IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

LAND CASE NO 02 OF 2022

JOSEPH AUGUSTINO MDAKA ..... PLAINTIFF

VERSUS

DAVID ELIAS NOMBO *(The Administrator of the Estate of the* **Late ELIAS NOMBO) ..... 1ST DEFENDANT**

FILBADA ELIAS NOMBO ..... 2ND DEFENDANT

JACTAN MGAYA .....3RD DEFENDANT

RULING

Date of last Order: *14/07/2022*
Date of Ruling: *25/08/2022*

MLYAMBINA, J.

The instant case suggests an exposition of another mesmerizing inexplicable issue; *whether a valuation report is a requisite condition prior to institution of a case for the purpose of ascertaining the Court's pecuniary jurisdiction.* It illustrates noticeable escalating problems in trial of some land matters likely to impede proper administration of justice.

In the process of its determination, the Court received very helpful submissions from Mr. Dickson Ndunguru, learned Advocate who competently appeared for the Plaintiff and Mr. Eliseus Ndunguru, learned Advocate who judiciously represented the 2nd and 3rd Defendants jointly. The 1st Defendant, however, appeared in person.

The background of the matter is as follows: On 1st day of April, 2021 David Elias Nombo (henceforth the 1st Defendant) through *Probate Cause No. 8 of 2021* was appointed as the administrator of the estate of the late Elias Nombo by the Mbinga Urban Primary Court. He then made follow up of the deceased properties including the house located at Plot No. 200, Block A, Mbinga Urban Area (henceforth the suit house). On 3rd day of April 2021, Augustino Joseph Mdaka (henceforth the Plaintiff) bought the suit house from the 1st Defendant at the consideration of TZs 120,000,000/= (One Hundred Twenty Thousand Million Tanzanian Shillings only). It is alleged that the transfer deed was signed on the same date. Consequently, the house was handled over to the Plaintiff on 4th day of April, 2021.

Later on, some beneficiaries of the deceased estate namely: Eligia Elias Nombo, Engbeth Nombo, Filbada Nombo and Maria Nombo complained before the Mbinga Urban Primary Court that the 1st Defendant was about to sale the suit house to the lowest price and he was not ready to sale it at the higher price of TZs 200,000, 000/=(Two Hundred Million Thousands Tanzanian Shillings only). On 7th day of May, 2021, the Mbinga Urban Primary Court appointed Eligia Elias Nombo as a Co- Administratrix of the estate.

On 12th May, 2021 the 1st Defendant was revoked by the same Court for failure to comply with the order of producing the bank statement of his mother's account in which he alleged that the purchase money amounting to TZs 120, 000,000/= were deposited after the sale of the suit house. David Elias Nombo unsuccessfully preferred *Civil Revision No. 3 of 2021* before the District Court of Mbinga at Mbinga.

On 23rd day of September, 2021 David Elias Nombo unsuccessfully filed *Miscellaneous Probate Application No. 14 of 2021* before the Mbinga Primary Court seeking for extension of time within which to file an appeal against the decision of the Mbinga Primary Court in *Probate Cause No. 8 of 2021*.

Being aggrieved, David Elias Nombo filed *PC. Appeal No. 6 of 2022* before this Court. The appeal faced two legal objections. *One*, it was time barred. *Two*, it was incompetent for being filed at the High Court Registry contrary to *section 25 (3) of the Magistrates Courts Act [Cap 11 Revised Edition 2019]*. Fortunately, upon consensus of both parties the appeal was struck out on 27th May, 2022 on the said defects.

On 14th April, 2022 the Plaintiff lodged the instant case in this Court suing the Defendants jointly for trespass on Plot No. 200 Block "A" Mbinga Town. He prayed for the following orders: *First*, declaration that

he is the lawful owner of the disputed land. *Second*, declaration that the Defendants are liable for tort of trespass to land. *Third*, order for permanent injunction restraining the Defendants from disturbing the Plaintiff in his land. *Fourth*, general damages. *Fifth*, cost of the suit and any other relief(s) the Court deems fit to grant.

In reply, the 2nd and 3rd Defendants raised *a plea in limine litis* that this Court has no pecuniary jurisdiction to determine the matter. At the hearing, Mr. Eliseus submitted that this Court lacks jurisdiction to determine the dispute based on two points. *First*, the value of the suit house is below the pecuniary jurisdiction of this Court. Apparently, at paragraph 6 of the Plaint, it was alleged that the value of the suit house is TZs 570,000,000/= (Five Hundred and Seventy Million Tanzanian Shillings).

Mr. Eliseus challenged the estimated value because there is no any valuation report from the valuer to prove that the house bought at the consideration of TZs 120,000,000/= (One Hundred, Twenty Million Tanzanian Shillings only) has appreciated to TZs 570,000,000/=(Five Hundred and Seventy Million Tanzanian Shillings) on a such short period of time. Mr. Eliseus supported his argument with the case of **Alphonce Kakweche and Another v. The Board of Trustees of BAKWATA**

Tanzania, Land Appeal No. 97 of 2019 High Court of Tanzania at Dar es Salaam (unreported), where the Court at page 8 stated that:

> *"The estimated value does not amount to factual value of the subject matter and in case the estimated value of the suit property exceeded the value in the contract of sale of the immovable property, the estimated value must be proved by valuation report so that to get the actual value of the suit land in order to justify the jurisdiction".*

Mr. Eliseus called upon this Court be persuaded with the afore mentioned decision under the doctrine of *stare decis* as it is prudent not to bring conflicting decision. He reminded this Court that the time from when the property was bought to the time when this suit was filed does not exceed one year and six months. Surprisingly, the value has risen from TZs 120,000,000/=(One Hundred and Twenty Thousands Tanzanian Shillings) up to TZs 570,000,000/= (Five Hundred and Seventy Million Tanzanian Shillings). Worse, it is not pleaded if there is any improvement to the suit house.

Mr. Eliseus averred that their Written Statement of Defence (WSD) is annexed with a valuation report pleaded under paragraph 3 therein. The valuation was verified on 08/03/2022. It revealed the current market value of the house is TZs 104,000,000/= (One Hundred and Four

Million Tanzanian Shillings Only). Mr. Eliseus was of view that the Plaintiff had a duty to prove that this Court has pecuniary jurisdiction to adjudicate this suit as per *Section 37 (1) (a) of the Land Disputes Courts Act [Cap. 216 Revised Edition 2019].*

Mr. Eliseus submitted further that subject to the provision of *section 37 (1) (a) of The Land Dispute Courts Act (supra),* the High Court shall have and exercise original jurisdiction in proceedings for recovery of possession of immovable property in which the value of the immovable property exceeds TZs 300,000,000/= (Three Hundred Million Tanzanian Shillings only). But the suit house lacks a proof that its value is above TZs 300,000,000/=. For that reason, Mr. Eliseus concluded that this Court lacks pecuniary jurisdiction to determine the matter at hand.

According to Mr. Eliseus, if this Court finds neither mandatory to have valuation report when filing a suit nor persuaded by the cited case of **Alphonce** *(supra), Order VIII Rule 1 Paragraph (f) of the Civil Procedure Code [Cap. 33 Revised Edition 2022],* requires the Plaint to contain a paragraph showing that the Court has jurisdiction. But the disputed Plaint bears two paragraphs with conflicting information. While paragraph 6 of the Plaint shows that the disputed property has the value of TZs 570,000,000/= (Five Hundred, Seventy Million Tanzanian Shillings

Only), Paragraph 10 of the same plaint shows the value of the disputed property is TZs 570,400,000/= Five Hundred, Seventy and Four Hundred Thousand Million Tanzanian Shillings Only). He insisted that the pleadings must be certain.

Mr. Eliseus went further submitting that uncertain pleading affect Court fees which are paid in accordance to the value of the subject matter. He was of the view that, if the conflicting facts in the pleading will be reminded at the hearing stage, there will be three effects. *One*, the other side will be taken by surprise, thus, it will affect fair hearing. *Two*, it will cause the plaint to be incompetent since a case is proved or disproved based on the pleading. Three, it can cause injustice.

Mr. Eliseus insisted that, Parties are bound by their pleadings. He added that the Plaintiff has to prove either the value of the property is TZs 570,000,000/= (Five Hundred Seventy Million Tanzanian Shillings Only) or TZs 570,400,000/= (Five Hundred Seventy Million and Four Hundred Thousand Tanzanian Shillings Only). He cannot prove both.

In reply, Counsel Dickson denied the submission that they have failed to avail a valuation report to prove/establish pecuniary jurisdiction of this Court on two counts. *First*, it is not a legal requirement. *Second*, the case cited by Mr. Eliseus is distinguishable to the circumstances of

the case before the Court. That, the cited case emanates from the case decided by the Kilombero Ulanga District Land and Housing Tribunal. The issue before the Court in the cited case was whether the trial District Land and Housing Tribunal had pecuniary jurisdiction to try the matter because the sale consideration was TZs 600,000/= (Six Hundred Thousand Tanzanian Shillings only) while the estimate value stated in the application was TZs 3,500,000/= (Three Million and Five Hundred Thousand Tanzanian Shillings only). The Judge in his opinion at page 6 stated:

> *In my opinion since this estimated value exceeds the purchasing price, the Respondent was required to prove the property value is TZs 3,500,000/= by providing the trial Court with valuation report.*
> *I have perused the entire record and there is "no evidence" which suggests that the value of the suit land exceeds. Three Million and this includes the valuation report which was not tendered before the trial Tribunal for justification.*

For the afore reason, Counsel Dickson was of view that the cited case talks of evidence but not pleaded. He submitted that it is not at this stage to prove what they have pleaded.

Counsel Dickson advised this Court not to embrace the argument of Counsel Eliseus because by doing so, no case will be filed in the Court. And if filed, all cases will end up at preliminary objection stage.

Moreover, it was Counsel Dickson's belief that the Minister responsible for Legal Affairs was very wise in enacting *Order VII Rule 1 paragraph (i) of the Civil Procedure Code (supra).* It only requires a statement of the value of the subject matter of the suit for the purpose of jurisdiction and Court fees so far as the case admits. He thinks this position gives wide chance to the citizens to go to any Court they think justice can be done.

Counsel Dickson submitted further that the submissions made by Counsel Eleseus needs evidence. That, any point which requires evidence or it is mix of evidence and law, it cannot be determined at preliminary objection. He supported his argument with the case of **COTU (OWT) Union and Another v. Hon. Idd Simba Minister of Industries and Trade and Others** TLR (2002) at page 88 where the Court of Appeal dealt with the meaning and tests as to what constitutes a preliminary objection. Thus, a preliminary objection should only be on pure points of law and not on unascertained facts which calls for evidence to prove it. Counsel Dickson agreed that this Court is not

bound to follow the cited High Court decision which is a bad law as it prevents access to justice.

On the point of appreciation of the value of the house from TZs 120,000,000/= up to TZs 570,000,000/= within one year and six Months, Counsel Dickson averred that, the consideration depends on bargaining capacity of the vendor *visa vis* the bargaining capacity of the purchaser who believes that the house he bought is valued TZs 570,000,000/=. It was Counsel Dickson view that the same house can be sold at TZs 5,000/=.

Counsel Dickson added that, it is very unfortunate the third Defendant has not annexed the sale agreement. He contended that the nature of pecuniary jurisdiction on this case is a mixture of law and facts. He thought that the proof of value of the subject matter shall be tendered at hearing stage. It cannot be availed at this stage. It was Counsel Dickson view that the proper provision is *Order VII Rule 1 (f) of the Civil Procedure Code (supra)* and not *Order VIII Rule 1 (f) (supra).* As they stated very clearly under paragraph 10 of their plaint.

As for the point of variation of value between TZs 570,000,000/= (Five Hundred Seventy Million Hundred Thousand Tanzanian Shillings Only) and TZs 570,400,000/= (Five Hundred Seventy Million and Four

Hundred Thousand Tanzanian Shillings Only), Counsel Dickson replied that, such variation cannot make the pleading incompetent. It is just a clerical error which can be cured by amendment. It does not require dismissal or striking out of the Plaint as Mr. Eliseus prayed. Unless such variation contravenes the object of *Order VII Rule 1 (i) of the Civil Procedure Code (supra)* which provides for the purpose of jurisdiction and Court fees. It was Counsel Dickson view that for the purpose of jurisdiction, TZs 570,000,000/= and TZs 570,400,000/= are both within the High Court jurisdiction as per counsel for the Plaintiff submission.

He went further submitting that, for the purpose of fees, the value of TZs 500,000,001 to TZs 600,000,000/= the law requires the payment of TZs 125, 000/= but in this case, they paid TZs 150,000/= as fees. That was above the required fees. They paid on 14/04/2022 at 10:40 am via control number 991400636342. As such, nothing has been contravened. Even if it was, the said minor error will not affect fair hearing. It was Counsel Dickson view that the amendment can be done by hand writing because paragraph 10 was a repetition of paragraph 6. There was a clerical error of typing 4 instead of 0.

In his rejoinder, to the case of **Alphonce Kakweche** *(supra)*, Mr. Eliseus insisted that the basis of the mentioned case is; when there is a

variation of the value in the Contract and of the estimated value of the immovable property, presumption is that the real value of the immovable property is that in the contract. Whoever wants to make the Court to believe that the real value of such immovable property is the one not stated in the contract has to bring the valuation report.

Mr. Eliseus submitted further that, since the Court has to verify/ascertain whether it has jurisdiction or not, it is important the valuation report be brought at the filing stage. That valuation report is a conclusive proof of the value of the property. That is why anyone who is aggrieved with the valuation report has to challenge it before the Chief Government Valuer.

Mr. Eliseus rejoined further that the provisions *of Section 37 (1) (a) of the Land Disputes Courts Act (supra)* confers pecuniary jurisdiction to this Court on the disputed immovable properties whose value exceeds 300,000,000/= (Three Hundred Million Tanzanian Shillings). It is not on estimated value. Also, *Order VII Rule 1 (i) of the Civil Procedure Code (supra)* requires that a Plaint should contain a statement of the value of the subject matter of the suit for the purpose of jurisdiction and of Court fees. He has no query with the clerical error of writing *"4"* instead of *"0"*. Mr. Eliseus questioned, if the Plaintiff

bought the house at the tune of TZs 120,000,000/ (One Hundred and Twenty Thousand Million) and annexed the sale Contract, what makes the house to have the value of TZs 570, 000,000/= (Five Hundred Seventy Million Thousand Tanzanian Shillings Only)? According to Mr. Eliseus, it is not enough to merely say that the value has appreciated. He referred the appreciation issue as a technical issue. It was his view that the valuation report should have been part of the pleadings since annexures are part of pleadings.

Mr. Eliseus denied the allegation that the requirement of attaching valuation report will bar Tanzanian from filing cases. Such valuation report will be required only when there is a variation between the consideration value in the contract and the estimated value in the Plaint. The essence of preliminary objection is to serve time and costs. So, it has to be raised at earliest time.

I have devotedly considered the arguments of the two legal minds. I want to make it abundantly clear that there are two conflicting important points surrounding the jurisdiction of the Court. *One*, while I fully agree with Counsel Dickson that any objection with a mixture of law and facts requires proof, the validity of this principle, it nevertheless seems to me, that such proof has to be done at earliest opportune time.

If the Court acts on the matter in which it has no jurisdiction to deal with, the whole procedure and consequential orders thereof becomes a nullity because jurisdiction goes to the root of the matter. This stance was also aired out by the Court of Appeal of Tanzania in the case of **Fanuel Mantiri Ngúnda v. Herman Mantiri Ngúnda and 20 others**, Civil Appeal No. 8 of 1995 (unreported).

It is also a well-established principle that parties cannot by consent give a Court jurisdiction which it does not possess because all Courts in Tanzania are created by statute and their jurisdiction is purely statutory. This principle is reflected in the case of **Sospeter Kahindi v. Mbeshi Mahini**, Civil Appeal No. 56 of 2017 Court of Appeal of Tanzania at Mwanza (unreported), in which the Court of Appeal quoted with approval the case of **Shyam Thanki and Others v. New Palace Hotel** [1971] 1 EA 199 at page 202. I would remark that; if more than one Court has concurrent jurisdiction to try a suit, parties by their consent may, limit jurisdiction to one of the two Courts. The same position may be backed up by *The Halsbury's Laws of England 3rd edition, vol. 7 at page 73* which states:

> "Where the parties expressly stipulate that the contract shall be governed by a particular law, that law will be the

proper law of contract, provided the section is bonafide and there is no objection on the ground of public policy."

Two, an objection on jurisdiction of the Court, in my view, is a first class pure legal point which has to be ascertained at the preliminary stage. In so doing, the Court is duty bound to inspect the pleadings and their annextures in order to ascertain whether the objection is well founded.

Needless, though I do not intend to get too deep into an academic discussion, I find it candidly speaking, this Court has established four schools as regards to determination of pecuniary jurisdiction of the Court in a conundrum of this matter. This Ruling, however, suggests a move to the fifth school of thought.

All the four schools, however, do share same construction in respect of: *One,* as per *section 33 (2) (a) of the Land Disputes Courts Act (supra),* the maximum pecuniary jurisdiction of the District Land and Housing Tribunal on dispute relating to immovable property is TZs 300,000,000/= (Three Hundred Million Tanzanian Shillings Only). *Two,* as *per section 37 (1) of the Land Disputes Courts Act (supra),* the High Court of Tanzania exercises original jurisdiction in proceedings for the recovery of possession of the immovable property whose value exceeds

TZs 300,000,000/=. With the phrase original jurisdiction, I mean a matter for which the Court is approached first. It is unlike the appellate jurisdiction which refers to the Court's authority to review or re-hear the cases that have been already decided in the lower Courts by way of an appeal, revision *exetra. Three,* as per *section 13 of the Civil Procedure Code (supra)* every suit must be instituted in the Court of the lowest grade competent to try it. *Four,* as per *Order VII Rule 1(i) of the Civil Procedure Code (supra),* the Plaint must contain a statement on the monetary value of the subject matter. *Five,* it is settled that whenever the suit is made before the Court of law, the initial issue to decide is whether the Court has jurisdiction to deal with the matter or not. The overriding factor in determining jurisdiction includes pecuniary value (fiscal value), geographical boundaries and the subject matter. (See the case of **Sospeter Kahini v. Mbeshi Mashani,** Civil Appeal No. 56 of 2017 Court of Appeal of Tanzania as cited in the case of **Dr. Deodatus Mwombeki Ruganuza** *(Administrator of the Estate of the late* **Domistocles John Ruganuza***)* **v. Abdulkarim Meza,** Land Case No. 4 of 2020, High Court of Tanzania Bukoba District Registry at Bukoba (unreported)).

Before considering the four schools of thought for ascertaining pecuniary jurisdiction of the Court as authorities binding on this Court and subordinates Courts, it is imperative to bear in mind the words of Sir George Jessel MR, in **Re Hallet's, Knatchbull v. Hallett** [1874 – 80] All ER Rep793 at page 793 at page 797; (1879), 13 Ch D 696 at page 712 where he stated:

> *The only use of authorities, of decided cases, is the establishment of some principle which the judge can follow in deciding the case before him.*

It should further not be forgotten that fundamental rules of precedent require: *One*, all Courts must consider the relevant case law. *Two*, lower Courts must follow the decisions of the Courts above. *Three*, the Appellate Courts are bound by their own decisions. Indeed, as Judges of the High Court we are bound no to lightly depart from the decision of our brethren or Sisters. Any departure must be substantiated with good reasons.

Before I digress, I will now turn to consider the four schools of thought. The first School advocates that no land dispute should be lodged in the Court of law without a valuation report. In the case of **Dr. Deogratius Mwombeki Ruganuza** *(Administrator of the Estate of the*

late **Domistocles John Ruganuza** *(supra),* one of the exponents of this school observed *inter alia* at page 6 of his computer typed Judgement:

> *"...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 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 statutory forum which is in place must be observed."*

Another profounder of the first school of thought expressed her position through the case of **Lutalambili Mageke v. Ngasa Bundala (As the Administrator of the Estate of the deceased Bundala Shilinde,** Miscellaneous Land Case No. 4 of 2020 High Court of Tanzania at Tabora (unreported). It was an appeal which originated from the Nguvu Moja Ward Tribunal (Trial Tribunal) whose decision was sustained by the District Land and Housing Tribunal for Nzega at Nzega.

In that matter the suit land comprised 600 acres. As such, it was argued to be beyond the pecuniary jurisdiction of the Court. The Appellate Judge before allowing the appeal, partly observed:

> *"I have gone through the record of the case to find whether the trial Tribunal was fully aware of the size of the suit land to be 600 acres but its value was never ascertained...The appeal is hereby allowed by quashing the judgement and decree of Two Tribunals below. If Parties are still interested in pursuing this matter hey may file a fresh suit after ascertaining the value of the suit land..."*

The second school of thought propounds that the value of the suit land must be estimated and stated in the plaint. Thus, the pecuniary jurisdiction of the Court on land matters is determined by the pleaded estimated value of the disputed land. Once it is estimated below the requirement of *section 37 (1) (a) of the Land Disputes Courts Act (supra)*, the suit must be dismissed for want of pecuniary jurisdiction. In the case of **Shamshudin Kassam v. Equity Bank (Tanzania) Limited, Cops Auction Mart and Court Broker Limited, Salehe Songoro and insight security Limited**, Land Case No. 11 of 2021, High Court of Tanzania Land Division at Dar es Salaam (unreported), the

plaintiff estimated the suit land to have the value of TZs 173 million. Upon entertaining a preliminary objection on want of pecuniary jurisdiction, the trial Judge found the objection laudable. She proceeded to strike out the plaint from the record of the Court with costs and left the Plaintiff at liberty to file a fresh suit before a competent Court subject to the law of limitation.

Another profounder of this school can be reflected from the case of **Hamadi Shabani Kagunda v. Maulid Rashid,** Land Appeal No. 16 of 2019, High Court of Tanzania Land Division at Tabora (unreported), in this case, the Court upheld the appeal on *inter alia* reason that the estimated value of the suit land was pleaded in the application under paragraph 4. Hence, the Trial Tribunal had jurisdiction to deal with the matter.

The third school of thought maintain that once a valuation report of the land is annexed to the plaint, it should not be disregarded. Such valuation report should be the basis of determining jurisdiction of the Court. Reference can be made in the case of **Subira Amon Mwamunyage v. EFC Tanzania Microfinance Limited and 2 Others,** Land Case No. 163 of 2020, High Court of Tanzania Land Division at Dar es Salaam (unreported), it was observed:

...It is undisputed fact that the market value of the suit property is TZs 113,000,000/=. The Plaintiff has at paragraph 19 of the Plaint, stated the suit property has the value of about Tshs 113,000,000/= to Tshs. 70,000,000/=. She further attached the valuation report of October, 2014 which stipulated the market value of the suit property to be Tshs. 113,000,000/=. It is well known that annextures are part of pleadings... In the Plaint, the Plaintiff craved for this Court for the valuation to form part of the plaint...

I find it proper not to disregard it. As stated earlier, it is not contentious that the suit property has the value of Tshs. 113,000,000/="

Having observed so, the Court proceeded to strike out the suit for being incompetent before the Court and left the Plaintiff at liberty to institute a fresh suit before a competent Court or Tribunal of grade with jurisdiction to entertain the matter subject to the law of limitation.

The fourth school of thought advances that the law governing pecuniary jurisdiction was not intended to declare the higher Tribunals impotent but simply to relieve them from the would be unnecessary over loading smaller cases. That was the position in the case of **Jamila Salahe v. Lucas Hungu Mzinzya and Mussa Issa Haji,** *Land Appeal*

No. 34 of 2020, High Court of Tanzania at Mwanza, (unreported). The same position was shared by this Court in the case of **Shaban Ally Ichilima (suing under power of Attorney donated by Hawa Alli Ichilima) v. NMB Bank PLC and 3 Others,** Civil Case No. 8 of 2018, High Court of Tanzania at Dodoma (unreported). In the latter case, the Court observed:

> *...notwithstanding the fact the suit could be entertained by a lower Court or tribunal does not by itself out the jurisdiction of the High Court. That is the gist of section 13 of the Civil Procedure Code [Cap. 33 R.E. 2019].*

Steadfast to the above review, for my part, I observe no possible difficulties in principle or in logic on the requirement of the law as regards determination of pecuniary jurisdiction of the District Land and Housing Tribunal and of the High Court on immovable properties. To begin with, *Section 22 of the Civil Procedure Code (supra)* provides for the procedure of institution of a civil suit. It reads:

> *Every suit shall be instituted by presentation of a plaint or in such other manner as may be prescribed.*

As per *Order VII Rule 1 of the Civil Procedure Code (supra),* particulars to be contained in plaint are inter alia (i) *a statement of the*

value of the subject matter of the suit for the purposes of jurisdiction and of Court fees, so far as the case admits.

Further, institution of land matters before the District Land and Housing Tribunals is governed by *The Land Disputes Courts Regulations, GN No. 174 of 2003 and the Second Schedule thereof. Regulation 3 (1) of G.N. 174 of 2003 (supra)* requires that any proceedings before the Tribunal must commence by an application filled by an applicant or his representative or payment of appropriate fees prescribed in the First Schedule to these Regulations.

Under *Regulation 3 (2) (supra)* an application to the Tribunal must be made in the form prescribed in the Second Schedule to these Regulations and must contain *inter alia* an estimated value of the subject matter of the dispute. More so, paragraph 4 of the second schedule thereto requires the Applicant to state the estimated value of the suit property.

In so far as this action relates to the determination of the pecuniary jurisdiction of this Court, I agree with the view already expressed by my Brethren and Learned Sisters representing the second school of thought that it is right to hold that the pecuniary jurisdiction of the District Land and Housing Tribunal as well as of this Court on

immovable property, as matter of principle, is based on the estimated value of the disputed landed property. My stand position is coined around the following reasons spanning from general to the particular.

One, the wording of *Order VII Rule 1 (i) of the Civil Procedure Code (supra)* is clear, unambiguous, explicit and it is specific in terms. It requires the Plaintiff to give a statement of of the value of the subject matter of the suit. The same is meant for the purposes of ascertaining jurisdiction of the Court and for assessment of Court fees only. The same position was echoed by this Court in the case of **Hertz International Limited and Another v. Laisure Tours Limited and 3 Others,** Commercial Case No. 74 of 2008 (unreported).

Two, Regulation 3 (2) of GN No. 174 of 2003 (supra) and *Paragraph 4 of the second schedule thereto* requires the Applicant to state the estimated value of the suit property.

Three, it is not in dispute that in terms of *Section 33 (2) (a) of the Land Disputes Courts Act (supra),* the maximum pecuniary jurisdiction of the District Land and Housing Tribunal on immovable properties is TZs 300, 000,000/=; and the original jurisdiction of the High Court on immovable properties, as per *section 37 (1) (a) of the Land Disputes Courts Act (supra)* is over TZs 300,000,000/=.

Four, though *Article 108 of the Constitution of the United Republic of Tanzania, 1977* confers the High Court power to hear and determine all matters but there must be no other law which have expressly specified for Court to entertain such matter at first instance. In other words, any matter which can be dealt with the lower Court cannot be brought before the High Court in its original jurisdiction. In the case of **Packaging and Stationers Manufacturers Limited v. Dr. Steven Mworia and Another**, Commercial Case No. 52 of 2010 High Court of Tanzania (Commercial Division). My brethren Mruma, J. has this to say:

> Thus, in light of *Article 108 (2) of the Constitution* and provision of *section 2 (1) of Judicature and Application of Laws Act,* the High Court has jurisdiction over all matters that are outside the jurisdiction of the Court subordinate to it.

Five, it is a mandatory requirement of the law under *section 13 of the Civil Procedure Code (supra)* that every suit to be instituted at the lowest grade competent to try it. In the case of **Manjit Singh Sandhu and Others v. Robibi R. Robibi,** Civil Appeal No. 121 of 2014, Court of Appeal of Tanzania at Mwanza (unreported), the Court held:

"Since section 13 of the Civil Procedure Code requires that every suit be instituted in the Court of the lowest grade competent to try it, and in the view of the fact that the High Court, in this case, was not a Court fitting that description, the High Court had no jurisdiction to try the Respondent's suit."

Needless, the afore position of the law, instituting a suit to the Court of the lowest grade serves the following *inter alia* purposes: *First*, to avoid congestion of cases in the High Court. *Second*, increases chances of appeal, hence fostering timely justice. *Third*, it compels equal access to justice by all citizens regardless of their economic status and geographical location. *Fourth*, serves costs to litigants as they will be required to pay little filing fees compared to fees to be paid in the High Court. *Fifth*, exposes Magistrates and Chairpersons of District Land and Housing Tribunals to variety of cases which litigants would have preferred to file in the High Court. *Sixth*, to give a chance for complex cases to be adjudicated by most experienced judicial officers and simple cases be adjudicated by the Court of the lowest grade.

Six, the law neither pose a requirement to attach a proof in relation of the amount mentioned in the plaint nor require a valuation report to accompany the plaint so as to determine the value of the subject matter. The same was stated by this Court in the case of **Julius Raphael Maitarya v. Commissioner for Lands and Others**, Land Case No. 109 of 2018, High Court of Tanzania, Land Division at Dar es Salaam (unreported).

Seven, as correctly argued by Counsel Dickson, the enactment of *Order VII Rule 1 paragraph (a) of the Civil Procedure Code (supra)* and *Regulation 3 (2) (d) and paragraph 4 of the Second Schedule to the Land Disputes Courts Regulations (supra)* were designed to ensure Tanzanians and investors regardless of their location and financial muscles differences, are afforded access to justice once they encounter land dispute. That, if the law requires carrying 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, the same is equal to curtailing justice and overburdening poor Tanzanians with unnecessary costs of litigation.

Unarguably, there are three reasons to support the above fallacy. *First,* up todate, Valuers and Surveyors are found only in Regional and

Headquarters Offices. Unfortunately, even some Region don't have such offices. As such, people from Magazini area Namtumbo District, Mitomoni area Nyasa District, Makande area Tunduru District, Mpepo area Mbinga District or Nakawale area Songea District and other remote areas in the Country would automatically be paralysed from accessing land justice bearing remoteness of their localities. Here we are reminded in the *First Book of Jurisprudence for Students of the Common Law, 5th Edition* by Sir Fredrick Pollock who has observed at page 16 that:

> Therefore, although declarations of legal principles, or interpretations of express laws, by Courts of justice may well be said to form part of the law, and so to be law in the abstract sense, we cannot say of any such declaration or interpretation the it is a law. When we are using the term in the concrete sense it is not only correct enough for ordinary political purposes, but correct without qualification, to say that "*Laws are general rules made by the State for its subjects*" Emphasis applied

Second, not every person can afford costs for carrying out valuation of the land. Requirement of valuation report be it in Municipalities, Township or Councils is a technical knockout of people

from accessing Courts of law. *Third*, most of land disputes in the Country involves unregistered land. Therefore, logically, it does not appeal to the mind of a normal citizen to carry out valuation of his area prior surveying it and obtaining title deed of the same.

Eight, valuation report proof arises only when the pleadings together with their annextures presents a different value of the same suit landed property. In the cited the case of **Alphonce Kakweche and Another** *(supra)* the Court directed the need to attach a valuation report because the estimated value of the subject matter differed from the value in the contract entered.

In the above circumstances, the estimated value must be proved by valuation report so as to get the actual value of the suit land in order to justify the jurisdiction. The reason here is that annextures to the plaint are part of pleadings. If the estimated value is different from the annexed sale agreement to the plaint, it creates uncertainties to the value of the suit land. As such, a valuation report of the suit land has to be attached and relied upon.

Nine, though I agree with Counsel Dickson that the disputed property's value could raise from the consideration of TZs 120, 000,000/= up to TZs 570,000,000/= within one year and six months,

depending on bargaining capacity of the vendor *vis a vis* of the purchaser, but there is nothing in the pleading to tell on: *First*, if the Plaintiff developed the suit land. *Second*, if the Vendor's negotiating ability was very down. *Third*, even if it is true that the Vendor's negotiating ability was low, the records reveals that the highest consideration offered by the other purchaser at the same interval of time was TZs 200,000,000/=. The alleged appreciation of value to 570,000,000/= leaves much to be desired.

To the contrary, in the instant case, the Defendants in their WSD annexed a valuation report indicating the value of the suit land is TZs 104,000,000/=. The Plaintiff never filed a reply to the WSD to contest such valuation report. It is the pleadings and their annextures which helps Courts to investigate the question of jurisdiction of the Court. Since, the valuation report formed part of the pleadings and it was not contested, it cannot be disregarded.

Ten, it was wrong for Counsel Dickson not to file reply to the WSD and come up with the valuation report establishing the actual value of the land. I disagree with his contention that the nature of pecuniary jurisdiction on this case is a mixture of law and facts. In my view, that is a failure to appreciate the meaning of a point of preliminary objection on

point of law. It is the findings of this Court that jurisdiction is among the legal issues which when raised by one of the parties in a case it requires immediate Court determination before proceeding to the main case. Indisputably, while defining preliminary objection, the Court of Eastern Africa in the daily cited case of **Mukisa Biscuit Manufacturing Company v. West End Distributors Limited** [1969] E. A 696, listed among other points, the point of jurisdiction and limitation.

Also, in the case of the case of **Hezron M. Nyachiya v. Tanzania Union of Industries and Commercial Workers and Another,** Civil Appeal No. 79 of 2001, Court of Appeal of Tanzania at Dar es Salaam; **Jackline Hamson Ghikas v. Mllatie Richie Assey,** Civil Application No. 656/01 of 2021, Court of Appeal of Tanzania at Dar es Salaam (unreported), the Court observed that a preliminary objection consist of a *point of law* which has been pleaded or which arises by clear implication out of the pleadings which if argued as a preliminary objection may dispose of the suit.

Further, *Order XIV Rule 2 of the Civil Procedure Code (supra)* requires determination of issues of law prior issues of facts. *Rule 2 (supra)* provides:

> Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof

may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Thus, it is my view that in the instant case, the issue of pecuniary jurisdiction is a point of law which arose out of the pleadings. Doubts arises because the suit house was bought at the tune of TZs, 120,000,000/=. After a year and half the same suit house was estimated TZs 570,000,000/=. At the same period of time, the Defendant carried out valuation and established that the market value of the same is TZs 104,000,000/=. The fact that the valuation report was annexed to the WSD, Counsel Dickson had a duty to reply the WSD. If Counsel Dickson could have filed a reply to WSD and come up with another valuation report within the pecuniary jurisdiction of the Court, I am of the view that the Court would have been required to conduct a mini trial to ascertain jurisdiction of the Court prior proceeding to parading all witnesses on the substantive matter. This is a departure from the already established procedure. Indeed, it advances the fifth school of thought.

It is my humble observation that the Court would not possess expertise to decide a preliminary legal objection on pecuniary jurisdiction

without summoning competent witnesses. On the same reasoning, the Court would not go to entertain substantive trial because an objection on jurisdiction is a pure point of law worth to be determined at preliminary stage.

Under mini trial, parties shall be entitled to call competent witnesses to ascertain the pecuniary value of the subject matter only. Thereafter, the Court would be required to issue a ruling on whether it has original pecuniary jurisdiction or not. More so, during mini trial procedure, the Plaintiff/Applicant shall have the burden to prove on preponderance of doubts that the estimated value empowering the Court to determine the suit is correct. If the value shall be not the estimated one in the plaint but within the pecuniary jurisdiction of the Court, such suit shall proceed on merits.

In the course of delivering the Ruling the Court or District Land and Housing Tribunal, which had the opportunity of listening to and observing the witnesses of both sides, is obliged to give reasons for the conclusion reached. This will include the Court's/Tribunal's opinion on the credibility of the professional valuers or any competent witness on valuation matters. It is however, necessary to note that a ruling on mini trial on pecuniary jurisdiction shall not be appealable.

There is no gainsaying that a mini trial necessitated by two or more conflicting pleaded valuation report will assist the Court to ascertain at preliminary stage on whether it has original pecuniary jurisdiction or not. In so doing, it shall serve time and costs of both litigants and of the Court. Indeed, a mini trial will put the Court at a right position to scrutinize valuation reports which are sometime prepared to suit the interests of the client.

The Court is also alive to the two schools of thought established by the High Court on the question of valuation report worth to be relied. The first school maintains that the valuation report must be approved by the Chief Government Valuer. One of the profounder is reflected in the case of **Nyakato Soap Industries Ltd v. NBC Holding Corporation**, Civil Appeal No.205/99 High Court of Tanzania at Dar es Salaam (unreported) in which the Court held:

> *"I must state that all valuation reports have to be endorsed by the Chief (Government) Valuer before they can be acted upon. Exh. P2 was not so endorsed. PW2 stated in his evidence that Exh. P2 had not been approved by the Chief Valuer. In that regard evidential value of Exh. P2 is therefore to remain as the opinion of the maker."*

The second school on validity of valuation reports worth to be relied by the Court maintains that value of the land must be ascertained a certified valuer. In the case of **John Malombola v. Remmy Kwayu,** Miscellaneous Land Application No. 91 of 2009, High Court of Tanzania, Land Division at Dar es Salaam (unreported), the Court held:

> ...the value of the land must be ascertained by a valuer taking consideration of the current market value of the land and its improvement at the time the suit is instituted..."

On my part, I support the second school for two reasons: *One*, the requirement that a Valuation Report must be endorsed by a Chief Government Valuer, who is located in Dar es Salaam is something which caused more delay in determining cases which. *Two*, as per *regulation 6 of the Land (Assessment of the Value of Land for Compensation) Regulations, 2001,* the only requirement of verifying valuation report by the Chief Government Valuer is the assessment of the value of land and unexhaustive improvement for the purposes of payment of compensation by Government or Local Government Authority.

Before I pen off, I'am aware that there are other significant issues raised by the Court *suo moto* during submissions of the parties

including: *One*, in any subsequent application, whether the Applicant must obtain leave of the Court to substitute the Deceased person who was a party to the case with the appointed Probate Administrator. *Two*, whether a Probate Administrator can *suo moto* be joined at the wishes of the Party bringing the application. *Three*, whether *Order XXII of the Civil Procedure Code (supra)* covers post judgement application. *Four*, whether the Applicant's cause of action will stand after abatement of the 1st Respondent. However, following determination of the objection on pecuniary jurisdiction, I find it premature to address the raised issues.

In the light of the foregoing analysis, the point of preliminary objection raised by the counsel for the 2nd and 3rd Defendant is sustained. Consequently, the suit is struck out for want of original pecuniary jurisdiction. Costs shall follow events.

Y.J. MLYAMBINA

JUDGE

25/08/2022

Ruling delivered and dated 25th August, 2022 in the presence of Counsel Dickson Ndunguru for the Plaintiff, the 1st Defendant in person and Counsel Eleseus Ndunguru for the 2nd and 3rd Defendant.

Right of Appeal is fully explained.

Y.J. MLYAMBINA

JUDGE

25/08/2022