

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

CIVIL CASE NO. 123 OF 2016

1. MAGWEIGA MUNANKA SAMO 1ST PLAINTIFF
2. SAID KHERI 2ND PLAINTIFF
3. BENEDICT PETER MASSAWE 3RD PLAINTIFF

VERSUS

1. ALOYCE KISENGA KIMBORI 1ST DEFENDANT
2. HAMIDA RAMADHANI MANARA 2ND DEFENDANT

Date of Last Order: 22/11/2016

Date of Ruling: 08/02/2017

RULING

FELESHI, J.:

The plaintiffs sues the defendants for Tshs. 378,955,500/= being special damages for loss of properties during unlawful eviction, payment of Tshs. 485,000/= being mesne profits for loss of business from 27/01/2015 until final payment also for declaration orders that the 1st defendant had breached an implied lease covenant by failing to ensure plaintiffs' peaceful enjoyment and quiet possession of the leased premises.

They also pray for declaration that the 2nd defendant has unlawfully evicted the plaintiffs from the suit premises described as house No. 19 Plot 12 Block 21, Kariakoo area in Ilala District in Dar es Salaam vide Certificate of title No. 77978 in land office No. 265923. Moreover, they pray for general damages at Tshs. 100,000,000/= to each of the plaintiffs, costs of the suit and any other relief(s) that the Court deem just to grant.

In defence, counsel for the defendants altogether raised two (2) preliminary points of objection to wit that:-

- 1. The suit does not disclose cause of action against the 1st defendant.**
- 2. The cause of action having originated from land matter, this Court sitting as a civil Court has no jurisdiction to entertain the same.**

Hearing of the objections was conducted by written submissions whereas the 1st defendant was represented by Topnotch Attorneys (Advocates) while the 2nd defendant engaged services of Sanis Law Attorneys. On the other hand, the plaintiffs were represented by Smile Stars Attorneys. Parties complied with the schedule, hence, this ruling.

Addressing the preliminary objection, counsel for the 1st defendant submitted for the 1st limb that, it is a statutory requirement per Order VII Rule 1(e) of the Civil Procedure Code, [CAP. 33 R.E, 2002] for the plaint to disclose facts constituting cause of action and as to when it arose.

The 1st defendant's counsel submitted that, the plaintiffs' complaint is on unlawfully eviction from the suit premises by the 2nd defendant and not by the 1st defendant. He thus prays for the plaint to be rejected per Order VII Rule 11 of the Civil Procedure Code (supra) as held by the East African Court of Appeal in **Sullivan vs. Alimohamed Osman** [1959] E.A. 239.

Regarding the 2nd limb, counsel for the 1st defendant submitted that, the dispute is over land specifically on landlord and tenant thus ought to have been instituted as a land case unlike civil cases as it presently stands thus seizing jurisdiction of this Court from entertaining it for that goes into the root of the case. He thus urges for the suit to be struck out with costs.

On his part, counsel for the 2nd defendant submitted for the 2nd limb that, section 3(1) & (2) of the Land Disputes Courts Act, [CAP. 216 R.E, 2002] excludes jurisdiction on land matters from the ordinary Courts. He added that, being the case, the same should not have been instituted as a normal civil case, rather, as a land matter. He urged for the suit to be dismissed.

In response, the plaintiff's counsel submitted for the 1st limb that, the plaintiff has properly disclosed cause of action as required by law in concise statements on breach of lease covenant, that is, in ensuring peaceful and quite enjoyment of the leased premises leading to unlawful eviction.

Regarding the 2nd limb, the plaintiff's counsel submitted that, in terms of section 2 of the Land Disputes Courts Act, [CAP. 216 R.E, 2002], land matters are triable in the High Court civil registry. Alternatively, being procedural irregularities, the same cannot vitiate the proceedings for it has not occasioned injustice. He cited **Judge In Charge, High Court at Arusha and the Attorney General vs. N.I.N. Munuo Ng'uni**, Civil Appeal No. 45/1998, (Unreported), (Arusha Registry). In rejoinder, counsel for the defendants basically reiterated what they submitted in chief.

Having considered the pleadings and respective submissions by parties, the following are the deliberations of this Court concerning the raised preliminary point of objections.

Regarding the 2nd limb, as correctly submitted by the defendants' counsel, enactment of the Land Disputes Courts Act (supra) vested

- jurisdiction over land matters to the High Court (land Division) whereas the amendments effected to the said Land Disputes Courts Act (supra) vide the Written Laws (Miscellaneous Amendments) No. 2 of 2010 just substituted the term "High Court Land Division" with "High Court" meaning that the ordinary High Court resumed jurisdiction to hear and determine land matters filed in their respective registries. That been said, it is undisputed that, following the amendments, land matters can be determined by both the High Court Land Division and the High Court ordinary registry.

As afore said, if one opts to institute a land matter in the High Court Land Division, obviously, the same will be registered in the land register which is the only available in the Land Registry. The hinging issue is as to which register a land case has to be filed in the ordinary Courts? Through this option, obviously, when one opts to file a land matter in the ordinary Court registry of the Court, the same has to be filed in the land register.

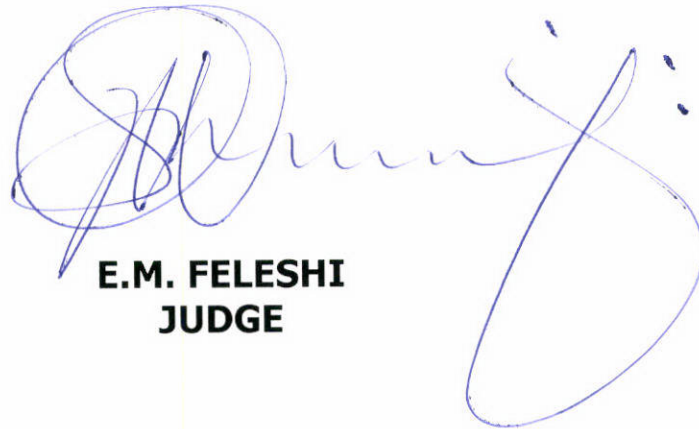
In other words, though a party is at liberty to institute a land matter either in the High Court ordinary registry or in the High Court Land Division, yet, once one opts to institute a land matter in the High Court ordinary registry has to register the same in the land register and not in the normal civil registry as it happened in the matter under scrutiny.

Marking end of this ruling, this Court enjoins parties to properly couch their pleading for registry officers to file them in the appropriate registers for the purposes of avoiding unnecessary mischief preventing the Court to dispense justice on time. In other words, both the litigants and

- courts should aim at facilitating timely delivery of justice and not creating hurdles towards justice delivery.

It is in the above premises, this Court finds the raised 2nd limb of preliminary objection meritorious in law and it is sustained. Thus, the suit is struck out, consequently, with costs. The plaintiffs are at liberty to file a competent suit in the appropriate Court register (if they so wish), subject to the law of limitation. It is so ordered.

DATED at Dar es Salaam this 8th day of February, 2017

A handwritten signature in blue ink, consisting of a large, stylized initial 'E' followed by the name 'M. FELESHI' and a large, sweeping flourish that ends in a small circle.

**E.M. FELESHI
JUDGE**

COURT:

Ruling delivered this 8th day of February, 2017 in the presence of Mr.Msuya, Advocate for the Applicant and Mr.Marlyn Kitali, Advocate for the Respondent.



**E.M. FELESHI
JUDGE**