VI Rule 14 of the CPC. Further that looking at the other signatures including that of 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 17<sup>th</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> which are all companies, the plaint shows only the fact that it was signed by directors and it does not say exactly who is the person signing on behalf of the company hence any person may appear and claim to be a director. She argued that if this discrepancy is left to stand, some of the parties may disown any liability as they were not added as parties hence not accountable for the decision of this court. That due to the nature of the case, it was wise that the names of the signatories be present in court. Her conclusion was that the plaint is incompetent before the court and her prayer was that the same be struck out.

In reply, Mr. Welwel admitted that the plaintiff has not been signed by the 11<sup>th</sup> plaintiff, but his counsel has signed on his behalf. His argument was therefore the plaintiff was signed and properly verified. He then urged the court, if it finds the plaintiff defective, to employ the overriding objective of the CPC to direct amendment by having the right plaintiff sign as there is no prejudice on the parties and because reliefs sought are for all the plaintiffs. He also pointed out that the worst-case scenario is to remove his name from the plaintiff. He then argued that because this is a question that can be answered by discretion of the court, it ceases to be a pure point of law and should be addressed as a pure point of law as my friends have suggested.

He went on submitting that the second issue raised in this PO relates to plaintiffs who are companies, in that the directors have signed but their names are not disclosed and the effect is that some of these directors may disown their signatures because the names are not there. His response was that there are plaintiffs who have properly signed the plaintiff and that Directors of a company can be ascertained because their records are kept in a public register at BRELA with their signatures as well. Therefore, he argued, the worry as to identity does not arise because their names and signatures are in public records. He further submitted that ascertaining the



identity is in the domain of evidence and that if the defendants have a problem on the identity, they would raise as an issue and evidence will be made to ascertain.

He then pointed out that on para 28 of the plaint, it has been pleaded that all the plaintiffs who are liability company have passed resolutions in their respective boards to execute this suit. That evidence will be led and there will be no reason to worry and that in any event, this is not a case for striking out a plaint because it is a small matter which does not defeat a case and can be resolved by a court order to amend the pleadings. For the purpose of Order VI Rule 14 the plaint is competent because it has been signed by the parties and their advocate. That the additional requirement complained of is extraneous from Order VI rule 14 and that it is a question of style and not the law. He concluded that all the PO should be rejected and leave the suit to proceed to trial on merits so that the substantive rights of the parties can be determined.

In rejoinder, Ms. Mcharo argued that the issue cannot be resolved by overriding objective as the law is clear that if the party cannot sign then the pleading must be signed by a person duly authorized to sign on behalf of the plaintiff. She argued that overriding objective is not applicable in this case

hence the prayer to amend the plaint cannot be issue because one may not be given a chance to amend what is incompetent before it and the effect thereto is for the matter to be struck out in this court.

On this issue, since it is admitted that the 11<sup>th</sup> plaintiff did not sign the plaint, the only point for determination is on the consequences of the omission and the remedy to the omission if any. The provisions of Order VI Rule 14 are clear that a plaint may be signed by a party and his advocate (any) meaning that where the party has an advocate, both must sign. In this case, the 2<sup>nd</sup> to 25<sup>th</sup> plaintiffs are shareholders of the 1<sup>st</sup> plaintiff of which I find the provisions of Order VI Rule 15(1) to be also applicable to rescue the situation in this case. The Order provides:

*"Rule 15(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading, or by some other person proved to satisfaction of the court to be acquainted with the facts of the case"*

Mr. Welwel was clear that the party could not be found to sign the plaint and, in my view, this does not preclude the remaining shareholders and the company to proceed to pursue what they think is rightfully theirs.

That being the case, the overriding objective is applicable in order to make ends of justice meet. However, since the 11<sup>th</sup> plaintiff could not be found, we are not sure if he has or would have blessed the institution of the suit although that is not fatal since the majority of the shareholders have agreed and signed the plaint. As prayed by Mr. Welwel, I find it just to order which I hereby order the amendment of the plaint in order to comply with the provisions of Order VI Rule 14. The amended plaint shall be filed in court within twenty-one days from the date of this ruling.

All said and done the preliminary objections are partly overruled and partly sustained to the extent explained. Costs of this objection shall follow cause in the determination of the suit.

Dated Dar es Salaam this 28<sup>th</sup> day May of 2024.



A handwritten signature in black ink, appearing to be "S. M. Maghimbi", is written over a horizontal dotted line.

**S. M. MAGHIMBI**

**JUDGE**