

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 66 OF 2018**

BENSON ELIKANA MAFUWE PLAINTIFF

VERSUS

CRDB BANK PLC 1ST DEFENDANT

COMRADE AUCTION

MART COMPANY LTD 2ND DEFENDANT

RULING

S.M. MAGHIMBI, J:

On the 27/04/2020, the plaintiff herein sued the three defendants jointly and severally for judgment and decree that:

- a) A Declaration order that the property (Plot No. 14, Block B Temeke Shopping Centre Area Dare es Salaam under Certificate of Title No. 25146) was wrongfully regarded as collateral to the said Loan from the 1st defendant.
- b) a declaration order that the Auction that is about to be conducted by 2nd defendant is illegal and shall not be done on the suit property
- c) an order for permanent injunction restraining the defendant, their workers, agents, servants and any other persons whomsoever from interfering with the plaintiffs use and peaceful enjoyment of the suit premises,

- d) For orders that the defendant to pay general damages for inconveniences caused by trespass the quantum hereof to be assessed by the court.
- e) For payment of costs of the case
- f) Any other relief(s) that the honourable court may deem fit.

On the 21/05/2020 while filing their written statement of defence, the first defendant, duly represented by Mr. Gerald Mosha, learned advocate, raised a preliminary objection on point of law that the plaintiff does not have locus standi to prosecute the suit. The objections were disposed by way of written submissions. The plaintiff was represented by Mr. Maiko Olotu, learned Advocate.

In his submissions to support the application, Mr. Mosha submitted that the basis of the objection traces its roots from the plaint. That reading all through the plaint, there are no facts disclosing how the plaintiff is interested in the suit premises. He submitted further that *locus standi* is governed by the rules of common law which provides that in order to maintain proceedings successfully, a plaintiff is required to show not only that the court has power to determine issue, but also that he is entitled to bring the matter before the court. He supported this argument by citing the case of **Lujuna Shubi Ballozi Sr. Vs. Registered Trustees Of Chama Cha Mapinduzi TLR (1996)** where his Lordship Samatta J.K (as he then was) stated:

"locus standi is governed by common law according to which a person bringing a matter to court should be able show that this right or interest has been breached or interfered with".

He submitted further that **Halsbury's Laws of England 4th Ed, Para 49 at page 52** provides explanation to the effect that Courts can only accord protection to interests which are regarded as being entitled to legal recognition. He then argued that for the court of law of maintains an action before it, the plaintiff must assert interference with or deprivation of, a right or interest which the law would take cognizance. Mr. Mosha then submitted that paragraph 10 of the plaint, the plaintiff states that:

"That the deceased had never engaged any bank for mortgage or give any consent to be a guarantor to a loan until his death in December 1995"

That the para indicates that the owner of the suit premises had passed away since year 1995 but on para 6 of the plaint, the plaintiff goes on further to state that the administrator of the estate was not appointed to date. He argued that the Plaintiff is neither administrator nor executor of the estates of the deceased one Sam Petro Membi. Being either an administrator of the deceased's estate or heir to the estate and or legal representative would have made the plaintiff have interest in pursuing the matter but none of that is exhibited in the plaint. Further that as a matter of fact, the plaintiff admits to just be a resident in the suit premises.

Mr. Mosha went on submitting that it is from the plaint itself where the plaintiff has not clearly disclosed as to what extent he is interested and or as to what extent does he related to dispute at hand. No demonstration has been in place to establish his locus standi to maintain an action before this honorable court and that on paragraph 5 of the plaint, the plaintiff claims to possess an interest in the estate without stating how he acquired

those interests, leaving for the court to assume his interests which is dangerous for the interests of justice. He then cited authorities in which the court dismissed a suit on the ground that, legal proceedings were filed by the plaintiff without having locus standi. One of the cited cases was that of **Ally Shabani VS. Abubakari Juma Misc. Land Appeal No. 54/2013**, where the High Court, Land Division sitting at Dodoma, when faced with a scenario of this element at an appeal stage, where the appellant was found not to be a legal representative of the estates of his deceased father and therefore he lacks locus standi at page 3; the court held that,

" .. appellant informed the court that he is not legal Representative of estate of his father and therefore he lacks Locus standi to sue in that regard ... that vitiates the proceedings"

He then submitted that in the current suit, the plaintiff lacks locus standi to maintain an action and this goes to the issue of jurisdiction to determine the action. He supported this argument by citing the case of **Richard Julius Rukambura Vs. Issack Ntwa Mwakajila & Another, CAT Civil Application No. 03 of 2004** and the case of **Fanuel Mantiri Ngunda V. Herman Mantiri Ngunda and 20 others, CAT Civil Appeal No. 08/2020** whereby in both cases it was emphasized that the existence of legal rights is an indispensable pre- requisite of initiating any proceedings in a court of law. He concluded that the plaintiff has no *locus standi* to prosecute this case and prayed that this suit be dismissed with costs.

In reply, Mr. Olotu submitted that there is a genuine argument as to who has the locus stand to institute a case in this manner. Starting with the cited case of **Lujuna Shubi Ballozi** (Supra), he argued that there is a different perspective to look at the issue of locus standi, arguing that on the part that the person (plaintiff) that brought this matter to the court, he has seen his rights and interests being interfered or breached. He pointed out that as it is stated on the plaint, the deceased who is the biological father of the plaintiff passed away in December 1995, is claimed to have consented after vast amount of years to his death, to be a guarantor on the mortgage from the 1st defendant. That the plaintiff who filed this case is then Son of the said deceased whereas he is direct linked with the estate left by his deceased father hence the issue of "interests and Rights" stated by Hon Samatta J.K in the cited case. That the plaintiff is among the beneficiary of the mortgaged property that is about to be sold by the 1st defendant and this clearly shows that there is a breach on the rights and interests of the plaintiff as the beneficiary to the said property.

Mr. Olotu then argued that from the aforesaid position, there is no doubt that the Case of the plaintiff is well pleaded on the right which he alleged to have been breached or interfered. Therefore, at this stage it is not proper to discuss much about the status of the parties taking into account that the claim contained in the application need to be proved the yardstick required by the law. That to argue the issue of locus of the plaintiff at this stage tantamount to prematurely interfere with the merit of the case, the trend which is not allowed in our jurisprudence. During hearing each party will strive to establish and disclaim liability. He supported this submission

by citing the case of **Maulidi Makame Ali Vs Kesi Khamis Vuai, Civil Appeal No. 100 of 2004** (Unreported) where the court of Appeal Judges faced the same issue that involved the heirs of the estate who wanted to safeguard their interest, the judges on page 11 and 12 stated that,

"Also in instituting the suit the respondent had locus standi as the heir of the estate "shamba" after the death his father and his young brother the late Vuai Khamis Vuai did not complain about it"

He argued that the holding above clearly gave room for the heir of the estate to claim when their interests are being infringed. He concluded that this kind of preliminary objection will pre-empt the trial of the main Case because it is based on facts. In order to avoid prejudicing the main Case, the court should refrain from dealing into merit of this preliminary objection of this category at this stage as it is unsafe and against the interest of justice to do so at this preliminary stage to determine status of parties. He hence prayed that the preliminary objection be dismissed with costs for being pre-maturely raised.

I have considered the parties submissions on the objection raised. The concern is the plaintiff's lack of locus standi to bring the current action. Mr. Mosha argued that there are no facts disclosing how the plaintiff is interested in the suit premises. That the para 10 indicates that the owner of the suit premises had passed away since year 1995 but on para 6 of the plaint, the plaintiff goes on further to state that the administrator of the estate was not appointed to date. He argued that the Plaintiff is neither

administrator nor executor of the estates of the deceased one Sam Petro Membi hence has no locus standi to bring the action.

In reply, Mr. Olotu argued that the plaintiff is then Son of the said deceased whereas he is directly linked with the estate left by his deceased father hence the issue of "interests and rights". That the plaintiff is among the beneficiary of the mortgaged property that is about to be sold by the 1st defendant and this clearly shows that there is a breach on the rights and interests of the plaintiff as the beneficiary to the said property.

In determining whether the plaintiff has locus standi to determine a certain matter, I must first elaborate what locus standi is, relate it to the pleaded facts and see the importance of determining the issue at the earliest stage. Locus Standi is defined by the Oxford Dictionary of Law VIIth edition, Oxford University Press to mean the right to bring an action or the ability of a party to demonstrate to the Court sufficient connection to and from the law or action challenged to support that party's participation in the case. As emphasized in the cited case of Lujuna Balonzi Sr. (Supra), a person bringing a matter to court should must be able show that his right or interest has been breached or interfered with. This is determined by the pleadings where in the case of immovable property, the person bringing an action may be the person who is the actual owner of the property or a person whose interest in the property has been affected one way or another.

With respect to the learned Counsel Mr. Olotu, his submissions are nothing but words from the bar. He is alleging that the plaintiff is the son of the deceased mortgagor of the Bank one Mr. Sam Petro Membi. But there is

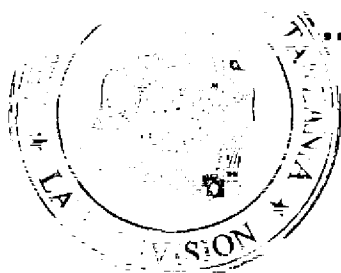
nowhere in the plaint that he has pleaded that the said Sam Petro Membi was his biological father. As rightly pointed out by Mr. Mosha, it is on para 5 that the plaintiff pleads to be an interested party to the estate of the late Sam Petro Membi including the suit property. In fact, the title of the case does not all, feature the name of the owner of the suit property, who is the deceased Sam Petro Membi. The law is clear that where the owner of the property is dead, then the person who has power to bring an action for recovery of the property which is in his state would be the administrator or the executor of the deceased's estate as appointed under the Probate and Administration of Estates Act, Cap 352 R.E 2002.

Furthermore, throughout his pleadings, the plaintiff has not adduced sufficient facts to show how he is interested in the suit property sufficient to have locus standi to bring the current suit. After all, as per para 6 and 7 of the plaint, the said Petro Membi is dead, then the person with a capacity to bring an action on his behalf would be an administrator of his estate and not a mere stranger from nowhere.

Owing to the above, it is conclusive that the plaintiff has no locus standi to bring the current suit. Consequently, this suit is struck out with costs.

Suit Struck Out.

Dated at Dar-es-salaam this 14th day of December, 2020.




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S.M MAGHIMBI
JUDGE.