

**IN THE HIGH COURT OF THE UNITED REPUBLIC TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 6859 OF 2024**

**ALLY SALEH AL-JABRY (SUING AS ATTORNEY OF**

**SALEH MSELEM ABOOD AL-JABRY).....PLAINTIFF**

***VERSUS***

**SIMON SAIMON KYANDO.....1<sup>ST</sup> DEFENDANT**

**SALIM SALEH AL-JABRY.....2<sup>ND</sup> DEFENDANT**

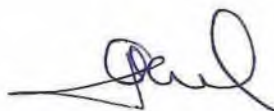
**RULING**

*23<sup>rd</sup> May, 2024 & 21<sup>st</sup> June, 2024*

**L. HEMED, J.**

In this ruling, the court has been called to determine two points of law which were raised by the counsel for the 1<sup>st</sup> Defendant against the suit, thus:-

*"i) Relief soughts (sic) by the Plaintiff are untenable for non-joinder of necessary parties namely the Commissioner for Lands, The Registrar of Titles, The Municipal Director of Ilala District and the Attorney General pursuant to Section 6(1), (3),(4) and 10 of the Government Proceedings Act, Cap.5 R.E 2019.*



*ii) That the Suit is bad in law as the Plaintiff under a general power of attorney lacks locus standi to purport to act on behalf of Mr. Salehe Mselem Abood Al-Jabry as legal owner of Plot No.39 Block "A" Uhuru Street Kariakoo Area."*

In arguing the above points, the court directed parties to do so by way of written submissions. **Mr. Erick Mark**, advocate acted for the 1<sup>st</sup> Defendant while the Plaintiff enjoyed the service of **Mr.G.S Ukwong'a** learned advocate. The schedule for filing written submissions was as follows:-

- i. Submissions in chief by 29<sup>th</sup> May 2024;
- ii. Reply submission by 05<sup>th</sup> June 2024;
- iii. Rejoinder if any by 12<sup>th</sup> June 2024.

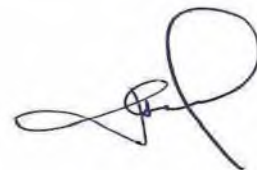
The 1<sup>st</sup> Defendant promptly filed his submission in chief by 29<sup>th</sup> May 2024 as ordered by the court. However, the Plaintiff's learned counsel filed Reply submissions on 6<sup>th</sup> June 2024 instead of 5<sup>th</sup> June 2024 as ordered by the court. It is thus obvious that the reply submission by the Plaintiff was filed out of time without the leave of the court. It is trite law that filing submission out of the time fixed by the court without its leave is as good as having not filed the same. In the matter at hand, I have opted not to consider



the plaintiff's submissions so as the rejoinder submission.

Let me start with the 2<sup>nd</sup> point of objection on the *locus standi* of the Plaintiff to sue under power of attorney. The learned counsel for the 1<sup>st</sup> Defendant has faulted the power of attorney for being general and having not specifically authorising him to deal with the disputed land. She also asserted that the donor of the Power of attorney one Mr. Mselem Abood Al-Jabry had denounced it *vide* the letter dated 02<sup>nd</sup> October 2019 (Annexure-ASA3). In her view, the Plaintiff has no *locus standi* to institute the instant suit basing on the general power of attorney which was denied by the purported donor of it. Reliance was put on the decision of this court in **Najima Hassanali Kanji (suing through Mohamed Hassanali Kanji, by power of attorney) v. Ramadhani Hamisi Ntunzwe**, Land Case No.93 of 2016. The learned counsel ended up praying for the suit to be struck out.

It is well known that a preliminary objection is in the nature of what used to be a demurrer. In fact, it raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. The determination of preliminary objection is done by looking at what the parties have pleaded. In other words, it has to be drawn out of the pleadings

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and not elsewhere as was insisted in the case of **Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Ltd** (1969) EA 696, that:-

*"...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."*  
*[Emphasis added]*

The above position is express that the preliminary objection has to be determined with reference to pleadings which in my view include the annexures. This was also echoed by the Court of Appeal of Tanzania in **Ali Shabani & 48 Others vs. Tanzania National Road Agency & Another**, Civil Appeal No.261 of 2020, thus:-

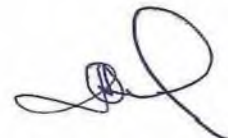
*"...no preliminary objection will be taken from abstract without reference to some facts plain on the pleadings which must be looked at without reference examination of any other evidence."*

I have gone through the Plaintiff to find out if the facts pleaded plainly reveal that the Plaintiff has no *locus standi* to institute the suit at hand under

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the power of attorney in question. In paragraph 4 of the Plaintiff, the Plaintiff has averred that on or about the 14<sup>th</sup> day of December, 2013 he was duly appointed attorney of Saleh Mselem Abood Al-Jabry (Annexure "ASA1"). However, reading paragraph 6 of the Plaintiff together with its annexures "ASA3", it is implied that, in 2019, one SALEHE MSELEM ABOOD AL-JABRY submitted an 'Indemnity Bond' to the Ilala Municipal Council revoking or denouncing the power of attorney purportedly given to one ALLY SALEH AL-JABRY, the Plaintiff herein. The said paragraph readth as follows:-

*"6. On or about the 25<sup>th</sup> day of June, 2024 the plaintiff accepted the Certificate of Occupancy and returned the same to the Commissioner for Lands' final signature and todate the signing has not been done and this happened because there were changes that took place in respect of the plot in issue that was finally solved thus changing the plot No. of the property of Plot No.39,Block "A" Kariakoo Area, Dar es Salaam. Annexed **marked "ASA3"** is the copy of letter from Municipal Council of Ilala District to the Commissioner for Lands forming part hereof."*

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I have read the said Annexure "ASA3" which is part of the Plaintiff and found it being a letter dated 02<sup>nd</sup> October 2019, Ref. No. AR/ILA/KAR/2556/65/FSR, titled "YAH: KIWANJA NA. 39 (19) KITALU'A' KARIAKOO." In the said letter, at paragraph two there are the following words:-

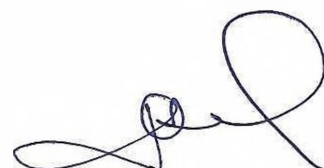
*"Pamoja na barua hii marekebisho ya namba yamefanyika na kukamilika kiwanja cha Ndg, SALEH MSELEEM ABOOD AL-JABRY kwa sasa kinasomeka 39 kitalu 'A' Kariakoo ofisi imeandaa vocha ya malipo kwa jina la SALEH MSELEEM ABOOD AL-JABRY baada ya kuwasilisha Indemnity Bond ya kutotambua "Power of Attorney" iliyompa nguvu ya kisheria watoto wake ALLY SALEH AL-JABRY. [Emphasis added].*

The above contents of annexure "ASA3", which is part of paragraph 6 of the plaintiff, plainly implies that the power of attorney which the Plaintiff relied in instituting the instant case, was denounced by the purported donor in 2019. From the Plaintiff's own pleaded facts, it is obvious that the Plaintiff used an ineffectual power of attorney to institute the suit at hand. In that

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regard, he has no *locus standi*.

Additionally, and without prejudice to the foregoing, I have also noted that the power of attorney in question which the Plaintiff used to initiate the matter at hand is a general one purported to be executed on 14<sup>th</sup> December 2013. I am aware of the recent position taken by the Court of Appeal of Tanzania in **Abdul Rahim Jamal Mohamed (Suing through his lawful Attorney Fauzia Jamal Mohamed) vs. Watumishi Housing Company Limited**, Civil Appeal No. 54 of 2021. In the said case, the Court emphatically stated that, though Order III Rule 2(a) of the Civil Procedure Code, [Cap.33 RE 2019] permits court representation through an attorney, that provision is limited to persons outside the jurisdiction of the court. In other words, for a person to be represented in court through power of attorney, it must be stated in the power of attorney showing that the donor is outside the jurisdiction of the court. In the present case, even if we assume that the power of attorney is valid, the same does not state as to whether the donor of it is outside the jurisdiction of this court. By the said reason, the said power of attorney cannot be a valid vehicle for the plaintiff to institute the instant matter.

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In the final analysis, I find merit in the 2<sup>nd</sup> limb of the preliminary objection. The Plaintiff has no *locus standi* to sue under the power of attorney on the reasons aforesaid. The fact that the 2<sup>nd</sup> limb of objection disposes of the suit, I find no reason to determine the 1<sup>st</sup> limb of the preliminary objection. The entire suit is hereby struck out with no orders as costs. It is so ordered.

**DATED at DAR ES SALAAM** this 21<sup>st</sup> June 2024.



  
L. HEMED

**JUDGE**