

TANZANIA / JUDGMENT

TAI FIVE RULING

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7 March 2025

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IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA MISCELLANEOUS
LAND APPLICATION NO. 2758 OF 2025 TAI FIVE HOTELS AND TOURS
LTD.....APPLICANT VERSUS THE ATTORNEY
GENERAL.....1ST RESPONDENT MWANZA CITY
COUNCIL.....2ND RESPONDENT

RULING

5th & 7th March, 2025 KAMANA, J. When this court was set to hear the preliminary objections raised by the respondents, Mr. Remegius Mainde, learned Counsel for the applicant was not ready. On his part, the notice of preliminary objection filed by the respondents was insufficient as it left out necessary particulars that would enable the applicant to know the nature of the said preliminary objections in order to prepare his defence. Expounding, Mr. Mainde argued that the notice of preliminary objections is silent as to which point of law or principle the objections are premised. Referring to the first preliminary objection that this court lacks jurisdiction, the learned Counsel held the view that jurisdictional 1 issues have a wide scope, hence the respondents needed to specify a point of law or a principle they wanted to rely on. He held the same view with respect to the second and third preliminary objections. The second preliminary objection was that the applicant has no locus standi. The third one was that the application was overtaken by events. In strengthening his argument, Mr. Mainde invited the court to be guided by the position of the Court of Appeal in the case of *James Buchard Rugemalira v. Republic and Another*, Criminal Application No. 59/19 of 2017. In the said case, the Court of Appeal held that the notice of appeal must contain necessary particulars to enable the court and the other party to grasp the nature and scope of that objection. Responding, Mr. Allen Mbuya, learned State Attorney representing the respondents prefaced his arguments by stating that each case ought to be decided by considering the nature of the case. Explaining, the learned State Attorney contended that the circumstances that led the Court of Appeal to hold the view that the notice should contain particulars that enable it and the adversary party to understand the nature and scope of the preliminary objection were different from the one in this case. He argued that in the cited case, the preliminary 2 objections were raised during the hearing while in this matter there was a prior notice of preliminary objection. Mr. Mbuya argued further that their objections are premised on various points of law and principles, hence they could not specify them in the notice of preliminary objection. Concerning the preliminary objection relating to jurisdiction, he held

the view that the same can be argued without citing the specific law. However, upon reflection, Mr. Mbuya stated that the jurisdiction is a creature of statute, and hence a specific law on which the objection was premised ought to be in the notice. Concerning other objections, the learned State Attorney contended that they are based on the principles derived from case law and hence they can be disposed of. In the alternative, he beseeched this court not to dismiss them but to order an amendment of the notice. His colleague, Mr. Joseph Vungwa, learned State Attorney took the argument advanced by Mr. Mainde as a misconception. Amplifying, the learned State Attorney contended that the requirements that the notice of preliminary objection should provide particulars that enable the other party to understand the scope of the preliminary objection was pronounced when the Court of Appeal was interpreting Rule 107 of the 3 Court of Appeal Rules, 2009. Given that, he held the view that such observation is not applicable in this court. Rejoining, Mr. Mainde reiterated his submission in chief. Concerning Mr. Vungwa's argument, the learned Counsel contended that this court is bound by the observation of the Court of Appeal under the doctrine of stare decisis. Without discussing whether or not this court is bound by the decisions of the Court of Appeal when interpreting its rules, I am aware that the principle stated in the cited case has been discussed by this court in several cases. From those cases, this court had divergent views as to whether this court is bound by the principle taking into consideration the fact that the Court enunciated the principle when interpreting its rules. For instance, in the case of *Moto Matiko Mabanga v. Ophir Energy PLC and Others*, Commercial Case No. 43 of 2019-HC (Unreported) which was decided on 12th February, 2021, this court (Fikirini, J as she then was) when discussing the objection relating to jurisdiction insisted on the requirement that the notice should specify specific law that is alleged to have been contravened. It was stated: 'Examining the point on jurisdiction, I would wish to start by referring to the case of *James Burchard Rugemalira v R 4 & Another*, Criminal Application No. 59/19 of 2017, CAT- DSM (unreported), the Court emphasized that it was necessary to state the nature of the preliminary point of objection. Translating the decision in reference to this point of objection raised by the 3rd, 4th and 6th defendants on jurisdiction, it is clear that the point was raised without offering any clarification or citing the provision of the law which was contravened as far as the pleadings were concerned. The presumed relevant provisions were referenced later in their submission, meaning the plaintiff was made aware of the nature of the preliminary point of objection at this stage when more information was shared. This is contrary to the requirement that the notice of preliminary point of objection ought to be clear from the beginning.' On the other hand, this court (Kagomba, J.) in the case of *Gold Africa Ltd v. Business Registration and Licencing Agency and Another*, Misc. Civil Application No. 5 of 2023-HC (Unreported) while underscoring the importance of the notice of preliminary objection in ensuring that the other party is not taken by surprise, this court held the view that so far as this court is concerned that is a practice and not the 5 requirement of the law as expounded in the case of *James Burchard Rugemalira* (Supra) when interpreting the Court of Appeal Rules. Given that this court had this to state: 'Since the said position has its root in the cited Court of Appeal Rules, which are not applicable to this Court, I find no legal basis to enforce it in this matter, despite its obvious desirability.' In my view, the essence of the notice of preliminary objection is to afford another party to understand the gist of the objection in question so as not to be taken by surprise. It is well known that surprises

in litigation prejudice the fair hearing. This position was accentuated by the Court of Appeal in the case of James Burchard Rugemalira (Supra) where it was stated: ‘Since the reason behind this requirement is to do away with surprises to the Court as well as the adversary party and thus promoting a fair hearing,...’ At this juncture, I asked myself whether the notice of objection was crafted in a way that erodes any possibility of taking the applicant by surprise. So far as the objection with regard to jurisdiction is concerned, I am of the considered opinion that it was insufficient for the respondents to generally state that this court has no jurisdiction to deal with the application without specifying the relevant law or supplying particulars that reveal the fact that the court has no jurisdiction. This is because the jurisdictional issues are many. For instance, issues relating to pecuniary, territorial, locus standi and time limitation are jurisdictional. Given that, to avoid surprises, the respondents were obliged to specify on what premise the objection is preferred. This could be done by citing the law or providing the necessary particulars that would inform the applicant to understand the nature of the preliminary objection and its scope. This would enable the applicant to prepare the defence. Likewise, matters relating to locus standi are numerous. In the circumstances of this case in which the applicant is a company, its locus standi is subject to issues like the board resolution allowing it to institute the matter before the court or its legal status including its existence. Because of that, it was incumbent on the respondent to specify the specific laws or particulars on which the preliminary objection is premised to afford the applicant an opportunity to understand the nature and scope of the preliminary objection. Worthy to note is that, in my view, the principle that the notice of preliminary objection should be specific on the law or particulars that reveal the nature and scope of the objection is mainly applicable when the preliminary objections are to be disposed of orally. This is because the applicant would have ample time to analyze them and prepare his defence before the hearing and hence is not taken by surprise. In cases that involve the disposal of preliminary objections by way of a written submission, the omission to specify the law or providing particulars necessary to reveal the nature and scope of the preliminary objection is not fatal. This is because the applicant would have time to go through the submissions in support of the preliminary objection and hence not be taken by surprise. In the case of James Burchard Rugemalira (Supra), contrary to Mr. Mbuya’s view that the objection was raised during the hearing, hence with no notice, my perusal of the said case reveals that there was a notice of preliminary objections. The Court held the view that the notice was insufficient as it did not disclose the proper provision that the applicant ought to have cited. Contextually, the preliminary objections were to be disposed of orally. As I stated hereinabove, the notice did not cite any law or provide any particular that reveals the nature and scope of the preliminary objection. In my view, the applicant would be taken by surprise and her defence would be negatively affected which would amount to an unfair hearing. I take that position while mindful of the fact that preliminary objections aim to nib the proceedings in the bud. That being the case, the initiator of the suit or application, as the case may be, is entitled to have a fair hearing that is not tainted with surprises. In the same spirit, I am of the considered view that the defendant or the respondent has a right to raise issues that affect the competency of the suit or application, as the case may be, to save time and costs for litigating incompetent matters. That being the case, the respondents are allowed to amend their notice of appeal. The same should be filed and served on or before 14th March, 2025. It is so ordered.

DATED at MWANZA this 7th of March, 2025. KS KAMANA JUDGE 9

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