

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

**AT DAR ES SALAAM**

**LAND CASE NO. 39 OF 2018**

**JACQUILINE DONATH KWEKA ABRAHAMSON.....PLAINTIFF**

**VERSUS**

**EXIM BANK TANZANIA LIMITED.....1<sup>st</sup> DEFENDANT**

**JOHAN HARALD CHRISTER ABRAHAMSSON.....2<sup>nd</sup> DEFENDANT**

**DASCAR LIMITED .....3<sup>rd</sup> DEFENDANT**

**MASS & ASSOCIATES COMPANY**

**LTD & COURT BROKER ..... 4<sup>th</sup> DEFENDANT**

**YUSUPH SHABAN MATIBWA ..... 5<sup>th</sup> DEFENDANT**

**RULING**

*06/12/2019 & 20/02/2020*

**NGWALA, J.**

This is a Ruling in respect of the plaintiff's prayer to file an Amended Plaint. The reason for that prayer is that the former one filed in this court on 07/12/2018 had been already over take by events. That is, the matrimonial house in dispute has already been sold by the 4<sup>th</sup> defendant under the instruction of the 1<sup>st</sup> defendant. Upon filing of that plaint, the 1<sup>st</sup> and 5<sup>th</sup> defendants filed preliminary objections on the same, that the suit is res

subjudice to Civil Application No. 446/16 of 2018 at the Court of Appeal of Tanzania.

Further, that the plaint is bad in law for contravening Order Rule VII 1 (i) of the Civil Procedure Code, [Cap. 33. R. E. 2002], and that the Court has no jurisdiction to entertain this suit.

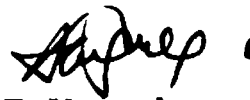
It is worthy to note here that, that prayer was made by the plaintiff when the matter came for First Pretrial Conference on 06/12/2012. The

Learned Counsel Zakaria Daudi representing the 1<sup>st</sup> defendant strongly objected the prayer by saying that it was made without any provisions of the law and that it is a suit without dispute to the defendants, the submissions which Mr. Athanas Venance, Advocate for the 5<sup>th</sup> defendant, was in agreement with.

In rejoinder Learned Counsel for the Plaintiff argued that the prayer was made under Order 6 Rule 17 of the Civil Procedure Code which allows a party to the proceedings to amend the plaint at any stage of the proceedings for the purpose of determining the real question in controversy between the parties.

After going through the submissions by parties and records at hand, the key issue for determination is whether or not the prayer by the plaintiff before this court is meritorious or not. It is true that a party to a suit can be allowed by the court to amend the plaint at any stage of the proceedings. In the case at hand, however the plaintiff seeks to amend the Plaint due to the fact that the former one has been over taken by

events; namely, the subject matter in controversy; the matrimonial house has been already sold and transferred by the defendants. The question here is if the prayer is granted will this be a correct remedy to the plaintiff? Obviously, the answer is No. It will not. Perhaps at this juncture this court finds it pertinent to make it clear that, there are principles which should be kept in mind while dealing with an application for amendment of pleadings, these are; all amendments should be allowed which are necessary for determination of the real controversy in the suit. The proposed amendment should not alter and be a substitute of the cause of action on the basis of which the original claim was raised. It is therefore the holding of this court that the prayer by the plaintiff do not meet the above principle. As the prayer is not maintainable by this court the objections are upheld. Accordingly the suit is hereby struck out with costs.



**A. F. Ngwala**

**JUDGE**

**20/02/2020**