

**THE UNITED REPUBLIC OF TANZANIA  
JUDICIARY**

**IN THE HIGH COURT OF TANZANIA  
(DISTRICT REGISTRY OF MBEYA)  
AT MBEYA**

**LAND CASE NO. 09 OF 2020**

**INDUSTRIAL CLOTHING AND SUPPLIES COMPANY LIMITED.....PLAINTIFF**

**VERSUS**

**ABRAHAM MWAKITALU.....1<sup>ST</sup> DEFENDANT  
ELISARIA KISSANGA.....2<sup>ND</sup> DEFENDANT  
CLAVERY MAYANGO.....3<sup>RD</sup> DEFENDANT  
ESTER NYWAGE.....4<sup>TH</sup> DEFENDANT**

**RULING**

Date of Last Order: 01/10/2020  
Date of Ruling : 26/11/2020

**MONGELLA, J.**

The plaintiff filed this suit against the defendants seeking, among other things, for a declaratory order that Plot No. 12 Block BB Uyole area is the property of the plaintiff; payment of special damages to the tune of T.shs. 327,060,000/-; demolition order for all building structures erected on the disputed plot and removal of all debris at own cost; and permanent injunction against the 3<sup>rd</sup> and 4<sup>th</sup> defendants from interfering with development or construction on the plot. Upon filing Written Statement of Defence (WSD), the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants raised a preliminary objection containing four points to wit:

  
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1. *The plaintiff has no cause of action against the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants.*
2. *The plaint is bad in law for contravening Order VII Rule 1 (e) and (i) of the Civil Procedure Code, Cap 33 R.E. 2019.*
3. *The plaint is bad in law for contravening section 37 (1) (a) of the Land Disputes Courts Act, Cap 216 R.E. 2002, as amended by the Written Laws (Miscellaneous Amendments) Act No. 4 of 2017, published in the Government Gazette on 1<sup>st</sup> December 2017.*
4. *The court lacks jurisdiction to entertain the matter.*

The plaintiff enjoyed legal services of Mr. Edson Mkisi while the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants enjoyed legal services of Mr. Sambwee Shitambala, both learned advocates. The 1<sup>st</sup> defendant never entered appearance despite being duly served, thus the matter proceeds ex parte against him. The preliminary objection was argued by written submissions.

Mr. Shitambala abandoned the first point of preliminary objection and argued on the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> points. On the 2<sup>nd</sup> point he argued that the plaintiff's plaint offends the mandatory provisions under Order VII Rule 1 (e) of the Civil Procedure Code which requires the plaint to contain the facts constituting the cause of action and when it arose. He contended that the whole plaint becomes defective for not conforming to that mandatory requirement. Cementing on his argument he referred the



court to the case of **Juma B. Kadala v. Laurent Mnkande** [1983] TLR 103 in which this Court (Sisya, J. as he then was) held:

*"I have, time and again, emphasized the importance of indicating in the plaint or application the time when the facts on which the claim is based arose...The basis of this requirement is that it is from the time shown or given that the Court can determine whether or not the suit is time barred. It must be the aim of every court of law to ensure that there is an end to litigation..."*

He argued that in the matter at hand, the plaint has not disclosed the time when the alleged trespass occurred. He added that the time limit for instituting a land dispute in court is twelve years as provided under Item 23 Part 1 of the Schedule to the Law of Limitation Act, Cap 89 R.E. 2019. By not indicating the time the cause of action arose, Mr. Shitambala was of the stance that the plaintiff did that deliberately to avoid being caught up by the limitation law.

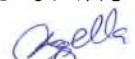
In reply to this 2<sup>nd</sup> point of objection, Mr. Mkisi argued that in context paragraphs 8, 9, and 10 of the plaint indicate as to when the cause of action against the defendants arose. He said that under these paragraphs it is shown that the civil trespass on the disputed land occurred in diverse dates of February 2017 when M/S National Service Construction Department was executing the contract executed with the plaintiff. In what I find so irrelevant to the preliminary point at hand, he endeavored to define the term "cause of action" as defined in the Book by **C. K. Takwani, Civil Procedure, 4<sup>th</sup> Edition** and in the case of **Cook v. Grill** (1873) 8 CP 107 (116) as a bundle of facts the plaintiff shall be



required to prove to succeed in a case. I find this irrelevant because the contention lies on the date the cause of action arose and not other facts constituting the cause of action.

With regard to the 3<sup>rd</sup> point, which is on the jurisdiction of the court in consideration of the value of the subject matter, Mr. Shitambala argued that the subject matter of the suit is a piece of land located at Plot No. 12 Block BB at Mbeya industrial area with C.T. No. 4599 L.O. No. 136737. He contended that there is nowhere in the plaint where the value of the land in dispute is stated. He referred to section 37 (1) (a) of the Land Disputes Courts Act, Cap 216 R.E. 2002, as amended by the Written Laws (Miscellaneous Amendments) Act No. 40 of 2017, which gives the High Court original jurisdiction on suits for recovery of possession of immovable property in which the value of the property exceeds three hundred million shillings. Given this provision of the law, Mr. Shitambala was of the position that the value of the land in dispute ought to have been stated.

He argued further that under paragraph 5 of the plaint, the plaintiff prays for declaratory orders that the defendants are trespassers. He also prays for payment of T.shs. 327,060,000/- as special damages, T.shs. 100,000,000/- as punitive damages, and general damages. He said that these figures signify a claim for tortious reliefs for the act of trespass, but do not show the value of the land in dispute. He added that the same figures appear under paragraph 12 of the plaint as pecuniary value for the purposes of jurisdiction of this Court. He insisted that the figure indicated under paragraphs 5 and 12 does not amount to the value of the land in dispute as required under the law. The failure to disclose the value of the



subject matter leaves this Court with no powers to handle the matter as it is not known whether the value is within the jurisdiction of the court or not. In conclusion he referred the court to Order VII Rule 1 (1) of the Civil Procedure Code which requires every plaint to state the value of the subject matter of the suit for purposes of jurisdiction and court fees.

On this 3<sup>rd</sup> point, Mr. Mkisi replied that the civil jurisdiction of this court to entertain the suit at hand is saved by the Judicature and Application of Laws Act, Cap 358 R.E. 2002, which under section 2 provides for the full jurisdiction of the High Court in civil and criminal matters in accordance with the Act or any other written law as expressly provided. He further referred to section 37 (1) (a) of the Land Disputes Courts Act, as amended, which provides the jurisdiction of the court on matters for recovery of immovable property to be exceeding three hundred million shillings.

He added that the matter at hand is on civil trespass to immovable property covered under section 37 (1) (b). He said further that the amendments to section 37 (1) (b) brought by the Miscellaneous Amendment Act No. 4 of 2017 do not oust the civil or tortious jurisdiction of the High Court as the provision confers jurisdiction to the court on other proceedings where the subject matter capable of being estimated at money value in which the value of the subject matter exceeds two hundred million shillings. He said that as pleaded under paragraph 12 of the plaint the value of the claim is T.shs. 327,060,000/-. He was of the firm view that this Court is vested with the jurisdiction to entertain the plaintiff's claims.



On the 4<sup>th</sup> point, Mr. Shitambala argued that considering the facts under paragraph 5, 11 and 12 of the plaint, it is obvious that the plaintiff's claim is not based on land, but on tort and crime. Under the circumstances, he was of the stance that this court lacks jurisdiction on tortious and criminal matters. Responding to these arguments, Mr. Mkisi submitted that Mr. Shitambala has failed to move the court on a specific point of law that ousts the jurisdiction of this court in tortious matters thus the point is incompetent and should be overruled.

I have healthily digested the arguments by both counsels. I shall deliberate first on the 2<sup>nd</sup> point and then collectively on the 3<sup>rd</sup> and 4<sup>th</sup> points.

On the 2<sup>nd</sup> point, Mr. Shitambala claims that the suit is incompetent for not disclosing the date when the cause of action arose as required under Order VII Rule 1 (e) of the Civil Procedure Code. On the other hand, Mr. Mkisi challenged that argument and invited the court to consider in context the facts stated under paragraphs 8, 9, and 10 of the plaint, which according to him they present the time the cause of action arose. The law as provided under Order VII Rule 1 (e) of the Civil Procedure Code categorically requires the plaint to state the facts constituting the cause of action and when it arose.

I have gone through the contents of paragraph 8, 9, and 10 of the plaint as prayed by Mr. Mkisi. Under paragraph 8, the plaintiff states that on 9<sup>th</sup> February 2017 the plaintiff executed a project execution contract with M/S National Service Construction Department (SUMA JKT) of South Zone-





Mbeya for undertaking the construction work on the land in dispute. Under paragraph 9, the plaintiff states that he effected an advance payment to the contractor and other relevant documents, including the building permit for him to start construction. Under paragraph 10 the plaintiff states that while the contractor was carrying out the construction assignment the 3<sup>rd</sup> and 4<sup>th</sup> defendants with some other youths invaded the plot, identified themselves as leaders of the local government and councilor of the area and ordered the contractor to stop the construction as there was a dispute on ownership of the plot in dispute.

Considering the provision of the law, one would expect the plaintiff to exactly state the date the 3<sup>rd</sup> and 4<sup>th</sup> defendants invaded the plot in dispute as being the date when the cause of action arose. However, I wish to look into this issue in a broader perspective considering the intention of the law in requiring the time as to when the cause of action arose to be stated in the plaint. The purpose of the law as argued by Mr. Shitambala and also settled by this Court in **Juma Kadala** (supra) is to enable the court and the parties to ascertain whether the suit is within the limitation of time settled under the law.

This being a land matter, the limitation of time is twelve (12) years as provided under Item 23 Part 1 of the Schedule to the Law of Limitation Act. As stated by the plaintiff under paragraph 10, the 3<sup>rd</sup> and 4<sup>th</sup> defendants invaded the plot in dispute when the contractor had started construction in fulfillment of a contract executed on 9<sup>th</sup> February 2017. Counting between 9<sup>th</sup> February 2017 and 5<sup>th</sup> August 2020, when the plaintiff instituted in this Court the matter at hand, it is obvious that the 12



years limitation has not elapsed. Therefore, in my humble view, taking all these facts into consideration, it is my finding that the provisions of Order VII Rule 1(e) of the Civil Procedure Code have not been offended to the extent of rendering the plaintiff's suit incompetent. On these bases I overrule this point of preliminary objection.

I now turn to the 3<sup>rd</sup> and 4<sup>th</sup> points of preliminary objection. In these points Mr. Shitambala argues that this Court lacks jurisdiction to entertain the matter as the value of the land in dispute is not stated. He argued that the claim of T.shs. 327,060,000/- as special damages, T.shs. 100,000,000/- as punitive damages, and general damages arise from tort of which this court has no jurisdiction. Starting with the latter argument, I think Mr. Shitambala missed the point he wanted to make as this court has jurisdiction on tortious claims so long as the pecuniary value is within the jurisdiction of the court. Thinking loudly, I think Mr. Shitambala meant that the matter ought not be filed as a land matter under the land register, but rather as a civil matter under the normal civil register. Mr. Mkisi however, argued that the plaintiff's claim is pegged under section 37 (1) (b) of the Land Disputes Courts Act which covers matters where the subject matter is capable of being estimated in money value.

My close scrutiny of the plaint reveals that the plaintiff's claim is grounded under both provisions, that is, section 37 (1) (a) and (b), and not only section 37 (1) (b) as claimed by Mr. Mkisi. The plaint reveals that, among other issues, there is a question of ownership of the plot in dispute by the parties. This is evidenced under paragraph 10 of the plaint whereby the plaintiff claims that the 3<sup>rd</sup> and 4<sup>th</sup> defendants appeared at the plot in



dispute and ordered the contractor to stop the construction as there was a dispute of ownership regarding that plot. It is further evidenced on some of the reliefs claimed by the plaintiff whereby he claims for a declaratory order that Plot No. 12 Block BB Uyole is the property of the plaintiff. He also prayed for demolition order for all building structures erected on the disputed plot No. 12 Block BB Uyole of 99.95m x 79.97m and removal of all debris at own cost. These claims clearly indicate that the plaintiff is as well claiming for recovery of possession of immovable property as provided under section 37 (1) (a) of Cap 216.

Under the above circumstances the plaint was supposed to adhere to the provisions of Order VII Rule 1 (i) of the Civil Procedure Code which for ease of reference I find it pertinent to quote as hereunder:

*"The Plaint shall contain the following particulars:-*

- (i) **A statement of the value of the subject matter** for the suit for the purposes of jurisdiction and of court fees, so far as the case admits." [Emphasis added].*

In consideration of the above provision, I agree with Mr. Shitambala's argument that for not stating the value of the land in dispute, the hands of this court are tied to entertain the matter as its jurisdiction stands unascertained. The plaintiff ought to have first ascertained the value of the land in dispute basing on the current market value and state the same in the plaint as required under the law. See also: **John Malombola v. Remmy Kwayu**, Misc. Land Appeal No. 91 of 2009 (HC at DSM, Land Div., unreported) and **Jamal Said & 3 Others v. Karmal Aziz Msuya**, Land Case No. 42 of 2017 (HC at DSM, unreported).



Having observed as above, I sustain these two points of preliminary objection. On these bases, the plaintiff's suit is hereby found to be incompetent and thus struck out with costs.

Dated at Mbeya on this 26<sup>th</sup> day of November 2020.

  
**L. M. MONGELLA**

**JUDGE**

**Court:** Ruling delivered in Mbeya in Chambers on this 26<sup>th</sup> day of November 2020 in the presence of both parties and their legal counsels.



  
**L. M. MONGELLA**

**JUDGE**