

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND CASE NO. 161 OF 2023**

**AMOS GEORGE NKHOMA (Sue with a special  
Power of Attorney of ANNA MARIA EMMANUEL RAYMOND).....PLAINTIFF**

**VERSUS**

**RICHARD ACTON MWANKEMWA..... DEFENDANT**

**RULING**

*Date of last Order:17/08/2023  
Date of Judgment:29/09/2023*

**K. D. MHINA, J.**

The "wrangle" between the parties in this suit is the ownership of the unsurveyed land measuring 4550 sqm located in Mbezi Juu within Ubungo District, whereby the plaintiff is praying for the judgment and decree against the defendant as follows;

- i. A declaration that the defendant is the trespasser to the disputed property.
- ii. An order to the defendant to immediately vacate from disputed property and hand over vacant possession and ownership to the plaintiff within seven days from the date of judgment failure of which developments on the plot shall belong to the plaintiff.
- iii. Payment of special damages of TZS. 600,000,000/=
- iv. General damage at the Court's discretion.

- v. Cost to be provided for
- vi. Any other orders or reliefs the Court may deem fit and just to grant.

When served with the plaint, the defendant disputed the claim by filing a written statement of defence. Furthermore, he filed a notice of preliminary objection, which contained two grounds, namely;

- i. The suit is time-barred.*
- ii. The plaintiff lacks locus standi to sue in his own name.*

The preliminary objection was argued by way of written submissions.

The plaintiff was represented by Mr. Amon Crescent Ndunguru, learned advocate, while the defendant was represented by Mr. Wilson Edward Ogunde, learned advocate.

The arguments by Mr. Ogunde to support the first limb of the P.O were that according to paragraph 9 of the plaint, the defendant trespassed into the suit land in 2017; therefore, the law under item 6 of Part I to the schedule of the Law of the Limitation Act, Cap 89 R.E 2019, any suit which is founded on trespass has to be filed in court for a period not exceeding three years from the date/time when the cause of action arose. Therefore, this suit is time-barred in terms of section 3 (1) of the same Act.

He narrated that the cause of action arose in 2017; therefore, this suit was supposed to be filed latest in 2020.

On the second limb of P.O., Mr. Ogunde submitted that the plaintiff has no locus to sue in his own name because the Power of Attorney was granted to the plaintiff and one Matola Chijue Nkhoma. Therefore, the duo should act jointly.

He argued that failure to implead Matola Chijue Nkhoma renders the suit incompetent.

On the way forward, he prayed for the suit to be dismissed.

Briefly, in response, Mr. Ndunguru submitted that the suit is for the recovery of land unlawfully occupied by the defendant; therefore, it is not a trespass under tort.

Further, he argued that the time limit for recovery of land is 12 years as per the 1<sup>st</sup> schedule of the Law of Limitation Act, Cap 89 R: E 2019. Therefore, the plaintiff was within time.

Concerning the second limb of P.O., apart from attacking it, that it falls short of the requirements enunciated in cited **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd (1969) E. A 696**, but he also submitted that the plaintiff had the capacity to institute this

case since he was granted full powers as well as for another done.

He further argued that the process of instituting this suit was lawfully done by a person with full powers.

Mr. Ogunde filed the rejoinder, but I don't see the reason to paraphrase it here because it reiterated his earlier submission but with more explanations.

Having gone through the pleadings, their annexures, and the submissions for and against the P.O., I will start with the second limb of the P.O. regarding the locus standi of the plaintiff.

On this, it is essential to understand the meaning of locus standi. Briefly, the Court of Appeal has already expressed what locus standi means in **Peter Mpalanzi vs Christina Mbaruka**, Civil Appeal No. 153 of 2019 [Tanzlii], where it was held that an expression locus standi means;

*"the right or legal capacity to bring an action or to appear in court"*.

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, as it touches and goes to the jurisdiction of the court, then it is a pure point of law, and it qualifies the conditions set in **Mukisa Biscuits Manufacturing (Supra)**.

Flowing from above, therefore, the preliminary objection raised is a pure point of law, and it qualifies as a P.O., as per the conditions set in **Mukisa Biscuits Manufacturing (Supra)**, and it was properly raised.

Reverting to the matter at hand, the plaintiff instituted this matter as a person representing AnnaMaria Emmanuel Raymond with a Special Power Attorney.

That Special Power of Attorney (Annexure DA 11) dated 29 July 2022 indicates that the doner AnnaMaria Emmanuel Raymond appointed by the special power of attorney, the donees, Matola Chijua Nkhoma and Amos George Nkhoma (the plaintiff). It is written;

*"BY THIS POWER OF ATTORNEY GIVEN on the 29<sup>th</sup> of July 2022, I ANNAMARIA EMMANUEL RAYMOND of P.O Box 10131, MWANZA*

*"DO HEREBERY Ordain, nominate and appoint one MATOLA CHIJUA NKHOMA of P.O BOX 71133 Dar es Salaam and AMOS*

*GEORGE NKHOMA of P.O BOX 71133 Dar es Salaam, to be true and lawful Attorney with full powers and authority to;*

*a) Sign, execute, deliver and/or receive all legal instruments and/or any other document for the purpose of processing and or completing, executing and/or submitting to the relevant authority, including instituting any legal proceedings against me.*

*THESE POWERS ARE SO ORDAINED FOR THE PURPOSE OF*

*1. Unregistered Land comprised in town planning drawing with No. TP MISC.37.397 LAYOUT, Kinondoni Dar es Salaam 4550 sqm located at Mbezi Juu-Kinondoni Municipality."*

In circumstances such as the above, I have the following observations;

**First**, from a power of attorney itself, it is clear the plaintiff cannot act alone in any act appointed by that power of attorney. Those appointed are inseparable. The plaintiff cannot sue alone without the other donee, Matola Chijua Nkhoma, because the Special Power of Attorney provides joint powers for the donees.

Further, the plaintiff's decision to act alone, taking matters into his own hands and assuming the powers of a solitary donee in exclusion of the co-donee amounts to the excess of his mandate as a co-donee. The plaintiff cannot act in solitude without involving co-donee.

**Second**, the pleadings and its annexures do not indicate any reason (s) for the non-involvement of the co-donee. On this, admittedly, I came across no law which provide for the secenario, but in my view, it is not proper for one of the co-donee to act without the knowledge or approval of the others. I think if one of the donees wishes to act alone, they must first get the consent of the co-donee or even the donor themselves.

From the above discussion, an act of the plaintiff to act alone, rendering the terms and directives contained in the Special Power of Attorney meaningless while they meant to serve the purpose.

Therefore, flowing from above, this application is not proper before the Court for want of the plaintiff's locus standi by failing to join the co-donee in the institution of this suit.

Consequently, the suit is struck with costs.

I order accordingly.



  
**K. D. MHINA**  
**JUDGE**  
**29/09/2023**