

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

**LAND CASE NO. 326 OF 2009**

**THE REGISTERED TRUSTEES OF MOVEMENT POPULAR DE  
LIBERATICO DE ANGOLA (MPLA)..... PLAINTIFF**

***VERSUS***

**HAMISA MOHSIN .....1<sup>ST</sup> DEFENDANT**

**OMARY SALUMU MOHAMED MOHSIN .....2<sup>ND</sup> DEFENDANT**

**PETER KUMBUKA CHOKALA (As administrator of the  
Estate of the Late RITA KAMULI CHOKALA) .....3<sup>RD</sup> DEFENDANT**

**MOHAMED IQBAL HADJI.....4<sup>TH</sup> DEFENDANT**

**ABDALLAH THABIT HUWEL.....5<sup>TH</sup> DEFENDANT**

**RULING**

*23<sup>d</sup> August 2023 & 12<sup>th</sup> October, 2023*

**L. HEMED, J.**

This is another protracted litigation over Plots Nos. 11, 12A, 67Q & 12 located in Kurasini area, held under CT.No. 186103/5, 12CT. No. 186103/8, 12CT. NO.186103/8, CT NO.186103/9 and CT No.186103/7. The plaintiff alleged to have bought the suit premises in 1974 from the administrator of the Estate of **NASSOR EL- LEMIK**, one **MOHAMED EL-LEMKI**. It was alleged by the plaintiff that on 30<sup>th</sup> August 2009, the 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> defendants trespassed into the suit premises and installed their guards.

This matter was initially decided by this Court vide the Judgment dated 29<sup>th</sup> December, 2015 by Hon. F.W. Mgaya, J. The Court of Appeal of Tanzania, suo motu revised the matter vide Civil Revision No. 1 of 2018, quashing the proceedings from the mediation stage onwards and set aside the judgment thereon. It directed the matter to commence for the 1<sup>st</sup> pre-trial process. It further directed Abdallah Thabit Huwel to be joined to the proceedings.

Having amended the plaint to join the said Abdallah Thabit Huwel, the defendants herein filed the written statements of defence to dispute all the plaintiff's claims save for the 2<sup>nd</sup> defendant who, at the time of composing this ruling was yet to file his written Statement of defence or enter appearance. The 3<sup>rd</sup> and 4<sup>th</sup> also lodged notices preliminary objections.

The 3<sup>rd</sup> Defendant's objection was on the following points of law:-

*" a) That, the suit is bad in law for being filed without the resolution of Trustees*

*b) That, basing on the value of the subject matter as claimed by the plaintiff this court has no jurisdiction to entertain this matter.*

*c) That the amended plaint is defective for want of proper verification pursuant to Order VI Rule 14 and 15 of the Civil Procedure Code Cap 33 RE 2019."*

Similarly, the 4<sup>th</sup> defendant's objection consisted the following points thus:-

*" i. That this suit is bad in law and a non- starter having been and verified by a stranger to the Trust and without any legal authority to sign the pleadings;*

*ii. That the suit is bad in law for being filed without a resolution of the Trustees;*

*iii. That the suit is bad in law for offending the provision of Order VII Rule 1 (1) of the Civil Procedure Code Cap 33 RE 2019;*

*iv. That the court has no pecuniary jurisdiction to entertain the suit.*

*v. That the suit is time -barred having failed to state as to when the cause of action arose;*

*vi. That the suit is untenable in law since the Amended Complaint offends Order VI Rule 14 and 15 of the Civil Procedure Code, Cap 33 R: E 2019; and*

*vi. The Amended Complaint is untenable in law for containing amendments beyond the court order."*

The preliminary objections were argued by way of written submissions. **Ms Stella Manongi, Mr. John Ignace Laswai, Mr. Francis Makota** and **Mr. Killey Mwitasi** learned counsels argued the

preliminary objections on behalf of the 3<sup>rd</sup> defendant, **Mr. Stephen Masha** and **Mr Frederick Mpanju** learned counsel argued for the 4<sup>th</sup> defendant, while the plaintiff enjoyed the service of **Mrs. Genoveva N. Kato** and **Mr Thomas Eustace Rwebangira**, learned advocates.

In arguing the preliminary objections, the learned counsels for the 4<sup>th</sup> defendant opted to argue points number 1 and 2 collectively, combined grounds 3, 4, and 5 and abandoned points number 6 and 7.

In respect of points 1 and 2 raised by the 4<sup>th</sup> defendant and point number 3 raised by the 3<sup>rd</sup> defendant which appear to be similar, the counsel for the defendants argued that the plaint is defective for want of proper verification pursuant to Order V1 Rule 14 and 15 of the Civil Procedure Code [Cap 33 R: E 2019]. They stated that the verification was signed by an unauthorized person, one **AYLTON ROMUALDO CAMUENDA MARIO**, and that, there is no resolution of Trustee as per section 8 of the Trustee Incorporation Act [Cap. 318 R: E 2002].

In reply thereto, the learned counsels for the plaintiff submitted that verification was signed by an authorized person. The learned counsel argued in the alternative that the alleged defects can be cured by amendments. To support their argument they referred to the book of **MOGHA's LAW OF PLEADINGS WITH PRECEDENTS**, Fourteenth

Edition, Eastern Law House at page 58 and the decision in the case of **Diamond Motors Limited vs K.Group (T)** Civil Appeal No 219. They prayed that the defect in the verification clause could be cured by order of amending the pleadings.

To ascertain if points 1 and 2 raised by the 4<sup>th</sup> defendant and point 3 raised by the 3<sup>rd</sup> defendant on **defective verification clause** have merits, I revisited the amended plaint filed by the plaintiff on **6<sup>th</sup> July 2023**. After carefully scrutiny, I found that one **ALYTON ROMUALDO CAMEENDA MARIO** verified the contents of the plaint. I noted that the person who signed and verified the contents of the Plaint pleaded to have authorization to sign pleadings. The defendants appear to challenge the said authorization, in my firm opinion, whether the person who signed the Plaint had the requisite authorization to sign it becomes a matter of fact requiring proof by way of adducing evidence. I am holding so because, principally, preliminary objection should be on point of law and should not attract evidence. The fundamental requirement is that any alleged irregularity must be apparent on the face of the pleadings the objector is challenging, in this case, the plaint. In **Mukisa Biscuit Manufacturing Company Ltd v. West End Distributors Ltd**

[1969] EA 296 where the East Africa Court of Appeal considering what constitutes a preliminary objection, held thus at page 700:-

*"...a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit."*

The Court of Appeal of Tanzania also cemented in the case of **Sugar Board of Tanzania vs. 21<sup>st</sup> Century Food and Packaging and Two others**, Civil Application No.20 of 2007, that:-

*" A preliminary objection is in the nature of legal objection, not based on the merits or facts of the case, but on the stated legal procedural or technical grounds. Such an objection must be argued without reference to evidence."*

Being the case, the said point of objection ceases to be a preliminary objection on point of law. From the foregoing, I find that point 1 raised by the 4<sup>th</sup> defendant and point 3 raised by the 3<sup>rd</sup> defendant to have no merits. They are thus overruled.

The 2<sup>nd</sup> limb of preliminary objection was on the pecuniary jurisdiction of this Court. It was argued by the counsel for the defendants that the plaintiff must state the value of the subject matter for the purpose of ascertaining the court jurisdiction and fees payable as provided under Order VII Rule 1 (i) of the Civil Procedure Code, Cap 33. According to the defendants' learned counsel, the value of the suit landed properties of above 50 million stated in the plaint cannot confer jurisdiction to this court. To support their arguments, they referred to the case of **Shyam Thanki and Others vs New Palace Hotel** [1971] EA 199, **Fanuel Mantiri Ng'unda versus Herman Mantiri Ng'unda** [1995] TLR 155, **Doctore Malesa and Others vs The Permanent Secretary Ministry of Lands, Housing and Settlement and 3 Others**, Land Case No 18 of 2019 and **Magweiga Chacha Magere vs Marther Manumba and 8 Others**. HC Land Case No.9 of 2020.

It was submitted that, since there was an order for retrial by the Court of Appeal, the original plaint ceased to operate upon amendment. It was added that, the pecuniary jurisdiction of this court for the recovery of possession of immovable property is limited to the value exceeding 300 million shillings. To cement his argument, he cited the case of **Consolidated Holding Corporation vs Nyakato Soap**

**Industries Limited**, Civil Appeal No 58 of 2020 and **Morogoro Hunting Safari Ltd vs Halima Mohamed Mamaya**, Civil Appeal No 117 of 2011.

In reply thereto, the counsel for the plaintiff argued that this suit was filed on 2<sup>nd</sup> December 2009, by that time the laws governing pecuniary jurisdiction on land matters were section 167 (1) (b) and (c) of the Land Act, [Cap 113 RE 2019] and section 33 (2) of the Land Disputes Court Act 2002. At that time, the court had jurisdiction because law does not operate retrospectively. It was stated that the amendment to the plaint was effected only for purposes of adding the 4<sup>th</sup> and 5<sup>th</sup> defendants that it did not affect the other parts of the original plaint. They also asserted that the High Court has unlimited jurisdiction as provided under section 13 of the Civil Procedure Code (supra) as it was well elaborated in the case of **Benitho Tadei Chengula vs Abdulahi Mohamed Ismail (Farther and Administrator of the estate of the late Mariam Abdulahi Mohamed Ismail)**, Civil Appeal No. 183 of 2020.

I am at one with the learned counsel for the defendants that, currently, suits on land whose value is Tshs. 300,000,000/= and below, fall within the pecuniary jurisdiction of the District Land and Housing



Tribunal. However, I am persuaded by the assertion of the learned advocates of the plaintiff that this matter was instituted in 2009 when disputes on land whose value exceeded Tshs. 50,000,000/= were to be lodged in the High Court. The instant case was one of them, it was tried to its end but upon *suo motto* revision it was directed by the Court of Appeal that the matter be retried afresh joining the 5<sup>th</sup> defendant one Abdallah Thabit Huwel. Therefore, when the matter was lodged in this court in 2009, it was then properly placed in this court as by then no court other than this court had pecuniary jurisdiction to entertain land matters for recovery of possession of land whose value exceeded Tshs.50,000,000/=.

I am aware that section 13 of the Civil Procedure Code,[Cap 33 RE 2019] requires a suit to be instituted to the court of the lowest grade competent to try it. I wish to quote it verbatim thus:-

*"Every suit **shall be instituted in the court of the lowest grade competent to try it** and, for the purposes of this section, a court of a resident magistrate and a district court shall be deemed to be courts of the same grade:*

*Provided that, the provisions of this section shall not be construed to oust the general jurisdiction of the High Court.*" (Emphasis added)

Reading closely the above provision, it does not oust the jurisdiction of the High Court in any matter notwithstanding the pecuniary value of the subject matter. Section 13 of the Civil Procedure Code (supra) is not there to confer or oust jurisdiction rather it provides a mere procedural requirement that a suit be instituted in court of the lowest grade competent to try the matter. By implication of section 13 of the Code, in certain circumstances, there may be two or more courts competent to try the matter, when such situation occurs, the provision suggests the matter to be instituted in the court of the lowest grade but competent to try the matter. It is my firm view that the said requirement aims at preventing overburdening the higher courts.

I have also being persuaded by the position taken by the High Court of India in **Mazhar Husain and Another vs Nidhi Lal**, (1885) ILR 7 All 230, while dealing with section 15 of the Code of Civil Procedure Code of India, which is *in pari materia* to section 13 of the Civil Procedure Code, Cap 33 of Tanzania. The Court had this to say:

*"Section 15 does not in sense affect jurisdiction, and in the case before us the subordinate Judge had jurisdiction, although there may have been a transgression of the rule of procedure laid down in section 15."*

Similarly, the High Court of Bombay in the case of **Gopal v. Shamrao** (1941), while called to interpret section 15 of the Code of India on Civil Procedure on place of suing, it commented that; *"a decree passed by a higher court cannot be said to have been passed without jurisdiction."*

From the foregoing, the fact that the suit was lodged in this court in the year 2009 when this court had exclusive jurisdiction to try matters of land whose value exceeded Tshs 50,000,000/=, the plaintiff cannot be punished by creating unnecessary costs associated with refiling, let alone the question of time limitation. Besides, in terms of section 13 of the Civil Procedure Code, Cap 33, this court has concurrent pecuniary jurisdiction with the subordinate courts/tribunals. It is thus competent to try the matter, notwithstanding the stated pecuniary value of the suit landed properties. The preliminary objection on the pecuniary jurisdiction is overruled.

Another limb of objection, which parties addressed upon, was on the suit being filed without any authorization or resolution of the trustees. They argued that, since the plaintiff is a registered trust, it was not proper to institute a suit on her behalf without its resolution. They relied in the case of **Simba Papers Converts Limited vs Packaging and Stationery Manufacturers Limited and Another**, Civil Appeal No. 280 of 2017 and the case of **Registered Trustees of Tanzania Bus Owners Association vs. Land Transport Regulatory Authority (LATRA) and another**, Misc. Civil Application No 46 of 2020.

In respect to the point of failure to disclose the cause of action, it was argued that the plaint contravenes the mandatory provision of Order VII Rule 1 (e) of the Civil Procedure Code(supra), which require the plaint to contain facts constituting cause of action. They relied on the case of **John M. Byombalirwa vs Agency Maritime International (Tanzania) Ltd (1983) TLR 1**. In their view, there are no facts referring to the 4<sup>th</sup> defendant.

Responding to the arguments, the counsels for the plaintiff submitted that on 7<sup>th</sup> October 2010, the 3<sup>rd</sup> defendant raised two preliminary objections and on 4<sup>th</sup> September 2010, the 4<sup>th</sup> defendant

raised the objections that the plaintiff does not have a cause of action and *locus standi* for instituting the suit and that, the advocate had no power to sign on behalf of the plaintiff. The objection was determined by Honourable Kalombola, J. on 13<sup>th</sup> September 2013, and the court dismissed the objections raised. They contended that in the decision of the Court of Appeal in Revision 1 of 2018 the court quashed the proceedings from the mediation stage thus the ruling on preliminary objections remains intact. They were of the view that this court is *functus officio* to re-determine the points of objection.

It was further argued in alternative that the defendants have failed to specify specifically the provisions under the Trustees Incorporation Act Cap 318, that mandatorily require for a resolution of the Trustees before instituting a suit in court. They were of the view that the Companies Act, does not apply to the trusts. To bolster their arguments, they referred to the case of **The Registered Trustees of Masjid Hidayah Mlalakuwa vs Abillah Hussein Swalehe and Others** , Civil Appeal No 131 of 2022. They submitted distinguishing the case of **Registered Trustees of Tanzania Bus Owners Association(*supra*)**, as not binding decision to this court. The case of **Simba Paper Converts Limited**

**(supra)**, according to the plaintiff's advocates, is distinguishable since it refers to the companies Act and not Trust.

The plaintiff is incorporated and registered under the Trust Incorporation Act, Cap 318 and it has the power to sue and be sued under section 18 of the Trust Incorporation Act, there is no specific provision which provides for the requirement of trustee resolution.

Let me start with the requirement of the Trustee's resolution prior to instituting a suit in court. I am aware that Trustees are governed by the Trust Incorporation Act, Cap. 318. I have gone through all 32 provisions of the Act and I could not find any provision which mandatorily requires for resolution of the Trustees prior to institution of any suit in court. So far, the requirement of resolution prior to institution of suits is only limited to companies as provided under section 147(1) of the Companies Act, Cap 212. The fact that the Companies Act does not apply to Trustees, we cannot impose such requirement to trustee. In short, I find merits in the preliminary objection.

Regarding the objection on cause of action being not disclosed, upon perusal of the proceedings prior to revision by the Court of Appeal, I realized that the point on none disclosure of the cause of action was raised and determined by this court on 12<sup>th</sup> September, 2013 by

Honourable Kalombola J. It should be noted that the court dismissed the said objection after having found to have no merits. I have noted that the facts constituting the cause of action pleaded in the amended Plaint are the same as those, which were in the previous plaint. I am of the firm view that since the point on cause of action was determined, this court becomes *functus officio*.

From the foregoing, all the limbs of the preliminary objection raised by the defendants, have fallen short of merits, they are thus overruled. Costs to be in the course. It is so ordered.



**DATED at DAR ES SALAAM** this 12<sup>th</sup> October, 2023.

  
L. HEMED

**JUDGE**