

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)  
AT ARUSHA**

**CIVIL REVISION APPLICATION NO. 10 OF 2021**

*(Relating to the District Court of Arumeru at Arumeru in Misc. Civil Application No.1 of 2021)*

**PETER AZA MHANDO.....1<sup>ST</sup> APPLICANT**  
**HELEN PETER MHANDO .....2<sup>ND</sup> APPLICANT**  
**VERSUS**  
**JAMES REUBEN KIMARO.....RESPONDENT**

**RULING**

**31/8/2022 & 31/10/2022**

**GWAE, J**

In the District Court of Arumeru at Arumeru, the respondent, James Reuben Kimaro instituted a suit against the 1<sup>st</sup> appellant, Peter Aza Mhando, 2<sup>nd</sup> appellant, Helen Peter Mhando and a legal entity known by its business name "Kambe Investment" (3<sup>rd</sup> defendant). The respondent through his plaint at Paragraph 5 is claiming against the defendants now applicants and another person jointly and severally for breach of contract occasioning a loss of Tshs. 186, 000,000/=.

Basing on the alleged breach of contract dated 22<sup>nd</sup> May 2019 entered by the respondent and applicants, the respondent prayed for the following reliefs;

- (a) Payment of Tshs. 93,000,000/=special damages as pleaded under paragraph 18 hereinabove
- (b) Payment of general damages as shall be assessed by the court
- (c) Payment of interest on the amount under (a) hereinabove at the commercial rate of 30 % from 22<sup>nd</sup> May 2019 to the date of full payment
- (d) Cost of the suit
- (e) Any other relief (s) as shall be deemed just

In their joint Written statement of defence of applicants, nothing like a notice of preliminary objection that was issued save that other person who was the 3<sup>rd</sup> defendant. The said 3<sup>rd</sup> defendant questioned the jurisdiction of the District Court under paragraph 19 of his WSD.

The institution of the civil suit in the District Court was followed by the respondent's act of filing an application for temporary injunctive orders via Misc. Civil Application No. 7 of 2021. In the respondent's application, the respondent sought an order restraining the applicants and that other person from entering, alienating, disposing, damaging and/or in any manner dealing with disputed land or any other properties situated at Engorora Village, Arumeru District in Arusha Region with Title Registration No. 27191 Plot No. 24 pending determination of Civil Suit. The applicants exhibited their concern on the jurisdiction of the District

Court in respondent's application for temporary injunction. Thus the canvassed a preliminary objection on jurisdiction of the District Court. The applicants' PO was overruled on the ground that the same requires ascertainment of certain facts.

Aggrieved by the ruling of the District Court dated 21<sup>st</sup> December 2021, the applicants' counsel one Nelson Merinyo filed this application under certificate of urgency. He challenged the ruling of the District Court on the ground that, it lacked jurisdiction. On the 31<sup>st</sup> day of August 2022 Mr. Nelson and Miss Beatrice, both learned counsel appeared before me for hearing of this application for revision respectively for the applicants and respondent.

Supporting the application, Nelson argued by reiterating that, the District Court had no requisite jurisdiction to entertain Civil Case No. 6 of 2021 as well as Misc. Civil Application No.1 of 2021 filed before it. He added that that, the injunction sought was essentially aimed at restraining the applicant from entering suit land pending the matter before Land Tribunal. Hence, the matter at hand through Miscellaneous Civil Application No. 1 of 2021 relates to landed property. He went on arguing that, if one looks at the pleadings through Civil Case No. 6 of 2021, he or she may certainly understand that, the matter is land related especially paragraph 18 of the plaint which reads;

"The acts of the 1<sup>st</sup> and 3<sup>rd</sup> defendants have occasioned the followings damages;

- a. Payment of specific damaged*
- b. In the event of failure to pay the required sum, the defendants to be ordered to return the said property immediately and the plaintiff will pay the remaining the purchase price"*

Mr. Nelson urged this court to make a reference to the provisions of section 3 (1) of the Land Disputes Courts' Act, Cap 216 Revised Edition, 2019 excludes the jurisdiction of the Magistrates Courts and section 64 (1) (a) and (b) of the Land Act, Cap 113, Revised Edition, 2019.

Opposing this application, Ms. Beatrice briefly submitted that, the said Civil Case No. 6 of 2021 is all about the breach of contract where it was reciprocally agreed that, half of the purchase or sale price would be paid in the day of signing the contract. She further argued that, the reliefs sought by the respondent were grantable by the District Court of Arumeru on the ground that, the matter between the parties is purely based on the breach of contract.

In his brief rejoinder, Mr. Nelson stated that it is undisputed fact that there was a contract relating to land and above all, it was not a loan.

According to her, the matter ought to be dwelt with land court competent to hear and determine the land disputes.

The issue for determination by this court is, whether the District Court has jurisdiction to entertain the matters before it. It is cherished principle that, jurisdiction of a court or quasi-judicial body is a creature of statute. Hence, no any court or tribunal which can assume jurisdiction. It is clear from the provisions of section 62 of the Land Village Act, Cap 114, section 67 of Land Act, Cap 113, Revised Edition, 2019 and section 3 of the Land Disputes Courts' Act, Cap 216, Revised Edition, 2019 that, courts which are conferred with jurisdiction to hear and determine land disputes in Tanzania are as follows; Village Land Council, the Ward Tribunal, the District Land and Housing Tribunal, the High Court and Court of Appeal of Tanzania.

Therefore, it is the considered view of the court that, the statutory provisions of the laws cited above envisages that, our ordinary courts to wit; Primary Courts, District Courts and the Courts of Resident Magistrates do not have the requisite jurisdiction to hear and determine land matters except land courts established by the law.

Having carefully perused, the respondent's suit and application filed before the District Court, it is manifestly clear that, the respondent endeavored to establish that, his suit is based on the breach of contract