

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA SUB-REGISTRY
AT MBEYA
LAND CASE NO. 10 OF 2023

HAMIS ATHUMAN MBANGWE (Suing as Administrator

of the Estates of his late Father Athuman Mbangwe).....**PLAINTIFF**

VERSUS

- 1. THE ATTORNEY GENERAL**
- 2. MBEYA CITY COUNCIL**
- 3. DANIEL MWAIJUMBA**

.....**DEFENDANTS**

RULING

Date of Last Order: 05/10/2023

Date of Ruling: 15/03/2024

NDUNGURU, J.

This is a ruling on preliminary objections (POs) raised by the defendants, The Attorney General, Mbeya City Council and Daniel Mwaijumba (1st, 2nd and 3rd respondents respectively) against the suit lodged in this court by the plaintiff, Hamis Athuman Mbagwe suing as Administrator of the Estates of his late Father Athuman Mbangwe. In the suit, and according to the plaint, the plaintiff claims against the 3rd defendant Daniel Mwaijumba for declaration that the suit premises

belonged to the plaintiff, vacant possession of the suit premises, general damages for invading and claiming ownership over the plaintiff's house on Plot No. 44, Block "17", Majengo, Mbeya. He further claims for costs and any other relief that this honourable court deems fit and just to grant to him. The 1st and 2nd defendants have been included in the suit as necessary parties.

In their respective written statement of defence (the WSD) the defendants denied any liability. They also raised the POs. On their part, the 1st and 2nd defendants based on the following two limbs:

- 1. That, this matter is unmaintainable in law for contravening section 106 (1) and (2) of the Local Government (Urban Authorities) Act, Cap 288 R.E 2002 as amended by section 33 of the Written Laws (Miscellaneous Amendment) Act No. 1 of 2020 read together with section 6 (3) of the Government Proceedings Act, Cap. 5 R.E 2019 as amended section 25 (a) of the Act No. 1 of 2020.*
- 2. That, the plaintiff has no locus standi to institute this suit.*

On his part, the 3rd defendant based on two limbs in his WSD and other four limbs in an additional notice of preliminary objection making a total of six limbs as follows;

- 1. This suit is time barred.*

2. *That the plaintiff have(sic) no locus.*
3. *That the suit is incompetent for failure to indicate the date when the cause of action arose.*
4. *That the suit is incompetent for failure to disclose the cause of action against the 3rd defendant.*
5. *The suit is incompetent as the plaintiff has no cause of action against the 3rd defendant.*
6. *That the suit is incompetent for failure to join the necessary parties to wit the administrator of the estate of the late Hamis Mbangwe.*

The plaintiff did not concede to the POs. The same was thus, argued by way of written submissions. In this matter the plaintiff was represented by Mr. Victor C.M Mkumbe, learned advocate. On the other hand, the 1st and 2nd defendants were represented by Mr. Modest Siwavula and Mr. Davis Mbembela, both learned State Attorneys whereas the 3rd defendant was advocated for by Mr. Philip Mwakilima, learned advocate.

In his submissions supporting the first limb of the PO, Mr. Siwavula essentially contended that, the matter is unmaintainable for contravening mandatory provisions section 106 (1) and (2) of Cap. 288

as amended by section 33 of Act No. 1 of 2020 which bar suits to be commenced against urban authority without prior 90 days-notice of intention to sue. According to him there was a letter addressed to the City Director headed as 90 days' notice but it is questionable if City Director is urban authority to be served with notice as per the law.

He argued that since the plaintiff sued Mbeya City Council, there supposed to be a notice served upon her and not to any other person since in accordance with section 14 (1) (b) of Cap. 288 it is the urban authority which is a body corporate capable of suing and being sued. He argued further that failure to issue statutory notice before institution of suit against the government renders the suit unmaintainable. He fortified his contention with the decision in the case of **Arusha Municipal Council vs Lyamuya Construction Company Limited** [1998] TLR 13.

Mr. Siwavula went on, relying on the decided cases of this court in **Gladness Ramadhani Mziray vs Mipeko Village Council and 8 others**, Land case No. 340 of 2015 High Court of Tanzania at Dar es Salaam and **Hermanus Philippus Steyn vs the Monduli District Council and Another**, Civil Case No. 30 of 2016 HCT at Arusha (both unreported) argued that for a notice to be valid it should be addressed

to a proper addressee of which in this case is Mbeya City Council and not City Director to whom the notice was served.

Replying to that very limb of Pos, Mr. Mkumbe was just wondering what bothered the state attorney for the letter to be served to the city director while in essence he deals with Mbeya City Council. He implored this court to be persuaded by its previous decision, in **Amon Yela Mbukwa and 2 Others vs the Attorney General and 2 others** Land case No. 31 of 2022 HCT at Mbeya (unreported) where the akin PO was overruled.

From the submissions by the parties and the pleadings, specifically plaint, the undisputed fact is that the plaintiff on 07/12/2022 wrote a letter to the City Director notifying him that he wants to sue the Authority (that is Mbeya City). The issue is whether the said letter can be considered to be a valid 90 days statutory notice to sue the urban authority as provided for under section 106 (1) and (2) of Cap. 288 as amended by section 33 of Act No. 1 of 2020.

In my considered view it is. This is because, the letter served to the City Director categorically informed him that the authority will be sued. In essence, the Director is not a legal person as correctly argued by the learned State Attorney. Nevertheless, taking into consideration

that there is no independent office of Mbeya City Council rather it is the authority run by the office of City Director there may no justification to hold that a notice issued to the Director notifying him of the action to be taken against the Authority was not duly served. Thus, I agree with what my sister Judge, (Nongwa J.) observed in **Amoni Yela Mbukwa** (supra) that a letter to be served to City Director is enough because is the one charged with day to day functions of the city authority.

Mr. Siwavula has also referred me to other decisions of this court in **Gladness Ramadhani Mziray vs Mipeko Village Council and 8 others**, and **Hermanus Philippus Steyn vs the Monduli District Council and Another** (supra). Unfortunately, having read them in extenso, the former confirms my observation in this case while the latter is distinguishable. For instance, in **Gladness case**, it was resolved that a letter addressed to the village chairman was valid thus that the Village Authority was duly served. But in the **Monduli case**, the circumstance was different to the present one, because, in that case both the director and the authority were parties to the case hence it was resolved that the letter addressed to the director was for his own behalf as a party to the case and not the same letter to serve two purposes.

In this case at hand therefore, addressing a letter to City Director which categorically notified him of the action to be taken against the City Authority was valid 90 days statutory notice to sue the urban authority as provided for under section 106 (1) and (2) of Cap. 288 as amended by section 33 of Act No. 1 of 2020. May be the position would have been different if the letter would have been directed to the real name of the city director which it would be said that it has been served to him personally and not his office. I thus, overrule the 1st limb of the 1st and 2nd defendants' PO.

Regarding the 2nd limb that the plaintiff has no *locus standi* Mr. Siwavula argued that the plaintiff has neither right nor legal capacity to institute the present matter. He referred this court to the case of **Lujuna Shubi Ballonzi vs Registered Trustees of Chama cha Mapinduzi** (1996) TLR 203 on the meaning of locus standi. According to him the suit premises was pleaded to be the property of the late Hamis Mbangwe whose estates were administered by the late Athuman Mbangwe. That the suit premises has never been the property of the late Athuman Mbangwe whom his estates are administered by the plaintiff herein. In his stance, the plaintiff is a mere busybody as far as this suit is concerned.

The foregone limb of the 1st and 2nd defendants' PO was also raised by Mr. Mwakilima for the 3rd defendant in the 2nd 5th and 6th limbs where in his submissions he argued them together that the plaintiff claims in para 6 of the plaint that Athuma Mbangwe was suing as the legal representative of the late Hamisi Mbangwe and it is not pleaded that the suit premises had already passed to Athuma Mbangwe hence the plaintiff cannot sue for the estate of Hamis Mbangwe while is an administrator of the estates of the late Athuman Mbangwe. Thus that this suit is incompetent and should be dismissed with costs.

Replying to the argument that the plaintiff has no *locus standi* by the 1st and 2nd defendant and if also counsel for the 3rd defendant meant so when he raised the PO that the plaintiff has no *locus*, Mr. Mkumbe argued that it is early to conclude that the plaintiff has no *locus standi*. That counsel for the defendants have to wait for evidence to be adduced. Thus, that the objection should be matter of law and not facts.

On my part, as far as the issue of *locus standi* is concerned, I am of the different view with Mr. Mkumbe, that the question of *locus standi* is purely matter of law though in some circumstances may require evidence. *Locus standi* is a principle which is governed by common law according to which, a person bringing a matter to court should be able

to show that his right or interest has been breached or interfered with. See; **Lujuna Shubi Ballonzi Senior vs Registered Trustees of CCM** (supra). The issue of *locus standi* therefore, is matter of law supposed to be dealt at very early stage as it touches the jurisdiction of the court. See **Registered Trustee of Sos Children's Villages Tanzania vs Igenge Charles & Others**, Civil Application No. 426 of 2018 [2022] TZCA 428 (Tanzlii) in that case the Court when borrowing a leaf from our neighbour in Malawi, the Supreme Court in the case of **THE ATTORNEY GENERAL VERSUS MALAWI CONGRESS PARTY AND ANOTHER**, Civil Appeal No. 32 of 1996 observed as follows:

"Locus standi is a jurisdictional issue, it is a rule of equality that a person cannot maintain a suit or action unless he has an interest in the subject of it, that is to say, unless he stands in sufficiently close relation to it so as to give a right which requires prosecution or infringement of which he brings the action." (Emphasis added).

In this case at hand, it has been pleaded in the plaint that the plaintiff is the administrator of the estates of the late Athuman Mbangwe and that Athuman Mbangwe was claiming the suit land is forming the estates of the late Hamis Mbangwe. Now, the plaintiff is the

administrator of the estate of the late Athuman Mbangwe claiming the same suit property. Under the circumstances, the plaintiff is stepping into shoes of the late Athuman Mbagwe whom the suit land was not yet transferred nor declared his. Mr. Mkumbe's argument that it is prematurely to deal with the issue of locus *standi* at this very stage on the account that will be exhibited in the evidence as to whom the plaintiff is suing for is unmaintainable as I do not find if there is evidence needed than the available pleaded facts.

Without any evidence, the pleadings at hand specifically paragraphs 5, 6, 7, 8, 10 and 11 are clear. The plaintiff essentially states at para 5 that he claims under capacity of his late father that means Athuman Hamis Mbangwe, that the late Athuman Hamis Mbangwe sued the 3rd defendant at the DLHT claiming House No. 44 Block 17 Mjengo, Mbeya, which is the same subject of this suit. That at DLHT it was established that the suit premises belonged to the late Hamis Mbangwe. Thus, it is claimed that the plaintiff is the grandson of the late Hamis Mbangwe.

In these facts it needs no rocket science to understand that the plaintiff basis to institute the present suit is the previous suit instituted by his father, Athuman Mbangwe claiming the land of the plaintiff's

grandfather. That being the case it is unmaintainable for the plaintiff to claim his grandfather's property without establishing that he is the administrator of Hamis Mbangwe's estates. Law permits a person to claim another's right if has firstly complied with legal requirements that give him mandate to do so on behalf of the actual interested person which does not exist in this case. And no evidence is required to prove that the plaintiff is not an administrator of the estates of the late Hamis Mbangwe.

It follows therefore, that the plaintiff has no *locus standi* to institute the case to claim the estates/property of the late Hamis Mbangwe. In the event, the matter at hand is incompetent. And I find this point of PO capable of disposing of the entire case without labouring to other points raised by the 3rd defendant.

In the end result, the remedy to an incompetent matter is to strike it out, that, I hereby do with costs.

Ordered accordingly.




D.B. NDUNGURU,

JUDGE

15/03/2024