

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MARUSHA DISTRICT REGISTRY)

AT ARUSHA

LAND CASE NO.23 OF 2017

TANZANIA COMMUNITY DEVELOPMENT

ALLIANCE (TACODA.....PLAINTIFF

VERSUS

JOMUKA GENERAL SUPPLIESD DEFENDANT

MAIGE, J

RULING

This suit has been instituted as a Land Case. However, in accordance with the facts in paragraphs 3, 4 of the plaint and the relief clause thereof, the claims by the plaintiff against the defendant are as follows: First, declaration that the defendant is in breach of contract for failure to pay the balance purchase consideration. Two, for an order of specific performance compelling the defendant to pay the said balance purchase consideration. Three and in the alternative, for an order for rectification of the land register to read that the plaintiff is the lawful owner of the **suit property**.

In his written statement of defense, the defendant has raised two points of preliminary objection and on account thereof, has urged the Court to strike out the application. In the first place, the defendant contends, through his counsel Mr. Robson Makundi, by way of written submissions that, the plaint is improperly verified for want of indication of the date and place of verification. He has relied on the provision of order vi rule 15(1), (2) and (3) of the **CPC** which imposes such a mandatory requirement. In the second place, it is the contention of the defense counsel that since the suit is based on a breach of contract, the relief of which falling within the jurisdiction of subordinate courts, this matter ought, in terms of the direction under section 13 of the **CPC**, to have been filed to a subordinate court. To buttress his view, the counsel relied on the authority of the Court of Appeal in **TANZANIA CHINA FRIENDSHIP TEXTILE CO. LTD VS. OUR LADY OF USAMBARA SISTERS, (2006) TLR 70.**

In his submissions in confutation, Mr. Makundi, while admitting that the plaint was not properly verified, it was his submissions that the defect does not justify striking out of the plaint. Instead, the plaintiff has to be afforded an opportunity to cure the defect by way of amendment. He has placed reliance on the authorities in **SABAYAGA FARMER'S CO-OPERATIVE SOCIETY VS. MWITA (1969)³⁸ and HIRJI VS. ALIBHAH (1974) E.A.314.** On the second limb of preliminary objection, the counsel submitted, correctly in my view that, the pleaded sum of **TZS 115,000,000/=** as specific performance of the contract and the

alternative prayer for rectification of the land register is not within the jurisdiction of the subordinate courts.


The pecuniary jurisdiction of subordinate courts as it stood at the time of the institution of the case in respect of a movable was TZS 100,000,000/=. The amount claimed therefore was above the jurisdiction of the subordinate court. Besides, neither the subordinate courts nor the District Land and Housing Tribunal, enjoy jurisdiction in rectification of land register as well. The second point of preliminary objection is misconceived and it is accordingly overruled.

On the second ground, I am also inclined to agree with Mr. Makundi that the omission to date the verification clause and indicate the place of verification is a minor defect which can be cured by way of amendment without occasioning any failure of justice. I am, in this my finding, armed with the authority of the predecessor of the Court of Appeal in among others, **HIRJI VS. ALIBHAH (1974) E.A.314.**

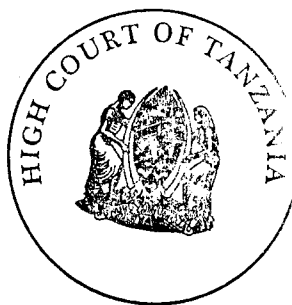
In the final result, the first preliminary objection is hereby overruled. The second point is sustained. However, for the reason I have exhibited above, I will not strike out the suit. Instead, I give an order for amendment of the plaint to indicate the place of verification and the date thereof. In


appreciating the fact that this suit has been pending here for quite a long time, the plaintiff is ordered to effect amendment by hand writing in the copy of the plaint which is in the Court file. I shall not give an order as to costs in the circumstance.

It is so ordered.


MAIGE.I
JUDGE
05.11.2018

Delivered in the present of Mr. Makundi, advocate for the plaintiff and Jenifa John, learned advocate for the defendant this 5th day of November 2018.




MAIGE.I
JUDGE
05.11.2018