

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DARESALAAM

LAND CASE No. 11 OF 2014

GABRIEL R. RWAKABARE.....PLAINTIFF

Versus;

1. REV. GETRUDE RWAKATARE.....1ST DEFENDANT.
2. MISSION TO THE NEEDY.....2ND DEFENDANT.

RULING

17/6/ 2013 & 23/9/2014.

Utamwa, J.

This is a ruling on a preliminary objection (PO) lodged by the defendants REV. GETRUDE RWAKATARE and MISSION TO THE NEEDY against the suit and an application filed by the plaintiff, GABRIEL R. RWAKABARE. In the suit the plaintiff alleges that the defendants breached a lease agreement executed between him (as land lord for house on plot number 475, Kawe, Mlalakuwa, Kinondoni Municipality, in short the suit premises) and the two defendants as tenants therein. The plaintiff claims for the following reliefs;

- a. Payment of the outstanding rent of US Dollars 36, 000. 000 or the equivalent in Tanzanian shillings (Tshs.) at the rate of exchange on the date of judgement.
- b. Payment of Tshs. 20, 464, 250/= being costs of completion of the house.
- c. Payment of mesne profits from February, 2014 assessed at the monthly rate as per the lease agreement up to the date of judgment and or completion of repair whichever comes earlier.
- d. Interests on the decretal sum at the court rate of 12% from the date of filing the suit until payment in full and;
- e. Costs of the suit.

The application was filed by way of chamber summons supported by the applicant's affidavit seeking for an order permitting him to take possession of the suit premises and carry out necessary repairs therein.

The PO raised by the defendants is thus footed on the following three points, namely:

1. That the court is not vested with original pecuniary jurisdiction to adjudicate the matter.
2. That the application is not properly before the court for not disclosing the proper provision of the law under which the application has been filed.
3. That the affidavit in support of the application is incurably defective for violating the provisions of Order 19 rule 3 (1) of the Civil Procedure Code (Cap. 33 R. E. 2002).

The plaintiff did not concede to the PO. Parties agreed, and the court then directed that the first point of PO relating to the suit (main suit) could be argued first because; the other two points are related to the application which is based on the main suit. It was also directed that the PO be disposed of by way of written submissions.

In their written submissions in chief however, the defendants argued both the first and second points of PO. They expressly abandoned the third point of PO. In his replying submissions the plaintiff also covered both the first and second points of PO. Though it was ordered that parties could first converse on the first point of PO, I will consider (in this same ruling) all the arguments related to both the first and second points of PO as long as the parties have advanced their respective arguments. That course will not occasion any miscarriage of justice. I will thus first discuss and decide on the first point of PO. In case the first point of PO will be overruled, I will then proceed to consider the second point of PO (related to the application). In this matter, the plaintiff was represented by Mr. Rutabingwa learned counsel (of Rutabingwa and Co. Advocates) while the defendants were advocated for by Mr. Mwesigwa, learned counsel (from Mawala Advocates).

In supporting the first point of the PO the learned counsel for the defendants essentially argued thus; according to s. 13 of Cap. 33 a suit must be instituted in the court of the lowest grade competent to try it. The pecuniary value of the suit at

hand is approximately 70, 000, 000/= attracting the pecuniary jurisdiction of a Resident Magistrates' Court which is Tshs. 150,000, 000/= for immovable properties and Tshs. 100, 000, 000/= for movable properties. The counsel cited s. 40 of the Magistrates' Court Act, Cap. 11 R. E. 2002 as amended by the Written Laws (Miscellaneous Amendments) Act, 2002 (No. 25 of 2002) to support the contention. He thus submitted that the suit ought to have been filed before a Magistrates' Court, hence this court lacks pecuniary jurisdiction. He supported this stance by the case of **Courtyard Dar es salaam v. The Managing Director Tanzania Postal Bank, Commercial Case No. 35 of 2003** (unreported). He thus urged this court to strike out the suit for been improperly instituted.

As to the second point of PO the learned counsel for the defendant submitted that, the application was wrongly brought before the court under Order XXXVII rule 8 (1) (b) of Cap. 33 which essentially does not state the orders which the court may grant. He also argues that the plaintiff/applicant would have properly moved this court by citing both Order XXXVII rule 8 (1) (a) and (b) of Cap. 33, but he did not do so. The counsel further contended that, failure to cite specific provisions of the law under which an application is made renders the application incompetent and liable to be struck out. He cited the Court of Appeal of Tanzania (CAT) decision in **Citibank Tanzania Limited v. Tanzania Telecommunication Company Limited, Civil Application No. 64 of 2003** to support his argument.

In his replying submissions related to the first point of PO the learned counsel for the plaintiff basically submitted that, according to s. 2 (1) of the Judicature and Application of Laws Act, Cap. 358 R. E. 2002 this court has unlimited pecuniary jurisdiction. He added that it is not clear whether in the **Courtyard Dar es salaam case** (supra) the Commercial Court faced a similar issue to the one under discussion since the learned counsel for the defendant did not attach any copy of that unreported precedent.

Alternatively, the learned counsel for the plaintiff contended that, the applicable law in the matter under discussion is the Land Act, Cap. 113 R. E. 2002 and the Land Disputes Courts Act, 2002 (Cap. 216, R. E. 2002). He added that according to s. 37 (a) Cap. 216, the High Court (Land Division) has pecuniary jurisdiction in respect of proceedings for recovery of possession of immovable property the value of which exceeds Tshs. 50, 000, 000/=. Again, he argued that

under s. 37 (b) of the same Act, the High Court has pecuniary jurisdiction to entertain other proceedings in which the value of the subject matter is capable of being estimated at monetary value and exceed Tshs. 40, 000, 000/=. He thus concluded that, the suit was properly filed in this court which can also entertain land cases like the Land Division of the High Court for, a judge of this court has jurisdiction to try any matter the jurisdiction of which has been conferred on the High Court. He cited s. 5 of Cap. 358 to strengthen this last contention.

Regarding the second point of PO the learned counsel for the plaintiff contended in his replying submissions that, the application was properly filed under Order XXXVII rule 8 (1) (b) of Cap. 33 which gives this court powers to make orders sought by the plaintiff/applicant, i. e. to enter into the suit premises which has been abandoned. He argued also that the suit premises is covered by the definition of the the terms "land or building" envisaged into such provisions of the law. He further argued that Order XXXVII rule 8 (1) (a) of Cap. 33 which the defendants/respondents want to be cited is irrelevant as it deals with detention, preservation and inspection of property which are not the plaintiff/applicant's interests in this matter. He thus urged the court to overrule this point of PO. I did not see any rejoinder submissions by the defendants. I thus take it that they did not file one.

I now test the first point of PO. The main issue to be determined here is whether or not this court has jurisdiction to try this suit. In my considered view, and according to the respective submissions of the parties and the pleadings, it is not disputed that the value of the subject matter in this suit is estimated at the tune of Tshs. 70, 000, 000/=. The parties are also in consensus that this matter is essentially a Land dispute, hence filed as a land case. Having considered the plaint and the reliefs sought by the plaintiff (as enlisted here in above) I also join hands with the parties on those undisputed facts. The sub-issue here is therefore, which law is applicable in this matter? I am settled in mind that, as long as this is a land case, the applicable law is Cap. 216 as rightly argued by the learned counsel for the plaintiff. Ss. 37 (a) and (b) of Cap. 216 give the High Court the requisite pecuniary mandate as proposed by the learned counsel for the plaintiff. I also agree with him that, like the Land Division (of the High Court), this Registry of the High Court is seized with the requisite jurisdiction to entertain land cases like the one under consideration.

The arguments by the learned counsel for the defendant would be forceful if this was a normal civil case as differentiated from a land case, and the CAT's decision in the case of **M/S Tanzania – China Friendship Textile CO. LTD v. Our Lady Of the Usambara Sisters, TCA Civil Appeal No.84 of 2002, at Dar es salaam** (unreported) would apply in favour of the defendants. But, their arguments are irrelevant in this case for the above reasons. I thus answer the main issue posed above positively to the effect that this court has jurisdiction to try this case and I accordingly overrule the first point of PO.

The above finding attracts the examination of the second point of PO related to the application. The issue in respect of this point of PO is whether or not the application was brought under a proper section of the law. As I hinted previously, in the application the plaintiff/applicant seeks under Order XXXVII rule 8 (1) (b) of Cap. 33, for the order permitting him to take possession of the suit premises and carry out necessary repairs therein. The defendants' counsel does not argue that these provisions are totally irrelevant in this application. What he submits is that it would be proper to cite these same provisions together with Order XXXVII rule 8 (1) (a) of Cap. 33. In my view, while Order XXXVII rule 8 (1) (a) only gives to the High Court powers to make an order for the detention, preservation or inspection of any property which is the subject matter of such suit, or as to which any question may arise therein, Order XXXVII rule 8 (1) (b) gives to it (High Court) powers to authorise, for all or any of the purposes aforesaid, any person to enter upon or into any land or building in the possession of any other party to such suit. These provisions, are therefore, wider than the provisions of Order XXXVII rule 8 (1) (a). Again, I agree as rightly argued by the counsel for the plaintiff, the plaintiff/applicant in this matter did not apply for any order for the detention, preservation or inspection of the suit premises so that Order XXXVII rule 8 (1) (a) can apply.

It follows therefore that, by considering the order sought by the plaintiff/applicant in the application at hand and the powers given to this court under Order XXXVII rule 8 (1) (b) of Cap. 33, it is clear that this court has the powers under such provisions of the law to entertain what has been sought by the plaintiff/applicant. For these reasons, the cited provisions of law sufficed to move this court in this application and formed a sufficient citation of the law in the application according to the envisaging by the CAT decision in **Chama Cha**

Walimu Tanzania v. The Attorney General, TCA Civil Application No. 151 of 2008, at Dare es Salaam (unreported). It was thus not necessary for the applicant to cite the said additional and irrelevant provisions suggested by the learned counsel for the defendant/respondent. I consequently determine the issue in respect of the second point of PO positively.

Having observed as above, I overrule the entire PO raised by the defendants. It is accordingly ordered.

JHK. UTAMWA.

JUDGE

23/9/2014.

23/9/2014

CORAM; Hon. Utamwa, J.

For; Applicant Mr. Brashi, advocate.

For 1st Respondent; Absent.

For 2nd Respondent; Absent.

BC; M/s. Janeth.

Court; ruling delivered in the presence of Mr. Brashi, learned advocate for the plaintiff/applicant, and in the absence of the defendants who do not attend the court, this 23rd day of September, 2014 in chambers. The defendants/respondents be notified.

JHK. UTAMWA

JUDGE

23/9/2014