

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

LAND CASE No. 117 OF 2022

SWEETBERT MATHIAS KUTAGA (Appointed Attorney of
Aliraza Kassamali Rajani).....**PLAINTIFF**

VERSUS

**REGISTRAR OF TITLES, MINISTRY
OF LAND HOUSING AND HUMAN
SETTLEMENTS DEVELOPMENT.....1ST DEFENDANT
ATTORNEY GENERAL.....2ND DEFENDANT
EUGENIA RUTATORA.....3RD DEFENDANT
WILSON MUJWAHUZI RUTATORA.....4TH DEFENDANT
KISHAN RAUJI VARSANI.....5TH DEFENDANT**

Date of last Order: 12.12.2022
Date of Ruling: 17.02.2023

RULING

V.L. MAKANI, J.

This is the ruling in respect of preliminary objection raised by the 3rd
and 4th defendants that:

- 1. The plaintiff has no locus stand to prosecute this matter as per judgments of this court Hon.P.M Kente, J and Opiyo, J in Land Case No.95 of 2014 and Land case No.72 of 2020 respectively.*
- 2. The suit is res judicata having been heard and finally determined by this Court in Land Case No.141 of 2012 between Eugenia Rutatora and Another vs. Municipal Director Kinondoni Municipal and two Other.*
- 3. The Court has no jurisdiction to try this matter.*

4. *The suit is an abuse of the Court process.*
5. *The plaint is bad in law for contravening Provision of Order VII, Rule 1 (i) of the Civil Procedure Code CAP 33 RE 2019 (the **CPC**)*

Ms. Regina Kiumba represented the plaintiff. Mr. Luoga, State Attorney represented the 1st and 2nd defendants while Mr. Stoki and Mr. Kulaya, Advocates represented the 3rd and 4th defendants. Mr. Thomas Massawe appeared for the 5th defendant and the matter proceeded orally.

Mr. Stoki submitted that the plaintiff is suing under the Power of Attorney of one Aliraza Kasamali Rajani. That paragraph 7 reflects that the said Aliraza is the owner of Plot No.107 Mbezi High Industrial Area, CT 44512 (the **suit property**). He said that the plaintiff has no *locus standi* to prosecute the case because he has no interest in the suit property. He said that there is decision of this court in Land Case No.95 of 2014 (Kente, J) between Murtaza Alihussein Dewji (as Attorney of Aliraza Kasamali Rajani (the plaintiff herein) and Govind Varsan Ravji and Ravji Construction Ltd. That the subject matter in the cited case is the same as in this case. He said Aliraza Kassamali Rajani entered into an agreement with Govindi Varsani Ravji and Ravji Construction Ltd to the effect that the suit property was sold. That

having entered into this Deed of Settlement Aliraza Kasamali Rajani cannot sue or make any action when he had already sold the suit property. That he has no power to issue Power of Attorney because he has already transferred his interest to another person. That there is another decision in **Land Case No.72 of 2020 between Sweetbert Mataga (as the Attorney of Aliraza Kassamali) vs. Eugenia Rutatora & Others (HC-Land Division)** (unreported) whereby this court stated categorically that Sweetbert Kutaga has no *locus standi* to sue. He said since this court has already declared the plaintiff to have no *locus standi* he therefore cannot prosecute this suit. He said in Land Case No.95 of 2014 parties agreed that they will not have any other claims in respect of the suit property.

On the second point of preliminary objection, he said that the suit offends section 9 of the Civil Procedure Code, CAP 33 RE 2019 (the **CPC**). He said that the subject matter in Land case No.141 of 2012 between **Eugenia Rutatora & Another vs. Municipal Director Kinondoni Ramji Construction & Samson J. Mwaipaja (HC-Land Division)** (unreported) is the same to the subject matter in the present case. He said the parties are the same save for the Municipal Council and Mwaipaja and further that it was filed by the 3rd and 4th

defendants. He said Ravji Construction Limited purported to buy the property from the plaintiffs. He said in the present case the 1st and 2nd defendants are necessary parties, the 5th defendant remains a necessary party. He pointed out that in Land Case No.141 of 2012 the plaintiffs therein (3rd and 4th defendants in the present suit) were declared owners of the suit land which is also the subject matter in the present matter. Counsel relied on the case of **Zuberi Paulo Msangi vs Mary Machumu, Civil Appeal No.316 of 2019 (CAT-DSM)** (unreported)

On the third objection Mr. Stoki said that in Land Case No. 72 of 2020 the same plaintiff was refused to proceed with the suit because he had no *locus standi*. That the plaintiff has filed to the Court of Appeal a Notice of Appeal against the said decision. That having filed the Notice of Appeal, this court ceases to have jurisdiction. He said Land Case No.141 of 2012 which declares the 3rd and 4th defendants' owners of the suit property makes this court *functus officio*. Counsel relied on the case of **Kamundu vs. Republic (1973) EA 540**

On the fourth point of preliminary objection, Mr Stoki said that the suit is an abuse of the court process. That having filed the Notice of

Appeal in respect of Land Case No. 72 of 2020 between the plaintiff 3rd and 4th defendants & 4 Others, it amounts to abuse of the court process coming to this court with the same subject matter.

As for the fifth point of preliminary objection he said that in the plaint there is no paragraph which reflects the value of the suit property for the purpose of assessment of jurisdiction of the court. That the suit should be dismissed for contravening Order VII Rule 1(1) of the CPC. He insisted that the issue of ownership of the suit property was conclusively determined by this court. He prayed for the suit to be dismissed with costs.

Mr. Luoga supported the objections raised by Mr. Stoki specifically on the fact there was a Deed of Settlement registered in this court in Land Case No. 95 of 2014 and the fact that there is a Notice of Appeal in respect of Land Case No. 72 of 2020 which is on the same parties.

Mr. Massawe for the 5th defendant did not have anything to submit on the objections raised.

In reply, as regards the first point of objection, Ms. Regina said that plaintiff has *locus standi* to prosecute this matter. That there is a Certificate of Title which is in the name of Aliraza Kasamali Rajani. That there is no court to date which has removed the plaintiff from ownership of the suit property. She said that the Certificate of Title is the conclusive proof of ownership. She relied on the case of **Macky Esther Nyange vs. Mihayo Marijani Wilmore & Another, Civil Appeal No.207 of 2019 (CAT-DSM)** (unreported). She said the suit property in Land Case No.72 of 2020 and 141 of 2014 is not the same as the one in the suit at hand. That the ownership was only for 2½ acres as opposed to the one with Certificate of Title.

As for the second point of preliminary objection she said that the present suit is not *res judicata* to Land Case No.141 of 2012. That the plaintiff herein was not party in that case and the suit property was not the subject matter in that case. That the subject matter in that case was only 2½ acres and the Certificate of Title is not mentioned anywhere. That to date the ownership of the Certificate of Title is still the property of the plaintiff. That the prayers in Land Case No.141 of 2014 and the present suit are different.

As for the third point of preliminary objection, she said that Land case No.72 of 2020 was filed by the plaintiff after the objection proceedings were dismissed. That the prayers therein were for investigation of ownership status. That the ownership of CT No.44152 was not the issue but that is where the court said that plaintiff has no *locus standi* on the 2½ acres as that is not his property. She said that this court is not *functus officio*. What was decided in Land Case No.72 of 2020 and the present case are different therefore the Notice of Appeal has no connection with the present suit. She said that this suit cannot be an abuse of the court process as the issue in the present case is different. She said that there is no court order to deregister the plaintiff and register the 3rd and 4th defendants. That there is a mere letter from the Deputy Registrar and there is no order. That the property in Land Case No.141 of 2012 has not been described to fit the one in the present case. She said the suit at hand is not an abuse of the court process.

As for the fifth point of objection she said that plaintiff has sued government entity and according to section 6 (5) of the Government Proceedings Act, a suit against the government has to be filed in the High Court. That the Registrar of Titles is a government entity, so the

point has no merit. She prayed for the preliminary objections to be dismissed.

In his rejoinder, Mr. Stoki reiterated his main submission and added that the issue of different subject matter in the Land Case No.72 of 2020 was raised by Mr. Msuya and was refused by the court (Hon. Opiyo, J) at page 8 of the same judgment. He insisted that the case at hand is *res judicata* to the Land Case No.72 of 2020. He said that filing the suit against the government does not automatically remove the requirement of the law. That Order VI Rule 1 (1) of the CPC is very clear in the value of the land to ascertain the jurisdiction and fees. And as to ownership, Mr. Stoki said the reliefs cannot be addressed without proof of ownership.

The main issue for consideration is whether the preliminary points of objections raised by the 3rd and 4th defendants have merit.

I shall first address the points on locus standi of the plaintiff and jurisdiction of this court. It is not in dispute that the plaintiff SWEETBERT MATHIAS KUTAGA, the Appointed Attorney of Aliraza Kassamali Rajani was also the plaintiff in the same capacity in Land

Case No. 72 of 2020. The 3rd and 4th defendants in the present case were also defendants in that case. The subject matter in these cases is undoubtedly the claim of ownership of the property with CT No. 44512, Plot 105 Mbezi Industrial Area, Kinondoni Dar es Salaam (the **suit property**).

Now, in Land Case No. 72 of 2020, the plaintiff was declared by this court that he did not have *locus standi*. This decision is still valid, until there is a decision contrary, from the superior court, that is, the Court of Appeal. And as a matter of fact, the plaintiff herein has filed a Notice of Appeal to the Court of Appeal to challenge this decision. Now, considering that there is a decision declaring that the plaintiff has no locus standi then this court becomes functus officio. Proceeding with this suit while the plaintiff has already been declared by this very court as having no *locus standi* may create conflicting decisions and it is an absurdity in the court process. In Land Case No. 72 of 2020 this court in its judgment at page 7 observed:

In the instance suit the same plaintiff who had already sold the property to the 3rd defendant is claiming for a declaration that he is a lawful owner and he be given vacant possession of the same suit property he had sold and even has a court decree for payment of a balance for. In my view, the plaintiff lacks the necessary locus to

pursue this suit for lack of protected interest over the subject matter.

In view thereof, this objection that the court the plaintiff has no *locus standi* has merit and it is hereby upheld.

On the issue of jurisdiction, Mr. Stoki and Luoga are of the same view that since there is a Notice of Appeal filed in the Court of Appeal of Tanzania in respect of Land case No.72 of 2020 in which the subject matter is the same as in the present suit then this court has no jurisdiction to entertain the suit. In other words, once a Notice of Appeal has been filed, the lower courts are ceased with jurisdiction to entertain any matter in relation to the same subject matter of which the Notice of Appeal has been filed. Ms. Regina for the plaintiff disputes the point and contended that the subject matter in Land case No.72 of 2020 is different from the subject matter in the case at hand. I, however, disagree with Ms. Regina because in Land Case No.72 of 2020 as said hereinabove, the parties were the plaintiff herein who was also the plaintiff in the said case against the 3rd and 4th defendants herein & 3 others. In the said Land Case No.72 of 2020, the court in its judgment referred to Land Case No.95 of 2014 in which the plaintiff (same plaintiff herein) sued the 3rd defendant over

performance of the sale agreement. The court observed that the case was marked settled and the Settlement Deed was adopted as a court decree. Finally, the court in Land case No.72 of 2020 struck out the suit for the plaintiff's lack of *locus standi*.

I have made reference to Land Case No. 72 of 2020 simply because the arguments and decision in the case were based on Land Case No.95 of 2014 whose subject matter is the same as is in the present case. This means therefore, this court is ceased with jurisdiction to entertain the matter as it is on the same subject matter. Among the prayers in Land Case No. 95 of 2014 in paragraph (c) is:

(c) The defendants jointly and severally yield vacant possession of those premises held under CT No.44512, Plot No.105 Mbezi Light Industrial Area, Dar Es Salaam forthwith.

Now, the prayer in paragraph (ii) in the present suit is for the declaration that:

The acts of the 1st defendant purporting to register the 3^d and 4th defendants as lawful owner of the landed property herein described as plot No.105 Mbezi Light Industrial Area constituted under CT No.44512 (the suit property) dated 24th April, 1995 is illegal null and void.

It is apparent that though the prayers above are on vacant possession and registration of land, but they revolve around that the same subject matter, that is, Plot No.105 Mbezi Light Industrial Area, Dar

Es Salaam with CT No.44512 of which Notice of Appeal has been filed to the Court of Appeal of Tanzania. In the case of **Aero Helicopters (T) Limited vs. F.N. Jansen [1990] TLR 142** and the case of **William Magurusi vs. Stella Chamba [2004] TLR 406** it was stated that the existence of the Notice of Appeal bars the applicant from initiating another proceeding in the lower courts against the respondent over the same matter which is pending in the Court of Appeal of Tanzania. This also applies in this present case as the issues revolve around the same subject matter which is subject of an appeal at the Court of Appeal. This court therefore lacks jurisdiction to entertain the suit at hand. This objection therefore has merit, and it is sustained.

These two points of objection disposes of the whole suit, and I find no reason to address the remaining points that were raised. Consequently, the first and third preliminary objections have merit, and they are sustained. The suit is hereby struck out with costs. It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
17/02/2023