

**IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTER**

AT DAR ES SALAAM

LAND CASE 41 OF 2017

ZAMDA AMRANI MDEMU PLAINTIFF

VERSUS

BANK OF AFRIKA TANZANIA LIMITED1ST DEFENDANT

GONZA FOOD AND PACKING (T) LIMITED..... 2ND DEFENDANT

BEST GROUP TANZANIA LIMITED3RD DEFENDANT

28/2/2018 & 28/3/2018

RULING

I.P.KITUSI, J.

This ruling is on two points of preliminary objection raised by the first and third defendant which read;

"(a) The plaintiff has no cause of action against the 1st and 3^d Defendants.

(b). This matter is not a land matter."

What is the matter all about, then?

It is Land Case No. 41 Of 2017 in which Zamda Amran Mdemu, the plaintiff sues Bank of Africa Tanzania Limited, Gonza Food and Packing (T) Limited and Best Group Tanzania Limited, the first,

second and third defendants respectively. The basis of the suit, as it were, must be gleaned from the plaint and I shall refrain from referring to it until later.

I ordered the parties to address the points by way of written submissions. The court also raised a point suo motu whether the plaintiff has locus standi to sue in this case.

Mr. Augustine Kusalika learned advocate represents the plaintiff whereas Mr. Godwin Muganyizi learned advocate stands for the first and third defendants. On reflection and after considering the submissions by the learned counsel I think I should only consider one point namely whether the matter is a land matter. In my settled view the issue of locus standi and cause of action are intertwined and do not meet the creterior of points of preliminary objection as laid down in **Mukisa Biscuits Manufacturing Company Limited V. West End Distributors Limited** [1969] EA 696 and followed in many domestic cases such as **Shahida Abdul Hassamali Kasam V. Maked Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999, CAT (unreported).

The two points are not based on pure points of law or ascertained facts therefore may not be determined without evidence.

I shall address the point whether this is a Land matter as titled. Determination of this fact needs me to take a look at the pleadings. For the plaintiff it has been submitted that this is a Land case because

the first and third defendants intent to sell the plaintiff's landed property on Plot No. 3003 Bock "U" Pugu Mwakanga Area.

On the other hand Mr. Muganyizi has submitted that what determines whether a matter is a Land case or not is the nature of the controversy. The learned counsel heavily relied on the decision of, Hon Ngwala, J citing **Mangaldas Taichura & others V. Levender Villas Limited in Britania Biscuits Limited Vs Natinal Bank of Commerce Limited & Others.** Land case No. 4 of 2011(unreported)

With respect I agree with Mr Muganyizi and the persuasive decisions he cited that it is the cause of action that finally determines the category of a case. I do not accept Mr. Kusalika's argument that the defendants' alleged intention to sell the plaintiff's house forms the basis of the suit and its category. To accept that view would mean that a matrimonial or probate cause in which there is an intention to sell a landed property would cease to be a matrimonial or as the case may be a probate cause.

In determining this issue, as I said earlier, I must visit the plaint and particularly take look at paragraph 5 thereof and the prayers. Under paragraph 5 it is alleged that the first defendant is in breach of a contract between it and the plaintiff. In the prayers, one of the relief claimed is for declaration that the said first defendant is in breach of the contract. The plaintiff is, in my view, walking a tight rope for, if the suit is not based on contract as I think, then I can see no cause of

action. It is my finding from the pleadings that the suit is based on contract.

On the ground that in my finding the suit is based on contract then it is improperly filed as a Land case. I uphold the point of preliminary objection and strike the suit out with costs.



I.P.KITUSI

JUDGE

28/3/2018