IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM

LAND APPEAL NO. 220 OF 2020

(Originating from the decision of the District Land and Housing tribunal for Kinondoni District at Mwananyamala in Land Case Application No.515 of 2019)

SAAD SALEHE JUMA.....APPELLANT

VERSUS

MIA MIA GLOBAL LTD.....RESPONDENT

JUDGEMENT

Date of Last Order:19.08.2021

Date of Ruling: 1.10.2021

OPIYO, J:

On the 31st of October 2019, Mr. Saad Salehe Juma, the appellant, sued MIA MIA Global Ltd, the respondent at the District Land and Housing Tribunal for Kinondoni District. His claim among others was for the respondent to pay the rent due amounting to 9,505,000/=Tshs. The same having its roots from a lease agreement, dated 09/01/2019, between the appellant as a caretaker of the leased premises on behalf of the owner and the respondent on the other hand. However the respondent objected the suit against her at the trial tribunal to the effect that:-

1. The applicant/appellant has no locus standi.
2. The trial tribunal has no jurisdiction over the matter.
3. That, the application is untenable.

The trial tribunal saw merits on the 1st objection hence upheld the same and went on to dismiss the suit with costs. This appeal therefore comes as a result of the foregoing background and is based on the following grounds:-

1. That, the trial Chairman erred in law and in fact by dismissing the application on the points of law which required evidence to be proved during trial.

2. That, the trial Chairman erred in law and in fact by holding that the application is not maintainable for the applicant lacks *locus standi.*

3. That, the trial Chairman erred in law and in fact by relying on lease agreements to determine land ownership without regard to the pleading and in the absence of documents to prove land ownership that were intended to be relied upon during hearing of the application on merit.

4. That, the trial Chairman erred in law and in fact by dismissing the application based on the lease agreements that were executed by the appellant on one part and the respondent on the other part thus granting an automatic right of continued occupation of the leased premises to the respondent without paying rent.

5. That, the ruling and drawn order of the tribunal was based on wrong principles of the law intended to give unfair benefits to the respondent who has defaulted to pay rent to the appellant.

6. That, the trial Chairman erred in law and in fact by not apprehending the principle of overriding objective to determine disputes on merit rather than technicalities.

The appeal was heard orally, Mr. Mohamed Tibanyendera, learned Advocate appeared for the appellant while the respondent enjoyed the legal services of Advocate Enid Makame.

Submitting on the 1st ground of appeal Mr. Tibanyendera was of the view that, it was wrong on part of the trial tribunal to allow the objection which was not on point of law as the same required evidence to be produced during trial. That, the law requires preliminary objections to be on pure point of law as per **Mukisa Biscuits case** and not facts that are to be ascertained by evidence, or what is sought to be the sole function of judicial discretion as stated **Sykes Travel Agent Ltd V. NIDA and Another, Civil Case No. 27/2019, High Court of Tanzania, at Dar Es Salaam**. He argued further that, the decision of the trial tribunal stood on document constituting evidence in deriving home the issue of *locus standi.* That, Page 3-4 of the decision referred to lease agreement that was entered into between the two. It interpreted the same and decided that based on the lease agreement the appellant had no *locus standi.* This was a serious misdirection on part of the tribunal because the chairman admitted that applicant has entered into lease agreement as seen in paragraph 2 of page 4 of the impugned decision. The fact of authorization requires evidence to establish between the landlord and appellant. Also, the chairman could have confirmed on pleadings where a Residential

License in the name of Omar Mohamed has been attached. The same shows that it was later transferred to the name Saad Saleh Juma. The documents were attached in the amended application. Even in lease agreement itself, there is no dispute that those who signed are the appellant and respondent. Therefore, there was a requirement of additional evidence to establish all that on the authorization of Amina Shabani as a mother of appellant and also on issues of title ownership being on the name of the appellant but still he is seen to have signed on behalf of his mother. He maintained that, in general the disposal of the preliminary objection required scrutiny of evidence and that cannot be done on preliminary hearing.

On 2nd ground it was argued that it was wrong to hold that the appellant lacks locus standi. In the case of **Mary Tuyate V. Grace Mwambenja and another land Appl No. 42 of 2019, High Court of Tanzania at Mbeya**, it was observed at 5 – 6 of the decision that, locus is capacity or right to appear in court, an ability to show to the court sufficient connection with the action challenged. He insisted that, In the pleading before the tribunal, the applicant showed that he is the one who was collecting rent from Mia Mia Global Ltd. Therefore, the arrangement that was between the appellant and his mother were personal to be evidenced before the court during trial. The lease agreement used by the court as per para 3 of the Written Statement of Defense do recognize the appellant as the person who executed the lease agreement and the respondent. There is in fact no lease agreement between respondent and Amina over the suit premises. The one getting loss is the appellant in terms of the authority cited. The respondent as a tenant is not paying so basing on

lease agreement alone without giving regard to other attachments as residential license and others which refer to the appellant. Mr. Tibanyendera stated further that, the respondent is using that decision of the tribunal to avoid his obligation under the lease agreement as she has refused to pay rent to date.

He went on to submit on the 3rd, 4th, and 5th grounds of appeal that, it was wrong for the trial tribunal to rely on a lease agreement alone in determining the ownership of the land in question. There were other documents before the tribunal, including the residential license which shows that the appellant is the owner of the property. The decision of the trial tribunal has given unfair benefit to the respondent who has defaulted to pay rent, both before and after the said judgment. The same should be quashed for the interest of justice.

Lastly on the 6th ground, he maintained that, the trial tribunal failed to apprehend the overriding objective principle in terms of S 3 A (1) and 3 B(1) of the Civil Procedure Code Cap 33 R.E 2019. The matter was not justly determined on tenancy agreement, the tribunal prolonged the issue and the respondent has continued not to pay the rent while occupying the premises. On the other hand, the appellant has continued to suffer for lack of income. He therefore prayed for the appeal to be allowed to enable the determination of the matter on merits.

In reply Ms. Makame for the respondent maintained generally that, a preliminary objection is for removing case in court if it is on pure point of law as per Mukisa Biscuits case. She argued that, the principle of *locus*

standi was established in the case of **Lujuna Shubi Balonsi Senior V. Registered Trustees of CCM 1996 TLR 203** where it was observed that, *locus standi* is governed by common law, the applicant has to be able to show interest that has been interfered with. If interest was not directly breached, he has to comply with order 3 Rule 1 of the Civil Procedure Code, Cap 33 R.E 2019.

Ms. Makame was of the view that, it is true that the appellant is the one who executed lease agreement with the respondent, but he dissented from the appellant's counsel on the fact that in the said lease agreements the appellant's capacity was different. Mr. Makame relied on the meaning of the word execute according to oxford dictionary which means to carry out, perform what one is asked to do. That in law execute means having it signed. Therefore, in that agreement the appellant executed as a mere supervisor not as owner. He cannot, therefore, sue or be sued for or on behalf of the owner of the leased property. She argued that there is a difference between ownership and authorization to act on behalf in instituting a legal action before the court as stated in the case of **Hans Nagorsen V. BP Tanzania Ltd & 1987. TLR 175.** Authorization to settle a claim is not the same with authorization to appear in terms of Order III Rule 1 of Civil Procedure Code. The appellant was not given power to institute a case against anybody on behalf of the owner of the property. Mr. Makame insisted that the cited authority of **Mary Tuyate (supra)** is distinguishable in our case. The said case has insisted on the existence of sufficient connection rule to entitle the applicant institute any claim before the court. The appellant is not covered by that rule as he is not sufficiently connected to the claim. He claimed areas of rent and what

brings that is the presence of agreement. The contract shows the appellant has no *locus* to bring the application as he was just a mere supervisor signing on behalf of the owner. He insisted that today *locus standi* is not viewed in its original narrow meaning as observed in the case of **Josiha Baltahazar Baisi and 8 Others V. Attorney General and others.** This appeal is baseless, and the court should find so and dismissed it with costs.

In his brief rejoinder Mr. Tibanyendera argued relying in the cases of **Abdala Ibrahim Pazi,** (supra) and **Mary Tuyate**, (supra) **and** maintained that, *locus* is also on the party having sufficient interest on the subject matter. He insisted that, the respondent counsel is just challenging the *locus standi* of the appellant based on technical terms and conditions of the leases. However, the same need evidence to prove what the respondent's counsel claims and evidence cannot be produced in the hearing of preliminary objections rather on the main suit. The position of appellant remains the same and as the only person who have executed the lease agreement, he has the right to collect rent and enforce the agreement.

Having appreciated the submissions of the parties through their respective counsels, and gone through the records of the trial tribunal, what is in hand for determination is the merit or otherwise of the instant appeal. The 1st and 2nd grounds of appeal are consolidated and discussed together. The appellant basically faulted the trial in the 1st and 2nd grounds for dismissing the application on the points of law which required evidence to be proved during trial and holding the appellant to have no

locus stand to prosecute his claim against the respondent. It was strongly contended by the appellant's counsel that, what the trial tribunal did was to take a narrow view of what *locus standi* means in law. He maintained that, since the appellant is the one who entered into the lease agreement with the respondent, on behalf of his Mother, one Amina, the wider view of the term covers him. The respondent's counsel maintained that the trial tribunal was right to dismiss the case as it is obvious that based on the lease agreement which is the foundation of the case in question, the appellant signed the same as a mere caretaker and not the owner of the property. He has no right to sue for the said property rather the said rights are vested to the owner or her authorized representative of the same.

It is already settled in **Lujuna Shubi Balonsi Senior, (supra) that** in determining whether the party to a case has a *locus standi* what the court need is to see if the said person has interest in the matter and further that his or her interests have been interfered with. In other words, the term *locus standi* entails only two elements in it, one interest of the person claiming and two interference of such interest by the other party's conducts. This position was also well explained in **R versus Paddington, Valuation Officer, ex-parte Peachey Property Corpn Ltd (1966) 1QB 380 at 400-1,** and quoted with approval in the case of **Mary Tuyate supra,** at page 7 that:-

> *"The court would not listen, of course, to a mere busybody who was interfering in things which did not concern him. But it will listen to anyone whose interests are affected by what has been done."*

From the records, the dispute at the trial tribunal as per the records was on the breach of the lease agreement. The appellant being the party who executed the lease agreement with the respondent on behalf of the owner of the leased property, is indeed attached to the said contract. His duty as person standing on behalf of the owner so named in the agreement, is to see the terms are of the agreement are honored by the parties to the contract. He therefore has interest in the subject matter, and he is definitely entitled to protect such interest in law provided he is not fringing interest of owner. Protection meant here, in my view, include enforcing the contract in court, if need be, as one of the parties involved in it and the one who was collecting rent from the respondent on behalf of the alleged owner. It is from that premise where I find the appellant to have *locus standi* to enforce the performance of the lease agreement. The fact that he signed the said lease agreement on behalf of another person who appears in the same as the owner of the premises is immaterial in the dispute at hand, unless there is a genuine claim to the contrary from the alleged owner or whoever claims under her. Whether the appellant lost that power after the death of his mother, alleged owner or not constitutes personal arrangements between the interested parties in her estate that were to be kept out of the land court's concern in absence of genuine claim before the court at such a preliminary stage. There was no genuine concern before the trial tribunal in challenging the appellants capacity after the death of his mother, this is especially because the challenge comes from someone who use it as a shield not to discharge her obligation under the agreement. Those are matters for probate court not for land court. Even more, as currently argued by Tibanyendera, digging into that requires evidence, thus it is not on pure point of law to be disposed at the

preliminary stage. Since the respondent was aware of the position of the appellant in the lease agreement and signed the agreement as it appears, she is bound by it as it is. She is therefore, estopped by her conducts to deny the involvement and powers of the appellant arising out of the said agreement, see section 123 of the law of Evidence Act, Cap 6 R.E 2019 and the case of **East African Development Bank versus Blueline Enterprises Ltd, Civil Appeal No. 110 OF 2009, Court of Appeal of Tanzania at Dar Es Salaam (unreported)**.

Based on the above given arguments, I am in agreement with the learned Counsel for the appellant, that the 1st preliminary objection raised by the respondent at the trial tribunal was not on point of law, rather on factual issues that attracted evidence in proving their existence or non-existence. The trial tribunal ought to have taken a note on that and proceed to overrule it. To that end I see merits on the 1st and 2nd grounds of appeal and allow them accordingly. As this finding alone disposes the entire appeal, I find no need to discuss the remaining four grounds of appeal (3rd -6th grounds).

In the event, this appeal is allowed. The decision of the trial tribunal is quashed, and the orders emanating from it set aside. The case file is remitted back to the trial tribunal for the main application to be heard on merits. Ordered accordingly.

M.P. OPIYO,
JUDGE
1/10/2021