

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

LAND CASE NO. 10 OF 2022

HEDY GREETJE VAN WIKELHOF ENTJES

(Administratrix of the Estate of the late

RUDOLF TEUNIS VAN WINKELHOF)PLAINTIFF

VERSUS

CHARLES YAW GYMFI SARKODIE.....DEFENDANT

R U L I N G

Date of Last Order: 28.06. 2022

Date of Ruling: 20.07. 2022

T. N. MWENEGOHA, J.

The defendant objected the determination of this suit on three grounds that;-

- 1. The plaintiff has no locus stand to sue the defendant for and on account of the properties of Bish International Bv.**
- 2. The court lacks jurisdiction to entertain the suit at hand.**
- 3. The suit is resjudicata.**

The dispute involves a landed property situated at Plot No. 568, Kinondoni Area in Dar es Salaam Region, with Certificate of Tittle No. 43359. It was alleged by the plaintiff that, the property in question was once owned by

a Company, Bish International Bv. It is stated that, the company was registered in the Netherlands and has its subsidiary in Tanzania. That, in 2006, Bish International Bv. was wound up in the Netherlands so is its subsidiary in Tanzania came to an end. That, the suit property was then taken by the shareholders and was registered into their individual names, Rudolf Teunis Van Winkelhof and Charles Yaw Gyamfi Sarkode.

The plaintiff being the Administratrix of the estate of the late Rudolf Teunis Van Winkelhof is fighting to protect the interests of the deceases and gain control over the suit property along with the defendant, hence this suit was filed and later objected as stated herein above.

The objections were disposed of by way of written submissions, Advocate Lucky Mgimba, appeared for the defendant, while the plaintiff was represented by Advocate Paschal Kamala.

Mr. Mgimba, arguing in support of the 1st objection insisted that the plaintiff has no right to bring this action against the defendant as she has not suffered any injury recognized by law in respect of the property in dispute. That, the said property is owned by a company, Bish International Bv. The company being a legal person has the capacity to sue or be sued on its own name as it is a separate entity. He referred the court to the case of **Solomon vs. Solomon & Co. Ltd (1897)**. The plaintiff cannot sue over the property which is neither hers nor of the late Rudolf Teunis Van Winkelhof. He cited the case of **Khana Said Aljabry vs. Nevumba Salum Mhando, Misc. Land Appeal No. 81 of 2021, High Court of Tanzania(unreported)**.

He went on to argue on the 2nd objection that, this court has no jurisdiction to entertain the dispute at hand. This case has nothing to do

with ownership of land rather it concerns shareholders disputes within a company. The plaintiff is the Administratrix of the estate of one of the shareholders hence the dispute is purely a commercial one. Lastly on the 3rd objection, the submissions by Mr. Mgimba were that, the instant case is resjudicata to the former case decided by the **High Court of Tanzania at Dar es Salaam, vide Civil Case No. 84 of 2019, between Charles Y.G Sarkode versus Hedy Greetje Winkelhof Entjes.**

In reply, Mr. Kamala for the plaintiff maintained that, Bish International Bv was dissolved in Netherland hence its subsidiary in Tanzania ceased to exist upon the dissolution of a parent company. That means, the properties that were owned by the said company in Tanzania reverted back into the ownership of the individual shareholders including the deceased Rudolf Teunis Van Winkelhof. That, the plaintiff being a legal representative of the deceased has acquired interests through the estate of the late Rudolf Teunis Van Winkelhof. Hence the plaintiff has the Locus Standi to sue the defendant in this case.

That, above all, it is settled in company law that, branches of foreign companies have no legal personality of their own. Therefore, they cannot sue or be sued on their own names as stated in the English case of **Lazard Bros vs. Midland Bank (1933) A.C 289.**

Mr. kamala went on to submit against the 2nd objection that, there are no shareholders at the time of filing this suit as Bish International Bv. (Netherlands) ceased to exist after being dissolved long time ago. Therefore, there is no such dispute between shareholders as claimed by the defendant's counsel. There exists no board of directors from the moment the parent company was dissolved, hence the court has a full

jurisdiction over the matter as provided for under sections 2 and 37 of the Land Disputes Act, Cap 216, R. E. 2019.

As for the 3rd objection that the case is *res judicata* to the former case at High Court of Tanzania at Dar es Salaam, between **Chales Y.G Sarkode vs. Hedy Greetje Winkelhof Entjes**, vide **Civil Case No. 84 of 2019**.

It was argued that, the plaintiff has never filed any case against the defendant over this matter. Therefore, the provisions of section 9 of the Civil Procedure Code, Cap 33 R. E. 2019 cannot apply in the instant matter. The plaintiff counsel also referred the case of **Fortunata Ntwale vs. Attorney General, Misc. Civil Cause No. 13 of 2019, High Court of Tanzania (unreported)**.

In his brief rejoinder, the defendant's counsel reiterated his submissions in chief and added that, the contention by the plaintiff counsel that, once Bish International Bv was dissolved in the Netherlands also its subsidiary company in Tanzania ceased to exist is unfounded.

That, it still exists as the procedures for winding up of the same were not followed. Further that, the property in question is still registered in the name of the Company (Bish International). That, the plaintiff ought to have pleaded these facts and provided proof that the company in question has already been struck off the registry of Companies.

It was his contention that, as of now, this is a new fact and the court should not pay attention to it. The reason being clear that, parties are bound by their pleadings as stated in the case of **International Tanzania Limited vs. Wande Printing and Packaging Company Limited, Commercial Case No. 31 of 2020, High Court of Tanzania, Commercial Division, (unreported)**, which cited the case

of Yara Tanzania Limited versus Charles Aloyce Msemwa T/A Msemwa Junior Agrovet & Another (unreported).

Having considered the submissions of parties through their respective counsels with regard to the objections so raised, the issue for determination is whether the same have merits.

The 1st objection challenged the locus standi on part of the plaintiff to sue the defendant in respect of the subject matter in question. Regarding to the fact that, the property in dispute is still owned by the company goes by the name of Bish International Bv. The arguments from the plaintiff's counsel were simply that, since Bish International Bv. was wound-up in the Netherlands, then its subsidiary company here in Tanzania ceased to exist from that date and the properties it owned reverted back to the individual shareholders who are the deceased Rudolf Teunis Van Winkelhof and the defendant, hence the plaintiff being the legal representative of the deceased's estate has the capacity to sue the defendant in respect of the property in dispute.

Upon perusal of the plaint together with its annexures, I came across a document titled "*Certificate of Occupancy*", attached as annexure A-6. The same shows to have been issued in respect of Plot No. 43359 in favour of Bish International B.V. and registered on the 21st of April, 1994.

With this document being attached and forming part of the plaint, it is undoubtedly that the property in dispute is still in the name of the company and not the individual shareholders as claimed by the plaintiff's counsel in his submissions. That is to say, the suit property is neither owned the deceased Rudolf Teunis Van Winkelhof nor the defendant as claimed by Mr. Kamala. It is the property of the person whose name

appears in the title. Whether that person is dead or alive, is another subject, outside the jurisdiction of this court to deal with.

In addition to that, I find the arguments of Mr. Kamala in this case to be highly misplaced. They are equally based on the preconceived ideas that, once the parent company was wound up in the Netherlands, its subsidiary herein Tanzania ceases to exist. And so, its properties revert back to the ownership of the individual shareholders. This being not the concern of this jurisdiction I will not dwell on the issue; I would however advise the counsel for the plaintiff to search for the truth of the facts he stated in his arguments. In that regard, I am of the settled opinion that, the 1st objection has merits and is hereby sustained. As I have allowed the 1st objection, I find it capable of disposing the entire suit hence I will disregard the 2nd and 3rd objection for that reason.

In the end, I struck out this suit with costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
20/07/2022