

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

AT DAR ES SALAAM

LAND CASE NO. 28 OF 2017

SIKUDHANI ABDALLAH MSHANA1ST PLA INTIFF

RAJABU ABDALLAH MSHANA2ND PLAINTIFF

VERSUS

BANK OF AFRICA (T) LIMITED 1ST DEFENDANT

ABDALLAH IDDI MSHANA2ND DEFENDANT

SHANA GENERAL STORE LIMITED3RD DEFENDANT

28/2/2018 & 16/3/2018

RULING

I.P.KITUSI,J.

The complaint in Land case No. 28 of 2017 seeks for an order of declaration that Sikudhani Abdallah Mshana, the first plaintiff is the lawful owner of houses described as being on Plot No. 53 Block "JJJ" section V Karanga Area Moshi Municipality, Plot No. 58 Block JJJ" section V Moshi Municipality; Plot No 60 Block "JJJ" V Pasua area Moshi Municipality and; Plot No 453 Block "DD" Sombetini area, Arusha Municipality. It is also prayed that the mortgage created by the defendants namely Bank of Africa, Abdallah Iddi Mshana and Shana General stores Limited over those properties was unlawful for lack of consent by the first plaintiff a spouse.

The plaintiffs are represented by Mr Augustine Kusalika learned advocate whereas the first defendant is represented by Mr. Muganyizi, learned advocate. Mr Muganyizi has raised a point of Preliminary Objection, the subject of this ruling, that this case has been filed in a wrong Registry of the court as the landed properties on the basis of which the suit has been filed, are situated in Moshi and Arusha.

Mr. Muganyizi made a brief address on the point, citing section 14 of the Civil Procedure Code, [Cap 33 R.E 2002] hereafter, the CPC .He submitted that the provision of section 14 of the CPC requires a suit for recovery of immovable property to be filed where the said property is situated. The learned counsel invited the court to seek inspiration from the decision of this court in similar circumstances in the case of **Sikudhani Abdallah mshana V. Bank of Afrika Tanzania Limited & Another** Misc. Land Application No.107 of 2017, HC Land Division (unreported); and **Sikudhani Abdallah Mshana & Another V Bank of Africa & Another,** Misc Land Application No.60 of 2017 Hc (unreported)

Mr. Kusalika resisted the point of Preliminary Objection on the grounds that the first defendant's headquarters is in Dar es Salam and the contract (Annexure GF – 4) was signed in Dar es Salaam. He submitted that the two cases cited by Mr. Muganyizi are not binding on this court.

The two cases cited by Mr. Muganyizi are surely not binding on this court, but section 14 of the CPC is. The said section reads;

" Subject to the pecuniary or other limitations prescribed by any law, suits.-

- (a) For the recovery of immovable property with or without rent or profits;*
- (b) For the partition of immovable property;*
- (c) For the foreclosure, sale or redemption in the case of mortgage in of or a charge upon immovable property;*
- (d) For the determination of any other right to, or interest in, immovable property.*
- (e) For compensation for a wrong to immovable property or;*
- (f) For the recovery of immovable property actually under distraint or attachment ,*

Shall be instated in the court within the local limits whose jurisdiction the property is situate"

There is no dispute that all immovable property involved in this suit are located outside the local limits of this court, that is in Moshi and Arusha. And as the plaintiffs have preferred a Land case in which they seek orders declaring their interest in the landed property, Mr. Kusalika's argument that the contract was signed in Dar es Salaam or that the first defendant's headquarters is in Dar es Salaam, cannot hold.

Even if I was to hold that the suit is based on a contract, it is clearly a mortgage which is covered under section 14 of the CPC.

Thus the point of preliminary objection is sustained, the suit is struck out with costs for being filed in a wrong Registry in violation of section 14 of the CPC.



I.P.KITUSI

JUDGE

16/3/2018

16/3/2018

Coram: Hon Massam DR

For the Plaintiff : 1st Mr Kusarika Augustino

2nd Absent

For the Defendant 1st } Present
2nd }

3rd Absent

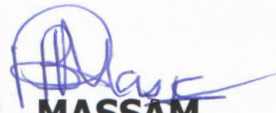
Cc: Masasi

Mr. Kusarika Augustino Advocate

The matter is coming for ruling.

I am ready for it

Order - Ruling delivered today on 16.3.2018 in the presence of Mr Kusarika Augustino for plaintiff, and presence of Plaintiff in person


R. B. MASSAM
DR
16.3.2018