

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

**LAND CASE NO.185 OF 2022**

**REGISTERED TRUSTEES OF MUSJID SHEIKH ALBANI.....PLAINTIFF**

**VERSUS**

**RAYA SALUM MOHAMED (By virtual of Special Power of Attorney from Sherdel Ghulam Rend).....DEFENDANT**

**RULING**

*Date of Last Order: 24.10.2022*

*Date of Ruling: 21.11.2022*

**T.N.MWENEGOHA, J**

The center of the dispute between the parties herein above is a landed property, located at Plot No. 28 Block "C", Temeke Area in Temeke Municipality. The plaintiff claims that, the defendant has trespassed into that property, belonging to the plaintiff. The said property was given to the plaintiff by the owner, one Sherdel Gullam Rend through a WAKFU deed, executed between them on the 15<sup>th</sup> June 2015. The defendant has evicted the plaintiff in the said property and her actions has led us into this case.

The defendant on the other hand, being against the case, filed three preliminary objections on point of law as follows; -

1. The suit is incompetent for being filed by person/body with no locus stand.

2. The suit is incompetent for being filed against a person with no locus stand.
3. The matter is resjudicata to Land Application No. 112 of 2019, filed before the District Land and Housing Tribunal for Kinondoni.

By consent of both parties, it was ordered that, the objections be heard by way of written submissions. The defendant when arguing in favour of the Preliminary objection, decided to drop the 3<sup>rd</sup> objection and remained with the first two. She was either enjoying the legal services of Advocate Emmanuel Ally, while the plaintiff was represented by Advocate Benard Seleman Maguha.

Mr. Ally chose to start with the 2<sup>nd</sup> objection. He argued that, as it has stated in the plaint, Raya Salum Mohamed has been sued as an Attorney of one Sherdel Ghulam Rend, by virtue of a Special Power of Attorney. The same document was annexed as annexure BSM-7 in the plaint. However, the said Power of Attorney was declared to be defective in **Rayah Salum Mohamed (by virtual of Special Power of Attorney from Sherdel Ghulam Rend) versus The Registered Trustees of Masjid Sheikh Albani, Civil Application No. 340/18 of 2019, Court of Appeal of Tanzania(unreported).**

That, it was observed in the said case that, the said power of attorney is defective and from the face of it does not give Rayah Salum Mohamed (the defendant herein) the power to sue or be sued on behalf of Sherdel Ghulam Rend. Hence the defendant has no locus stand to be sued by the plaintiff in this case, as held in **Mrs. Halima Mchora versus Robert Edward Hind and 2 Others, Land Case No. 322 of 2014, High Court of Tanzania (Land Division) at Dar es Salaam(unreported).**

Replying to the arguments by the defendant's counsel in respect of the 2<sup>nd</sup> objection, Mr. Maguha for the plaintiff was of the view that, the submissions by the defendant are misconceived on this matter. That is why, among the prayers in the plaint, the plaintiff wants the Court to declare that, the defendant is not a lawful attorney as she has no powers to evict the plaintiff in the suit premises. That, the counsel for the defendant failed to understand the ruling of the Court of Appeal given in **Rayah Salum Mohamed (supra)**.

It was there argued that what the Court of Appeal ruled was the fact that, the defendant cannot use the said power of attorney to institute a case before the Court of Appeal, as it was contrary to Rule 30(2) of the Court of Appeal Rules. That decision of the Court of Appeal does not exempt the defendant herein from being sued before this court as her actions were done in her capacity as an Attorney of Sherdel Ghulam Rend. They argued that, that is why the Court has been invited to see whether the eviction of the plaintiff by the defendant was lawful. Therefore, the 2<sup>nd</sup> objection is devoid of merits and should be overruled.

On my part, having heard the arguments of both counsels on behalf of the parties, and upon reading carefully the decision of the Court of Appeal given in **Rayah Salum Mohamed (supra)**, I have no doubts to say that, it is the counsel for the plaintiff who has misconceptions with what the Court of Appeal of Tanzania decided.

It's true that, the center for discussion in the said Ruling was the legality of the purported power of Attorney given to the defendant herein, if the same can confer powers to her to file and prosecute the said case, vide **Civil Application No. 340/18 of 2019**.

However, we cannot say that, the Court of Appeal of Tanzania declared the Power of Attorney to be illegal for the purpose of instituting and prosecuting only the said case before it (**Rayah Salum Mohamed (supra)**). Such arguments as presented by the counsel for the plaintiff are misconceived. With such decision of the Court, the defendant was stripped off, all powers conferred to her by the said *Special Power of Attorney*. She cannot act in whatever way on behalf of the doner of *Special Power of Attorney*, as it does not exist from the date the same was declared to be illegal by the Court of Appeal.

Therefore, if she lacked the Locus to sue the plaintiff in the former case before the Court of Appeal by virtue of that *Special Power of Attorney*, verily, she cannot have the locus to be sued by using the same *Special Power of Attorney* in this Court. What is interesting here is the fact that the same person who led the said *Special Power of Attorney* to be declared illegal and benefitted from the decision of the Court, is the one who wants to benefit by going against such decision.

With these observations, I find merits in the 2<sup>nd</sup> objection. The defendant has no locus to be sued in this case by the plaintiff. The same is hereby sustained. And that is enough to dispose the entire case to its finality, without discussing the remaining objection (1<sup>st</sup> objection).

In the end, the case is struck out with costs.



  
**T.N. Mwenegoha.**  
**Judge**  
**21/11/2022**