

**IN THE HIGH COURT OF TANZANIA**

**IN THE DISTRICT REGISTRY**

**AT MWANZA**

**LAND APPEAL NO. 74 OF 2017**

(From the decision of the District Land and Housing Tribunal of Mwanza at Mwanza in Land  
Application No. 371 of 2016)

**EMMANUEL BUFE MKUYU ..... APPELLANT**

**VERSUS**

**1. CRDB BANK PLC**

**2. SUKAH SECURITY CO. LTD ..... RESPONDENTS**

**JUDGMENT**

**04/10/2018 & 21/01/2019**

**RUMANYIKA, J.:**

It is against a ruling of 14/07/2017 on a pecuniary jurisdiction related preliminary point of objection (p.o). According to records, against the exceeding limit valued subject matter and claim. As determined by the District Land and Housing Tribunal for Mwanza at Mwanza (the DLHT). Case, on that basis having been struck out.

Emmanuel Bufe Mkuyu (the appellant) is aggrieved. Hence the single ground of appeal, rephrased as under.

**That the DLHT erred in law improperly holding that value of the subject matter exceeded pecuniary jurisdiction.**

Matter was in absence of records of the DLHT, but for good reasons of 04/10/2018 determined.

Messrs Renatus Lugwisha and Kange learned counsel appeared for the appellant and respondents respectively.

Mr. Lugwisha submitted that according to F.I. of the Land Dispute Courts Reg. of 2013, value of the subject was only by estimates stated. (para 4 of the application). That whether or not it was, according to annexure to the written statement of defence worth Shs. 87,000,000/= it was not a point of law. But only a point of fact. Whose proof needed evidence (perse not a p.o). Case of Musanga Ng'wandu Vs. Chief Japhet Wanzagi (2006) TLR 351 (Hc). We would pray that appeal be allowed with costs and the DLHT be ordered to proceed from where it had ended. Submitted Mr. Lugwisha.

Mr. Kange learned counsel submitted that the DLHT's chair was justified. It had no pecuniary jurisdiction (**Section 33 (2) (a) of the Land Disputes Courts Act Cap. 216 R.E. 2002** (the Act)). That copy of the valuation report annexed to the WSD in fact was not tendered as exhibit. The learned chair only looked at it. The appeal is devoid of merits. Stressed the learned counsel.

The issue is whether purely, the point raised was worth the name a p.o. The answer is no! Value of the subject matter could be Shs. 45,000,000/=, less or even more yes. But that one was not a point of law but of fact. It needed evidence for proof. Equally so was Shs. 87.0 million in the WSD raised by the respondent. It is very unfortunate that the trial

chair just took the respondents factual allegations wholesale and struck out the matter.

After all had the chairman considered the principle that provisions of **Section 13 of the Civil Procedure Code** or for this case **Section 33 (2) (a) of the Act** deprived no court's jurisdiction, but in my considered view only for convenience. More importantly that cases be entertained by courts of lowest grades competent to try them, such that parties would not go for courts and judges of their choice, he should have arrived at a different conclusion.

It is very unfortunate that the DLHT even entertained the p.o and subsequently struck out the application. Appeal is allowed with costs. Here and at the DLHT. Ordered accordingly.

Right of appeal explained.


**S.M. RUMANYIKA**

**JUDGE**

**12/01/2019**

Delivered under my hand and seal of the court in chambers this 21<sup>st</sup> day of January, 2019 in the presence of Mr. Galati Ntembe for the 1<sup>st</sup> respondent and Ms. Gladness Lema holding brief for Mr. Adam Robert for the appellant



  
**M.A. Moyo**  
**DEPUTY REGISTRAR**  
**21/01/2019**