

TANZANIA / JUDGMENT

umaiya makilagi musoma vs tabora municipal council others 2023 tzhc 22894 11 august 2023

COURT
TZHCDECIDED
11 August 2023

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

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA THE SUB REGISTRY OF
TABORA AT TABORA LAND CASE NO. 3 OF 2022 UMAIYA MA KI LAG I MUSOMA.....
PLAINTIFF VERSUS TABORA MUNICIPAL COUNCIL..... 1st DEFENDANT THE
REGISTERED TRUSTEES OF THE CATHOLIC ARCHDIOCESE OF TABORA..... 2nd
DEFENDANT THE ATTORNEY GENERAL 3rd DEFENDANT

RULING

Date: 26/07/2023 & 11/08/2023 BAHATI SALEMA, J.: The plaintiff herein named Umaiya Makilagi Musoma is suing the three named respondents Tabora Municipal Council, the Registered Trustees of the Catholic Archdiocese of Tabora and the Attorney General seeking the following orders;

1. A declaratory order of this Court that the suit land described as Plot No. 2 Block "W" is the property of the late Kharid Omary;
2. A declaratory order that the allocation of the suit plot by the 1st defendant to the 2nd defendant was null and void;
3. The suit land be reverted to the plaintiff's father and a restraint order be issued restraining the defendants from interfering with the suit plot;
4. Cost of the suit be borne by the defendants. i Before the suit could come for hearing the defendants lodged separate notices of preliminary objections on point of law that,
 1. The plaintiff has no locus standi to sue the defendants
 2. The suit is hopelessly time barred.
 3. The Plaintiff is bad in law for contravening provisions of Order VII Rule 1(c) (e) and (f) and of the Civil Procedure Code, Cap. 33 [R.E 2019] Based on the above-listed objections the 1st and 3rd defendants pray for the dismissal of the plaintiff's suit with costs. The hearing of Preliminary objections was set to be heard by way of written submissions whereby all the

parties adhered to the scheduled order. Having read and considered the submissions made in support and against the preliminary objections, the issue is to determine whether the points of objection raised by the respondents succeed. Starting with the first point of objection on locus standi, the respondents made reference to the cases of Lujuna Shubi Baionzi vs. Registered trustees of Chama Cha Mapinduzi [1996] TLR 208 and the case of Peter Mpaianzi vs Christina Mbaruka, Civil Appeal No. 153 of 2019. In both cases, the Court emphasized that a plaintiff or applicant must show not only that the court has the power to determine the issue but also that he is entitled to bring the matter before the Court. Applying the principle of the law to the case at hand it is evident that the plaintiff is suing the defendants in his own name Ilmaiya Makilagi Musoma nowhere he has informed the court that he is suing in the capacity of the administrator of the estate of his late father, in paragraph 2 of the plaint, he informed the Court that he was appointed the administrator of the estate of Kharid Omary but he didn't say if he is suing in that capacity that is why the case is registered in his name. For that reason, the plaintiff lacks locus stands to sue the respondent therefore, the objection is sustained. Regarding the second point of objection that the suit is hopelessly time-barred, I think this should not detain me to address because from the 1st to the last page of the plaint, it does not state when the cause of action arose rather the whole plaint is explaining about the exchange of correspondences between Kharid Omari(deceased), Nusra Kharid, Nusara Omari and the respondents. Paragraph 2 of the plaint states about the exchange of letters dated 20th October 2004 and 05 January 2012 while paragraph 6 states about allocation made on 6th September 2021 to the 2nd defendant but none of the two paragraphs tells the time when the cause of action arose; absence of that important information the court has failed to find an exact mark as to when the cause of action arose so that it could start counting the limitation of time as per the law of limitation. For that reason, the objection has merit. As to the third objection that the Plaint is bad in law for contravening provisions of Order VII Rule 1(c) (e) and, (f) and of the Civil Procedure Code, Cap. 33 [R.E 2019]. Order VII Rule 1 (c) (e) and (f) states that, I quote The plaint shall contain the following particulars (a)..... (b).....

- (c) the name, description and place of residence of the defendant including email address, fax number, 3 telephone number and post code if available, so far as they can be ascertained; (d).....
- (e) the facts constituting the cause of action and when it arose;
- (f) the facts showing that the court has jurisdiction; Indeed, as rightly stated by the defendants the plaintiff did not follow the mandatory requirement of law set in sub rule 1 (c), (e) and (f) to Order VII of the Civil Procedure Code. The description and addresses of the defendants are not listed in the plaint, and having read the whole plaint it is unclear on the cause of action and the time the same rose. For that reason, I sustain the objection by joining hands with the defendants that the plaintiff's plaint is defective. In the circumstance, and for the reasons stated herein above, the plaintiff's suit is struck out. Order accordingly. Right of appeal explained. A. BAHATI SALEMA JUDGE 11/08/2023 Court: Ruling delivered in

presence of both parties. Xu A. BAHATI SALEMA JUDGE 11/08/2023 4

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/305771/source_file/umaiya-makilagi-musoma-vs-tabora-municipal-council-others-2023-tzhc-22894-11-august-2023.pdf

CASE PAGE <https://chat.esheria.ai/case-law/tanzania/umaiya-makilagi-musoma-locusstandi-tzhc-2023>

Prepared on 14 October 2026 · Esheria