

**IN THE HIGH COURT OF TANZANIA**  
**(DR ES SALAM SUB REGISTRY)**  
**AT DAR ES SALAAM**  
**PC CIVIL APPEAL NO. 4 OF 2021**  
(Arising from Civil Case No. 55 of 2021)

**GBP TANZANIA LIMIED.....APPLICANT**

**VERSUS**

**ASAA SIMBA HAROON.....1<sup>ST</sup> RESPONDENT**

**A.H.V FILLING STATION CO. LTD.....2<sup>ND</sup> RESPONDENT**

**RULING**

Last Order: 5/8/2022  
Ruling: 18/8/2022.

**MASABO, J.:-**

The parties herein contend over ownership of a petrol filling station in Civil Case No. 55 of 2021. Subsequent to this suit, the applicant who is the plaintiff in said suit filed the instant application seeking for temporary injunction against the respondents. Upon being served the respondent raised two points of preliminary objection which is the subject of this ruling.

Hearing of the application proceeded in writing. Both parties were represented. The applicant had representation from its legal department whereas the respondent was represented by Mr. Reuben A. Simwanza. The

submissions were all filed within time. I have had the opportunity of reading all of them. I do not intend to reproduce their content.

The two limbs of preliminary objection raised by the respondents were that, the court has no jurisdiction to entertain the application and second, the application is bad in law as it does not contain specific prayers and/orders sought thus vague. At first, I was made to understand that these limbs of preliminary objection were different from the preliminary objection raised in the main suit and canvassed by this court in a ruling I personally delivered on 2<sup>nd</sup> March 2022. However, reading the submissions it has become vividly apparent that they are principally identical.

In the first limb, just as in the preliminary objection in the mother file, the respondents have argued that this court has no jurisdiction to entertain the application as it emanates from a land dispute hence within the jurisdiction of the Land Division of this court. On the second limb, instead of arguing in support of the point raised, they focused on the pecuniary jurisdiction of the court and submitted that, the plaint does not disclose the actual value of the subject matter hence it is presupposed that value of the subject matter is

within the pecuniary limits of the district court and the court of the resident magistrate. This point was exhaustively deliberated while determining the preliminary objection in Civil Case No. 55 of 2021.

In view of this, when the parties came for a ruling on 5<sup>th</sup> August 2022, I invited the parties to address me on the competency of preliminary objection. The Respondents were absent. Mr. Kagashe, learned counsel, who was appearing for applicant prayed for another date. Fortified, I rescheduled the matter to today 18<sup>th</sup> August 2022. Unexpectedly, all the parties have defaulted appearance hence they are deemed to have forfeited their right to be heard on this point.

Under the premises, I am constrained to hold that, the preliminary objection was inconceivably raised in the present application as the two limbs on which it is premised deal with the competency of the plaint which can not be interrogated in an application for temporary injunction. Second, even if they were property raised, this court cannot competently entertain these two points as having entertained and resolved them in mother suit, it has become *functus officio*.

Based on these twin grounds, the two limbs of the preliminary objections fail and are hereby dismissed.

**DATED** at **DAR ES SALAAM** this 18<sup>th</sup> day of August 2022

X 

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Signed by: J.L.MASABO

J. L. MASABO

**JUDGE**

