

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

AT DAR ES SALAAM

CIVIL CASE: NO 204 OF 2019

NOBERT MBOWE

T/A GASOIL CONSULTING GROUP.....PLAINTIFF

VERSUS

ISSACK MWAMASIKA.....1ST DEFENDANT

EDBP& GD CONSTRUCTION LIMITED.....2ND DEFENDANT

HARLOD ISSACK MWAMASIKA.....3RD DEFENDANT

RULING

J.L MASABO, J.:

This is the ruling in respect of the preliminary objection raised by the plaintiff against the defendant's counter claim. For the purpose of clarity, I find it crucial to state, albeit briefly the background of the preliminary objection. The plaintiff Norbert Mbowe entered into a lease agree in which he rented the Defendants premises, to wit an apartment located at Uganda Avenue, Oyster Bay. In 2015, their relationship turned sour following disagreement on rent and renovation. Because of this feud, their relationship terminated disgracefully. In the course of that feud, the Defendant sued the plaintiff for armed robbery, a trial of which was concluded in the Plaintiff's favour. Being disgruntled, the plaintiff is now before this court suing the defendant for malicious prosecution and claiming among others: a sum of Tshs. 500,000,000/= for the loss of business; USD 1,000,000 specific damages;

payment of Tshs 100,000,000/= as punitive damages; and payment of Tshs 300,000,000/ as general damages and loss of reputation to the plaintiff.

Upon the receipt of the plaint, the 2nd defendant in his written Statement of Defence raised a counter claim that Plaintiff defaulted to pay rent and he owes him an outstanding rent of USD 6000 and 10,400 USD being storage costs for his items with effect from 2nd November, 2015 to 2nd March, 2020. The Plaintiff was not amused. He raised a preliminary objection on a point of law that, the counter claim is incompetent as this court has no jurisdiction to entertain the same as it is founded on rent which is a land claim. The preliminary objection was heard in writing. Both parties had representation. Mr. Josephat Ndelembi, learned Advocate for the Plaintiff and Daniel Haule Ngundungi, Advocate for the defendants.

In his submission in chief Mr. Ndelembi submitted that section 4(1) of the Land Disputes Courts Act [Cap 216 RE 2019] ousts the jurisdiction of ordinary courts to deal land matters. He further submitted that; the counter claim being based on rent default can not be entertained by this court. It can only be entertained by the High Court Land Division pursuant to section 37 of the Land Disputes Courts Act. In reply, Mr. Ngundungi refuted the submission that only the High Court Land Division has jurisdiction to entertain the claims raised in the counter claim. He argued that counterclaim is a cross suit against the parties and its rationale is to reduce multiplicity of suits before the courts of law. Therefore, this court has jurisdiction to entertain this matter. He further argued that this court has unlimited jurisdiction as per

Article 108 of the Constitution of the United Republic of Tanzania, 1977 and Section 2 (1) of The Judicature and Application of Laws Act [Cap 358 RE 2019]. He then cited the case of **Ivanna Felix Teri V MIC Tanzania PLC, Civil Case No. 5 of 2019 HC at Moshi (unreported)** where it was held that section 13 of the Civil Procedure Code is a rule of procedure and not a rule of jurisdiction, thus it could not be construed to take away the jurisdiction of the High Court to entertain matters. He further argued that, the claims were not only for arrears but for storage and security fees of USD 10,400.00 which is within the jurisdiction of this court. He further cited the case of **Quality Group Limited versus Image Properties and Estates Limited**, Land Case No 1 of 2010, HC at Dar es Salaam where it was held that High Court Land Division ceased to exist on 26th March 2010 after the amendment of Written Laws (Miscellaneous Amendments) Act No 2 of 2010.

In the rejoinder the plaintiff's counsel submitted that the High Court Land Division is established by the Parliament the Land Act [Cap 113 RE 2019] and The Village Land Act [Cap 114 RE 2019] and still operates. He further submitted that the jurisdiction of the court is not only bound by pecuniary and territorial factor. It can also be determined by the nature of the case. Therefore, the counter claim should be dealt with on the separate suit.

I have considered submissions by both parties. Order VIII Rule 9 (1) provides the following with regard to counter claim:

(1) Where in any suit the defendant alleges that he has any claim or is entitled to any relief or remedy against the plaintiff in respect of a cause of action accruing to

the defendant before the presentation of a written statement of his defence the defendant may, in his written statement of defence, state particulars of the claim made or relief or remedy sought by him.

Further, in Rule 12, it states that:

12. Where a defendant has set up a counterclaim the court may, if it is of the opinion that the subject matter of the counterclaim ought for any reason to be disposed of by a separate suit, order the counterclaim to be struck out or order it to be tried separately or make such other order as may be expedient.

The Plaintiff has invited me to dismiss the counter claim for being outside the jurisdiction of this court. On the other hand, the Defendant has forcefully argued that the same is within the jurisdiction. Accordingly, there is only one issue for determination before this court, that is, *does this court have jurisdiction to adjudicate the counter claim?* The plaintiff's counsel's major contention is that since the counter claim stemmed from arrears of rent this court has no jurisdiction to entertain. He has cited the case of **Exim Bank Versus Agro Impex T Limited** Land Case Appeal No 29 of 2008.

I am alive to the fact that jurisdiction of the court is determined by looking at different factors, the pecuniary value of the subject matter, geographical jurisdiction, and the subject matter, among others. It is undisputed that the claims in the counter claim emanates from lease dispute which falls under the jurisdiction of land courts. It is also true that, at the inception of the Cap

216, the High Court Land Division had jurisdiction, exclusive to other registries, on land disputes. That position was however changed following the amendment effected to Cap 216 by the Written Laws Miscellaneous Amendments Act No 2 of 2010. Echoing these changes in **Ivanna Felix Teri V MIC Tanzania PLC**, Civil Case No. 5 of 2019 HC at Moshi (unreported) this Court held that, all Judges of the High Court have jurisdiction over all such land disputes as envisaged under the Courts (Land Disputes Settlements) Act, Cap 216 as amended by the Written Law (Miscellaneous Amendments) Act No 2 of 2010.

The new position is currently reflected under section 3.-(1) and (2) of the Cap 216 which states that every dispute or complaint concerning land shall be instituted in the court with jurisdiction to determine land disputes, which according to sub-section 2 constitute of "*(a) the Village Land Council; (b) the Ward Tribunal; (c) the District Land and Housing Tribunal; (d) **the High Court**; or (e) the Court of Appeal of Tanzania*". The argument by Mr. Ndelembi is therefore, devoid of any merit as it is based on the old position of law. I, therefore, overrule it.

Regarding the pecuniary value of this court, I am of the stronger view that the provision of Article 108 (2) of the Constitution and Section 5 of the Judicature and Application of Laws Act, [Cap 358 RE] should not be read in isolation. They should be read together with section 40 of the Magistrate's Courts Act, [Cap 13 RE 2019]. As Held by the Court of Appeal in **Tanzania**

Breweries Limited v. Anthony Nyingi, Civil Appeal No. 119 of 2014, Court of Appeal of Tanzania (unreported):

“It is therefore clear from these provisions of JALA and the Constitution, that the jurisdiction of the High Court is subject to the provisions of other written laws. So, it was wrong for the learned trial judge to have decided the question of jurisdiction by looking at Article 108 (2) of the Constitution alone. In other words, Article 108 (2) of the Constitution should not have been read in isolation, without discussing whether or not such other written laws to the contrary exist.

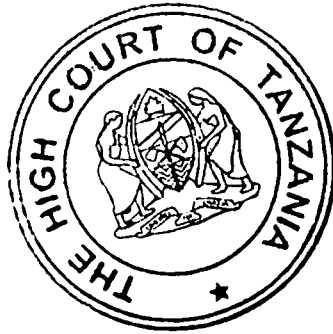
Mr. Ngundungi has also impressed upon me that under section 13 of the Civil Procedure Code litigants are free to refer any matter to the High Court notwithstanding the pecuniary value of the subject matter. In my humble view, prior to accepting this line of thinking one has to consider the mischief behind the pecuniary limits. As reasoned by Ndyasobera, J in **Peter Keasi Versus the Editor, Mawio Newspaper & Jabir Idrissa**, Civil Case No. 145 of 2014, HC DSM (unreported):

“The object and purpose of the said provision is I think three-fold. First, it is aimed at preventing overcrowding in the court of higher grade where a suit may be filed in a court of lower grade. Second, to avoid multifariousness of litigation and third, to ensure that case involving huge amount must be heard by a more experienced court.”

This being said, I have found merit in the Plaintiff's submission. However, for avoidance of conflicting decisions, since the claim in the counter claim is intertwined with the matters for determination in the mother suit, it is fair and convenient that they be determined under the same proceedings.

To this extent, I overrule the objections. The parties are to bear their respective costs.

DATED at DAR ES SALAAM this 14th day of August 2020.



J.L. MASABO
JUDGE