

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

LAND CASE NO. 605 OF 2024

SURAFU SOSPITA.....PLAINTIFF

VERSUS

ANNA ISACK KILAWA.....DEFENDANT

RULING

21st to 27th March, 2024

E.B. LUVANDA, J

This ruling is in respect of preliminary objections embedded into the written statement of defence by the Defendant above: One, the Plaintiff does not have cause of action against the Defendant in this suit; Two, the Plaintiff does not have locus standi in this suit; Three, the plaint is defective for being improperly verified.

Mr. Thomas Joseph Massawe Esq for the Defendant submitted that according to the pleadings the Plaintiff who is the third wife of Sudi Iddi Ibuma is claiming for damages from the Defendant alleged for trespassing and harassing tenants in the leased suit premises on the allegation that she and her husband are lawful tenants of the disputed premises. He submitted that it is very difficult to link the Plaintiff with the lease agreement between the Defendant and the Plaintiff's husband Sudi Iddi Ibuma who has two other wives, arguing the Plaintiff's

husband is there and the Plaintiff neither signed the lease in respect of the suit premises which is house No. 29 Msasani Bonde la Mpunga nor being granted any power of attorney by her husband to sue on behalf. He submitted that it is not easy to find facts to link the Plaintiff's action with the Defendant's lease agreement with her husband in order to create a cause of action between the two. He submitted that the contractual relationship between the Plaintiff and Defendant never exist at all.

Point number two, the learned Counsel submitted that there was a lease/renovation agreement entered on 8/8/2016 between the Defendant and the Plaintiff's husband one Sudi Iddi Ibuma for purpose of leasing and renovating the suit premises. He submitted that there is nowhere the Plaintiff was involved at all in the lease agreement. He submitted that the Plaintiff is suing under his (sic, her) own capacity according to the title of the plaint. He submitted that there is no power of attorney or any other document to authorize the Plaintiff to bring the current suit or any claim on his behalf. He submitted that the issue of locus standi of the Plaintiff could have aroused if there was any document or authority issued to the Plaintiff by her husband to such effect. Ms. Loveness Ngowi learned Counsel for Plaintiff submitted in reply that, the existence of the plaintiff's possessory right or interest in the item and Defendant's dominion over that item or interference with it in derogation of

Plaintiff's rights is action per se. She submitted that the Plaintiff is a lawful wife of Sudi Idd Ibuma and the Plaintiff was the one who have been legally given mandate to possess the said leased property and conduct business even before her husband being declared sick in which by being in a possession of the said property and establishing permanent business, arguing any illegal interference in the Plaintiff business in which it was legally established by the Plaintiff in the leased premises even before Sudi Idd Ibuma declared sick this is actionable per se against the intruder.

For point number two, the learned Counsel submitted that the Plaintiff being the wife of Sudi Idd Ibuma and being given possession of the leased premises give and establishment of the business in the leased area give the Plaintiff interest and she cannot stand to see illegal interference in her business and being a wife only that means has interest in the leased property as it is property of the matrimonial property.

On my part, I see merit on both points of objection. The lease or renovation agreement was between the Plaintiff's husband one Sudi Iddi Ibuma as a tenant and the Defendant as a land lord. The Plaintiff is not privy to the lease agreement. A mere fact that she was given possession of the said property and established permanent business, on itself does not establish contractual obligation with the Defendant over the suit premises. Equally a mere fact that

the Plaintiff is a wife of the said Sudi Idd Ibuma does not give her an automatic right and power to sue on his behalf. Indeed, the Plaintiff did not dispel a fact that the alleged Sudi Idd Ibuma is having more two wives. A mere fact that the said Sudi Idd Ibuma is having some incapacitations due to medical ground, on it self does not confer the Plaintiff an automatic warrant to sue on her capacity over an action arising from contractual relationship for which is not a privy.

That said the first and second preliminary objection are sustained. In that regard no need for discussion of a third point, because the two points suffices to have the matter disposed of.

The suit is struck out. However, I spare the Plaintiff to pay costs given the circumstances of the matter that her husband is under ailment.



E. B. LUVANDA
JUDGE
27/03/2024

Ruling delivered in the presence of Mr. Richard Gira learned Counsel for Plaintiffs and in the absence of Mr. Thomas Joseph Massawe learned Counsel for Defendant.



E. B. LUVANDA
JUDGE
12/03/2024