

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

LAND CASE NO. 225 OF 2023

MOHAMED HASSAN KANGAMBILI.....PLAINTIFF

VERSUS

TANZANIA NYANZA ROADWORKS.....DEFENDANT

R U L I N G

Date of Last Order: 16.08.2023

Date of Ruling: 30.08.2023

T. N. MWENEGOHA, J.

The defendant above named, raised three preliminary objections on point of law as follows:-

- 1. That, the plaintiff has no locus standi to sue on this matter.**
- 2. The plaintiff has no cause of action.**
- 3. The Court lacks jurisdiction to entertain the matter.**

Submitting on the 1st and 2nd objections together, Advocate Bwire Benson Kuboja was of the view that, the plaintiff has failed to establish his interest on the suit property. He was supposed to show that, he is entitled to bring the matter before this Court. The plaintiff has no land to claim, hence, he cannot sue the defendant for trespass. That, the property in question is located on a road reserve. It is a public property under the supervision of the Tanzania National Roads Agency (TANROADS), as per the Roads Act,

No. 13 of 2007. The plaintiff being a small business owner (machinga), has placed a temporary stand into the said land with the purpose of conducting business. Therefore, the plaintiff has no cause of action against the defendant as well as the locus to sue as stated in **Lujuna Shubi Balonzi versus Registered Trustees of Chama Cha Mapinduzi (1996), TLR 208**. Also Order the case of **Peter Mpalanzi versus Christina Mbaruku (Civil Appeal No. 153 of 2019), Court of Appeal of Tanzania (unreported)**.

On the 3rd objection, the counsel for the defendant maintained that, since the issue of locus is a point of law, there is no way that the Court will have jurisdiction to entertain the matter at hand as stated in **Peter Mpalanzi vs. Christina Mbaruku** (supra). That, the issue of jurisdiction is a creature of statute and not wishes of parties, hence the Court has no jurisdiction to entertain this matter. Also, the value of a subject matter is below this Court's Jurisdiction. He cited the case of **Aloyce James Kasawa versus William Mafungo Mwangwa & Another, Civil Reference No. 5 of 2018, Court of Appeal of Tanzania**.

In reply, Advocate Mashaka Edger Mfala for the plaintiff, maintained that, the objections raised by the counsel for the defendant, need evidence and arguments. Therefore, the same are highly misplaced based on **Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd (1969) EA 966**. He went on to argue that, the issue of locus stand cannot be resolved without looking at the evidence so as to ascertain if the plaintiff has locus standi or not. However, paragraph 4 of the plaint has an answer to that, as the plaintiff has narrated well on how he acquired the suit land.

That, the fact that the suit land is owned by Tanzania National Roads Agency (TANROADS) also need proof, hence cannot be resolved at this stage. Further, that, paragraph 9 shows clearly the cause of action which the plaintiff has against the defendant. The assertion that, the plaintiff has no cause of action is misconceived. He referred the case of **John B. Byombalirwa versus Agency Maritime International (Tanzania) (1983) TLR.1.**

On the 3rd objection, it was argued that, it is not true that, the value of the land in dispute is between 7,200,000 up to 8,600,000/=. There is no valuation report to that effect, hence the Court cannot act up to such assertion. This objection also calls for evidence to prove the allegations raised by the counsel for the defendant.

I have considered the submissions of both counsels for the respective parties. The issue for determination is whether the objections have merits or not. In my discussion, I will consolidate all three objections and analyse them together as they are related to one another.

In dealing with a preliminary objection, Courts are guided by a rule that, the same should on a point of law, **see Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distribution Ltd** (supra). In identifying what constitutes a point of law, two issues are considered. First, it should be apparent on the face of it. Second, it should not need evidence or long drawn arguments to ascertain it, see **Lyamuya Construction Company Limited versus Board of Registered Trustees of Young Women Christian Association of Tanzania, Civil Application No. 2 of 2010 (unreported).**

Now, in the present matter, three objections were raised. Firstly, it was alleged by the counsel for the defendant that, the plaintiff has no cause of action against the defendant and locus standi to sue in this case. Also, that, the Court lacks jurisdiction, owing to the reason that, the value of the subject matter being below the court's jurisdiction.

Looking at these objections, we agree that, all of them are allegations, that attract evidence and arguments to prove their existence or non-existence. At paragraph 3, 9 and 10 of the plaint, the plaintiff has stated clearly that, the defendant has trespassed into the land, belonging to the plaintiff, measuring 12 X 90 feet. That is his cause of action, being clearly stated in the plaint. If one alleges lack of cause of action thereto, it means that he is disputing the facts given under paragraph three, hence he has to prove his or her allegations. If proof is required, then the allegations are factual issues and not points of law.

Same applies to the other objection on locus standi. Under paragraphs 4, 5, 6, and 7, the plaintiff claims to be the owner of the land in dispute, hence, he has interest on the case at hand. These paragraphs are the ones showing the locus standi.

Lastly, on the value of the subject matter. This too need proof by documentary evidence. A valuation report from a valuer. At this stage, the same cannot be produced. Therefore, as I have said here in above, all these objections are facts that need proof by evidence, hence they go against the rules governing preliminary objections, as stated in **Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd** (supra).

For the reasons explained above, I find all three objections to be devoid of merits. The same are overruled accordingly. The main case shall proceed to be heard on merits, until its final determination.

It is so ordered.




T. N. MWENEGOHA

JUDGE

31/08/2023