

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

**LAND CASE No.120 OF 2020**

**MWAJUMA LUSAMA.....PLAINTIFF**

**VERSUS**

**COMMISSIONER FOR LANDS.....1<sup>ST</sup> DEFENDANT  
ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT  
MWANUKA AHMED SAID.....3<sup>RD</sup> DEFENDANT  
HAWA AHMED SAID.....4<sup>TH</sup> DEFENDANT  
KANDORE MUSIKA.....5<sup>TH</sup> DEFENDANT  
FAUSTINE MALLYA.....6<sup>TH</sup> DEFENDANT  
AHMED NASSORRO KHALIFA.....7<sup>TH</sup> DEFENDANT  
CHARLES RICHARD KOMBE.....8<sup>TH</sup> DEFENDANT**

Date of last Order: 28.09.2021  
Date of Ruling: 01.11.2021

**RULING**

**V.L. MAKANI, J**

This is the ruling in respect of the preliminary objection raised by the 5<sup>th</sup> defendant that.

- 1. The suit is incompetent before the Court for combining several causes of action.*
- 2. The suit is incompetent before the court for joinder of parties.*

*3. The plaintiff has no locus standi to claim rights over the suit properties.*

With leave of the court the application was argued by way of written submissions. Mr. Thomas Brash, Advocate drew and filed submissions on behalf of the 5<sup>th</sup> defendant. Submissions in reply on behalf of the plaintiff were filed by Mathew Bernard Kabunga, Advocate.

Submitting on the first point of preliminary objection, Mr. Brash said the cause of action is contained in paragraph 14 of the plaint. That the plaintiff wants the court to consider; the matrimonial status, disposition of the landed property by the 4<sup>th</sup> defendant without their consent, disposition of the landed property by the 3<sup>rd</sup> defendant in the capacity of administratrix of the estates of the late Ahmed Said Lusama who is the plaintiff's deceased husband and that the action of defendants denied her rights to properties. He said that the claims by the plaintiff are based on different causes of action. That they arise out of different dates and scenarios which cannot be said to have occurred on the same events.

Mr. Brash said the cause of action cover activities by the 4<sup>th</sup> defendant prior and after the death of the plaintiff's husband. He said that

properties involved are different each having its distinct details and titles and they are alleged to have been disposed on different dates involving different persons. That the alleged dispositions were carried out by 3<sup>rd</sup> and 4<sup>th</sup> defendants at different capacities among others being the capacity of administratrix. He further said, the case formulated falls under several areas of suits to be filed at different registries. He added that the 3<sup>rd</sup> defendant is said to be an administratrix of the estate of the late Ahmad Said Lusama and that any beneficiary may raise concern in the probate cause but not in a fresh suit. He relied in the case of **Seleman Twahili Kusundwa & 4 Others vs. Ibrahimu Twahili Kisundwa, Misc. Land Application No. 25 of 2021 (HC-DSM)** (unreported). Counsel further submitted that, the plaintiff is challenging the action taken by the 1<sup>st</sup> defendant during transfer of ownership of land to the 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> defendants. That the transfer was done by the office of the 1<sup>st</sup> defendant in exercise of the powers vested under section 102 (1) (a) of The Land Registration Act, Cap 334 RE 2019 which requires an aggrieved party to appeal to the High Court and not to file a normal suit like this. He relied on the case of **The Presidential Parastatal Sector Reform Commission vs. M/S Moreal Limited, Civil Appeal No.50 Of 2005 (CAT-Arusha)** (unreported).

On the point that the plaintiff lacks locus standi, Mr. Brashi said that the plaintiff is suing as the widower of the deceased, one Ahmed Said Lusama. He said the estate of the deceased is administered by the 3<sup>rd</sup> defendant. The duty of suing over the estate therefore is vested in the administrator of the estate of the deceased. That the plaintiff can only have her rights through a probate case not a new suit. That a person other than an administrator is precluded from instituting a suit over the estates of the deceased. Counsel relied on the case of **Selemani Twahili** (supra) and Order XXX Rule 1 of the Civil Procedure Code Cap 33 RE 2019. He prayed for the suit to be struck out with costs.

In reply, Mr. Kabunga said that he has failed to comprehend as to how the said written submissions are watertight preliminary objections because they are not points of law. He said that the objections raised do not indicate as to which law they are based upon. That the arguments by the 5<sup>th</sup> defendant are facts which are subject to the evidence of the parties and cannot stand as preliminary objections. He argued the court to apply the principle of overriding objective and he relied on the case of **Yakobo Magoiga Gichere vs Peninah Yusuph, Civil Appeal No.55 Of 2017 (CAT-Mwanza)**

(unreported). He prayed for the preliminary objections to be dismissed with costs.

In rejoinder Mr. Brash said that Mr. Kabunga have decided to avoid objections raised and he has conceded to the preliminary objection raised. He insisted that the objections raised touch the jurisdiction of the court. That the issue of jurisdiction cannot be waved down by oxygen rule.

The main issue for determination is whether the preliminary points of objection raised by the 5<sup>th</sup> defendant has merit. I would wish to point out that the preliminary objections raised are points of law and fall within the ambit of the celebrated case of **Mukisa Biscuits Co. Ltd vs. West End Distributors (1969) EA 696.**

I shall first consider the third preliminary objection that the plaintiff does not have locus stand to institute this suit. Mr. Brash submitted that, the 3<sup>rd</sup> defendant is the administratrix of the estate of the late Ahmed Said Lusama whose properties are the subject of this suit. This being the case, it is the 3<sup>rd</sup> defendant who can bring claims in court regarding the interest of the deceased's estate. He can sue or

be sued on behalf of the deceased. This is also clearly stated in paragraph 14(v) of the plaint and noted by the 7<sup>th</sup> defendant in paragraph 6 of his WSD. Mr. Kabunga did not controvert this objection, he rather argued the court to apply the principle of overriding objective. It is trite law that only the administrator of the estate of deceased can initiate any claim in court of law regarding the interest of the estate of the deceased. It is apparent that the plaintiff is not the administratrix of the estate of the late Ahmed Said Lusama and therefore she does not have the capacity to file a claim regarding the properties of the deceased estate. If at all she had any claim against the properties in the estate of the deceased and or the manner in which the administratrix was managing the deceased estate then she should have challenged the same in the probate court but not filing the suit in her own name.

Mr. Kabunga suggested to the court to invoke the overriding objective principle. However, to me, the overriding objective principle, cannot be applied in this situation because the issue of locus standi goes to the very root of the matter as one cannot sue without the legal capacity to do so. It should be noted that the overriding objective principle was not meant to circumvent the mandatory principles of

the law which go to the foundation of the case. (See the case of **SGS Societe Generale De Surveillance SA & Another vs. VIP Engineering and Marketing Limited & Another, Civil Appeal No. 124 of 2017 (CAT-DSM)** (unreported))

In the result, the third point of preliminary objection raised is meritorious and is hereby sustained. This point alone suffices to dispose of the whole suit. I would therefore not discuss the other points of preliminary objections.

In view thereof, the suit is hereby struck out with costs for being incompetent.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**01/11/2021**

