

**THE UNITED REPUBLIC OF TANZANIA**  
**JUDICIARY**  
**THE HIGH COURT OF TANZANIA**  
**IN THE DISTRICT REGISTRY OF DODOMA**  
**AT DODOMA**

**LAND CASE NO. 31 OF 2022**

**IBRAHIM BAKARI NYAKUBIHA.....PLAINTIFF**

***VERSUS***

**M/S CRDB BANK PLC.....1<sup>ST</sup> DEFENDANT**

**M/S CITYLAND COMPANY LIMITED.....2<sup>ND</sup> DEFENDANT**

**AYUBU JUMANNE RAMADHANI MBUWA.....3<sup>RD</sup> DEFENDANT**

**ARAFA JUMANNE MBUWA.....4<sup>TH</sup> DEFENDANT**

**AISHA JUMANNE MBUWA.....5<sup>TH</sup> DEFENDANT**

**RULING**

*Date of Last Order: 14/08/2023*

*Date of Ruling: 04/10/2023*

**A.J.Mambi, J.**

This ruling emanates from the preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> defendants. It is on the records that the plaintiff on the 27<sup>th</sup> of Sept, 2022 filed the suit at this Court against the defendants

claiming among others for an order declaring him the lawful owner of the landed properties located at Plot No. 86 and 87 Block "B" Nkuhungu South within Dodoma Municipality with Certificate of Title No. 21323-DLR and 9662-DLR respectively (*the suit lands*). The 1<sup>st</sup> and 2<sup>nd</sup> defendants raised a preliminary objection. The 1<sup>st</sup> and 2<sup>nd</sup> defendants in their preliminary objection and their written statement of defense contended that: -

1. *'That this suit is bad in law as there is judgment in rem (Land Case No. 17 of 2016) in respect of the same subject matter.*
2. *That this honourable court has no jurisdiction to entertain the matter."*

Submitting in support of the preliminary objection through written submissions, Ms. Tekla Kimati the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendant dropped the first limb of preliminary objection and went submitting on the second limb. In her submissions Ms. Tekla contended that this Court lacks jurisdiction to determine the suit before it since the value of the suit lands is Tsh 176,000,000/= which is below to the amount provided under the law, that is s. 37(1) of the Land Disputes Courts Act. The counsel's argument was based on the fact

that under the plaint the plaintiff claimed that he was granted a loan facility of Tsh 100,000,000/= by the 1<sup>st</sup> defendant that was secured by the suit lands. Ms. Tekla contended that the parties conducted a valuation over the properties before grant of the said loan where the property on Plot No. 86 Block "B" its market value was Tsh 80,000,000/= and forced value was Tsh 64,000,000/= and the property on Plot No. 86 Block "B" its market value was found to be Tsh 96,000,000/= and forced value Tsh 77,000,000/=. Thus, making the total market value to be Tsh 176,000,000/=. It was Ms. Tekla's view that this matter was wrongly placed before this Court, instead it was supposed to be filed at the District Land and Housing Tribunal as per s. 33(2)(b) of the Land Disputes Courts Act. Reference was made on several decisions of the court including **Commissioner General of Tanzania Revenue Authority vs. JSC Atomredmetzoloto (ARMZ)**, Consolidated Civil Appeal Nos. 78 and 79 of 2018 (CAT Unreported), **Tanzania-China Textile Co. Ltd vs Our Lady of the Usambara Sisters**, [2006] TLR 70, **Subira Amon Mwamunya vs EFC Tanzania Microfinance Ltd and 2 Others**, Land Case No. 163 of 2020.

Responding to the submissions in chief, Mr. Emmanuel Bwile learned counsel for the plaintiff conceded to the fact that the 1<sup>st</sup> defendant advanced a loan facility to the plaintiff amounting to Tsh 100,000,000/= that was secured by the suit lands. Mr. Bwile conceded further that the value of the said suit lands according to the valuation that was conducted in 2015 was Tsh 176,000,000/=. However, it was his contention that from 2015 to date the plaintiff has done a tremendous improvement on the suit land estimating to the tune of Tsh 320,000,000/= thus clothing the jurisdiction of this Court under s. 37(1) of the Land Disputes Courts Act. Mr. Bwile invited this Court on s. 49(2)(a) to (o) of the Valuation and Valuers Registration Act, No. 7 of 2016 on the ground that valuation exercises are undertaken for various purposes and therefore valuation for mortgage purposes cannot be invoked to decide court's pecuniary jurisdiction rather pecuniary jurisdiction is determined by the plaintiff estimation. Reference was made on the decision of the court in **Joseph Mdaka vs David Elias Nombo (The Administrator of the Estate of the Late Elias Nombo) and 20Others**, Land Case No. 2 of 2022.

In her rejoinder, Ms. Tekla maintained her submission in chief and adding that the valuation report should be used to ascertain the jurisdiction of the court since it was pleaded in the plaint. She contended that there is no need to estimate when there is a valuation report. She further contended that if this Court wishes to check the current value of the said securities, the same has decreased as per annexure PA-2 of the written statement of defense. It was her view that a valuation report is challenged by another valuation report and not by mere words. Ms. Tekla went on submitting that the alleged improvement on the suit lands is not substantiated by the plaintiff and therefore the valuation report attached in the plaint should be used to ascertain the jurisdiction. The learned counsel added that the alleged improvement on the suit lands squarely falls under the general damages that does not determine pecuniary jurisdiction of this court as specific damages is the value of the said lands under the valuation report that is Tsh 176,000,000/=

Having considerably gone through the parties' pleadings the submission in support and against the point of preliminary objection that was raised by the defendants, the main issue for determination is

whether this Court has pecuniary jurisdiction to determine this matter or not.

The pecuniary jurisdiction of this Court on immovable properties is provided under s. 37(1)(a) of the Land Disputes Courts Act, Cap 216 [R: E 2019] to be on properties which its value exceeds Tsh 300,000,000/=. The said provision provides: -

*"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;**"*(Emphasis Added)

The provision above is clear on the jurisdiction of this Court when exercising its original jurisdiction on immovable properties. It has jurisdiction on cases for recovery of possession of immovable properties with value exceeding Tsh 300,000,000/=.

In the instant case, there is no dispute that the loan of Tsh 100,000,000/= advanced to the plaintiff by the 1<sup>st</sup> defendant was based on the valuation of the suit lands which was conducted in 2015 that valued the suit lands at the tune of Tsh 176,000,000/=. The

dispute that arises between the parties is that the defendants suggests that since the plaintiff in his plaint has attached a valuation report, annexure IBN-3 which shows value of the suit land to be Tsh 176,000,000/= then that should be used to gauge the jurisdiction of this Court and that the improvement that was done after the said valuation report are mere general damages which cannot be used to determine the jurisdiction of the court. The defendants added that since there is a valuation report attached in the plaint that was approved by the Chief Government Valuer, then the value of suit land cannot be estimated in ascertaining the jurisdiction of the court and in turn they invited this Court on the current valuation report, annexure PA-2 attached to their written statement of defence which show that the value of the suit lands has decreased. On the other hand, the plaintiff contends that the valuation report attached is based on the valuation of the suit land that was conducted way back in 2015 at the time the plaintiff was mortgaging his lands, the suit lands. That since then the plaintiff has made a tremendous improvement that has increased the value of the suit land to Tsh 320,000,000/=.

Before going further, it must be made clear at this juncture that it is upon the plaintiff to state in his plaint the value of the subject matter for purposes of showing that the court has jurisdiction. Reference is made on Order VII Rule 1(f) of the Civil Procedure Code, Cap 33 [R: E 2019]. The same reads;

*"1. The plaint shall contain the following particulars*

*(f) The facts showing that the court has jurisdiction"*

That being the case then it follows that the suggestion by the defendant's counsel for this Court to consider a current valuation report of the suit lands, annexure PA-2 attached in the written statement of defence is untenable in law.

It is my considered view that in ascertaining the value of the subject matter, it is the contents of the plaint that has to be considered. Going through the plaint, indeed annexure IBN-3 which are valuation reports of the suit lands show that the value of the suit lands as in 2015 was Tsh 176,000,000/=. However, this suit was filed on 27/09/2022 about seven years down the road. Can we say that the value of the suit land has remained stagnant or depreciated as pointed out by the counsel for the defendants? The answer in my is **NO**. The defendant's counsel



has said nothing as to why she was saying that the suit land has depreciated. She didn't state whether the said landed properties were demolished or else. She did not counter the fact submitted by the plaintiff that there has been development in the suit land since 2015 to date.

In this city it is a common ground that there has/are a lot of developments on all angles. Since 2015 to date a lot have happened and are continuing happening. Lands are appreciating day in day out. That being the case, then to hold that the value of the suit lands of Tsh 176,000,000/= from 2015 has remained the same is something equivalent to impossible.

I understand that the plaintiff in this case just estimated the value of the suit lands to the tune of Tsh 320,000,000/=. As it stands, it is just an estimation. There is no law that provides for mandatory valuation of the suit lands and courts have several times determined cases that the value of the subject matter had been just estimated. That being the case it is my considered view that the estimated value of the suit lands in the instant case should be used to assess the pecuniary jurisdiction of this Court.

That said since the estimated value of the suit lands is Tsh 320,000,000/= which is within the pecuniary jurisdiction of this Court, then it is the finding of this Court that the preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> defendants is baseless.

From my analysis and observations, I find that the preliminary point of objection raised is non-meritorious is accordingly overruled. In the premises and from the foregoing reasons, the plaint filed by the plaintiff is hereby sustained and scheduled to proceed into the next steps. I make no order as to costs.

It is so ordered



**A. J. MAMBI**

**JUDGE**

**04/10/2023**

Ruling delivered in Chambers this 4<sup>th</sup> of October, 2023 in presence of all parties.



**A. J. MAMBI**

**JUDGE**

**04/10/2023**

Right of Appeal explained



**A. J. MAMBI**

**JUDGE**

**04/10/2023**

