

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

**LAND CASE NO. 34 OF 2022**

**ELITE RESIDENCY ASSOCIATION .....PLAINTIFF**

**VERSUS**

**RASHMEAR SERVICE & MAINTANENCE  
COMPANY LIMITED .....DEFENDANT**

Date of last Order: 28.04.2022  
Date of Ruling: 30.05.2022

**RULING**

**V.L. MAKANI, J**

The defendant in this suit has raised two points of preliminary objections as follows:

- 1. That this honourable court has no jurisdiction to entertain this suit in vie of sections 33 (1) (a) (b) and 33(2) (b) of the Land Disputes Court Act CAP 216 RE 2019.*
- 2. The plaintiff has no locus standi to maintain this suit.*

The defendant prayed for the court to strike out the suit with costs.

With leave of the court the objections were argued by way of written submissions. Mr. Norbet Mlwale, Advocate drew and filed submissions on behalf of the defendant. Mr. Mlwale said looking at

the reliefs that have been claimed by the plaintiff in paragraphs 4 (a) (b) (c) (d) (e) and (f) and section 33(1)(a)(b) of the Land Disputes Court Act, the matter can be tried by the District Land and Housing Tribunal (the **Tribunal**). He said even when the pecuniary jurisdiction is considered relative to paragraph 5 of the plaint which state USD 250 as the amount in dispute is still not covered by section 33(2)(b) of the Land Dispute Courts Act which states the pecuniary jurisdiction of the Tribunal to be TZS 200,000,000/= . He said USD 250 is a very low amount compared to what is provided in the law and he wondered why the plaintiff opted to file this suit at the High Court rather than the Tribunal. He said according to section 13 of the Civil Procedure Code CAP 33 RE 2019, every suit shall be instituted in the court of lowest grade competent to try it. And further that the plaintiff did not diligently satisfy herself that this court has jurisdiction to try this suit. Mr. Mlwale cited the case of **Tanzania China Friendship Textile Company Limited vs. Our Lady of the Usambara Sisters, Civil Appeal No. 84 of 2002 [2006] TLR 70**. He said the suit contravenes the provisions of sections 33(1)(a)(b) and 33(2) of the Land Disputes Courts Act. He prayed for the suit to be struck out with costs.

As for the second point of objection on *locus standi*, Mr. Mlwale said the plaintiff is a registered society under the Societies Act CAP 337 RE 2002. He however, pointed out that being a society the plaintiff is supposed to obtain a mandatory registration under section 3 of the Trustees Incorporation Act CAP 318 RE 2002 which mandates all these organizations to be registered as the Board of Trustees in order to have the power to hold property, to sue and be sued in the name of the said Board of Trustees. He said a society as is the case with the plaintiff has no capacity to sue or be sued in its own name. He said the plaintiff could be a body corporate if it were registered under section 36(1)(c) of the Unit Titles Act or the Trustees Incorporation Act. He went further to state that the registration of the plaintiff as the owners of the units within the suit property was required to be made under the Unit Titles Act and its subsequent Regulations of 2009 (the **Regulations**). Mr. Mlwale further said that the plaintiff was required to be registered under and obtain a Certificate of Registration under the Unit Titles Act and not under the Society Act. He said for purposes of this suit the plaintiff is a non-existent person and lacks legal existence therefore incapable of maintaining this suit. He relied on the case of **Lujuna Shubi Balonzi Snr vs. Registered Trustees of Chama cha Mapinduzi [1986] TLR 203**. For the

reasons stated Mr. Mlwale prayed for the suit to be struck out with costs.

The submissions in reply on behalf of the plaintiff were drawn and filed by T&N Attorneys at Law. There was no specific name of the Advocate who had conduct of the matter. The plaintiff said this court has jurisdiction to entertain the suit as the subject matter at hand falls under the pecuniary jurisdiction of this court. The residences or apartments in dispute are worth billions of shillings and the reference of USD 250 in the plaint was merely the amount that the defendant charges each apartment owner every month. The plaintiff claimed that the matter falls under land matters because it involves land as residences and this leads to occurrence of the cause of action. He said the provisions cited by Counsel for the defendant do not apply because the residences in dispute are way higher in value than what the provisions have provided. The plaintiff pointed out that the substantive claim is for declaratory orders that involve premises whose value is more than a billion shillings. He said in the case of **Tanzania China Friendship Textile Company Limited** (supra) it was held that it is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the court. He thus

concluded by stating that this court has jurisdiction to entertain the matter.

As for the second point of objection, the plaintiff said she has locus standi. He relied on the case of **God Bless Jonathan Lema vs. Musa Hamisi & 2 Others Civil Appeal No. 47 of 2012 (CAT)** where it was stated that it is a rule of equity that a person cannot maintain a suit or action unless he has an interest in the subject of it. He said the Unit Titles Act provides that unit owners can form societies. He said the owners of Elite Residence were granted subtitles and not unit titles and because of that they were directed by the Registrar of Titles to form an association. In that respect, the plaintiff said she has *locus standi* because the association is duly registered, and all the documentation is attached to the plaint to prove registration hence can sue and be sued. He said the provisions of Unit Titles Act by Counsel does not apply in the matter of *locus standi* and is not even necessary. The plaintiff prayed for the objections to be dismissed with costs.

In rejoinder Mr. Mlwala reiterated what he submitted in the main submissions. He further said that instead of the plaintiff pointing a

particular paragraph in the plaint where jurisdiction of the court may be derived, she has departed from the substance and opted to come with a new fact that the property is worth billions of shillings a fact which was not pleaded in the plaint. He said the ownership and value of the apartments within the residence subject of the suit has not been stated anywhere in the plaint. He insisted that the amount of USD 250 stated in the plaint at paragraph 3 is far lower than the amount provided in the law. He also emphasized that the plaintiff may bear the name of an association but does not qualify as an association under the Unit Titles Act and the Regulations thereunder. He said in the case of **Godbelss Lema** (supra) the key words are person and interest. A person in the eyes of the law is either a natural person or legal person, but in the case at hand the plaintiff is neither a natural person nor a legal person with corporate personality capable of being sued in her own name. He reiterated the prayers for the suit to be struck out with costs for lack of jurisdiction and locus standi.

I have gone through the submissions and the pleadings filed herein. The main issue for consideration is whether the objections raised have merit.

According to Order VII Rule 1 of the CPC the particulars of the plaint of the plaintiff include the facts constituting the cause of action and when it arose, the facts showing that the court has jurisdiction, the relief (s) which the plaintiff claim and a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

In the plaint the plaintiff is claiming to be an association of lawful apartment owners. Indeed, the reliefs are declaratory but in paragraph 5 of the plaint there is a claim of service charges to the tune of USD 250 per month, and that the members of the plaintiff are not happy with the charges levied against them. This, to my understanding, is the basis of the claim. In other words, if no service charges were levied then the plaintiff would not have been in court. There is no claim of ownership or trespass or rent but payment of service charges which in my considered view is monetary in nature. According to section 33(2)(b) the amount below TZS 200,000,000/= can only be entertained by the District Tribunal and not the High Court. In the present case, the plaint is considerably vague, name of the apartments are not mentioned, the total number of the

apartments or the location of the said apartments is unknown. It was expected that the plaintiff would, apart from stating the monthly charges of USD 250, reflect in the plaint the time the defendant started levying the service charge and the amount so far paid so the court could assess the pecuniary jurisdiction. Looking at the facts of the case even the territorial jurisdiction is a mystery. Annexure ERA is not of assistance either as it does not state the address and location of the plaintiff. Considering the vagueness and other reasons stated hereinabove, the jurisdiction of the court cannot be established easily in terms of Order VII Rule 1 of the CPC as such the court cannot entertain the suit in such circumstances.

The second point of objection is on *locus standi*. It is clear that the plaintiff is registered as a society under the Societies Act. And as correctly stated by Mr. Mlwela, a society has no power to own property, sue or be sued in its own name. If a society of the nature of the plaintiff would wish to be a corporate body, then the plaintiff would have registered under section 3 of the Trustees Incorporation Act to enable the Board of Trustees to have the power to hold property, to sue and be sued in the name of the said Trustees. Since the plaintiff is registered under the Societies Act, then she does not



have the power to sue and be sued in its own name. Mr. Mwala suggested the option of suing under section 36 of the Unit Titles Act. Indeed, owners of unit titles can form an association (a corporate body) registered under the said Act. However, it is not reflected in the plaint that members of the plaintiff are holders of unit titles, and in any case, in their submissions the plaintiff said they are not owners of unit titles but subtitles(?) For the reasons thereof, it is apparent that the plaintiff has no power to own property, sue or be sued as such has no *locus standi* to institute this suit.

In the result the preliminary points of objection have merit and are sustained. The suit is hereby struck out with costs for want of jurisdiction and *locus standi*.

It is so ordered.

  
**V.L. MAKANI**  
**JUDGE**  
**30/05/2022**

