

26

IN THE HIGH COURT OF TANZANIA
AT DAR ES SALAAM

CIVIL CASE NO. 29 OF 1998

CHARLES MUSAMA NYIRABU.....PLAINTIFF
VERSUS
THE CHAIRMAN (DSM) CITY COMMISSION & OTHERS....DEFENDANT

R U L I N G

KALEGEYA, J.

Mr. Jasson, Advocate, for 1st Defendant and Mr. Ngalo, Advocate, for 2nd and 3rd Defendants, have raised a preliminary objection that where the dispute concerns a registered land the High Court has no jurisdiction as the same is ousted by S. 22(2) of the Land Ordinance, Cap 113; citing (HC) Civil Appeal No. 39 of 1992, Dsm City Council & 2 Others vs C. M. Mundebe and another (unreported - Dsm Registry) they insisted that the only court bestowed with jurisdiction is the District Court manned by a District Magistrate, and also that filing the matter in the High Court instead of the District Court which is the lowest court competent to hear it violates S. 13 of the Civil Procedure Code.

As to how the parties came to find themselves within the gates of this court the story goes as under.

Way back 1992\93 the plaintiff bought a piece of unsurveyed land in Msasani area, Kinondoni District, Dar es Salaam, from Terezia Cosmas. By 1997 the whole of what was known as 'Msasani Bonde la Mpunga' or Butiama village (which covered plaintiff's land as well) was surveyed by the City Commission (1st Defendant) and divided into plots. The plaintiff's land was divided into three plots - Nos. 866, 867 and 868. The 1st Defendant proceeded

to allocate the plots which process earned for plaintiff only plot No. 868 while plots No. 866 and 867 were allocated to 2nd and 3rd Defendants contrary to wishes and expressed expectations by plaintiff that they should all, the three plots, be allocated to him. Embittered by this act of allocating what he believes to be his land to people who were not in possession thereof the plaintiff brought the present action, claiming against the defendants, for, among others,

"(i) a declaration that plot 866 and 867 belongs to the plaintiff as a single piece together with plot 868.

(ii) the allocation to 2nd and 3rd Defendants of plots 866 and 867 be declared null and void

(iii) allocations to 2nd and 3rd Defendants be revoked and plots concerned be allocated to plaintiff, and the structures already put up by 2nd and 3rd Defendant be pulled down.

(iv) In the alternative, be paid compensation by way of specific and general damages (a) Tshs. 1.5 million with 35% interest p.a. since 1992\93, (b) Tshs. 20,000,000/= as general damages.

(v) 12% interest on decretal sum up today of payment".

Apart from the usual denial of liability contained in their written statement of defences (whose details, in the circumstances, are unnecessary) the defendants also raised the above indicated preliminary objections hence the present ruling. Mr. Nyanduga, Advocate, appeared for the plaintiff, Mr Jasson,

Advocate for the 1st Defendant while Mr. Ngalo, Advocate, appeared for 2nd and 3rd Defendants.

During submissions, Mr. Jasson and Mr. Ngalo advocates briefly reiterated what they consider to be the two legal points, adding however that the sum of over 20m Tshs is just speculative, while Mr. Nyanduga strenuously wriggled to go around them by saying that as much as he concedes the contents of s. 22 (2) Cap 113 as supporting the broader objection, the District Court would not have jurisdiction, because, contained in the plaint is a claim for damages for the sum of over 12 million shillings, the maximum jurisdictional limit of a District Court. As to section 13 of the CPC, Mr. Nyanduga calling, Mulla, On Civil Procedure, (13th Ed. pages 125-7) a commentary on s. 15 of the Indian code which is in pari materia with our s. 13 CPC, insisted that the principle enunciated thereunder does not go to the roots of the jurisdiction, and that it is the plaintiff's evaluation of his claim which determines the jurisdiction of the court.

Enough for the facts and arguments, what does the law say? s.22(2) of the Land Ordinance, cap 113, provides,

"All claims (other than claims against the government) arising under the provisions of this ordinance in respect of any rights acquired under a right of occupancy in respect of land situate within the jurisdiction of a district court, presided over by a District Magistrate, shall be prosecuted before such court, and no appeal shall lie from the decision of such court.

Provided that the President may, if he thinks fit, transfer any such case at any stage of the proceedings to the high Court, or order a retrial by the High Court"

S.13 of the Civil Procedure Code provides,

" Every suit shall be instituted the court of the lowest grade competent to try it. For the purposes of this section a court of a resident Magistrate and a district court shall be deemed to be courts of the same grade".

From the clear provisions of the law quoted above I can not see how Mr. Nyandunga's endervours can assail the defendant's preliminary objections. The wording in S. 22(2) of the Land Ordinance, Cap 113 is very clear. The only exceptions it makes are those where the government is made also a defendant, or where under the proviso to the section, the President, if he thinks fit, transfers the proceedings to the High Court. None of the exceptions can be invoked here as they don't exist. As regards, Mr. Nyanduga's argument that so longer as the claim involves sums above the jurisdictional limit (12 million TSHS) the matter should be filed in the High Court, with respect, that can not be bought by this court let alone any court. As I said, the provisions of s.22(2) Cap, 113, are so express and direct, that to hold otherwise, and in the way Mr. Nyanduga would want us to do, would be tantamount to interpolating this provision and not interpreting the law as courts are supposed to do: in the process crossing over into the domain of the legislature. So longer as the claim arises under the provisions of cap 113 in respect of any rights acquired under a right of occupancy, regardless of the sums involved, the said claim must be filed in the District court unless the government is involved or subsequent to filing, the President transfers it.

Turning to s.13 CPC, with respect to Mr. Ngalo and Jasson, if the provisions of s.22 (2) of cap 113, did not apply , then s. 13 CPC would not have aided them. As rightly submitted by Mr. Nyanduga, it is the plaintiff who sets the pecuniary jurisdiction of his claim. It is him who knows what he claims. Until it is argued the exact amount that would be awarded by the court would be unknown. At the same however s. 13 CPC does not oust the jurisdiction of a higher court: any one who goes counter to that provision would be committing an irregulariy but that is the maximum one can be blamed for. As commented by the learned

Author, Mulla, on a similar provision, and called to his aid by Mr. Nyanduga,

"The section is a rule of procedure, not of jurisdiction, and whilst it lays down that a suit shall be instituted in the Court of the lowest grade, it does not oust the jurisdiction of the courts of higher grades which they possess under the Acts constituting them".

The purpose behind is to avoid over-crowding higher Courts with suits which could easily be disposed of by lower courts. In normal situations, cases involving less than 12 million Tshs. would be ordered by the High Court to be tried by subordinate courts. However if the said High Court does not do so and proceeds to hear it it can only be accused of committing an irregularity and not lacking jurisdiction.

In the case at hand, if it weren't for the provisions of s. 22(2) of Cap. 113, the discussed problem would not have arisen, for, clearly the alternative claim is above 12 million, Tshs, for which the District Court has no jurisdiction. An alternative claim is not an ancillary claim as Mr. Jasson and Ngalo would want us to believe. It is equally a main claim only that it is in the alternative. The question whether it is speculative or cannot be granted would depend on evidence, and in any case that would be after the whole matter had been heard. That said however, section 22(2) of Cap. 113 ousts pecuniary jurisdiction: so longer as the matter is not caught up in the two exceptions above a District Court can hear any case involving any amount.

On the whole, as was observed in Civil Appeal No. 39 of 1992, referred to above, and as already discussed, this court lacks jurisdiction in terms of s. 22 (2) of the Land Ordinance, cap 113, thus the preliminary objection on ground one is upheld.

Following prayers made by Mr. Nyanduga, Advocate, while arguing the application, it is hereby ordered in terms of Order

VII, Rule 10 of the Civil Procedure Code that the plaint be returned to him for presentation to the Kinondoni District Court, and shall accordingly be endorsed as per requirements of that order of the CPC.

(L. B. Kalegeya)

JUDGE

Delivered on.....

(L. B. Kalegeya)

JUDGE