

TANZANIA / JUDGMENT

gasper peter macha vs property assets ltd others 2019 tzhc 131 23 october 2019

COURT
TZHCDECIDED
23 October 2019

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE UNITED REPUBLIC OF TANZANIA THE HIGH COURT OF TANZANIA (DAR ES SALAAM DISTRICT REGISTRY) AT PAR ES SALAAM MISCELLANEOUS CIVIL CAUSE NO. 150 OF 2015 GASPER PETER MACHA----- PETITIONER/ 1st RESPONDENT VERSUS PROPERTY ASSETS LIMITED----- 1st RESPONDENT/3rd PETITIONER GENES DANIEL ASSEY----- 2 nd RESPONDENT/1 st PETITIONER PROTCHESAUGUSTINEMOSHI---- 3 rd RESPONDENT/2nd PETITIONER THE REGISTRAR OF COMPANIES----- 4TM RESPONDENT/5TM RESPONDENT JUDGMENT ON COUNTER-CLAIM MUTUNGI. J. The first respondent Gasper Peter Macha, previously (the petitioner) had filed a petition against Property Assets Limited (second respondent), Genes Daniel Assey (first petitioner), Protches Augustine Moshi (second petitioner) and the registrar of companies (5th Respondent) in the counter - claim. In the petition, the first respondent had alleged that he was the Managing Director given the mandate to handle the affairs of Property Assets Limited which was a Limited Company incorporated in Tanzania which was originally registered as Property International Ltd (third petitioner) under certificate of incorporation No. 46211. Gasper Peter Macha went on to claim that Genes Daniel Assey and Protches Augustine had failed to pay the consideration for the purchase of the shares allotted to them at the current market value beside the fact they demanded participation in the commercial activities of the Property Assets Limited. The two had also usurped the powers of the Board of Directors calling and convening unlawful meeting contrary to the Memorandum of Articles of Association of the Property and Assets Limited. They had established companies which were in conflict with the interest of Property Assets Limited. They established companies (the Property Masters Limited and MEM Auctioneers Limited) which had similar objectives and business activities. They had also failed to participate in the Company's activities since its inception hence the existence of the company was left dormant and inexpedient and derailed the corporate well being and commercial operations of the said company. The two did not end her but went on to usurp powers of the Board and that of the Annual General Meeting by causing self appointment of the chairman and Secretary contrary to the Articles of Association. 2 To cap it all, they had changed the address of the company to personal addressess without mandate and notification to the other members. In view thereof, the first respondent (Gasper Peter Macha) had prayed in the petition for the following: -

- (a) An order that the allotted nominal shares during the inception of the company be purchased by the company or its members.
- (b) A declaration that the two names in the said company's register is invalid, null and void.
- (c) An order for the Registrar of Companies to delete the names of the respondents and remove any changes or amendment submitted to it by the two.
- (d) To order to revoke the nominal shares allotted to the two during the company's inception and issue them to new members.
- (e) The two to pay the costs incidental to the petition.
- (f) Any other relief (s) that the honourable court may deem fit to grant. Before the determination of the petition the first respondent did pray to withdraw the petition on 04/07/2015 but there was left a surviving Counter - Claim raised by the petitioners Genes Daniel Assey (1st petitioner), Protches Augustine Mushi (second petitioner) and Property International Ltd (Reg. No. 46211) the 3 third petitioner) as against Gasper Peter Macha (1st Respondent), Property Assets Limited (second respondent), Property International Limited (105061) (3rd Respondent), Equity Bank Limited (4th Respondent) and the Registrar of Companies (5th Respondent). In the Counter - Claim the first and second petitioners were claiming to be shareholders and directors together with the first respondent (Gasper Peter Macha) in Property International Ltd (Reg. 46211) in the year 2003. Whereas, the first respondent was also purported to be the Managing Director of the second respondent, (Property Assets Limited) which took over the affairs of the third petitioner (Property International Ltd (46211) through fraud. The petitioners claimed the first respondent had forged a RESOLUTION dated 8th October, 2014 which had the status of changing the name of PROPERTY INTERNATIONAL LTD (Reg. No. 46211) (the third petitioner) to that of PROPERTY ASSETS LTD (the second respondent). The petitioners further claimed the purported Sale Agreement dated 15th October, 2014 between Property International Ltd (105061) (the third respondent) and the third petitioner Property International Ltd (No. 46211) was done fraudulently by the first respondent and was null and void. Hence the 5th respondent (the Registrar of Companies) should be compelled to deregister/delete the names of the second respondent (Property 4 Assets Limited) and third respondent (Property International Ltd (105061) from the Register. It was further claimed that the 4th respondent (Equity Bank Ltd) negligently opened a Bank Account for the Property International Ltd (46211) without a valid company resolution and the 4th respondent should pay the petitioners Tshs. 20,000,000/= which was unlawfully withdrawn from Account No. 3003211130745 illegally opened and operated by the 3rd petitioner (Property International Ltd (46211). By the use of the petitioners' name in their business, the 2nd respondent (Property Assets Limited) and 3rd respondent (Property International Ltd 105061) should pay general damages in excess of Tshs. 1.5 billion for loss of business suffered. Wherefore, the petitioners prayed for: -

- (a) A declaration that the Resolution to change the name Property International Limited (Reg. No. 46211J to Property Assets is null and void ab initio. (bj A declaration that the incorporation of the second and 3rd respondent was null and void on fraud basis.
- (c) An order that the 4th respondent acted negligently in opening a Bank Account without a valid mandate. 5
- (d) An order compelling the 5th respondent to deregister and delete the second and 3rd respondents from the company Register.
- (e) An order against the 4th respondent to pay the petitioners special damages of Tshs. 20,000,000/=.
- (f) An order of payment of Tshs. 1,500,000,000/= against the first respondent and second respondent for unlawful use of the petitioners' name.
- (g) Costs.
- (h) Any other reliefs as the court shall deem fit to grant. In line with the above claims found in the Counter - Claim the court did frame the following issues: -
 - (1) Whether there was negligence on the part of the 4th respondent in opening and running the Bank Account No. 300321113074455 in the name of the 3rd petitioner.
 - (2) Whether the 3rd respondent lawfully purchased the company name Property International Ltd from the 3rd petitioner.
 - (3) Whether it was lawfully for the 5th respondent to change the 3rd petitioner's name to the second respondent. 6
 - (4) Whether the petitioners sold its company name to the 3rd respondent.
 - (5) If the answer to No. 4 is in the affirmative, whether the 3rd respondent is justified to trade as Property International Limited.
 - (6) Whether the Board meeting held on 08/01/2014 was lawful and property convened.
 - (7) Whether the first and second petitioners paid up their share capital to justify their claims before this court.
 - (8) What relief (s) if any are the parties entitled with. Mr. Gregory Ndanu, learned Advocate advocating for the petitioners led evidence as follows, PW1, GENES DANIEL ASSEY (first petitioner) did explained that, he was a founder and Director of Property International Ltd (3rd petitioner) which was registered in June, 2003 with BRELA. The same had 4 other directors including GASPAR PETER MACHA (first respondent), BEDA KILASARA NGAWIKA and PROCHES AUGUSTINE MOSHI (second petitioner). In August, 2014 he had received a letter from TANTRADE (TZ) congratulating them for winning a tender to renovate the "Saba saba" grounds at Dar es Salaam and Mwanza. After notifying the 7 other directors it was observed that there was never such a tender applied for and this could be a mistaken fact or

otherwise it was referring to a similar company. The meeting of directors resolved and appointed Gasper Macha (first respondent) to make a follow up. To their dismay the said Mr. Gasper Macha never brought back any feedback and started avoiding them. It is when it was decided that their lawyer should make another follow up. Mr. Ndanu contacted both BRELA and Property International Ltd (Reg. 105160) and the response was such that the company's name had been sold to them. That Mr. Gasper Macha (first respondent) had further signed a resolution which purported that they had agreed to change the name to Property Assets Limited (second respondent). They also realized that Gasper Peter Macha had tendered forged minutes. The matter was reported to the Central Police for investigation. The investigation revealed there was a forged RESOLUTION at BRELA which was unlawful admitted. Further, there was Tshs. 20,000,000/= paid to Property International Ltd (Reg. No. 46211) (the third petitioner) from Property International Limited (105061) 3rd respondent. The company purchase Agreement from the 3rd respondent was signed on their behalf by Gasper Peter Macha and Humphrey, Director of operations respectively. The money paid was through an account at the Equity Bank. According to 8 PW1 they were not aware of the existence of the second respondent (Property Assets Limited). It was his settled opinion and prayer that the third respondent should be removed from the Registrar of Companies Register, the resolution of 08/10/2014 be declared Null and Void. As they have been in conflict of business, they have been shaken and incurred losses in the business. PW1 clarified that Gasper Peter Macha had faced Criminal charges for forgery at the Ilala District Court but was eventually acquitted. The same is now due to the appeal process. Mr. Nehemia Gabo representing the first and second respondents had DW1 Gasper Macha (first respondent) who clarified that, the first and second petitioners are his co-directors in the third petitioner (Property International Ltd, (Reg. No. 46211) registered on 11 /06/2003 which changed to Property Assets Limited (second respondent) on 28/10/2014. He went on to elaborate that after realizing in mid-September, 2014 that there was a company using their name, (Property International Limited (105061) (the third respondent), they convened a meeting of directors. After a lengthy deliberation it was resolved that he makes a follow up. He got a lawyer (Paul Mganya) who wrote a letter to the third respondent and BRELA. It was found that the matter could be settled amicably. The 3rd petitioner and 3rd 9 respondent did sit on a negotiating table and came to a conclusion that they give their name to the 3rd respondent. In consideration the third respondent paid Tshs. 20 Million in the 3rd petitioner's account at Equity Bank Ltd (Kariakoo, Branch). It was further resolved by the 3rd petitioner that they get a new name now known as Property Assets Ltd (2nd Respondent) and BRELA was dully notified. The Tshs. 20 Million dully paid to them was used to settled debts, rent for a new building to accommodate the new company and director's allowances. After a short period, the other directors (first and second petitioners) had grievances as to how the money was spent or divided. The directors decided to convene family meetings to settle the matter but the two directors ran to the police and as a result DW1 was arraigned in court to face criminal charges. DW1 did fully explain that one Linus Humphrey was co-opted as a director for the reasons that, Beda lives in Morogoro and Protches (2nd petitioner) is fully involved in a company known as MEM COMPANY whilst Genesis Assey (1st Petitioner)

was a Court Broker in Morogoro and too involved in the brokerage business and was in return asked to manage the Morogoro operations. It follows that DW1 needed assistance and in view thereof the two directors were appointed. In support of his story DW1 tendered the certificate of change of name of the 3rd petitioner and 10 certificate of incorporation (admitted Exhibit "D1" collectively). As regards the criminal case where he was ultimately acquitted, he tendered a judgment of criminal case No. 588 of 2017 (Exhibit "D2"). In order to open the Bank Account, they had prepared minutes where Linus Macha was appointed to facilitate the procedure. They also got the Memorandum and Articles of Association, photos, the business license and specimen signatures. The meeting that gave permission to open the account was constituted of DW1, Beda and Protches Mushi (all directors). This was so since the Memorandum and Articles permit that in any transaction the Coram can be of two or more directors who can pass a resolution. The new directors were appointed in 2012 and the membership rose to six. Mr. Abdallah Shaibu, learned counsel representing the 3rd respondent staged DW2, ABDUL HALEEM ZAHRANI SALIM, who incidentally is the third respondent's Director (Property International Limited (105061) registered in 2014 as per the certificate of in-cooperation (Exhibit "D3"). He narrated that they had received a letter through their lawyer from the third petitioner. The same was a complaint that the third respondent was using their name, they quickly cross - checked with BRELA who admitted that, indeed there was a company formally registered with a similar name and this was a mistake occasioned by them. BRELA advised them to sit and resolve the problem since the third petitioner did not seem to be operating. They followed up this advice and invited the third petitioner with their lawyer for a discussion. Among those in attendance was Gaper Macha and another. It was agreed if they were interested they could buy the third petitioner's name and they would instead use a new name and the directors transferred to the new company. It was agreed that they pay Tshs. 20 Million through their account. DW2 tendered a receipt (Exhibit "D4") to this effect. After the alleged changes, they went for confirmation at BRELA and got confirmation the new name was Property Assets (2nd respondent). To their surprise they received a letter on 29/10/2015 complaining against the use of the third petitioner's name, a matter which had already been resolved. They called upon their lawyer to deal with the complaint. The third petitioner's lawyer, DW3 PAUL JUSTINE MGAYA testified to the effect that he had been instructed by Gasper Macha (first respondent) to write to the third respondent inquiring as to why they were using the 3rd petitioner's name (Exhibit "P6"). The 3rd respondent's Director went to his office for negotiations after 12 finding out the truth. Those who sat in the meeting included Gasper, Linus, Humphrey and DW2. After an agreement the learned Advocate prepared a contract for the sale of name of 15/10/2014 to do away with the confusion that had occurred. The sale was for Tshs. 20 Million which was done through the third petitioner's account. Thereafter the third petitioner started using the new name of PROPERTY ASSETS. As regards the fourth respondent who was dully represented by Mr. Mkebezi, learned counsel led DW4 Alex Ndongole in evidence. He averred he worked with Equity Bank (Kariakoo Branch). He explained at length on the procedure for one to open an account with their Bank. He listed down the check list which comprised of a Board Resolution (original) dully signed by the

directors, Memorandum and Articles of Association (copy), TIN number, certificate of incorporation, identification cards, photos of the ones who will operate the account and specimen signatures (Exhibits "D7"). He further stated, the 3rd petitioner had also introduced Linus, Peter Macha and Gasper Peter Macha as the signatories. The customer in this case was the 3rd petitioner registration No. 46211 and the account was opened on 18/12/2012 (No. 33211130745). Thereafter, they never received any complaints apart from a 13 summons issued by the court (criminal) to testify in a case involving the first respondent. In the account there was an amount of Tshs. 20 Million deposited. He summed up, they had followed all the procedures hence had no liability at all in this matter. DW4 further, brought to light that in 2014 they were notified that, the company had changed its name to PROPERTY ASSETS LIMITED. They in fact received the certificate of change. It was none of their business to know the reason for the said change. Their duty was to carry out a search at BRELA when opening the company's account which they did to ascertain the existence of the company and its directors. In this case they got an answer "search is okay". To them the fundamental document was the Board Resolution. Having summarized the evidence as above, it is time now to deliberate on the framed issues. Before then I would like to commend the respective advocates from all camps for the enlightening final written submissions. Further, it should be noted the counter-claim proceeded Ex-parte against the 5th respondent (Registrar of Companies). The dispute herein seems to boil from the fact that the third petitioner PROPERTY INTERNATIONAL LTD dully registration No. 46211 by the Registrar of Companies (5th respondent) was allegedly sold by the first 14 respondent together with other purported directors to the third respondent (PROPERTY INTERNATIONAL LIMITED, 105061) and its name changed accordingly to PROPERTY ASSETS LIMITED (the second respondent). It is when this development came to the first petitioner's knowledge that together with his co-directors (the second petitioner) realized that their other directors (first respondent) had gone behind their backs and secretly carried out the said transaction. The first petitioner who was the only witness on the petitioner's side faulted the said change of name and the sale Agreement done without the company's resolution or even consultations. The sale Agreement had a consideration of Tshs. 20,000,000/= payable by the 3rd respondent which was deposited with the 4th respondent in the 3rd petitioner's account. The first petitioner (PW1) did also fault the same that the account so used was opened without following the Bank's procedures, in that there was no company's resolution to that effect. Even those involved in the opening process were not company directors nor appointed signatories. To cap it all, the first petitioner wondered when, how and who had established the new company (the second respondent) without their knowledge. In view of the foregoing the court had expected that the petitioners would lead evidence to substantiate all that has 15 moved them to institute this case. In other word the petitioners had a duty to prove their case on the balance of probabilities. The onus of proof is vested in the one who alleges the facts that these really exists. The same is amplified by the famous maxim that, "he who alleges must prove". In law the same is provided for under section 110 (1) of the Evidence Act, Cap. 6 R.E 2002 which is coached in the following words: - "whoever desires any court to give judgment as to any legal right or liability

dependent on the existence of facts which he asserts must prove that those facts exist.” It was hence the duty of the petitioners to show that all that they doubted was true. These are questions to be found in the second, third and fourth issues. The petitioners were to show proof of the controversial sale, the people involved in the sale transaction and ultimately the change of name. The petitioner was to avail with the court, the Memorandum and Articles of Association to clarify as to who were the legal directors of the 3rd petitioner, mandated to carry out any of the company's official transactions. To this nothing was tendered in court to support the petitioners' case. PW1 simply narrated the history but with no proof at all. He had been asked during cross - 16 examination to produce documents and to the court's surprise, he simply replied that he had tendered all his documents before Hon. Dr. Feleshi, JK in a case which was before him. To the court's further surprise, the first petitioner did not even mention the number of the said case nor the parties thereto. The petitioner had complained in the fifth issue as to whether the 3rd respondent was justified to trade in the 3rd petitioner's name but once again did not show how this was done. There was a complaint as per the first issue that the fourth respondent was negligent to open and run the 3rd petitioner's account (No. 30032111307445) yet did not even bring evidence to show if at all the said account existed and or the documents used to open the said account. The first petitioner had made mention of a Board meeting dated 08/10/2014 but like the other issues, this issue (the sixth) had no proof demonstrated in court to the extent that, the court is yet to believe if there was ever such a Board meeting convened. Reading through the seventh issue the first respondent seems to be complaining about the paid up capital shares by the first and second petitioners but PW1 (first petitioner) made no mention at all of this fact, hence the court has no material to refer to. 17 To the contrary on the other side of the coin, the first respondent explained very clearly that indeed the 3rd petitioner was established on 11th June, 2003 as per part of exhibit “D I” (the certificate of incorporation). He further proved and supported by the Memorandum and Articles of Association part of Exhibit “D7” collectively that, the directors thereto were BEDA V. NDAWEKA, Gasper Peter Macha, Protches Augustine Mushi and Genes Daniel Assey. DW1 (the first respondent) clarified to the court that, the problem arose after the directors of the third petitioner got wind that the third respondent had incorporated a company with the same (identical) name as the one they had and dully registered on 9th January, 2014 with registration number 105061 (this is as per Exhibit “D6”. This fact was also proved by DW3 (Paul Justin Mgya) the first respondent's Advocate. The 3rd respondent's Director was informed of what had been noticed by the third petitioner and the two sat and resolved the issue accordingly as per Exhibit “D I” (the certificate of change of name), the evidence of DW2 (the 3rd respondent's Director) and Exhibit "D 5" (the letter from the 3rd respondent's Advocate). In resolving the matter, the two sides had on 10th October, 2014 signed a company name Purchase Agreement at a consideration of Tanzanian Shillings Twenty Million (Tshs. 20,000,000,000/=). The same was signed by Gasper Peter Macha 18 (1st respondent) and Humphrey Bernard Mgema. It was further, agreed the third petitioner was to change its name and the same was done. The third petitioner was formally known as PROPERTY ASSETS LIMITED after a special resolution from the company and the approval of the Registrar of Companies and a

deposit of Tshs. 20 Million as per the Bank slip tendered in evidence as Exhibit "D4". The first respondent did adduce evidence that, since out of the directors two were very busy people he had to get assistants as supported in evidence by Exhibit "D7" which was an extra ordinary meeting held on 08/12/2012 by the 3rd petitioner's Directors. Among the Agenda was the appointment of a Director. Those in attendance were Beda V. Ndaweka (chairman), Gasper Peter Macha (member/Secretary), Protches Augustine Mushi and Genes Daniel Assey was absent. Item (ii) of the minutes reads; "The members who are founders of the company passed a resolution to appoint a Director of Operations who is called "LINUS PETER MACHA". The appointed Director will be charged with the duty of administering all the daily business activities of the company and to act as a Bank signatory The question will be whether such meeting was lawful. It was in evidence as per the Memorandum and Articles of 19 Association that the quorum of directors for transacting business shall unless otherwise fixed by directors. For the purposes of general meeting the same is provided that; "(a) A general meeting, ordinary may with the consent in writing of all member be convened on a shorter notice than several days or without notice.

- (b) Two members, present either personal or by proxy shall from a quorum". In that regard the Extra-ordinary meeting held was lawful with the foregoing evidence issues number 2, 3, 4 and 5 will all be answered in the affirmative. There is yet another pertinent issue on the account that was used to deposit the Tshs. 20 Million by the 3rd respondent. It has been brought in evidence by DW4 (the Bank Manager) that this account (No. 30032111307445) was opened on 8th December, 2012 at the Equity, Kariakoo Branch. He was able to provide the court with all the documents needed to open an account with the Bank as per Exhibit "D7" collectively. Among these was the Extra-ordinary minutes showing resolution (iii) on the opening of a Bank Current Account, it states: - 20 It was resolved that, to open and maintain a Bank Current Account with EQUITY BANK LIMITED at Kariakoo Branch in Dar es Salaam". The signatories so appointed were Gasper Macha and Linus Macha and either is to sign. In view of such straight forward evidence, one can not say that there was any negligence on the part of the 4th respondent in opening and running the said account, which answers the first issue. The court finds there was no evidence adduced on the issue of the Board meeting held on 08/10/2014 or on the share capital of the first and second petitioner's hence the court would not make any useful findings on the sixth and seventh issues. The court now turns to the last issue (8th) on the reliefs. As already observed by the court, the petitioners had a duty to prove their counter-claim. It is only the first petitioner who appeared and gave evidence of which as already analysed has miserably failed to prove his claims on a balance of probabilities. The petitioners have also accused the first respondent for unscrupulous conduct of fraud against their affairs which occasioned immense loss to them. They referred to the purported sell of their company without the mandatory mandate of the company, a forged RESOLUTION for change of name, a forged Sale Agreement 21 purporting to sale the 3rd petitioner, caused to open a business account in the name of the 3rd petitioner and lastly forged and submitted documents to the 5th respondent. These fraud accusations fell short of the standard in proving the same as envisaged by law. It is thus concluded that the

counter - claim is dismissed for want of proof with costs. " N r----- J B. R. MUTUNGI
JUDGE 23/10/2019 Read this day of 23/10/2019 in presence of the first and second petitioners,
the first respondent, Abdallah Shaibu Advocate for the 3rd respondent and holding brief for
Wilson Mukibi for the 4th respondent. B. R. MUTUNGI JUDGE 23/10/2019 Right of appeal
explained. B. R. MUTUNGI JUDGE 23/10/2019

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://media.tanzlii.org/media/judgment/197117/source_file/gasper-peter-macha-vs-property-assets-ltd-others-2019-tzhc-131-23-october-2019.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/companynamenamechange-tzhc-2019>

Prepared on 14 October 2026 · Esheria