

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT COURT OF ARUSHA

AT ARUSHA

**(Originating from Civil Case No. 18 of 2020 in the Resident Magistrate Court of Arusha at
Arusha)**

CIVIL APPEAL NO. 30 OF 2020

ANGELINA ZABLON MSUYA.....APPELLANT

VERSUS

FANIKIWA MICROFINANCE COMPANY LIMITED.....1ST RESPONDENT

ACTIVE RECOVERY COMPANY LIMITED.....2ND RESPONDENT

EDWARD MASSAWE.....3RD RESPONDENT

JUDGMENT

17/03/2022 & 14/04/2022

GWAE, J

This is the first appeal. The appellant, Angelina zablon Msuya is calling upon this court to determine whether the trial court was justified to hold that it lacked jurisdiction to determine the matter before it.

Brief background facts are more telling to the effect, that, on the 10th March 2020 at the Resident Magistrate Court of Arusha, the appellant above filed a suit against the respondents seeking for the following reliefs;

1. A declaration that the auction which disposed the disputed property was illegal.
2. A declaration that the sale of the disputed property to the 3rd respondent is null and void and the same be returned to the plaintiff.
3. An order for eviction of the 3rd respondent from the property in dispute.
4. An order to the respondents to return to the appellant all the households' properties worth Tshs. 18,275,500/= which were illegally confiscated when they were illegally evicting the appellant from the disputed property.
5. In alternative to prayer No. (4) herein above an order to the respondents to pay to the appellant Tshs. (18,275,500/=) as compensation for the household properties illegally confiscated.
6. An order for payment of general damages to be assessed by this court for illegal sell, and illegal eviction of the plaintiff from the disputed property.
7. Costs of this suit to be provided
8. Any other order(s) or relief(s) that the court may deem fit.

It is further stated from the plaint that, the appellant had initially secured a loan of Tshs. 2,000,000/= from the 1st respondent, Fanikiwa Microfinance Limited which was to be repaid within six (6) months by installments. The appellant went on stating that she repaid the loan however as he was still

repaying the loan the 2nd respondent advertised the sale of the mortgaged property and subsequently on the 20th December 2017, the 2nd respondent, Active Recovery Company Limited sold the appellant's residential house at the tune of Tshs. 12,000,000/= to the 3rd respondent, Edward Massawe without following proper procedures.

The appellant further contended that the respondents at the time of her eviction from the mortgaged the respondents took her household properties worthy Tshs. 18,275,500/=. She thus urged the trial court to grant the reliefs sought as the whole process of disposing of the mortgaged property was nothing but illegal exercise.

The defendants while replying to the appellant's plaint, they raised an objection that the trial court had no jurisdiction to determine the suit as it contravenes section 167 (1) of the Land Act Cap 113 Revised Edition, 2019 and section 3 and 4 (1) of the Land Disputes Courts Act Cap 216 Revised Edition, 2019. The preliminary objection was determined and it was the finding of the trial court that the suit before it was purely a land matter as the subject matter in dispute was the house and as per section 3 (2) (a) of the Land Disputes Courts Act adding the appellant's suit falls under the category of suits for recovery of possession of immovable property. Having

sustained the respondent's preliminary objection, the trial court consequently strike out the suit with no order as to costs.

Dissatisfied by the trial court's decision sustaining the respondent's preliminary objection, the appellant has filed this appeal with the following grounds of appeal;

1. That, the trial court erred in law and in fact by dismissing the suit that it had no jurisdiction to entertain the same because it is a land matter while it is not a land matter.
2. That the trial court erred in law and in fact by failing to take into consideration the appellant's submission.

At the hearing of the appeal, the appellant was represented by the learned counsel, **Mr. Fridolin Bwemelo** whereas **Miss Judith Reuben** appeared for the 1st respondent. With leave of the court the appeal was disposed of by way of written submission.

In support of his grounds of appeal, the appellant submitted that, the trial Magistrate failed to properly construe the nature of the dispute between the parties as pleaded in the appellant's plaint. According to him the nature of the dispute between the parties is founded from the breach of the loan agreement between the appellant and the 1st respondent which resulted into

an illegal sale of the appellant's house and confiscation of the appellant's household properties. He went on submitting that even the prayers sought indicate that the cause of action originated from a breach of contract of contract and not a land matter as wrongly held by the trial court. Cementing his arguments Mr. Bwemelo cited the decision of the Court of Appeal in the case of **The National Bank of Commerce Limited vs National Chicks Corporation Limited & 4 Others**, Civil Appeal No. 129 of 2015 (Unreported).

Responding to the submission of the appellant's advocate, the learned advocate for the first respondent submitted that in determining the issue of jurisdiction two things must be taken into consideration one, pleaded facts and second, reliefs prayed. Mis. Judith went on submitting that, going by the plaint in particular at paragraph 5 of the plaint and on the reliefs at item (ii) it is clearly indicated that the appellant is seeking the recovery of her house which shows that her prayer is purely a land matter contrary to what the appellant alleges. The counsel further cited section 3 (1) (2) of the Disputes Courts Act (supra) stating that it is the statutory provisions which establish courts that are vested with jurisdiction to deal with land matters. The counsel

thus urged this court to dismiss the appeal as the matter was filed in a wrong forum.

Having briefly outlined what transpired at the trial court and the rival submissions by the parties in this appeal, I will now determine one issue, notably; whether or not the trial court erred in law by holding that it is not vested with jurisdiction to determine the matter before it.

While I am in agreement with the appellant's counsel in that, not all transactions or contracts founded on mortgage used in obtaining credit facilities may not necessarily result into a land case when a dispute arises between the parties as to loan agreements/facility letters. However, each case must always be treated or determined dependent on its set of facts. Before determining this appeal I would like to be guided by the Court of Appeal of Tanzania's decision when facing some identical contentions by the parties' advocates in the case of **National Bank of Commerce vs, National Chicks Corporation Limited**, Civil Appeal No. 129 of 2015 (unreported) whose judgment was delivered on the 23rd September 2019 (unreported) approving the decision of this court (**Mziray, J** as he then was) In **Exim Bank (T) Limited vs. Agro Impex (T) Limited and Two Others**,

Land Appeal No. 29 of 2008, (HC) (Unreported) save for the word jurisdiction had these to say;

"On the plaint filed it clearly shows that the plaintiff is claiming a total of Tshs. 1, 215, 598, 942.00 being the outstanding amount due and owing to the plaintiff arising from an overdraft facility extended by the plaintiff to the first defendant. The claim therefore against the defendant is founded on a credit facility. On the part of the second and third defendants the **cause of action is founded on a contract of guarantee. There is no doubt that the suit is purely founded on contract. On looking at the prayers you find that none is related to land. The mere fact that the second and third defendants have put some security for the loan does not turn the suit to be a land dispute. Additionally, in my view, suing on an overdraft facility per se does** not turn the suit to a land dispute and give the court the necessary jurisdiction (Emphasis supplied)."

According to the above cited decision, it is therefore established principle that, not all transactions made out of the credit facilities that amount to land disputes as the breach of the terms and conditions stipulated in such agreements may either be commercial case or land case. In this instant matter, I should not be detained determining the issue on whether

the trial court had jurisdiction or not for the obvious reason that my reading from the facts pleaded in the plaint together with the reliefs sought by the appellant, it is plainly clear that, the claim of the appellant against the respondents is on the recovery of her house which she alleged to have been illegally sold together with her household properties as demonstrated at paragraph 5 of the plaint which states as follows;

“That the plaintiff claims against the defendants jointly and together for a recovery of her residential house built on surveyed plot of land measuring 20 meters long and 12 meters width situated at Olorien area, Kiranyi within Arusha District, Arusha Region with the following borders, West-Ernest S. Mollel, East-Road, South-Road, North-Godfrey Mollel worth more than One Hundred Million Shillings (Tshs. 100, 000, 000/=), and recovery of her confiscated household properties worth Tshs. 18,275,500/=.”

In view of the above quoted paragraph, the argument by the appellant’s counsel is not attainable on the reasons explained above and as correctly submitted by the 1st respondent’s counsel, in determining the cause of action one has to look at the pleaded facts and the reliefs sought as authoritatively emphasized in the case of **National Bank of Commerce vs, National Chicks Corporation Limited** (supra).

In the matter at hand, it is with no doubt that the appellant herein is not contesting on the breach of the loan agreement with the 1st respondent, the main area of controversy is, on the illegal sale of her house and this is also reflected in the reliefs sought where the appellant is seeking for the declaration that the auction and sale of her house was illegal, therefore null and void, declaration that the sale of the disputed property to the 3rd respondent is null and void, an order of eviction of the 3rd respondent and return of the appellant's household properties.

From the above facts and prayers, I am therefore of the considered view that the matter before the trial court was purely a land case and not a civil case as incorrectly proposed by the appellant and therefore the trial court was justified to hold that the matter before it was purely a land case as per section 3 (2) (a) of the Land Disputes' Courts Act (Supra) read together with section 167 (1) of the Land Act (Supra) and for that matter it lacked jurisdiction. The decision in the case of **National Bank of Commerce vs, National Chicks Corporation Limited** (supra) is thus distinguishable.

Nevertheless, had the appellant based her claims on the breach of contract in her pleadings, her suit would be of a commercial nature, thus a


civil case which is of commercial nature. Even though Order IV rule 4 of the Civil Procedure Code Cap 33, Revised Edition, 2019 provides that it is not mandatory for commercial cases to be instituted in Commercial Division of the High Court yet the value of the property claimed by the appellant being of Tshs. **100,000,000/=** would have automatically ousted the jurisdiction of the trial court to determine the matter since the value of the subject matter exceeds Tshs. 30,000,000/= (See a decision of this court (**Mruma, J**) in **Commercial Bank of Africa (T) Ltdvs. Patroba Adeli Ademba**, Commercial Case No. 2 of 2018 (unreported)).

In the event this court is satisfied that the above considerations suffice to dismiss the appeal. following the nature of the dispute between the parties I refrain from giving an order as to costs. Moreso, the appellant is directed to file his case to the competent court or tribunal.

It is so ordered.

Dated and delivered at Arusha this 14th April 2022




M. R. GWAE
JUDGE
14/04/2022