

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND CASE NO. 105 OF 2011

**CLARA NGOYAI LOWASA PLAINTIFF
VERSUS
CRDB BANK PLC DEFENDANT**

R U L I N G

A.F. Ngwala,J.

The Plaintiff had Mortgaged a house situated on Plot No. 586 Block D, Mbezi, Dar es salaam (C.T. No. 47300) to the Defendant's Bank. Before the mortgage could be discharged, she filed this suit praying for Orders, judgment and Decree against the Defendant as follows:-

- (i) *A declaration that the Plaintiff is entitled to redeem the Mortgaged assets.*
- (ii) *The Defendant Bank reschedules within the agreed repayment period.*
- (iii) *Costs of the suit and*
- (iv) *Any other relief that the Honourable Court may deem fit and just to grant.*

In the Written Statement of Defence the Defendant raised a Preliminary Objection on Point of Law that this Land Division of the High Court has no jurisdiction to entertain the matter. With leave

of the Court this Preliminary Objection was argued by way of Written Submissions.

In support of the Objection the Defendant, through the service of Mr. Rweyongeza, learned Counsel submitted that this Division of the High Court (the Land Division) has been established specifically to hear and determine all manner of disputes and proceedings concerning land. He contended as this matter arises from a Mortgage it is not a dispute concerning land that would have come in if the landed property was sold in exercise of power of the provisions of the Land Act.

In reply the Plaintiff through the services of Brick House Law Associates Advocates submitted that the facts as pleaded in the Plaint show the dispute between the Plaintiff and the Defendant, that is the Defendant is wrongfully interfering with the Plaintiff property, and has taken steps to illegally interfere with the Plaintiff's title to land situated on Plot No. 586 Block D, Mbezi, C.T. No. 47300.

In rejoinder, Mr. Rweyongeza submitted that since there is a mortgage it does not make it "*ipso facto*" a dispute concerning land.

He concluded that attempts to sell the land which was pledged as a security does not constitute a dispute concerning land.

I have carefully gone through the pleadings and the submissions of the parties. There is no doubt and it is not in dispute that the Plaintiff had secured a loan from the Defendant Bank and mortgaged a house and had executed a chattel mortgage over two buses with registration numbers T. 479 AUU and T.497 AUU.

The basic issue before me is whether this is a land dispute. Without saying much, a land dispute is the one which touches and concerns land of land, or the dispute involving the dispute on Landlord and Tenant, whose cause of action directly arise from land or landed property. A land dispute does not arise from a Cause of action which is a consequence of a contract not relating to land matters.

The question whether a suit arising from a mortgage is a land dispute had been in debate but had already been settled. In the case of **Britania Biscuits Ltd Vs. NBC and others** Land case No. 4 of 2011 The court ruled out that a mere fact that landed properties were mortgaged will not turn the matter to a land dispute. The matter is purely commercial in nature and it is an outcome of an unperformed Commercial transaction which is far away from the jurisdiction of the Land Division of the High Court.

In my ruling in the above case (Britania Biscuits)I cited with approval the holding of my learned brother,Mziray,J. in his Ruling

in **Exim Bank (T) Ltd Vs. Anglo Impex (T) Ltd & Others, Land Case Appeal No. 29 of 2008** where he said:-


“Two matters have to be looked upon before deciding whether the court is clothed with jurisdiction. One, you look at the pleaded facts that may constitute a cause of action. Two, you look at the reliefs claimed and see as to whether the court has power to grant them and whether they correlate with the cause of action. The claim therefore against the first Defendant is found on a credit facility. On the part of the second and third Defendants the cause of action is founded on a contract of guarantee..... on looking at the prayers you will find none is related to land. The mere fact that the 2nd and 3rd Defendants have put some security for the loan doesnot turn the suit to be a land Dispute...”

See also the reasoning of Kalegeya,J. in the case of **Rashidi Mangaldas Taichura & Others Vs. Lavender Villas Ltd & Others, Comm. Case No. 197 of 2002.**

In that effect, the nature of the Plaintiff's case cannot be entertained by this court. The Plaintiff's case is not a land Dispute properly so called. It has to be adjudicated in another forum with proper jurisdiction, the court which deals with disputes arising

from contractual matters that does not touch land or landed property.

For that reasons, I uphold the objection raised by the Defendant. Consequently, I strike out this suit with costs.


A.F. Ngwala,
JUDGE,
06/11/2012

Delivered in Court this 06 day of November, 2012


A.F. Ngwala,
JUDGE,
06/11/2012

6/11/2012.

Coram : Hon. A.F Ngwala,J.
For Applicant/Plaintiff : Absent.
For Respondent/Defendant : Mr. Sangudi.
B/c: Jane.

Court: Ruling delivered in court in the presence of Mr. Sangudi for the Defendant/Respondent and in the Absence of the Plaintiff.

Court: Plaintiff's to be notified accordingly.


A.F. Ngwala,
JUDGE,
06/11/2012