

**IN THE HIGH COURT OF TANZANIA
MUSOMA DISTRICT REGISTRY
AT MUSOMA**

LAND CASE NO. 04 OF 2023

MODESTA MAHANDO MATIKO	1ST PLAINTIFF
MBUSIRO ROSWE NYAMBACHA	2ND PLAINTIFF
AHMED IBRAHIM MSIRA	3RD PLAINTIFF
KISIRI WAMBURA KISIRI	4TH PLAINTIFF
LAWE CHACHA MHABE	5TH PLAINTIFF
EMMANUEL WAMBURA CHACHA	6TH PLAINTIFF
SUZANA BHOKE RANGE.....	7TH PLAINTIFF
MUBUSI MARWA CHACHA	8TH PLAINTIFF
FILOMENA M. MAGAIWA	9TH PLAINTIFF
CHACHA NYAISARI CHACHA	10TH PLAINTIFF
SAMWEL MARWA KIBE	11TH PLAINTIFF
CHACHA MAHANDO MATIKO	12TH PLAINTIFF
MUGOSI SAGIRE KIMURU	13TH PLAINTIFF
ANNA GICHOGO CHACHA	14TH PLAINTIFF
CHACHA MOHABE MWITA	15TH PLAINTIFF
MSABI PIUS	16TH PLAINTIFF
MAGRETH P. PIUS	17TH PLAINTIFF
RYOBA GICHONGE NYAMATENDE	18TH PLAINTIFF
KEMERO MARWA MACHOLI	19TH PLAINTIFF
NCHAMA IROGA CHRISTOPHER	20TH PLAINTIFF
LILIAN NYAMAINA	21ST PLAINTIFF
CHACHA WAMBURA NYANKENA	22ND PLAINTIFF
PETER MAHANDO MATIKO	23RD PLAINTIFF
MGESI NYANG'OMBE RANGE	24TH PLAINTIFF

PETRO MWITA RHOB 25TH PLAINTIFF
STEVEN WAMBURA CHACHA 26TH PLAINTIFF
WEMA RAZACK MANINGO 27TH PLAINTIFF
MGAYA BISAKU CHACHA 28TH PLAINTIFF

VERSUS

NORTH MARA GOLD MINE LTD **DEFENDANT**

RULING

29th August & 20th September, 2023

M. L. KOMBA, J.:

Plaintiffs herein are jointly and severally claim against the defendant for the payment of Tsh. 9,786,000,000/= being compensation (based on the current prevailing land market rates, construction rates and market rate for other destroyed properties as obtaining within Tarime District) in respect of their lands, buildings, crops, and other items that have been unlawfully and forcefully acquired by the defendant. The plaintiff has itemized claim by each plaintiff and pray for this court to; declared the action by the defendant is unlawful and violates plaintiffs' rights; restrain the defendant, its agent and workers from continuing to access and utilize the impugned land pending final determination of this matter; order payment of Tsh 9,786,000,000/=, subsistence allowance, general damage, punitive damage plus interest.

Defendant on her side denied the claim and pray the suit to be dismissed with costs. Further to that the defendant raised Preliminary Objection (PO) on point of law and prayed the suit be dismissed on the following summarized ground that;

1. *The monetary value of the plaintiffs built house and other exhausted improvement on the piece of land, this court has no improvement as was decided in **Mwanahamisi Seifu vs. Mwajuma Seifu and 2 others**, Land case No. 110 of 2020 (Dar es salaam), **Alphonse Kakweche and another vs. Board ya Wadhamini ya BAKWATA Tanzania**, Land case No. 97 of 2019 this court lacks pecuniary jurisdiction to determine the suit.*
2. *According to section 96(3) and (4) and section 121 of the Mining Act, Cap 123 R. E 2019 the claim should have been Institute in the Mining Commission and therefore this court has no jurisdiction.*

Before hearing of the main suit, PO has to be determined first. See **Khaji Abubakar Athumani vs. Daudi Lyakugile TA D.C Aluminium & Another**, Civil Appeal No. 86 of 2018, CAT at Mwanza.

Mr. Mchome and Audax Kameja both being advocates submitted for the defendant on the 1st limb of PO that this court lacks jurisdiction due to the fact that plaintiffs has submitted estimated value instead of submitting counter valuation form to substantiate claim of Tsh 9,786,000,000/=. It

was their submission that this court should not rely on estimation value which are inflated contrary to the valuation conducted by the Government valuer. To boost their submission, the dual counsel cited the case of **Dr. Deodatus Mwombeki Ruganuzza (Administrator) vs. Abdulkarim Meza**, Land Case No. 4 of 2020, **Ahimidiwe Geofrey and 43 others vs. Temeke Municipal Council**, Land Case No.50 of 2016 and **Karata Ernest and others vs. Attorney General**, Civil Revision No. 10 of 2010.

It was further submitted that so far as the amount submitted by the Government valuer was not disputed the same should be considered by this court as the value of property to be considered is the value as assessed and not value as estimated and referred the case of **Alphonse Kakweche and another vs. Board ya Wadhamini ya BAKWATA**, Land Appeal No. 97 of 2019 and **Shukran Chacha Chacha vs. Shaba Zuberi Mrutu**, Land Case No. 15 of 2022 that the valuation report should be considered and valuation and the amount has to be certain. By clear implication they submitted that WSD was not denied, basing on that they said the remaining plaintiffs are seven (7) whose claim is Tsh. 19,989,233/= which this court lacks pecuniary jurisdiction and prayed the same to be dismissed with costs.

In response to the PO, the plaintiffs had a legal service of Mr. Juvenalis Motete, an advocate who on the 1st limb of Objection submitted that the counsels for the defendant argue as if it is full trial, he said at this point what was supposed to be submitted is legal points and not facts. It was his submission that the 1st limb lacks quality to be PO as it deals with facts as attaching valuation report in plaint is not a matter of law as it is not mandatory under section 37 (1) (b) and (e) of Land Disputes courts, Cap 216 neither Order VII (1) (i) of the Civil Procedure Code nor Regulation 3 (2) Land Disputes Courts (District Land and Housing Tribunal) Regulation, GN 174 of 2003; even rule 4 of Court Fee Rules of 2018 GN. 247 of 2018 does not direct that requirement. It was his argument that the law require estimated value of the disputed land in land actions and that estimation was supposed to be mentioned by the plaintiff and not defendant. To boost his submission, he cited the case of **Juma Madafu vs. Herbert Mwanga**, Misc Land Appeal No 114 of 2008 High Court Land Division DSM where it was decided that courts are bound by the value of subject matter stated by the plaintiff. So far as the law requires plaintiff to provide estimated value of the land then defendant is not supposed to challenge it, he insisted.

Mr. Motete further submitted that WSD was not accompanied by evaluation report and that the amount in consent judgment was attained when plaintiffs add what has been agreed by defendants but there was no valuation report. He resisted the submission that the amount was based on evaluation report and refer this court to the case of **Michael Robertham vs. Fatuma Salim Amour**, Land Case No. 187 of 2004 that when PO is about jurisdiction based on evaluation report, the same need to be proved during hearing.

The counsel for the plaintiffs submission that the circumstance of this case is that, suit was filed when plaintiffs were already evicted. Analysing the case of **Ahimidiwe Geoffrey and 43 Others vs. Temeke Municipal Council** (supra), counsel said the case is distinguishable as it was heard on merit not as Preliminary Objection and the plaintiff did not prove his claims in evidence. Cases of **Shukran Chacha Chacha vs. Shaba Zuberi Mrutu** (supra) and **Alphonse Kakweche and Another vs. board ya Wadhamini ya BAKWATA** (supra) he said they are distinguishable too as the plaintiff estimated value in sale agreement but the court adopt the value in salary because it was substantiated. He further refers this court to the case of **Zebadia Wanchara Chacha vs. North Mara Gold Mine**,

Land Case no. 27 of 2022 where it was decided that there is no need of scientific valuation report in filling land disputes.

I will analyse the first limb of objection as argued by both counsels. As it is called, it is preliminary objection on point of law and in length on what is it all about has been elaborated by the famous case of **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd** [1969] E.A 696 that that, the preliminary objection cannot be raised if any fact has to be ascertained;

'A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.'

See also **Selcom Gaming Limited vs. Gaming Management (T) Limited & Gaming Board of Tanzania**, Civil Application No. 175 of 2005, (unreported).

In the 1st limb of objection, the dual counsel submitted about valuation report that plaintiff failed to submit counter valuation report and amended plaint after judgment in admission was entered. Though they did not cite

any provision of law, I find counter evaluation report is a matter of evidence which plaintiffs were supposed to be adduce during trial. With regard to jurisdiction of the court, the dual counsel for the defendant argues that after judgment in admission the remaining claims are from seven plaintiffs and mentioned them with the amount supposed to be claimed which is Tsh. 19,989,233/=. According to them, basing in that amount then this court lacks pecuniary jurisdiction.

It is not clear how the counsel recognise only seven (7) plaintiffs out of 28 plaintiffs as listed in the plaint. For this court to confirm that the rest of the plaintiffs has no claims need evidence and that attract full trial as it is trite that point of law should be on face of record. See **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd** (supra) and **Zebadia Wanchara Chacha vs. North Mara Gold Mine** (supra).

Claiming that the amount submitted by the Government valuer was not disputed by failure of plaintiffs to filing reply to WSD does not fall under the circumstances of Preliminary Objection. So far as plaintiffs have filed plaint, I am of the position that plaintiffs' claims need to be proved in full trial and not otherwise as was in the case of **Michael Robertham vs. Fatuma Salim Amour** (supra). Cases of **Ahimidiwe Geoffrey and 43 others vs.**

Temeke Municipal Council was heard on merit but currently this court is dealing with preliminary objection. In **Dr. Deodatus Mwombeki** case (supra) the defendants annexed the valuation report but in the case at hand the valuation report was not attached with WSD. In the case of **Karata Ernest** (supra) it was an appeal and the matter was heard in merit. All these cases are distinguishable to the case at hand as briefly analysed. To understand and substantiate the claim it need evidence which attracts full trial. Intention of the PO is to serve time of the court and parties when the matter is legal and which can be entertained summarily.

Claims as submitted by dual counsel in the first limb of objection needs evidence as they are the matter of facts. Thus, I find the first limb of PO lacks quality and is hereby overruled.

Coming to the second limb of objection. The dual counsel submitted that this court lacks jurisdiction to entertain the matter as the plaintiffs are claiming for compensation which defendants are supposed to pay them from mining activities done by the defendant. they said plaintiffs are claiming for compensation and defendant agreed to pay as there is judgment on admission. What plaintiffs are claiming after the judgment in

admission is claiming for unfair compensation which was not supposed to be filed in this court, they insisted.

It was their submission that it is the Mining Commission which has mandate under section 119(1) (c) of the Mining Act, Cap 123. They said, the commission is on operation since 2021 and it has rules. They insisted that when the law directs the matter to be handled by certain body it should be done by that body as was in the case of **Heritage Insurance Company Limited vs. Abihood Michael Mnjokava**, Civil Appeal No. 01 of 2020 HC Arusha. Referring the matter at hand they said the law is clear that it is the Mining Commission which has mandate and therefore this court has no jurisdiction. They cited the case of **Tambueni Abdallah & 89 Others vs. National Social Security Fund** Civil Appeal No. 33 of 2000 where CAT discussed the use of word 'may' as it refers the process of filing or not to file the case but not to opt for another forum. In the case at hand, Mr. Abert submitted that plaintiffs are claiming for compensation and therefore they had to choose to file their claims to the Commission or not to file, that means they have no other forum.

It was their submission that this court lacks jurisdiction to entertain the matter as plaintiff should appear in this court by way of appeal and not

otherwise. Basing on that, they prayed the matter to be struck out with costs.

In response to the second limb, Mr. Motete submitted that the dispute is about land and not mining and that plaintiffs are farmers they have never engaged in mining activities. He said the cited provisions of Cap 123 which are S. 96 and S. 119 is about mining operations contrary to submission by dual counsel for defendant. Mr. Motete refer this court to the case of **Jackson Nyamachoa vs. Higira Zabron** Civil Appeal No. 31 of 2020 HC Musoma and the case of **Suzan Pius Karani vs. Godlisten Mbise** Civil Appeal No. 14 of 2019 HC Mbeya where it was decided that section 119 (1) is used where parties are involved, engaging or prospecting mining operation. It was his further submission that if the Mining Commission can be termed as specialized tribunal, it can have mandate on issue of mineral and not land issue as the specialized forum for land disputes are clearly stipulated under section 3(2), 37(1) (b) and (c) and 62(c) of Land Disputes Courts, Cap 216 and Section 167 of the Land Act, Cap 113.

The counsel for the plaintiffs submitted that when this court (Musoma Registry) faced with akin situation in the case of **Zebadia Wanchara Chacha & 21 Others vs. North Mara Gold Mine Limited** (Land Case

27 of 2022) [2023] TZHC 20308 (22 August 2023) it was said this court is vested with jurisdiction to solve dispute over land disputes and counsel for defendant are aware of the said judgment as they appeared too. Sorrowful he submitted that he believed they could withdraw the PO after the decision was read but to his surprise, he submitted that they decided to contravene section 3A and B of the Civil Procedure Code, Cap 33 (the CPC) on substantial justice. He then prayed the PO to be dismissed with costs. It was his further prayer that if his prayer (for dismissal) will be granted, he prayed further that plaintiffs to be allowed to file bill of costs because it is a separate suit and the defendant has misused the time of this court and plaintiffs' time too.

During rejoinder, Mr. Audax insisted that section 119 of Cap 123 deal with all disputes not mining alone and the case in hand plaintiffs are complaining of compensation and that means it is a dispute between mining operation and the third party. He said the case of **Zebadia Wanchara Chacha** (supra) is not binding to this court as he expects the wisdom of this court.

I have keenly made a follow up of the submission by learned minds for and against the second limb of objection. The dual counsel for defendant

argues that under section 119 (1) of Cap 123 this court lacks jurisdiction as there is Mining Commission established for the purpose of dealing with compensation. This is not a new protest in this court (High Court) specifically this registry (Musoma Registry). My brother Hon. Mtulya, J. has in length, explain when the Mining Commission take charge in solving disputes and when the court established under the Land Disputes Courts Act and Land Act can entertain the matter in **Penina Mhere Wangwe & 31 Others vs. North Mara Gold Mine Limited** (Land Case 19 of 2022) [2023] TZHC 20674 (4 September 2023).

For easy of refence section 119(1) of the Mining Act provides;

*'...the Commission may inquire into and decide all disputes between persons engaged in prospecting or mining operations, **either among themselves or in relation to themselves and third parties other than the Government not so engaged, in connection with;***

(a)...(b)...

(c) the assessment and payment of compensation. (Emphasis supplied).'

From the excerpt above, the Commission may order or decide disputes for those who are engaging in prospecting or mining operations, including the third parties, in connection with the assessment and payment of

compensation. The issue now is whether plaintiffs conduct mining operations or are prospects in mining operations. Just as submitted by Mr. Motete, plaintiffs are farmers and did not involve in mineral operations neither expecting to be.

Moreover, from the long title to the Land Disputes Courts Act, that legislature intends to establish land disputes settlement machinery and matters incidental to lands, whereas section 3 of the indicated Act provides to that effect that *every dispute concerning land shall be instituted in the court of competent jurisdiction to determine land disputes*. Section 3 (2) (a)-(e) of the Land Disputes Act, section 167 (1) (a)-(e) of the Land Act, and section 62 (2) (a)-(e) of the Village Land Act vest powers to hear and determine all complaints regarding land matters to the Court of Appeal, the High Court, the District Land and Housing Tribunal, the Ward Tribunal and the Village Land Council.

Reading pleadings in the matter at hand, specifically as displayed in the prayers of the Plaint, the plaintiffs are asking this court to scrutinize the acquisition process of their lands, including valuation and compensation which is claimed to be unfair and this court to issue declaratory orders with regard to the complained process of eviction from their land.

In resolving the plaintiffs' complaints of this nature in this court, a bundle of enactments regulating acquisition of lands has been registered. It was said in **Penina Mhere Wangwe & 31 Others vs. North Mara Gold Mine Limited** (supra) that the enactments can only be interpreted by courts of law, not the Commission with insufficiencies of legal experts, as it was stated elsewhere in a number of times. See also **Zebadia Wanchara Chacha vs. North Mara Gold Mine Limited** (supra). The plaintiffs in the instant case are not mining companies and therefore cannot be said they are searching or doing mining activities to refer their matter to the Mining Commission.

The cited precedent in **Tambueni Abdallah & 89 Others vs. National Social Security Fund** (supra) and **Heritage Insurance Company Limited vs. Abihood Michael Mnjokava** (supra) by the counsel for the defendants are distinguishable on the sense that, in **Tambueni Abdallah & 89 Others vs. National Social Security Fund** (supra), the Court had resolved that; it is clear that trade disputes have to follow the prescribed procedures and there is no room for going to High Court straight. The precedent regulated trade disputes. Similarly, in **Heritage Insurance Company Limited vs. Abihood Michael Mnjokava** (supra) court was

invited to resolve on section 123 of the Insurance Act and Regulation 6 (1) of the Ombudsman Regulation, 2013 GN. No. 411 of 2013 which require all complaints filed by insurance customers against insurance registrant to be filed with the Insurance Ombudsman. The two indicated precedents did not provide this court with the test of mining and acquisition of land as complained by plaintiffs in the case at hand.

From the decisions in **Zebadia Wanchara Chacha vs. North Mara Gold Mine Limited** (supra) and **Penina Mhere** (supra), it is this my holding that it is this court which is empowered to resolve land associated disputes, including suits of compensations emanated from lands disputes. The Mining Commission is reserved for disputes between persons engaging in prospecting or mining operations. And therefore, the second limb of PO is hereby overruled and make the whole Preliminary Objection to be of no merit and is overruled with costs.

Plaintiffs has to benefit on costs and I have reasons. Just as submitted by the Mr. Motete, counsel for the defendants objected the suit while knowing position of the law. Their act has delayed the proceedings of the case and declined to abide with provision of Order VIII Rule 2 of the Code and

directives of this court in **Rukia Ruhaza Bhililo vs. Zaituni Saidi & Two Others**, Land Case No. 32 of 2021.

Dated at Musoma this 20th day of September, 2023



NK
M. L. KOMBA

Judge

Ruling delivered in chamber before in the presence of Mr. Thomas holding brief for Mr. Juvenalis Mtote and in the presence of Mr. Waziri Mchome.

NK
M. L. KOMBA

Judge

20 September, 2023