

UNITED REPUBLIC OF TANZANIA

JUDICIARY

HIGH COURT OF TANZANIA

MOROGORO DISTRICT REGISTRY

AT MOROGORO

LAND CASE NO. 26 OF 2022

VENANCE BENEDICT MINDE PLAINTIFF

VERSUS

MUSSA ALLY LWAYO 1ST DEFENDANT

HUSSEIN MWALIMU LWAYO 2ND DEFENDANT

LEP AUCTIONEER COMPANY (CLOUDI STEWA) 3RD DEFENDANT

RULING

Date of last order: 28/06/2023

Date of Ruling: 14/07/2023

MALATA, J

The plaintiff herein instituted a suit in the High Court of Tanzania at Morogoro. The dispute involves a total of thirty-six (36) acres situated at Ruhembe Village within Kilosa District with a total value of TZS 360,000,000/= meaning that, the value of each acre is TZS 10,000,000/-. This court found the land to be overestimated for purposes of denying jurisdiction to the District Land and Housing Tribunal. The plaintiff was with

estimated value of the land. This court found anxious to know how the plaintiff got that value of land bearing in mind its location which is one of the determining factors of value of land.

Upon inquiry from the plaintiff, Mr. Bartalamew Tarimo learned counsel for the plaintiff simply stated that, it was just an estimate but with no reliance from any valuation report. As the issue touched pecuniary jurisdiction and parties have to be sure of value of land or estimated value which is realistic to the market value of the land for the purposes of establishing jurisdiction and where to institute such land dispute.

Jurisdiction is Constitutional and statutory creature; thus, the court must be jealous of it and ensure that litigants travel within the four corners of where they are really required to be. Short of that, left uncontrolled will be like unguided missile thus watering down the legal foundation of courts and tribunals which is rooted from jurisdiction. Jurisdiction is not founded on litigants' supremacies or own choice as to where to institute but legal creature of which one has to be certain before instituting such a suit.

Had it been falling within the litigants' jurisdiction then some courts and tribunals might find not having cases to adjudicate as parties have decided to choose it guided by their own choice and not law. This court has the duty to ensure that, suits are instituted in tribunals and courts with

jurisdiction to try such cases guided by among others pecuniary jurisdiction.

Left uncontrolled, tribunals or courts might find itself dealing with a matter of which it has no jurisdiction.

As the plaintiff was unable to give concrete response to the court, when this matter came for the first pre-trial conference, this court suo motto raised the issue of pecuniary jurisdiction of the Land subject and whether the matter fall within the High court jurisdiction or not.

The parties were invited to make submission, and the plaintiff was represented by Mr. Bartalomew Tarimo while the respondent was represented by Mr. Alfred Tukiko Okechi, both learned counsels.

Mr. Tarimo submitted that; it is true that the land case at hand provides for estimated value of land to be TZS 360,000,000 for 36 acres. The estimated value of the land isn't founded on any criteria but mere estimate. He further submitted that the land in dispute is surveyed and developed, the land has been developed and there is a built farm house, and the estimated value is due to survey and development.

Mr. Tarimo conceded that, there is no criteria in arriving to estimated value of TZS 360,000,000/=. However, he submitted that, the estimated

value is valid and within this court's pecuniary jurisdiction and not the District Land and Housing Tribunal.

Mr. Okechi, submitting on the issue of pecuniary jurisdiction stated that, it is true that based on the pecuniary jurisdiction the DLHT is the one vested with first pecuniary jurisdiction to determine matters at the first instance. He submitted further that, the estimated value doesn't match with the actual price market value of the land at Ruhembe Village in which one-acre is sold at TZS 2,000,000, therefore for 36 acres is equivalent to TZS 72,000.000 which is within the jurisdiction of the DLHT.

Since there is no attached valuation report to the pleadings, the court is left in dilemma on whether the matter is within pecuniary jurisdiction of the High Court and not DLHT.

Section 13 of the Civil Procedure Code Cap.33 R.E. 2019 provides that, any suit shall be instituted in the court of the lowest grade, he thus submitted that the matter be dismissed for want of jurisdiction.

It is settled law that, whenever a suit is made before a court of law, the initial issue to decide is whether the court has jurisdiction to deal with it.

The East African Court of Appeal in **Shyam Thanki and Others Vs. New Palace Hotel [1971]1 EA 199** held inter alia that;

*"The 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"*

That being the case, any trial or proceeding by a court lacking pre-requisite jurisdiction to try it is a nullity. It is important to stress that, parties cannot confer jurisdiction to a court or tribunal that lacks jurisdiction. See the case of **Shyam Thanki and Others vs. New Palace Hotel** (supra).

Another case is **Fanuel Mantiri Ng'unda vs 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 significant to note that, when jurisdiction is conferred by statute, nothing, but the law itself can oust such jurisdiction. A court therefore before embarking on determining any matter, it must ascertain whether it is vested with jurisdiction be it territorial or pecuniary. Failure of which is fatal to the proceedings.

In the case of **Sospeter Kahindi vs. Mbeshi Mashini**, Civil Appeal No. 56 of 2017, CAT at Mwanza, the Court held that: -

"At this point we would hasten to acknowledge the principle that the question of Jurisdiction of a court of law is so fundamental and that it can be raised at any time including at an appellate level. Any trial of a proceeding by a court lacking requisite jurisdiction to seize and try the matter will be adjudged a nullity on appeal or revision"

This ruling is in respect of the issue of pecuniary jurisdiction, as to whether this court is clothed with mandate to entertain this suit based on the pecuniary value of the suit land provided in the plaint in absence of valuation report.

Order VII Rule 1(i) of the Civil Procedure Code, Cap 33 R.E 2019 (herein to be referred as CPC) provides a requirement that the statement of value of the subject matter is made so as to enable the court to determine its jurisdiction and assess the requisite filing fees. In the case of **Doctore Malesa and Others vs. The Permanent Secretary Ministry of Lands, Housing and Settlement and 3 Others**, Land, Case No. 18 of 2019 (unreported) this Court (Hon. Tiganga, J.) cited a case of the defunct Court of Appeal for East Africa namely, **Assanand and Sons (Uganda)**

Limited vs. East African Records Limited, Civil Appeal No. 10 of 1959

where it was stated that: -

"The facts showing that the court has jurisdiction is a matter of great importance because if the court proceed without assurance that it has jurisdiction, and it is later proved that it had not, any judgment which it gives is a nullity."

Also, it is a requirement under the provisions of section 13 of the CPC that every suit is to be instituted in a lowest court competent to try it.

However, this is a pure land suit, jurisdiction of courts in land cases is categorized basing on value of the subject matter, that is, the pecuniary jurisdiction.

The issue is whether this court is clothed with pecuniary jurisdiction to entertain this suit on its original jurisdiction. The judicial authority vested with original jurisdiction to entertain land matters are the District Land and Housing Tribunal (DLHT) and the High Court.

However, such jurisdiction is enjoyed subject to pecuniary limits provided under sections 33 and 37 of the Land Disputes Courts Act, [Cap. 216 R.E 2019] (LDCA). Section 33 and 37 are hereby reproduced for readymade reference;

33.-(1) *The District Land and Housing Tribunal shall have
and exercise original jurisdiction-*

(a)

(b)

(2) *The jurisdiction conferred under subsection (1) shall
be limited-*

(a) *in proceedings for the recovery of possession of
immovable property, **to proceedings in which the
value of the property does not exceed three
hundred million shillings;** and*

(b) *in other proceedings where the subject matter is
capable of being estimated at a money value, **to
proceedings in which the value of the subject
matter does not exceed two hundred million
shillings.***

37.-(1) *Subject to the provisions of this Act, the High
Court shall have and exercise original jurisdiction-*

*(a) in proceedings for the recovery of possession of immovable property in which the value of the **property exceeds three hundred million shillings;***

*(b) in other proceedings where the subject matter capable of being estimated at a money value in which the value of the **subject matter exceeds two hundred million shillings;***

As it can be gleaned from the law cited above that, in suits for recovery of possession of immovable property, the DLHT has jurisdiction where the value of the landed property doesn't exceed TZS. 300,000,000/=. Beyond that, it falls within jurisdiction of the High Court.

A question is how do the court come to know about this pecuniary jurisdiction in the absence of the valuation report?

In Land Case **No. 4 of 2020, Dr. Deodatus Mwombeki Ruganuza (Administrator of the Estate of the late Domistocles John Ruganuza) vs. Abdulkarim Meza**, Hon. Ngigwana, J adopted the position in **Hertz International Ltd and another Versus Laisure Tours Ltd and 3 others, Commercial Case No, 74 of 2008** where the court was caught with the situation that;

"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)"*

Taking consideration of the above legal position, I am highly persuaded that; **one**, generally suits are to be filed in the court or tribunal of the lowest grade, **two**, the exception fall on cases which are legally required to be filed in the High Court based on pecuniary jurisdiction or directives of the law, such as suits by or on behalf of Government of which the law requires to be filed in the High Court. Section 6(4) of the Government Proceeding Act, Cap.5 R.E.2019 Provides that;

*"All suits against the Government shall be instituted in the
High Court by delivering a claim in the Registry of the High
Court within the area where the claim arose"*

The **three** criterion is the court/tribunal with jurisdiction to determine certain kind of disputes. Issues touching probate, matrimonial, tax, land, etc which Tribunal or court is vested to deal with such specific matters.

Since, tribunals'/courts' jurisdiction is a creature of Constitution or statute then filing of cases cannot be based on parties' assumption who have no

legal mandate to confer jurisdiction to Courts. By leaving presumption by litigants to confer jurisdiction to courts, the principle that, jurisdiction is fountain of courts to determine a matter before it will be watered down.

In my view therefore, for a case to be instituted in the court/tribunal of lowest grade or otherwise, consideration must be put to above factors which has to be expressly provided in pleadings otherwise, courts will find handling cases of which it has no jurisdiction.

In the regard, litigants must at least provide for basis of the pecuniary amount for the purposes of conferring jurisdiction to either a lower court or the High court. Without it courts and tribunals might find itself entertaining matters not falling within its jurisdiction. Factors which can be used in establishing pecuniary on land includes; **one**, location of the land, **two**, use, **three**, topography, **four**, method of valuation used, **five**, other factors affecting the property value and normal current market value at a given place, **six**, attaching agreement with current purchase price.

In the present suit, there is no any attachment supporting existence of such mentioned value of land situated at Ruhembe Village within Kilosa District being thirty-six (36) acres valued at TZS 360,000, 000/= each acre being valued at TZS 10,000,000/=

In the course of submission parties, the defendants stated that the current market value of the land does not exceed TZS 2,000,000/=

The issue of jurisdiction is paramount and can be brought to the court attention at any time, however, this court is a court of record and since there is no factor establishing value of land in dispute bearing in mind it is at the village, this court has warned itself of the danger of acting on estimated value given by the plaintiff and his advocate herein.

It goes without saying, since the purchasing price of the suit property according to the Sale Agreements between plaintiff and the sellers for the thirty-six acres in cumulative didn't amount to 360,000,000 as per Annexure's E1 to E15. With respect, I disagree with the plaintiff's position.

Sections 33(2)(a) and 37(1) of the LDCA which are to the effect that the High Court's lacks jurisdiction to hear matters for recovery of possession of immovable property whose value do not exceed TZS 300,000,000. Moreover, section 13 of the CPC requires every suit to be instituted at the lowest court with competent jurisdiction to try it. The Court of Appeal in the case of **Manjit Singh Sandhu & others vs. Robibi R. Robibi**, Civil Appeal no. 121 of 2014 positioned.

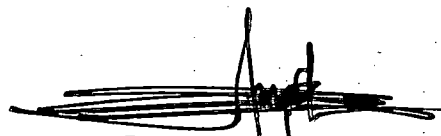
Applying the above position of the law, it is clear that the estimated value doesn't suffice in the absence of valuation report, it is hard for this court to ascertain if the suit land is within its pecuniary jurisdiction.

As stated earlier, this court must satisfy itself first, if it is clothed with pecuniary jurisdiction to entertain this suit instead of relying on the estimated value with no basis.

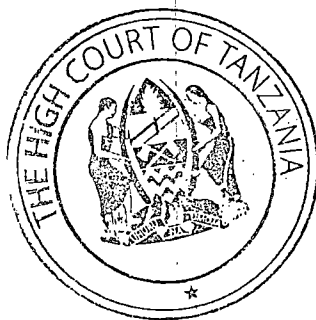
All said and done, I hereby struck out Land case no. 26 of 2022 for want of pecuniary jurisdiction with no order as to costs.


IT IS SO ORDERED.

DATED at **MOROGORO** this 14th July, 2023


G. P. MALATA
JUDGE
14/07/2023

RULING delivered at **MOROGORO** in chamber this 14th July 2023,




G. P. MALATA
JUDGE
14/07/2023