

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

LAND CASE NO. 60 OF 2020

ABDUL MOHAMED NGOLWE

(Administrator of the estate of the late Mohamed Hassan Ngolwe) ...**1ST PLAINTIFF**

ZAINABU MOHAMED NGOLWE.....2ND PLAINTIFF

AMIDA MOHAMED NGOLWE.....3RD PLAINTIFF

SHAHARANI MOHAMED NGOLWE.....4TH PLAINTIFF

HASSAN MOHAMED NGOLWE.....5TH PLAINTIFF

ALLY MOHAMED NGOLWE.....6TH PLAINTIFF

MAHAFUDHI MOHAMED NGOLWE.....7TH PLAINTIFF

MANSURI MOHAMED NGOLWE.....8TH PLAINTIFF

ASMAU MOHAMED NGOLWE.....9TH PLAINTIFF

SABRA MOHAMED NGOLWE.....10TH PLAINTIFF

VERSUS

ABDUL WAHID ABDALLAH MOHAMED.....DEFENDANT

RULING

MANGO, J.

On 15th April 2020, the plaintiffs instituted this suit praying for judgement and decree against the defendant as follows;

- i. That the contract between the defendant and the late Mohamed Hassan Ngolwe and its addendum executed by the defendant and the first plaintiff be terminated;

- ii. The Plaintiffs be declared sole lawful owners of the disputed land;
- iii. Defendant be ordered to give vacant possession of the disputed land; Permanent restraint against the defendant and all those acting under his instructions from interfering with Plaintiffs' ownership and use of the disputed land;
- iv. Tshs 600,000,000/- be awarded to the Plaintiffs as damages; and,
- v. Costs of the suit.

On 19th May 2020, the defendant filed his written statement of defence which contained a notice of preliminary objection on the following points

1. That the first plaintiff, after distributing the estate of the late Mohamed Ngolwe to the heirs including the property comprised under Plot No. 5, Block D, Aggrey Street Kariakoo that were completed on 6th February 2013 had no locus stand to sue on the same property by 15th April 2020
2. That the plaintiffs' claim is bad in law for failure to plead the value of the property in dispute
3. That the 1st to 10th Plaintiffs are strangers to the Joint venture Building agreement dated 11th October 2008 and thus have no locus stand to sue the defendant
4. That the entire Plaintiffs had no cause of action and or locus stand to sue the defendant who had breached nothing nothing on the contract alleged.
5. That this Honourable Court has no jurisdiction to determine the suit and or grant the prayers sought in particular the revocation of the Defendant's title without joining the Commissioner for Lands and Registrar of Titles

Parties to this case have legal representation. The plaintiffs are represented by Richard Mathias Kinawari learned advocate, while the defendant is represented by Silas Adam Nziku learned advocate. The preliminary objection was argued.

Submitting in support of the preliminary objection raised, Mr Nziku argued each point separately. On the first point of objection he argued that the first plaintiff does not have locus standi to sue in respect of the property in dispute because he does not have any interest to protect in the particular property after he effected transfer of the property to the remaining plaintiff on 6th February 2013. To support his arguments, the learned counsel cited the case of **Lujuna Shubi Ballonzi, Senior Versus Registered Trustee of CMM** [1996] TLR 203.

On the second point of objection, the learned counsel argued that the plaint does not disclose the value of the property in dispute. Quoting the contents of Order VII Rule 1(i), he argued that failure to state the value of the subject matter is a fatal irregularity. He highlighted that the statement contained in the plaint that the value of the suit property is above 350 Million cannot be considered to be the statement regarding the value of the suit property as it does not expressly provide the value of the suit property.

The third point of objection concerns the issue of lack of locus standi. The learned counsel argued that the 1st to 10th plaintiffs does not have locus to sue in this case as it originates on allegations of breach of contract in which they are not party to. He argued further that the plaintiffs ought to have been introduced to the defendant by the administrator of the estate of the late Mohamed Hassan Ngolwe and their name should have been included in addendum to take on board the said plaintiffs to the Joint Venture agreement.

According to him the plaintiffs were not made party to the Joint Venture Agreement after the death of the late Mohamed Hassan Ngolwe, thus they are strangers to the said contract and they don't have the capacity to sue in their own names. To cement his arguments he cited the case of **Beswick Versus Beswick**[1968] AC 58.

On the fourth point of objection, the learned counsel for the Defendant submitted that the plaintiffs have no cause of action to sue the defendant as the defendant has not breached any of the terms and conditions of the joint venture building agreement. According to him the agreement does not set time limit for construction of the said building. In such circumstances the plaintiffs have no cause of action against the defendant.

On the fifth point of objection, the learned counsel for the defendant submitted that among the relief sought by the plaintiffs is revocation of the defendants title over the suit land. He argued that, such an order cannot be issued without joining the Commissioner for Lands and the Registrar of Title who are responsible with the revocation of the said title. He argued further that the Commissioner for Lands and Registrar of titles need to be joined as necessary parties to this suit.

In his reply submission, learned counsel for the plaintiffs submitted that the points of objection raised by the defendant are not purely on points of law, they are based on facts. He argued that preliminary objections should be purely on points of law and not on facts. He cited the case of **Mukisa Biscuit Manufacturing Co. Versus West end Distributors Limited** Civil Appeal No. 1969 East Africa Law Reports EA 696 to cement his arguments on what should be raised as a preliminary objection.

In his response to the first point of objection, Mr. Kinawari submitted that the first plaintiff has locus stand to sue in this suit as the administrator of the estate of the late Mohamed Hassan Ngolwe. According to him, the first plaintiff need to protect the interest of the late Mohamed Hassan Ngolwe in the joint venture agreement and addendum which was actually executed by the first plaintiff as the administrator of Mohamed Hassan Ngolwe's estate. He is insisted that the issue whether the plaintiff has locus stand to sue or not need to be proved or disapproved by evidence, thus it does not qualify to be raised as a point of preliminary objection.

As to the issue of statement of value, which was raised as a second point of objection, the learned counsel argued that the plaint contain such statement in its paragraph 18. According to the said paragraph the value of the property is above 350 Million. He argued that if the defendant disputes the indicated value he should dispute the same by producing a valid valuation report. In this, he cited the decision of my sister, Hon. Mgonya J in the case of **Peter Paul Semwajah Versus Intergrated Property Consultancy Co. Ltd and Others**, Land Appeal No. 21 of 2017.

On the third point of preliminary objection, the learned counsel submitted that the plaintiffs have locus standi to sue as they are registered owners of the suit property as indicated in the certificate of title annexure E to the plaint. They are also part to the joint venture agreement as introduced in the addendum executed between the first plaintiff and the defendant. He argued that in the addendum the first owner of the suit premises was introduced to include his heirs. He argued further that the plaintiffs are heirs of the first owner thus, they are accommodated in the joint venture agreement.

The learned counsel submitted that the plaint discloses a cause of action which is a breach of contract executed by the late Mohamed Hassan Ngolwe and the defendant. He argued that this is a point of fact to be proved by evidence and not point of law.

Submitting on the fifth point of objection the learned counsel argued that the relief sought by the plaintiff is to have the name of the defendant expunged from the certificate of title and not revocation of the certificate of title. He is of the view that such relief does not require joinder of the Commissioner for Lands and Registrar of Titles.

The defendant had no rejoinder.

From the submissions made by the parties to this case it is not disputed that the case at hand originates from the joint venture agreement executed between the late Mohamed Hassan Ngolwe and the defendant. Pleadings indicate that the first plaintiff was appointed to be the administrator of the estate of the late Mohamed Hassan Ngolwe via Probate and Administration Cause No. 343 of 2011 filed at Mbagala Primary Court. The duties of the administrator of the deceased estate as provided by section 100 of the Probate and Administration of Estate Act, [Cap. 352 R.E 2002] includes collection and payment of debts in which enforcement of the contracts that were executed by the deceased during his life time may be considered to be part of the same. In such circumstances the first defendant cannot be considered to have no locus stand to sue in respect of the contract executed by the late Mohamed Hassan Ngolwe. The duties of the administrator of the estate cease after the closure of the Probate Cause. As long as there is no evidence that Mbagala Primary Court has closed Probate Cause No. 343 of 2011, the first plaintiff retains his capacity as the administrator of the estate

and he can continue with his administration duties including suing to recover interest of the deceased Mohamed Hassan Ngolwe.

As to the remaining plaintiffs, there is no dispute that they are registered owners of the suit property. The law, Order I Rule 1 of the Civil Procedure Code, [Cap 33 R.E 2019] provides clearly who may be joined as plaintiffs. The provision reads

*"All persons may join in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where, if such persons brought separate suits, **any common question of law or fact would arise.**"*

Facts of this case indicates that, if the first to tenth plaintiff were to institute a separate suit to claim their 50% ownership of the suit property as indicated in the certificate of title, the issue of existence of the joint venture agreement would have arisen and its adjudication would have attracted pieces of evidence similar to the case that would have instituted separately by the administrator of estate of Mohamed Hassan Ngolwe praying for either termination or specific performance of the joint venture building agreement subject of this case. For that reason, this court is of the view that the second point of objection is unfounded.

On the third point of objection, this court agrees with the arguments by the defence counsel that the plaint need to contain a statement of value of the suit property. As correctly submitted by the learned counsel for the defendant, the value of the property in dispute assist the court in determining its jurisdiction. Ordinarily the value contained in the plaint is not actual market value of the suit property, it is the estimated value of the said property. In

that regard the statement contained in para 18 of the plaint that the value of the suit property is above Tshs. 350 Million satisfies the requirements of the law.

On the issue of cause of action this court finds that the plaint has established a cause of action in this case. In determining whether the plaint discloses a cause of action or not the court need to consider the plaint and its annexures. Among the annexures to the plaint is the certificate of title and the joint venture building agreement. The joint venture agreement which made the Registrar of title to include the name of the defendant as the second owner of Plot No. 5 Block D Kariakoo Dar es salaam provides at its clause 2 that, the second owner will be responsible with the construction costs. Item 2 (iv, v and vi) of the certificate of title provides for conditions to occupier who are actually the owners of the suit property. According to the mentioned item 2 to the certificate of title the occupiers were supposed to submit building plans to Ilala Municipal Council within six months from commencement of the right, Building construction to begin within six months after the approval of plans. And complete building within 36 months from the date of the commencement of the right.

It is not clear from the pleadings as to whether the building plan was submitted or not and if yes whether the same was approved or not. However, the facts in the pleadings indicates that, the plan was submitted within time. This is indicated by the fact that by 2017 when the addendum was signed, the defendant had already constructed the building in the disputed plot. And Item 3 of the certificate requires the existing building to be pulled down before the new building can be constructed. This means even if one had to count the 36 months from January 2017, the same would have expired in

December 2020. In such circumstances, one cannot claim that the plaint does not disclose a cause of action.

The last point of objection should not detain much this court as it is not disputed that the land in dispute was not allocated to the defendant. The name of the defendant was included in the certificate of title via a joint venture agreement without which the Registrar will merely rectify entries in the Register by removing the name of the defendant. Such an action does not require the Commissioner for lands and Registrar to be joined as necessary parties in this case.

The analysis of evidence contained in this ruling proves that the objections raised by the defendant are not on points of law but points of facts that requires parties to adduce evidence to prove or disapprove the same.

For those reasons the points of preliminary objection raised by the defendant are hereby overruled as they don't qualify to be raised as objection on points of law within the meaning of preliminary objection as expounded in the case of Mukisa Biscuits cited by the counsel for the Plaintiff. Costs to follow events




Z. D. MANGO
JUDGE
12/03/2021