

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

AT DAR ES SALAAM

LAND CASE NO. 80 OF 2017

MAGWEIGA MUNANKA SAMO.....1ST PLAINTIFF

SAID KHERI.....2ND PLAINTIFF

BENEDICT PETER MASSAWE.....3RD PLAINTIFF

VERSUS

ALOYCE KISENGA KIMBORI.....1ST DEFENDANT

RAMADHANI KITENGE (*As administrator of the*

Estate of the late **HAMIDA RAMADHANI MANARA.....2ND DEFENDANT**

RULING

Date of last Order: 29/11/2019

Date of Ruling: 16/12/2019

MLYAMBINA, J.

The defendant has raised two preliminary points of objection:

1. That, this Honorable Court sitting as a Land Court has no jurisdiction to hear and determine this matter.
2. That, the suit is bad in law for being initiated by the firm and advocates who have conflicts of interest.

On the first ground of objection, the 2nd defendant submitted *inter alia* that the relationship between the plaintiff and the 2nd defendant is not of the land lord and tenant. It is an ordinary relationship, the only Court having jurisdiction to determine the

matter between them is an ordinary Court, not the Land Courts which has only exclusive jurisdiction to determine land matters.

It was the 2nd defendant's submission that paragraphs 4, 5, 6, 17 (a) and (b) of the plaint indicating the facts constituting cause of action is breach of the lease agreement, as well as the reliefs stated indicating the plaintiff are claiming against the defendants for declaration of breach of the lease agreement and compensation for damages, the claims which are not based on interests or ownership of land, which can give this Court powers to entertain the matter.

There was no dispute from the plaintiffs on the principles of establishing jurisdiction of the Court. In the cited case of *Exim Bank (T) Ltd v. Agro Impex (T) and Others* Land Case Appeal No. 29 of 2008 (unreported) this court observed.

"Two matters have to be looked upon before deciding whether the court is clothed with jurisdiction. One, you look at the pleaded facts that may constitute a cause of action. Two, you look at the reliefs claimed and see whether the court has power to grant them and whether they correlate with the cause of action"

As properly submitted by the plaintiffs, paragraph 4 to 17 of the plaint clearly states that the plaintiffs were the lawful tenants over

the premises known as House No. 19, Plot No. 12 Block 21 Kariakoo Area, Dar es Salaam comprised under the Certificate Title No. 77978 following the execution of the lease agreements with the 1st defendant as the landlord.

The plaintiff did further allege that without any justifiable cause and without any notice to the plaintiffs and their advocates, and without having an eviction order by the trial tribunal; on 27th January, 2015, the late Hamida Ramadhani Manora invaded/trespassed into the suit premises and started evicting the plaintiffs from the suit premises and demolishing the house on the suit premises.

It follows, therefore, true that the facts constituting the cause of action are clear on an interference with the possessory rights of the lessee (if any).

Again, the reliefs sought by the plaintiffs are *inter alia* that the 1st defendant has breached the implied lease covenant by failing to ensure the plaintiff's peaceful and quite possession and enjoyment of the lease premises; a declaration that the late Hamida Ramadhani Manara unlawfully evicted the plaintiffs from the suit premises.

It is my considered view that the reliefs sought as stated above correlate with the cause of action and this honorable court has powers to grant them. In the cited case of *Charles Rick Mulaki v. William Jackson Magero*, Civil Appeal No. 69 of 2017 (unreported) it was observed.

"In my opinion therefore the expression "matters concerning land would only cover proceedings for protection of ownership and or possessory rights inland."

In the view of the foregoing, I find the first ground of objection lacks any merits. As regards the second ground of objection, I noted the plaintiff's counsel Mr. Leonard T. Manyama has not substantially disputed that in 2012, under the umbrella of his law firm in the name of SMILE STARS ATTORNEYS, acted on behalf of *inter alia* the plaintiffs, filed the Land Application No. 148/2012 at Ilala District Land and Housing Tribunal against the late Hamida R. Manara the matter which was determined in favour of the late Hamida R. Manara. The same advocate represented the loser on Appeal, Land Appeal No. 136 of 2014.

Further, counsel Manyama has not disputed that subsequent to the appeal, the 1st defendant (Aloyce Kisenga) under the service of counsel Leonard T. Manyama and Smile Stars Attorneys filed the

suit against the late Hamida Ramadhani Manara, Attorney General, Commissioner for Lands and Registrar of Titles at the High Court Land Division at Dar es Salaam as Land Case No. 3 of 2015 of which was dismissed on 22nd April, 2016.

It is very astonishing to note the same counsel Leonard T. Mnyama and Smile Stars Attorneys are acting on behalf of the plaintiffs in this matter. They also did so in Civil Case No. 123 of 2016 before this Court.

I do agree with the plaintiff's definition of the term conflict of interests as put under Regulation 3 of the Advocates (Professional Conduct and Etiquette) Regulations, 2018 which defines *conflict of interest* to mean; a situation that has the potential to undermine the impartiality of an advocate, because of the possibility of a clash between the advocates self-interest and the public interests.

Though the plaintiff has denied the possibility of existence of such conflict of interest, I find there are exists such interests because, though different cause of action, the subject matter and the parties thereto are almost or/similar. *Regulations 30, 31 (1) and (2), 33, 35 (1) and (2), 45 and 52 (1)* of the Advocates (Professional Conducts and Etiquettes) *Regulations of 2018 GN NO. 118/2018* read together with *Rule 4 (1) (a) and (b)* of The Advocates

(Disciplinary and Other proceedings) Rules G.NO. 120/2018 restrict the Advocate and Law Firm to act or represent the client where interests between them are in conflicts. In the cited case of *Prince Jefre Bolkiah v. KPMG (a firm)* 1999 1 ALL ER, 517 (1999) 2AC 22, the house of lords, held:


"The court can restrain the solicitor who has relevant confidential information or his firm, from acting for a client with an interest adverse to that of the former client unless it is satisfied that there is no real risk of disclosure."

In another case of *General Trading Co Ltd v. Skjevesland* (2002) EWCA Civil 1567, the court observed:

"The court had the power, under its inherent powers to prevent abuse of its procedure to restrain an advocate from representing a party if it were satisfied that there was a real risk that his continued participation would lead to a situation where the order made at a trial would have to be set aside on appeal. In exceptional circumstances, that power could be exercised even if the advocate did not have confidential information."


In the circumstances of the above, I do agree with the objector, that the plaintiff being drawn, filed and endorsed by an advocate

and firm who have confidential information against the former client, has been improperly brought before the court. To that effect, the plaint is hereby struck out of the record. Costs shall follow events. It is so ordered.



Y. J. MLYAMBINA
JUDGE
16/12/2019

Ruling delivered and dated 16th day of December, 2019 in the presence of all persons and counsel Philemon Mrosso for the 1st defendant.



Y. J. MLYAMBINA
JUDGE
16/12/2019