

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

LAND CASE NO. 107 OF 2023

ALDO HANS POPPE (Administrator of the Estate
of the Late Zacharia Hans Poppe).....**1ST PLAINTIFF**
ANGEL ZACHARIA POPPE (Administrator of the Estate
of the Late Zacharia Hans Poppe).....**2ND PLAINTIFF**
ABEL ZACHARIA POPPE (Administrator of the Estate
of the Late Zacharia Hans Poppe).....**3RD PLAINTIFF**
Z. H. POPPE LIMITED.....**4TH PLAINTIFF**

VERSUS

EQUITY BANK TANZANIA LIMITED.....**1ST DEFENDANT**
SALMO OIL LIMITED.....**2ND DEFENDANT**
MOHAMED NASSORO.....**3RD DEFENDANT**
NUTMEG AUCTIONEERS & PROPERTY
MANAGERS CO. LTD.....**4TH DEFENDANT**
JAFARI MOHAMED MATONYA.....**5TH DEFENDANT**
ECOBANK TANZANIA LIMITED.....**NECESSARY PARTY**

RULING

14th & 25th August, 2023

L. HEMED, J.

It was on 19th day of April, 2023 when the plaintiffs herein **ALDO ZACHARIA POPPE, ANGEL ZACHARIA POPPE, ABEL ZACHARIA POPPE** (the administrators of the estate of the late Zacharia Hans Poppe) and **Z.H. POPPE LIMITED** presented the instantaneous suit in this court. The plaintiffs claim against the defendants for declaration that the landed

properties described as Plots No. 54/1, 54/2 and 54/3, Visiga, Kibaha, Coast Region are the lawful properties of the **Z.H. POPPE LIMITED**.

The defendants, **EQUITY BANK TANZANIA LIMITED, SALMO OIL LIMITED, MOHAMED NASSORO, NUTMEG AUCTIONEERS & PROPERTY MANAGERS CO. LTD, JAFARI MOHAMED MATONYA** and the necessary party, **ECOBANK TANZANIA LIMITED** disputed all the claims by filing written statement of defence. The 1st Defendant raised in her written statement of defence a plea in *limine litis* that;

"To the extent that the plaintiffs are co administrators pendente lite of the late Zacharia Hans Poppe and to the extent that in terms of paragraph 9 of plaint and its annextures thereto, the disputed properties are owned by Majidi Abdallah Kimaro, Muro Investment Company Limited and Z. H. Poppe Limited. The plaintiff have no locus stand to sue"

The 2nd, 3rd and 5th defendants raised three (3) points of law against the suit, thus;

"1. The suit by the 1st, 2nd and 3^d plaintiffs is misconceived and unmaintainable as they have no locus standi to institute this suit for lacking registered and/ or lawfully recognized interest in the subject matter of the suit.

2. *The suit by the 4th plaintiff incompetent and unmaintainable for lacking the relevant board resolution sanctioning institution of the suit against the 2nd, 3rd and 5th Defendants.*
3. *The plaint is defective for not disclosing the cause of action against the 2nd, 3rd and 5th Defendant."*

The objections were argued by way of written submissions. Mr. Godwin Nyaisa, learned counsel represented the 1st defendant. Ms. Faith Mwakikoti acted for the plaintiffs while Mr. Kamazima Idd, learned advocate represented the 2nd, 3rd, and 5th defendants. The necessary party enjoyed the service of Mr. Zuriel Kazungu learned advocate.

Let me start with the point on *locus standi* of the 1st, 2nd, and 3rd plaintiffs to institute the instant suit. The point was raised by the 1st, 2nd, 3rd and 5th defendants.

It was argued in support of this point that the plaintiffs who are joint administrators of the estate of the late Zacharia Hans Poppe cannot have *locus standi* to sue on the suit property pleaded to belong to Z. H. POPPE LIMITED. In reply thereto the counsel for the plaintiffs asserted that the plaintiffs have *locus standi* to step into the shoes of the late Zacharia Hans Poppe in Civil Case No. 184 of 2017 that was pending in this court.

In the view of the learned counsel for the plaintiffs stated that the plaintiff have *locus standi* for protection of the interests of the late Zacharia Hans Poppe as share holder in Z. H. POPPE LTD.

Locus standi is the right to bring an action or to be heard in a given forum, this is pursuant to Black's Law Dictionary, 8th Ed. in **God Bless Jonathan Lema vs. Musa Hamis Mkanga and 2 others**, Civil Appeal No. 47 of 2012 the Court of Appeal of Tanzania had this to say with regard to the question of *locus standi*;

"locus standi is a jurisdictional issue. It is a rule of equity that a person cannot maintain a suit or action unless he has interest in the subject of it, that is to say unless he stands in a sufficient close relation to it so as to give a right which requires prosecution or infringement of which he brings the actions."

It is the connections the person has to the subject matter. *Locus standi* is governed by common law according to which a person can bring a matter to court.

I have examined the pleadings, the plaint in particular and found that the plaintiffs have pleaded that the suit property belongs to **Z. H. POPPE LIMITED**, the 4th plaintiff. The 4th plaintiff is a company incorporated under the Laws of Tanzania. The 1st, 2nd and 3rd plaintiffs are

mere co-administrators of the estate of the late Zacharia Hans Poppe who was amongst the shareholders of the 4th plaintiff. The 1st, 2nd and 3rd plaintiffs have not stated if their shares which were owned by the late Zacharia Hans Poppe have been transmitted to them. Even if we assume that the plaintiffs have fallen into the shoes of the late Zacharia Hans Poppe, do they have the right to sue on the property of the company (4th plaintiff)?

The answer to this question is straight forward that they have no such right. This is pursuant to the separability principle of the company from its owners/shareholders, directors and employees. The principle provides that a company is essentially regarded as a legal person separate from its directors, shareholders, employees and agents. The principle was expounded in the case of **Salomon v. Salomon & Co. Ltd** [1897] AC 22 where it was stated thus;

"A company is an independent person with its rights and liabilities appropriate to itself and that the motive if those who took part in the promotion of the company are absolutely irrelevant in discussing what those rights and liabilities are"

From the above principle, it is obvious that the 1st, 2nd and 3rd plaintiffs have no legal legs to walk into this court to sue on the suit property. In short, they have no *locus standi*.

The 2nd, 3rd and 5th defendants also raised the point of competence of the suit for lacking of the relevant board resolution sanctioning institution of the suit against the 2nd, 3rd and 5th defendants. It was argued that the 4th plaintiff being a company runs its affairs by making major decisions through resolutions of board of directors. Amongst major decision requiring resolution of board of directors is institution of legal proceedings. It was asserted that the instant suit has been instituted without resolution of board of directors. They cited the decision of the Court of Appeal of Tanzania in **Simba Papers Converters Limited vs. Packaging & Stationery Manufacturers Limited & Another** Civil Appeal Case No. 280 of 2017 to cement their point.

In reply, the counsel for the plaintiffs stated that it was impossible to obtain Board Resolution at the time of filing the plaint/suit. According to the learned advocate of the plaintiffs, it will be availed before the commencement of hearing. In her submissions, the counsel for the plaintiffs she admits that the suit at hand has been filed without the requisite board resolution to sue.

The 4th plaintiff is company which is a subject of the Companies Act, Cap 212. Section 147 (1) of the Act requires anything done by the company to be by resolution of general meeting or any class of members of the company. It is a settled position that failure to comply with section

147 (1) of the Companies Act, renders the suit incompetent. In **Bugerere Coffee Growers Limited vs. Sebaduka and Another** (1970) EA 147 the court held that;

"When companies authorize the commencement of legal proceedings, a resolution or resolutions have to be passed either at a company or board of directors meeting and recorder in the minutes".

The above position was echoed by the Court of Appeal of Tanzania in **Ursino Palms Estate Limited vs. Kyela valley Foods Ltd & 2 others**, Civil Application No. 28 of 2014. From the foregoing it is obvious that the matter at hand is incompetent in respect of the 4th plaintiff for want of Board Resolution to institute the instant suit.

In the final analysis, I find that the 1st, 2nd and 3rd plaintiffs have no *locus standi* to institute the matter at hand. I have also found that the suit is incompetent in respect of the 4th plaintiff for want of Board Resolution. The fact that the 1st and 2nd limbs of the preliminary objections suffices to dispose of the entire suit, I find worthless to determine the rest of the preliminary objection. In the upshot, I proceed to strike out the entire suit with costs. it is so ordered.

DATED at DAR ES SALAAM this 25th August 2023.

