

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND REVISION NO.08 OF 2020

(Arising from the District Land and Housing Tribunal for Temeke at Temeke, in Land Case Application No.112 of 2019)

REGISTERED TRUSTEES OF MUSJID SHEIKH

ALBANI.....APPLICANT

VERSUS

RAYA SALUM MOHAMED (by virtual of special power of attorney from **SHERDEL REND**) **RESPONDENT**

RULING

OPIYO, J.

In this ruling, the only task of this court at this juncture is to see whether the two objections by the respondent, against the application are meritorious or not. After abandoning the second point of objection, the remaining objections are that the application for revision is incompetent and that the applicant have no cause of action against the respondent.

When submitting in favour of the 1st objection, through written submissions, Advocate Wandore for the respondent, challenged the affidavit in support of the application for being fatally defective by offending the provision of Order XIX Rule 3(1) of the Civil Procedure Code, Cap 33 R.E 2019. He insisted that, paragraphs 14 and 15 of the applicant's

affidavit contain prayers to the effect that the High court should direct the Tribunal to execute the orders issued by it on 26/17/2020 and further that, this court should take necessary measures to ensure that its orders are complied with. To him, these statements offends the above provision of Code and renders the whole application incompetent as provided in the case of **Nicodemus G Mwita versus Bulyanhulu Gold mine Ltd (2013) LCCD 97, High Court of Tanzania** where the emphasis was that, the defective affidavit affects the whole application it supports and therefore going to the root of the matter. He further cited the case of **Uganda versus Commissioner for Prisons Ex-parte Matovu (1966) E.A 514.**

In reply, Mr. Deogratius Lyimo for the applicant submitted on the 1st point of objection that, the objection as argued by the counsel for the respondent is misconceived and devoid of merits. The paragraphs complained about in the affidavit (paragraphs 14 & 15) are facts arising from the ruling and orders of the High Court in Revision No. 15 of 2019. They are not arguments, prayers or conclusions. It was further argued that, in the event this court finds the said paragraphs to have offended the Order XIX Rule 3 (1) of Civil Procedure Cap 33 R.E 2019 then, it should expunge the same, leaving the remaining paragraphs to support the application. The case of **The Attorney General versus SAS Logistics Ltd, Court of Appeal of Tanzania, Court of Appeal of Tanzania, Criminal Application no. 9 of 2011 (unreported)**, citing in approval the case of **Phantom Modern Transport (1985) Limited versus D.T Dobie Tanzania Limited, Civil References No. 15/2001 and 3 of 2002, at page 11**, was cited to substantiate the argument. In that case, it was held that: -

"it seems to us that were defects in an affidavit are inconsequential, those offensive paragraphs can be expunged or overlooked, leaving the substantive parts of it intact so that the Court can proceed to act on it. If, however, substantive parts of an affidavit are defective, it cannot be amended in the sense of striking thereof the correct averments in the same Affidavit."

On the 3rd point of objection, it was submitted that, the respondent in this application lacks *locus standi* to be sued owing to the decision of the Court of Appeal of Tanzania in Civil Application No. 340 /18 of 2019 between the parties here in above. The court ruled that the Power of Attorney giving right to the respondent to sue or be sued is invalid and defective both in form and content. Therefore, in absence of the power of attorney, the respondent lacks the *locus standi* to defend the application at hand. Thus, the applicant cannot institute any proceedings against the respondent who has no *locus standi* to be sued. He made reference to the case of **Kajubi versus Kayanja (1967) 1 E.A 301 (HCU)** in which the plaintiff claimed to have been given power of attorney by his company to represent it, however, the special power of attorney did not authorize the plaintiff to institute the suit before the court, it was held. It was held that without such special power of attorney, the plaintiff had no powers whatsoever to institute the matter before the court.

Mr. Lyimo's reaction to the above argument was that, it is true that, the Power of Attorney was found to be defective, but at this juncture the issue of cause of action can not apply as there is no suit in court between the applicant and the respondent. What the instant application is all about is

for the court to exercise its supervisory powers conferred upon it by the law so cited in this application.

In rejoinder, the respondent's counsel reiterated his submissions in chief and insisted that, the application is fundamentally and incurably irregular for the respondent has been sued personally when it has been already held that she had no *locus standi* due to her power of attorney being defective.

I appreciate the efforts done by the learned counsels for both sides. In light of the foregoing submissions, I have formed the opinion that the first objection is meritorious, as indeed the two paragraphs of the affidavit in support of the application contain prayers contrary to what is required of the affidavit. However, the effect of containing prayers in its two paragraphs does not make it fatally defective. Therefore, in line with the holding in the case of **The Attorney General versus SAS Logistics Ltd** (supra), I expunge the defective paragraphs and leave the substantive parts of it intact which can still support the application at hand.

In regard to the second point of objection, I believe that as the court is asked to examine the effect of the nullification of respondent's power of attorney on what transpired before the said power of attorney was nullified by Court of Appeal, the respondent's lack of locus stand could not arise. The application before this court is for revision in relation to application No. 112 of 2019 which the applicant filed before Land and Housing Tribunal demanding putting to effect the decision of this court in land revision no 15 of 2019, Maghimbi, J. which the tribunal has failed to

implement. It is true that the power of the respondent to sue or being sued was taken away by the Court of appeal when it nullified his power of attorney, meaning that, he had no requisite power to do whatever he did. The question is now whether he can still be sued after such decision, this forms the basis of this objection that, he has no locus to be sued after his assumed power has been nullified. In my view, I think this contention is true for a new suit or application as the case may be, but not on what he did before the powers were taken away from him. His deeds without the requisite powers, after the nullification of the power of attorney he was holding, led to a certain result. Should such nullification affect his locus to the extent of not challenging the said result he had gotten without the power in the first place. The answer is obviously, no, for the said result could not be challenged without involving him on the same capacity he had gotten it from. In the circumstances therefore, his objection is obviously based in a misconception as explained in the context explained above. It is therefore overruled.

In the end, both objections are overruled and the application at hand shall proceed to be heard on merit until its final determination. No order as to costs.



M. P. OPIYO, J.

JUDGE

3/3/2020