

TANZANIA / JUDGMENT

LAND CASE NO 8797 of 2024 scnd 1

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TANZLIIDECIDED
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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM LAND CASE NO. 8797 OF 2024 UMOJA WA WAFANYABIASHARA WA SOKO LA NDIZI MABIBO.. PLAINTIFF VERSUS ATTORNEY GENERAL..... 1stDEFENDANT
PRESIDENT'S OFFICE, MINISTRY OF REGIONAL ADMINISTRATION AND LOCAL GOVERNMENT..... 2ndDEFENDANT UBUNGO MUNICIPAL COUNCIL..... 3rdDEFENDANT OFFICE OF THE REGIONAL COMMISSIONER DAR ES SALAAM REGION..... 4th DEFENDANT

RULING

09/7/2024 & 30/7/2024 A. MSAFIRI, J The herein above plaintiff instituted this suit against the above defendants claiming among other things for declaration that the plaintiff is entitled to the permanent ownership, occupation, use and control of the suit land located at Mabibo Area, behind Urafiki Textile Mills, which is commonly known as Soko la Ndizi Mabibo with Title No.28456 where the market activities are being carried out. The plaintiff also seek for declaration that the 4th defendant's order putting the management and i operations of the Soko la Ndizi Mabibo under the 3rd defendant was illegal and that the acts by the 3rd defendant of taking over the management and control of the market affairs and its presence at Soko la Ndizi Mabibo are illegal. The defendants filed their written statement of defence and with it they raised two preliminary objections that:-

- i. The suit is incompetent for contravening Section 6 of the Government proceedings Act. ii. The suit is incompetent for want of focus standi. The disposal of the preliminary objection was by way of written submissions whereas, the plaintiff was represented by Mr. Benitho L. Mandele learned Advocate while the defendants enjoyed the legal service of Mr. Daniel Nyakiha learned Senior State Attorney. On his submission in support of the preliminary objection Mr. Nyakiha learned State Attorney submitted that this suit contravenes Section 6(2) of the Government Proceedings Act, Cap 5 [R.E.2019]. He stated that the provision above requires the plaintiff before instituting any suit against the Government like in this suit to give ninety days⁷ notice to the Government and that such requirement is compulsory.. 2 He further stated that though the notice was served to the Solicitor General, the same was not served to the Attorney General, therefore that the provision of the law was never complied with, hence that this suit must be struck out with costs. On the second preliminary

objection, Mr. Nyakiha learned State Attorney, submitted that the plaintiff has no locus standi to sue the defendants on its own name as UMOJA WA WAFANYABIASHARA WA SOKO LA NDIZI MABIBO unless it is a registered body corporate or a Registered Trustees under Trustees Incorporation Act, Cap 318 [R.E. 2002], he further added that the court will not grant any relief to persons who have no sufficient interests and who are not party in the matter. To bolster the point above, he cited the case of Jung Hwan Kim and Another vs Tanzania Presbyterian Church, Civil Case No. 98 of 2019, HC (unreported) where this court struck out the case for having contravened Section 8(1) of the Trustees Incorporation Act and indicated that the court cannot proceed to hear the suit in which one of its parties is as good as not existing as to so do it is tantamount to deciding the matter against no person before the court as it is not a body corporate. J 3 He prayed that this suit be struck out for two reasons, failure to issue the 90 days' notice to the defendants and lack of locus standi to sue the defendants. On reply, Mr. Mandele contended that the raised preliminary objection is premature and misconceived on the ground that the defendants admit the 90 days' notice to have been served to the Solicitor General and that the proof of service is available where the defendants signed the dispatch that will be tendered as evidence during the hearing. That this fact would need evidence which disqualifies this point of objection as per the principle set in the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696. That the position in the case of Kukutia Ole Pumbuni vs Attorney General and another 1993 TLR 159 (CA) cannot be applied in this suit because in this suit the 90 days' notice were served to the defendants. On the second preliminary objection, Mr. Mandele was of the view that the plaintiff has full capacity to sue the defendants on its name UMOJA WA WAFANYA BIASHARA WA SOKO LA NDIZI MABIBO as business organisation, having a TIN Number 152-801-858, and that the 4 plaintiffs derives its power to sue from incorporation registration under the Societies Act, Cap 337 [R.E. 2002]. He further stated that the plaintiff has all the capacity to sue the defendants as a business organisation because it does not fall within ambit of Section 2,3, and 8 of the Trustees Incorporation Act, Cap 337 [R.E. 2002]. The counsel for the plaintiffs argued that the position in the case of Jung Hwan Kim and Another vs Tanzania Presbyterian Church, (supra), is distinguishable from this suit, since in the cited case the court was dealing with pure charitable (religious) organisation whose incorporation is under Section 8 of the Trustees Incorporation Act, Cap 318 [R.E. 2002]. He prayed that the preliminary objection raised be overruled with costs. After a careful scrutiny of the rival submissions of the parties, I will start by determining the second preliminary objection as to whether the plaintiff has the capacity to sue on its registered name UMOJA WA WAFANYA BIASHARA WA SOKO LA NDIZI MABIBO (UWASONDIMA). I should make it clear that capacity to sue and be sued is vested to the individuals and none individuals/artificial personnel that acquires the status of legal entity like a company incorporated under the Companies Act of 2002 and other entities incorporated under the Trustees Incorporation Act, Cap 318 [R.E. 2002], the plaintiff is none of them. It is my view that UMOJA WA WAFANYA BIASHARA WA SOKO LA NDIZI MABIBO (UWASONDIMA) does not fall under what is called artificial personnel or the status of legal entity vested with capacity to sue on its name, as a result I find the plaintiff to have no locus

standi to sue, and the reason is simple that the plaintiff is not a legal entity capable of suing on its own name. In the upshot, I find that the second preliminary objection to have merit, I sustain it, and since the same is adequate to dispose this suit, I see no need to determine the first preliminary objection. For the foregoing reasons, I find that this suit is incompetent before this court and it is hereby struck out with no order as to the costs. It is so ordered. 6

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Prepared on 14 October 2026 · Esheria