

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

BUKOBIA DISTRICT REGISTRY

AT BUKOBA

LAND CASE NO. 4 OF 2020

**DR DEODATUS MWOMBEMI RUGANUZA (Administrator of the
Estate of the late Domistocles John Ruganuza).....PLAINTIFF**

VERSUS

ABDULKARIM MEZA.....DEFENDANT

RULING

12/07/2021 & 15/07/2021

NGIGWANA, J

The plaintiff filed a suit against the defendant seeking the following orders; a declaration that the defendant blatantly invaded and trespassed the plaintiff father's Plot No.120 "Low Density Area" located at shore Road by then called Bukoba Township issued on 28/01/1994 with Title No.003018/18, a declaration that Domistocles John Ruganuza, deceased was the legal owner of Plot No.120, an order compelling the defendant to give vacant possession of the disputed land as soon as possible, forcible eviction and demolition order against the defendant in case he refuses to give vacant peacefully .

The suit is contested by the defendant who filed the Written Statement of Defense in which preliminary points of objection were raised as follows;

1. That this suit is incompetent and bad in law for being filed in the Court that has no jurisdiction to hear and determine it

2. That the suit is incompetent for being an abuse of Court process.

Wherefore prays that this suit be dismissed with costs.

When the matter was called on for hearing, the defendant was represented by Mr. Zeddy Ally, learned advocate while the plaintiff had the services of Mr. Kelvin Mutatina, learned advocate. Before commencing the hearing, Mr. Zeddy prayed to drop the 2nd preliminary point of objection, the prayer which was duly granted.

Submitting on the first limb of the preliminary objection Mr. Zeddy argued that it is a legal requirement that every suit shall be instituted in the court of the lowest grade in the hierarchy competent to try it. He further submitted that the value of the subject matter in this case is Tshs 102,000,000/= and not 350,000,000/= as estimated by the plaintiff and that according to section 33(2)(a) of the Land Dispute Courts Act Cap 216 R: E 2019, this suit falls within the pecuniary jurisdiction of the District Land and Housing Tribunal. He further argued that, on that ground this court has no jurisdiction over the matter, hence prayed for its dismissal with costs

In response to the preliminary point of objection, Mr. Kelvin submitted that it is trite law that preliminary objection must be on point of law and not

facts. The learned counsel referred the court to the famous case of **MUKISA BISCUITS MANUFACTURING CO LTD VERSUS WEST END DISTRIBUTORS LTD** (1996) EA Page 696. He added that it was wrong for the learned counsel for the defendant to make reference to the Valuation Report annexed to the Written Statement of Defense dated 4/12/2020 while the suit was filed in court on 2nd October 2020, and the purpose of the Report was not indicated. He added that the said Valuation report is evidence and not a matter of law. He went on submitting that in land matters, the actual value of the subject matter is always estimated, that is why they estimated the value of the disputed land at the tune of Tshs 350,000,000/= taking into account the fact that it is located in the prime area to wit; the Beach area. Mr. Kelvin ended his submission by a prayer that the preliminary objection be dismissed for want of merit.

In his rejoinder, Mr. Zeddy reiterated his earlier stance, however he added that pleadings have to be read together with annexures.

Having seen the rival submission by both sides, the court remained with the task to determine as to whether the preliminary objection raised by the defendant has any merit.

It is settled that whenever the suit is made before the court of law, the initial issue is to decide whether the court has jurisdiction to deal with the matter or not. The basis to determine jurisdiction includes fiscal value, geographical boundaries and the subject matter. Jurisdiction being the bedrock on which the court's authority and competence to decide matters rests, can be raised at any stage of the suit.

It was held in the case of **Sospeter Kahindi versus Mbeshi Mashani**, Civil Appeal No.56 of 2017 CAT (Unreported) that

"The question of jurisdiction of a court of law is so fundamental. Any trial of any proceeding by a court lacking requisite jurisdiction to seize and try the matter will be adjudged on appeal or revision"

Furthermore, the erstwhile of East African Court of Appeal in **Shyam Thanki and others versus New Palace Hotel** [1971]1AE199 at page 202 held that;

"All Courts in Tanzania are created by Statute and their jurisdiction is purely statutory. It is an elementary principle of law that parties cannot consent to give a court jurisdiction while it does not possess"

Another authority is **Fanuel Mantiri Ng'unda versus Herman Mantiri Ng'unda** [1995] TLR 159 where the court held that,

"The jurisdiction of any Court is basic, it goes to very root of the authority of the court to adjudicate upon cases of different nature.....The question of jurisdiction is so fundamental that courts as a matter of practice on the face of it be certain and assured of their jurisdictional position at the commencement of the trial. It is risky and unsafe for the court to proceed on the assumption that the court has jurisdiction to adjudicate upon the case"

In our case, the type of jurisdiction which is subject to determination is pecuniary or monetary jurisdiction, thus I shall confine myself there. According to Order VII rule 1 (i) of the Civil Procedure Code Cap.33 R: E

2019, the plaint must contain a statement on the monetary value of the subject matter. This helps the court to ascertain whether it has jurisdiction over the matter, but also in the assessments of filing fees. **See Hertz International Ltd and another Versus Laisure Tours Ltd and 3 others, Commercial Case No, 74 of 2008.**

Paragraph 15 of the plaint filed before this court reads,

"That, the cause of action arose within Kagera Region within Bukoba Town and the estimated value of the Beach Plot in dispute is three hundred Fifty Thousand (**350,000,000/=**) which is within the pecuniary jurisdiction of the same thus this honorable court has jurisdiction to adjudicate over the matter"

The question is whether in all land matters the court can rely on the estimated value of the subject matter especially where the same is located in small towns or cities to determine whether it has pecuniary jurisdiction or not.

According to Oxford Learner's Dictionary, the term estimate means a judgment that you make without having the exact details or figures about the size, amount or costs of something. The answer to the herein above question is no, the court should not always rely on estimated value. In order to be certain on the question of pecuniary jurisdiction, the value of the subject matter needs to be ascertained by a competent and recognized valuer and this helps much to determine whether the court has pecuniary jurisdiction or not. In the case of **John Malombola versus Remmy Kwayu** Miscellaneous Land Application No.91 of 2009, the Court (HC) held

that, the value of the land must be ascertained by a Valuer taking consideration the current market value of the land and its improvement at the time the suit is instituted.

In other words, as far as land disputes are concerned especially where the subject matter is located in small cities, business centers and towns, I am of the strong view that it is very important to carry out Valuation in order to determine the actual value of the subject matter before a decision is made on which forum is vested with pecuniary jurisdiction to handle the matter. It is risky to determine pecuniary jurisdiction basing on the estimation done or just mentioned by a person who is not an expert in that area because it may open the door for some people to rush directly to the High Court for one reason or the other and that is very wrong because the statutory forum which is in place must be observed.

In our case, the disputed land was valued by the Government Valuer Mr. Fidelis G. Alute who then prepared the Valuation Report which was annexed to the Written Statement of Defense and duly served to the Plaintiff via his advocate Mr. Kelvin Mutatina, but filed no reply thereto. The Valuer opined as follows;

"Taking into account the location, user, topography, method of valuation used and other factors affect the property value, we are of the opinion that the Current Market Value of Plot 120 Low Density Shore Road Area Bukoba Township, Bukoba Municipal, Kagera Region for market value purpose is Tshs 102,000,000 (Shillings One Hundred Two Million Only)"

The arguments that the purpose of the valuation done was not known and the reason as to why it was done on 4/12/2020 while the case was already instituted are of less importance. The question is whether the land in dispute is the one really valued, and whether the Valuer was competent, coming from a recognized institution. The pleadings reveal that the disputed land was valued by a Government Valuer and no objection was filed by the plaintiff side after being served with the copy of the Written Statement of Defense.

This court is in agreement with Mr. Zeddy Ally that pleadings should always be read as a whole and not in piece meal fashion.

The plaintiff through his advocate, Mr. Kelvin Mutatina, when arguing Land Revision No.16 of 2018 which was annexed to the plaint as **Annexure FA-06** admitted before this court that the District Land and Housing Tribunal for Kagera at Bukoba has power to determine ownership dispute in relation to Plot No.120 "Low Density". See page 12 of the said annexure. That shows that he was fully aware that this court has no pecuniary jurisdiction to handle this case but decided to estimate the value of the subject matter at a tune of 350,000,000/= to make the High Court believe that it has pecuniary jurisdiction to deal with the matter. This is not acceptable.

Among other things, pleadings may help the court to investigate the question of jurisdiction and confirm the pecuniary value of the subject matter. **The Court of Appeal of Tanzania in the case of Mount Meru Flowers Tanzania Ltd versus Box Board Tanzania Ltd, Civil Appeal**

No. 360 of 2018 (unreported) was inspired by the judgment in the case of **Karata Ernest versus AG, Civil Revision No. 10 of 2010** (unreported) where the Court of Appeal stated;

*"At the outset we showed that it is trite law that a point of preliminary objection cannot be raised if any fact has to be ascertained in the course of deciding it. **It only consists of a point of law which has been pleaded, or which arise by dear implication out of the pleadings**"* (Emphasis supplied).

In the case at hand, the question of pecuniary jurisdiction is a point of law and it arose out of the pleadings.

There is no dispute that, the maximum pecuniary jurisdiction of the District Land and Housing is Tshs. 300 million for movable properties. See section 33 (2) (a) of the Land Disputes Courts Act, Cap 216 R: E 2019

Now, the question is whether, the High Court can entertain a matter whose subject value falls within the ambit of the Land and Housing Tribunal

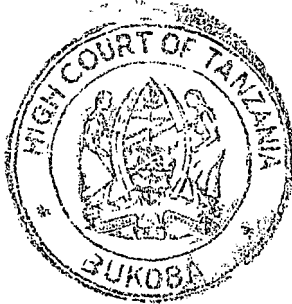
Section 13 of the Civil Procedure Code, Cap.33 R: E 2019 provides that, *"every suit **shall** be instituted in the court of the lowest grade competent to try it"*

In our case, the Court of the Lowest grade to try a land dispute whose subject value is Tshs 102,000,000/= is not the High Court but the District Land and Housing Tribunal taking into account that the herein above provision of law has been coached in the imperative form.

Based on the above findings, I am of the settled view that the preliminary objection raised by the learned counsel for the defendant is laudable. The suit is therefore not competent before this court, thus the same is hereby struck out accordingly. I make no order as to costs.

The plaintiff is a liberty to file a fresh suit in a competent court with the necessary jurisdiction, subject to the law of limitation.

It is so ordered.




E. L. NGIGWANA

JUDGE

15/07/2021

Date: 15/7/2021

Coram: Hon. Emmanuel Ngigwana, J.

Plaintiff: Mr. Kelvin Mutatina for the Plaintiff.

Defendant: Pilly Hussein Ardi for the defendant

B/C: Gosbert Rugaika

Mr. Mutatina:

My Lord, the matter is coming for ruling and we are ready to receive it.

Ms. Pilly Hussein for the Defendant:

My Lord, we are also ready.

Ruling delivered this 15th day of July, 2021 in the presence of the Mr. Kelvin Mutatina learned counsel for the Plaintiff and Ms. Pilly Hussein learned counsel for the defendant.



E. L. Ngigwana

JUDGE

15/7/2021