

TANZANIA / JUDGMENT

ABED MAULID SAFI

COURT
TANZLIIDECIDED
30 October 2024

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM LAND CASE NO.
20816 OF 2024 ABEID MAULID ABEID..... PLAINTIFF VERSUS SAIDI BAKARI
MABRUKI..... 1st DEFENDANT GAUDENCIA CALIST
NDIBALEMA..... 2nd DEFENDANT MAS & ASSOCIATES COMPANY
LIMITED AND COURT BROKER..... 3rd DEFENDANT

RULING

24th to 30th October, 2024 E.B. LU VAN DA, J The First Defendant named above raised preliminary objection vide a notice thus: This Court does not have jurisdiction to hear and determine the suit because it has been filed by a trustee in his personal capacity, which is against the law. Mr. Moses Stawart Kaluwa learned Counsel for Second Defendant submitted that the plaint and annexure A2 collectively depict that the owner of the suit property is Manyema Mosque Registered Trustees and a letter from Registration Insolvency and Trusteeship Agency (RITA) introduces trustees of the said Manyema Mosque. He submitted that it is the position of the law, that is, The Trustees Incorporation Act, Cap 318 R.E. 2002, under section 8(1), that the power to sue or be sued is vested to the body corporate registered under i section 2 Cap 318. He submitted that section 3 Cap 318, is mandatory for a trustee or trustees who are holders of property in the trust for any religious purpose to be registered. He submitted that the name of every body corporate created under Cap 318 shall include the word "The Registered Trustees", citing section 6(2) Cap 318. He submitted that the Plaintiff admitted under paragraph five of the plaint and annexure A1 that he is a member of the Registered Trustees of Manyema Mosque body, argued the contention that the suit property belongs to him as per paragraph six of the plaint, argued it is contrary to annexure A2 that the suit property is owned by Manyema Mosque Registered Trustee. He submitted that the Plaintiff has no capacity/locus standi to sue in his own name. In reply, Ms. Rahma Kombo learned Counsel for the Plaintiff, submitted that the Plaintiff is one of the Trustees of Manyema Mosque Registered Trustees who is the owner of the suit land and hence with locus standi, citing annexure A1 to the plaint that state that the Plaintiff is authorized by Manyema Mosque Registered Trustees to sue on its behalf. She submitted that being a Trustees, a fact which the Second Defendant acknowledges, the Plaintiff has right/interest which was breached/interfered. She submitted that being authorized by a legal instrument to file a suit to claim on behalf of Manyema Mosque Registered Trustees, argued it also give the Plaintiff locus to sue. 2 On rejoinder, the learned Counsel for Second Defendant submitted that, the

argument of the learned Counsel for Plaintiff that the Plaintiff being one of the trustees therefore capable of suing in his own name by virtue of authorization from the Board of Trustees, argued is against the law, that is Cap 318 (supra). He submitted that powers to sue or being sued is vested to the body corporate registered under section 2 of Cap 318 (supra) and not to individual notwithstanding presence of any instrument authorizing individual to sue. He submitted that authorization is illegal ab initio, for explanation that the law makes mandatory for a trustee or trustees who are holder or property in the trust for any religious purpose to be registered and Manyema Mosque is a registered entity under Cap 318. To my view, the preliminary objection is meritorious. Going by the plaint, specifically annexure A2 which is a certificate of right of occupancy title number DSMT1063481 depicts the registered occupier and tenure of a property described as Plot No. P33686 Kariakoo Ilala, is Manyema Mosque Registered Trustee. In the plaint, the Plaintiff sued under personal capacity, indeed under paragraph six he craves for this Court to be declared the lawful owner of the house located at Plot No. 29 Block F, Kariakoo, Pemba Kipande/Muheza Street Ilala. 3 The law is settled that upon grant a certificate of incorporation, a registered trustee become a body corporate by the name described in the certificate, with power to sue or be sued in its corporate name. Section 8(l)(b) Cap 318 (supra), provide, 'Upon the grant of a certificate under subsection (1) of section 5 the trustee or trustees shall become a body corporate by the name described in the certificate, and shall have-

- (a) perpetual succession and a common seal;
- (b) power to sue and be sued in such corporate name;
- (c) subject to the conditions and directions contained in the said certificate to hold and acquire, and, by instrument under such common seal, to transfer, convey, assign and demise, any land or any interest therein in such and the like manner, and subject to the like restrictions and provisions, as such trustee or trustees might, without such incorporation, hold or acquire, transfer, convey therein, assign or demise any land or any interest' Therefore, the Plaintiff has no locus to sue on his own capacity over assets and properties vested on the body corporate. The argument that the Plaintiff was authorized by board members to sue vide a letter annexure A1, is misleading. Going by the entire contents in annexure A1, nowhere the Plaintiff was authorized to sue, rather was nominated by fellow board members to be their representative on the case, as opposed to sue. For the sake of argument, even if it can be taken that annexure A1 authorized the Plaintiff to sue, it could be 4 illegal. The law is clear that an individual cannot sue on behalf of a body corporate. According to Order XXX rule 2, Cap 33 (supra), requires all trustees to be joined to a suit. The rule provides, 'Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them' Therefore, an individual board member of the registered trustee has no power to sue under his/her own name. In other words, a suit by the Plaintiff is incompetent. I therefore sustain the above preliminary objections. The suit ..ZX is struck n V H If out. X. No order for costs. E. B. LUVANDA 30fW20^k Ruling delivered in the preseno if Ms. Rosemary Kirigiti learned for First Defendant, Ms. Jackline Majure learned Counsel holding brief for Mr. Moses Stawart Kaluwa

learned Counsel for Second Defendant, Ms. Rahma Kombo learned Counsel for the Plaintiff.
X . E. B. LUVAm 'judge / 30/10/2024

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