

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

**LAND CASE NO. 74 OF 2023**

**MTUMWA JUMANNE ALLY AND 178 SOTHERS.....PLAINTIFFS**

**VERSUS**

**ATTORNEY GENERAL.....1<sup>st</sup> DEFENDANT**

**MINISTRY OF WORKS & TRANSPORTATION.....2<sup>ND</sup> DEFENDANT**

**MINISTRY OF LAND, HOUSING & HUMAN**

**SETTLEMENT.....3<sup>RD</sup> DEFENDANT**

**TANZANIA NATIONAL ROADS**

**AGENCY(TANROADS).....4<sup>TH</sup> DEFENDANT**

**R U L I N G**

*Date of Last Order: 19.05.2023*

*Date of Ruling: 31.05.2023*

**T. N. MWENEGOHA, J.**

This Ruling is in respect of an objection from the respondent that, the suit is untenable in law in respect of the 31<sup>st</sup> to 37<sup>th</sup> plaintiffs. In written submissions in favour of the objection, Victoria Ally Lugendo, learned State Attorney for the defendants, was of the view that, the procedures regulating Power of Attorneys are provided under Order III Rule 2(2) of the Civil Procedure Code, Cap 33 R. E. 2019. The said provisions have not been followed in giving the Powers of Attorney given to the 31<sup>st</sup> to 37<sup>th</sup> plaintiffs. The donors have failed to show that they fit in the criteria given

in the law. That, they are incapacitated by sickness or reside outside Tanzania, such that they cannot appear in Court. Therefore, there is an obvious abuse of the use of the Power of Attorney by the said persons. That makes this suit untenable for including person with no locus standi to sue in this case, as stated in the case of **Zarina Mohamed versus Leonida F. Sakulo, Land Case No. 166 of 2010, High Court of Tanzania.**

In reply, Advocate Benitho Mandele for the plaintiffs was of the view that, the objection at hand is not on a pure point of law. The same cannot be determined without looking at the evidence which the defendants are inviting the Court to draw its attention. Above all, according to **Order 1 Rule 9 of the Civil Procedure Code, Cap 33 R. E. 2019**, a suit does not fail by reasons of misjoinder or non-joinder of parties. Therefore, this objection is devoid of merits and should be overruled.

Having gone through the submissions of both counsels on behalf of the parties, the issue for determination is whether the objection has merits or not.

The objection in question is centered on the legality of the Powers of Attorney, given to the 31<sup>st</sup> to 37<sup>th</sup> plaintiffs. According to learned State Attorney for the defendants, the said documents have been given contrary to **Order III Rule 2 (2) of the Civil Procedure Code, Cap 33 R. E. 2019**. It is because, the donors have failed to prove that they cannot appear and prosecute their case by reasons of serious sickness or being outside Tanzania.

To resolve this contention, I went through the plaint to satisfy myself on the truthfulness of the arguments by the learned State Attorney for the

defendants. Unfortunately, I did not find the documents in question. It was mentioned in paragraph 9 of the Plaint that, the 31<sup>st</sup> to 37<sup>th</sup> plaintiffs have power of Attorney and the same have been annexed as **Annexure "C"**, collectively. However, the plaint contains no annexure whatsoever. That is to say, I have no reference in hand, to substantiate what was pointed out by the learned State Attorney for the defendants.

Either, even if I was to find "**Annexure C**", I'm worried if at this point of preliminary objection, I have the powers to investigate on the validity of the said documents. Therefore, it hard or almost impossible to say in clear cut terms at this stage that, the donors are capable of appearing in Court or otherwise so as to check the validity of the Powers of Attorney given to the 31<sup>st</sup> to 37<sup>th</sup> plaintiffs. This is a fact that needs arguments and evidence to prove its existence or non-existence. As per the case of **Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd, (1969) EA**, that is not a point of law so to speak. It is a factual issue that can be ascertained by long drawn arguments and evidence, see **Lyamuya Construction Company Limited versus Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported)**.

Eventually, I find the objection to be devoid of merits and overrule it accordingly. The main case shall proceed to be heard until its final determination. No order as to costs.

Ordered accordingly.

  
**T. N. MWENEGOHA**  
**JUDGE**  
**31/05/2023**

