

TANZANIA / JUDGMENT

RULING AMANI for Tanzlii

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15 November 2024

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IN THE HIGH COURT OF TANZANIA GEITA SUB-REGISTRY AT GEITA MISCELLANEOUS CIVIL
APPLICATION NO. 30522 OF 2024 (Originated from Civil Case No. 30266 of 2024) MARTIN AMANI
CAPITAL LTD-----APPLICANT VERSUS AS LULILA COMPANY LTD
-----RESPONDENT

RULING

Date of last Order: 11/12/2024 Date of Ruling: 12/12/2024 K. D. MHINA, J. This Application is brought under a certificate of urgency by way of chamber summons made under the provisions of Order XXXVII Rules 2 (1) and Sections 68 (e) and 95 of the Civil Procedure Code [Cap. 33 R. E. 2019] (“the CPC”) The order being sought is for this Court;

- (i) To grant a Temporary/Interim Injunction to prevent the Respondent, Respondent’s Agents, or the Respondent’s servants from entering the plant and operating the machines and all other plant activities, the Plant is owned by the Respondent pending determination of the main suit. The application is firmly supported by the affidavit disposed of by Martine Mashauri Amani, the applicant’s principal officer, which clearly expounds the legal grounds for the application. After being served with the application, the respondent confronted the application with a notice of preliminary objection predicated on two grounds; however, at the hearing, the counsel for the applicant abandoned the 2nd ground. Thus, the remaining ground which was argued was;
- (ii) The application is bad in law in view of the fact that the applicant has no locus standi to initiate this matter. This application found its basis in Civil Case No. 30266 of 2024, whereby the parties have a dispute over the expired lease agreement relating to the Mining Plant and Machinery located at Nyarugusu,-Geita. In that suit, the applicant prayed for the following reliefs;
 - i. A declaratory order that Defendant pay Plaintiff the amount of (TZS. 685,717,870/=) Tanzania Shillings Six Hundred Eighty- Five Million Seven Hundred Thousand Seventeen Thousand and Eight Hundred and Seventy being the compensation for financing and refurbishment of the plant and machinery located at Nyarugusu, Geita Region. ii. Payment of general damages as may be assessed by the court. iii. Payment of commercial interest on the aforesaid amount at the rate of 22% per annum from the date each claim accrued until the

date of final payment. iv. Payment of interest on the aforesaid amount at the rate of 7% per month from when each claim accrued until the final payment date.

- v. Costs of the suit and vi. Any other relief this Honorable Court deems just to grant. The preliminary objection was argued by way of oral submissions. The applicant was represented by Mr. Bartholomeo Musyangi, a learned advocate, while the respondent was represented by Mr. Kevin Mutatina and Mr. Remigius Mainde, both learned Advocates. At the hearing, Mr. Mutatina contended that the applicant has no legal standing or locus standi to file this application. He argued that according to paragraph 8 of the affidavit and annexure M-1 (lease agreement) attached, the contract between the parties expired on 15 November 2024. Furthermore, he argued that the Court of Appeal elaborates the legal status of the applicant when the contract had expired in the decision of Lawrence Magesa t/a Jopen Pharmacy vs. Fatma Omary, Civil Appeal No. 333 of 2019 (Tanzlii), that once the tenancy or lease agreement expires, the status of the tenant or the lessee became a mere trespasser and illegal occupier of the premises. He also argued that the relationship between the applicant and the respondent ended after the contract expired. Thus, the applicant's legal status was active when he was a lessee, but he remained silent until the contract expired. On the applicant's act of remaining silent until the agreement expired, Mr Mutatina stated that the applicant put himself in a trap of an established legal principle that the law aids the vigilant and not those who sleep over their rights. (*Vigilant bus non dorminienti bus jura subvenunt*). He concluded by submitting that the applicant was no longer a lessee; therefore, there was no relationship between the parties as lessee and the lessor, rather than the applicant being regarded as a trespasser and illegal occupier. In response, Mr. Musyangi acknowledged the agreement between the parties had expired on 15 November 2024. However, on 7 November 2024, before the lease agreement expired, the applicant served a letter to the respondent so that they could convene a meeting to solve the issue of additional costs, but the respondent did not respond, and in the end, he evicted the applicant from the mining plant. He further argued that the objection had no merit because the respondent failed to perform his obligation under the lease agreement. On this, he cited section 37 of the Law of Contract Act, which provides for the obligation of parties to the contract, and section 38, which provides for the effect of refusal to accept the offer of performance. He concluded by submitting that the applicant could file this application against the respondent even when the contract expired because the respondent did not perform his obligations under the lease agreement. In rejoinder, Mr. Mutatina briefly stated that the applicant's advocate conceded that the lease agreement had expired. Further, he reiterated his earlier submission in-chief. Having gone through the affidavit and submissions for and against the preliminary objection from both parties, I now turn to determine the preliminary objection raised, but first, it is essential to understand the meaning of the term locus standi. Briefly, the Court of Appeal has already expressed what locus stand means in the case Peter Mpalanzi vs. Christina Mbaruka, Civil Appeal No. 153 of 2019 [Tanzlii], where it was held that locus standi means; "the right or legal capacity to bring an action or to appear in court". Further, in the same cited case, the Court also held that; "locus standi is a point of law

rooted into jurisdiction. It is for that reason that it must be considered by a court at the earliest opportunity or once it is raised”. Therefore, briefly, it is the legal capacity to institute an action in a court of law; it is a point of law as it touches the issue of jurisdiction. Turning to the merits of preliminary objection, it is essential to go through the affidavit of the applicant. This is very important because, in a number of cases, it was held that points of law must arise by clear implication out of the pleadings. See *Salim. O Kabora vs. Tanesco and two others*, Civil Appeal No. 55 of 2014 (Tanzlii). For relevance of this application, I quote paragraphs 1 and 8 of the affidavit,

1. THAT, on 2nd day of August 2023 the Applicant and Respondent entered into a lease agreement of plant named As Lulila Company Limited -C1P located at Nyarugusu, Geita Region for the period of twelve months and fifteen days (12 months and 15 days) from 1st October 2023 to 15th November 2024. The said lease agreement was entered between the Applicant and the Respondent in order for the Respondent to compensate the Applicant the total of Tshs. 341,925,000/=.
8. THAT after the expiration of the Lease Agreement that is on 15th November 2024 the Plaintiff was already received the total amount of Tshs 285,000,000/= as compensation due to the fact that the Plant did not operate for a period of 30 days because of shortage of power supply (mgao wa umeme) and waiting for the response from the Respondent concerning the price fluctuation of construction and repair of plant. Immediately the Respondent evicted the Applicant from the Plant without considering that the Applicant has not received the full amount of compensation to the tune of Tshs. 685,717,870/= originating from the plant”. Further, in the lease agreement annexed as M-1, which is a part of the pleading (affidavit), the owner of the plant is the respondent. Therefore, what can be gleaned from the above are one, the lease agreement between the parties had expired on 15 November 2024; two, after the expiration of the lease agreement, the applicant was evicted from the plant; and three, the respondent was the owner of the plant. Therefore, the question is whether the applicant has a locus to request a temporary/Interim Injunction to prevent the Respondent, the respondent’s agents, or the respondent’s servants from entering the plant and operating the machines and all other plant activities. In the cited case of *Lawrence Magesa (Supra)*, it was held that; “.it is our settled view that, following the expiry of his lease agreement on 1st February 2015, he was required to vacate the demised premises, as from 2nd February 2015, he was a trespasser and in illegal occupation of the premises. As such, he was not entitled to any notice before eviction”. Thus, the position of law is that once the lease agreement expires, the lessee must vacate from the premises. Further, in the decision by the Supreme Court of India in *Mahadeo Savlaram Shelke and others vs. The Puna Corporation and another*, 1995 (3) SCC 33, it was held that; “Trespasser cannot seek an injunction against the true owner”. The principles in the cases cited above are the following; One, when the lease agreement expires, the lessee must vacate from the premises. Two, failure to vacate makes the lessee become a trespasser or illegal tenant. Third, the trespasser has no locus to seek an injunction against the owner. In this application, as per the affidavit, after the expiration of the lease agreement, the applicant was evicted; therefore, he is not a trespasser who was

intended in the cited case of Lawrence Magesa (Supra). However, in my opinion, the same principle in the cited cases above applies to the instant application that a former tenant has no locus and cannot seek an injunction to prevent the owner from entering the premises. Therefore, as I discussed above, whether a person is a trespasser or a former tenant, both have no locus standi. Further, as rightly submitted by Mr. Mutatina his locus to seek an injunction against the owner ended when the lease agreement expired on 15 November 2024. From the above discussion, this application is untenable for want of the applicant's locus standi. Therefore, the preliminary objection is sustained. Consequently, the application is dismissed with costs. I order accordingly. K. D. MHINA JUDGE 12/12/2024
Court: Right to appeal explained. K. D. MHINA JUDGE 12/12/2024

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