

IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 2289 OF 2024

CLIMATE CONSULT (T) LIMITED.....PLAINTIFF

VERSUS

NCBA BANK TANZANIA LIMITED.....1ST DEFENDANT

NUTMEG AUCTIONEERS & PROPERTY

MANAGERS CO. LTD.....2ND DEFENDANT

RULING

11th March 2024 & 30th April 2024

L. HEMED, J.

The suit properties are Plot No. 161 Block 13, Mbweni Mpiji, Kinondoni, Plot No. 15 Block 1, Ukuni, Bagamoyo District, Plot No. 129 Block 13 Kibada Kigamboni; Plot No. 169 Block 13, Mbweni Mpiji, Kinondoni; Plot No. 171, Block 13, Mbweni Mpiji, Kinondoni, Plot No. 188 Block 13 Mbweni Mpiji, Kinondoni, Plot No. 190, Block No. 13, Mbweni Mpiji, Kinondoni; Farm No. 2103/1 CT No. 46694, Kimara, Ubungo; and Farm No. 2103/2, CT 46695 Kimara, Ubungo Municipality. The properties are owned by **Buruhani Salum Nyenzi, Eva Nyenzi and Majaliwa Salum Nyenzi.**



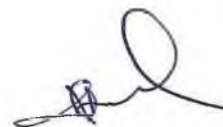
On 7th February 2024, the plaintiff **CLIMATE CONSULT (T) LIMITED** instituted the instant suit seeking, among others, for nullification of public auction conducted on 29th January 2024 for the sale of some disputed properties. It also sought for permanent injunction restraining the defendants, **NCBA BANK TANZANIA LIMITED, NUTMEG AUCTIONEERS & PROPERTIES MANAGERS CO. LTD** from disposing by way of sale the remained properties.

The defendants disputed the claims through the written statements of defence which were presented for filing in this court. The 1st Defendant also raised a preliminary objection on point of law that: -

"The plaintiff has no locus standi to claim release of mortgaged properties that were mortgaged by third parties or seek nullification of the sale of mortgaged properties owned by third parties."

The preliminary objection was argued by way of written submissions. **Mr. Gasper Nyika & Samah Salah**, advocates acted for the 1st defendant, while the plaintiff enjoyed the service of **Mr. Laurent Ntanga**, advocate.

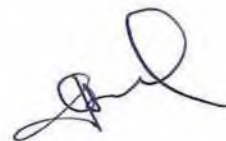
I have gone through the rival submissions filed by the learned counsel and the question for determination is whether the Plaintiff has *locus standi*



to sue on the suit properties. It is well known that *locus standi* is a jurisdictional issue. It is a rule of equity that envisages that a person cannot maintain a suit or action unless he has an interest in the subject matter, that is to say he stands in a sufficient close relation to it as to give a right which requires prosecution or infringement of which he brings the action. This position was also taken by the court in **Lujuna Shubi Ballonzi, senior v, Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203.

In the instant case, the plaintiff alleges that the 1st Defendant is unlawfully holding title deeds for properties that are not mortgaged. She also avers that the 1st Defendant through the 2nd Defendant sold by Public auction landed properties which were not issued as security and intends to sell more. On that basis, the plaintiff is seeking release of the properties held and nullification of the sale of the sold properties.

It is also on record and not in dispute that the sold and held properties listed in the Complaint (Paragraphs 4 and 16) are owned by Buruhani Salum Nyenzi, Eva Nyenzi and Majaliwa Salum Nyenzi. In her submissions the plaintiff has insisted to have *locus standi* to institute the instant suit on the ground that she is the borrower and thus has direct relation to the collaterals, the suit properties.



The learned counsel for the Plaintiff is of the view that the mortgage contract made between the Plaintiff and the 1st defendant was in the form of contract of guarantee where the guarantor promises the creditor to be responsible for the due performance of the borrower of existing and future obligation to the creditor. Reliance was put on section 78 of the Law of Contract Act [Cap. 345 RE 2019] and the decision of this court in **Dirshad Othman Hassan vs. Kariakoo Auction Mart Co. Ltd**, Misc. Civil Cause No. 596 of 2021.

As aforesaid, after having gone through the pleadings, it is clear that the suit properties are not registered in the name of the Plaintiff, however, she is challenging the sale of some of the properties and the intended sale of the rest. The question is whether the Plaintiff has the requisite *locus standi* to institute the proceedings at hand. In **Chama cha Wafanyakazi Mahoteli na Migahawa Zanzibar (HORA) vs KAIMU MRAJISI wa Vyama vya Wafanyakazi na Waajiri Zanzibar**, Civil Appeal No. 300 of 2019 observed in respect to *locus standi*, thus: -

"...only a person whose right or interest has been interfered with by another person has a right to bring his claim to court against that other person."



In the matter at hand the registered owners of the suit landed properties are Buruhani Salum Nyenzi, Eva Nyenzi and Majaliwa Salum Nyenzi, the guarantors of the loan which was extended to the Plaintiff. The Land Registration Act. [Cap. 334 RE 20219], in section 2, defines word 'owner' as follows: -

*"means, in relation to any estate or **interest**, the person for the time being in whose name that estate or **interest** is registered."* [Emphasis added].

From the above provision, the Plaintiff has no right or interest over the suit landed properties as she is not the registered owner of them. This being the case, the Plaintiff cannot be said to have *locus standi* to sue on the landed properties in dispute. The plaintiff has claimed to have *locus standi* in the capacity the borrower. It is my firm view that the borrower cannot develop interest in the properties pledged by the guarantor as security for the loan advanced to such borrower. The borrower's interest is only in the loan facility and not in the collateral. The person with *locus standi* to sue and protect the properties pledged as security is only the guarantor or any other person who has right or interests in the properties. In the instant case, the plaintiff is neither the guarantor nor the person with interests in the suit




properties, therefore, she cannot be said to have *locus standi* to sue on the properties.

In the end, I find merit in the preliminary objection that the Plaintiff who is not the registered owner of the suit properties lacks legal legs to come to this court, and commence action against the defendants herein in respect of the disputed landed properties. I hereby sustain the objection and proceed to strike out the entire suit with costs. Order accordingly.

DATED at DAR ES SALAAM this 30th April, 2024.




L. HEMED
JUDGE