

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

AT TABORA

LAND CASE NO. 3 OF 2019

KAUNDIME SHABANI CHALAMILA

**(The Administrator and Legal representative of the Deceased
SALIMA AIZURU MAJALIWA) PLAINTIFF**

VERSUS

**THE PRINCIPAL SECRETARY, MINISTRY OF INFRASTRUCTURE
BUILDING & COMMUNICATION & 11 OTHERS DEFENDANTS**

RULING

KIHWELO, J.

In its contents and demands, it is apparent that the Plaintiff filed a suit against the Defendants claiming among other things, declaration that the Plaintiff is a lawful owner of the suit land allocated at Malolo Ward Area in Tabora Municipality. In addition to that, the Plaintiff claims for eviction order, general damages for trespassing into the suit land, compensation for not enjoying peaceful use of the suit land as well as for untold mental and physical hardship or suffering.

In the meantime, the Defendants have come up with a number of preliminary points of objections challenging the suit filed against them. The 1st, 2nd and 4th Defendants represented by Mr. Exavery Ndalaha learned State Attorney raised two points of preliminary objections as follows:

"1. That the Plaintiff suit is bad in law for being (sic) violated the provisions of Rule 3(2) (b) of GN. No. 174 of 2003.

2. That the Plaintiff has no locus standi to entertain the suit."

The 3rd Defendant represented by Mr. Kulaba G. Doto, Municipal Solicitor raised one point of preliminary objection to the effect that;

The Plaintiff did not comply with the statutory provision of Order VII, Rule 1(i) of the Civil Procedure Code, Cap 33 R.E 2002.

The 5th to 12th Defendants represented by Mr. Charles Livingstone Ayo, learned counsel raised two points of preliminary as follows:

"1. This Honourable Court lacks pecuniary jurisdiction to entertain this suit

2. The suit is time barred."

The Plaintiff was represented by Mr. Lucas Ndaga, learned Counsel. Upon leave of the court, the preliminary objections were disposed through written submissions. It is instructive to interject a remark, by way of a postscript that a perusal of the court records reveals that although Mr. Exavery Ndalaha learned State Attorney raised two points of preliminary objections for the 1st, 2nd and 4th Defendants but written submissions in support of the preliminary points of objections were conspicuously missing and that left me with only written submissions that were dully filed by Mr. Kulaba G. Doto, Municipal Solicitor and Mr. Lucas Ndaga, learned Counsel in accordance with the courts schedule.

In support of the preliminary objections it was amplified by Mr. Doto, that the trial court had no jurisdiction to hear and determine the suit for lack of particulars in the Plaint stating the value of the subject matter of the suit for the purposes of jurisdiction and of court fees in line with Order VII Rule 1(i) of Civil Procedure Code Cap 33 R.E 2002 (the Code). He argued that the High Court by virtue of section 2(1) of the Judicature and Application of Laws Act, Cap 358 R.E 2002 (JALA) is vested with full and unlimited jurisdiction over all civil and criminal matters that are outside the jurisdiction of the subordinate courts. He further contended that Article 108(2) of the Constitution of the United Republic of Tanzania (the Constitution) vests the High Court with jurisdiction on the particular matter where there is no other court that has been vested with such jurisdiction by the Constitution or any other law.

According to Mr. Dogo, is it the specific damage of the substantive claim, which determines the jurisdiction of the court. He also referred to section 13 of the Code, which requires suits to be filed in courts of the lowest grade competent to try them. To argument, this position he referred the case of **Peter Keasi v The Editor, Mawio Newspaper and Jabir Idrissa**, Civil Case No. 145 of 2014 (unreported) and prayed for dismissal of the suit with costs.

On his part Mr. Charles Livingstone Ayo, learned counsel for the 5th to 12th Defendants in amplifying the first point of preliminary objection was not far from the position adopted by Mr. Doto by arguing that the Honourable Court lacks jurisdiction to hear and determine the matter for

lack of particulars in the Plaintiff stating the value of the subject matter of the suit for the purposes of jurisdiction and of court fees as required by Order VII Rule 1(i) of Civil Procedure Code Cap 33 R.E 2002 (the Code) and that the Court can not assume jurisdiction. He cited the case of **Fanuel Mantiri Ng'unda v Herman Mantiri Ng'unda** (1995) TLR 159 in which the court religiously stated that it is risk for the court to proceed with trial of a case while assuming its jurisdiction. Mr. Ayo further referred this Court to the case of **Hertz International Ltd and Another v Leisure Tours & Holdings Limited and Another**, Commercial Case No. 74 of 2008 (unreported) in which the Court reiterated the importance of stating the value of the subject matter of the suit in the Plaintiff for the purposes of jurisdiction and of court fees.

In further submission to the second point of preliminary objection Mr. Ayo argued that the suit was time barred because the 5th Defendant occupied the suit land for decades and that according to the Law of Limitation Act, Cap 89 R.E 2002 in particular section 22 in part 1 to the Schedule the time limit for recovery of land is twelve years. He went on to submit that the 11th Defendant bought the suit land from the 5th Defendant in 1999 and since then he has been in peaceful enjoyment of the suit land until 2019 and that the 7th Defendant found the 5th and 9th Defendants on the suit premises. He forceful argued therefore that the matter should be dismissed with costs.

In reply to the preliminary objection raised by the 3rd Defendant Mr. Lucas Ndaga, learned counsel for the Plaintiff valiantly argued that any attempt to dismiss the suit on account of violating the provision of Order VII Rule 1 of the Code will amount to an abuse of the Constitution in particular Article 107A (2) (e) which obliges courts to dispense justice without being tied up with undue technicalities which may obstruct dispensation of justice. He cited the famous case of **Mwalimu Paul John Muhozya v Attorney General** (1996) TLR 130. He further went on to concede to the preliminary objection but prayed that the suit should be struck out instead of dismissing it.

In further reply to the preliminary points objection raised by the counsel for the 5th to 12th Defendants, Mr. Ndaga strenuously argued that the argument that the High Court has no jurisdiction because the matter ought to be filed before the subordinate court, is baseless since State Attorneys are not allowed to appear before the District Land and Housing Tribunal and that all suits against the Government have to be filed before the High Court. He further conceded to the preliminary objection but prayed to withdraw the Plaint and file an Amended Plaint with no order as to costs.

Mr. Ndaga further contended that the argument that the suit is time barred is baseless since the person who is alleged to have sold the suit land was a mere caretaker or an overseer.

I have thoroughly scrutinized the submissions by the trained minds and I am settled in my mind that the fate of this matter can be determined by addressing the issue of jurisdiction of the court to entertain the suit.

I think it is appropriate here to recapitulate briefly the law on jurisdiction of the court. The law is settled and clear that jurisdiction is a fundamental issue since it goes to the substance of a trial. In the case of **Tanzania Revenue Authority v Tango Transport Company Ltd**, Civil Appeal No. 84 of 2009 (unreported) the Court of Appeal of Tanzania religiously stated that:

"Jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests."

The court by any stretch of imagination cannot assume its jurisdiction as by doing so it will be taking an assumption of risk. It is therefore, important that, the court should make sure that it is seized of jurisdiction before entertaining any matter before it.

The High Court draws its jurisdiction from a number of legislation starting with the Constitution in particular Article 108(2), which articulates that the jurisdiction of the High Court comes into play when there is no court specified for that purpose. Other pieces of legislation are JALA in particular sections 2 and 3 which as rightly stated it vests the High Court with full civil and criminal jurisdiction, the Magistrates Courts Act, Cap 11 R.E 2019 (MCA) which specifies the maximum pecuniary limit for the

District Courts as well as the Resident Magistrate's Courts and Order VII rule 1(i) of the Code.

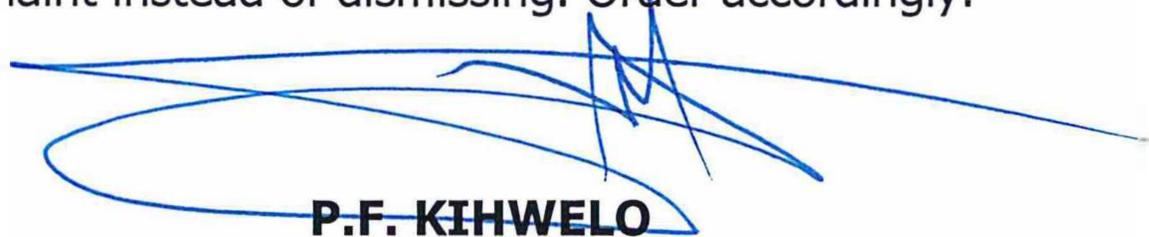
It is instructive to state that the pecuniary jurisdiction of the court is determined by the substantive claim and not the general damages, since general damages are awarded where the court when exercising its discretion finds it is warranted upon consideration of the circumstances pertaining to the claims. See- **Mwananchi Communications Ltd and 2 Others v Joshua K. Kajula and 2 Others**, Civil Appeal No. 126/01 of 2016 (unreported).

In **Tanzania-China Friendship Textile Co. Ltd v Our Lady of Usambara Sisters** [2006] TLR 70 the Court of Appeal held that:

"It is the substantive claim and not the general damages which determines the pecuniary jurisdiction of the court."

In the instant case it is conspicuously clear that from the Plaintiff claims among other things are declaration that the Plaintiff is a lawful owner of the suit land, eviction order, general damages for trespassing into the suit land, compensation for not enjoying peaceful use of the suit land as well as for untold mental and physical hardship or suffering. This is clear that the Plaintiff did not state the value of the subject matter and therefore offending the provision of Order VII rule 1(i) of the Code.

In the upshot and for the foregoing reasons this preliminary objection is upheld and for that matter I do not find it useful to deliberate on other points of preliminary objections. However, for the interest of justice and in the spirit of dispensing justice without undue regard to technicalities, I will strike out this Plaint instead of dismissing. Order accordingly.



P.F. KIHWELO

JUDGE

13/12/2020

Ruling to be delivered by the Deputy Registrar on a date to be fixed.



P. F. KIHWELO

JUDGE

13/12/2020



Date : 17/12/2020

Coram : Hon. B.R. Nyaki, DR

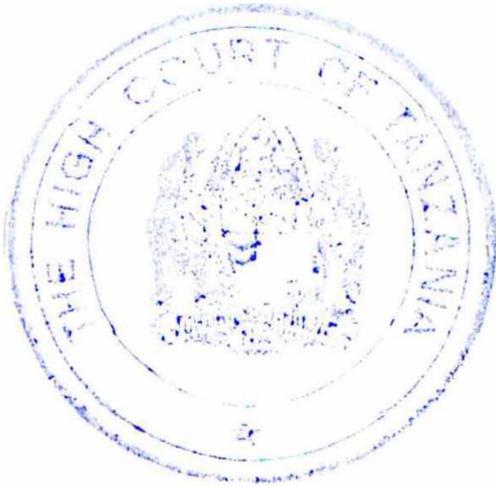
Plaintiff : Present in person

Defendants: Mr. Frank Kavishe Holding Brief for Mr. Charles Ayo Advocate
for 5 – 12, 1st – 4th Respondents absent

Bench Clerk: Grace Mkemwa, RMA

Court: Ruling delivered this 17th day of December, 2020 in the presence of Mr. Frank Kavishe on behalf of Mr. Charles Ayo, Advocate for the 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th Respondents.

Right of appeal explained fully.



A handwritten signature in blue ink, appearing to be "B.R. Nyaki".

B.R. Nyaki
**DEPUTY REGISTRAR
HIGH COURT – TABORA**