

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
ARUSHA SUB REGISTRY
AT ARUSHA**

LAND APPEAL NO. 112 OF 2022

(originating from Application No. 216 of 2018 at the District Land and housing
tribunal for Arusha at Arusha)

ELIHURUMA PAUL MOLLELAPPELLANT

VERSUS

NATIONAL MICROFINANCE

BANK LIMITED PLC1ST RESPONDENT

ADILI AUCTION MART LIMITED2ND RESPONDENT

JUDGMENT

30th October & 11th December, 2023

KAMUZORA, J.

The current appeal emanates from the decision of the District Land and Housing Tribunal for Arusha at Arusha in Application No 216 of 2018 (herein to be referred to as the trial tribunal). The appellant in this appeal is seeking for this court's indulgency in overturning the tribunal decision and declare that the tribunal was clothed with jurisdiction to determine his case.

Briefly, in 2016 the Appellant and the 1st Respondent herein entered into a loan agreement and the 1st respondent extended an overdraft

facility to the Appellant to the tune of tshs 30,000,0000/=. It was the Appellant's claim that the 1st respondent engaged the 2nd Respondent to claim the loan advanced to the Appellant prematurely hence hindered the Appellant from redeeming the property used as collateral. Appellant therefore sued the Respondents herein for a declaration that the respondents are in breach of loan agreement and the mortgage agreement. He therefore sought for a permanent injunction restraining the respondents, their workmen, agents or anyone working on their behalf from premature exercising the sale of the mortgaged property which is a residential house built in plot No. 208 Block A Engare Olmotonyi Arumeru District in Arusha Region with certificate of title No. 20284.

The 1st respondent filed his Written Statement of Defense together with a notice of preliminary objection on point of law to the effect that the trial tribunal lacked jurisdiction to grant the reliefs sought by the Appellant. The trial tribunal upheld the preliminary point of objection and ruled that it lacked requisite jurisdiction to entertain the matter. Upon hearing the objection, the tribunal was convinced that it lacked jurisdiction hence, the application was dismissed for want of jurisdiction with costs.

Aggrieved by that decision, the Appellant knocked the doors of this court with one ground that the trial tribunal erred in law and fact by dismissing the application for want of jurisdiction. Hearing of the appeal was by way of written submissions and as a matter of legal representation, the Appellant appeared in person while Mr. Moses Mmbando appeared for the respondents. Each party filed submission as per the schedule save for the rejoinder submission.

In his submission in support of the appeal, the appellant pointed out that jurisdiction is the creature of statute and parties cannot confer jurisdiction to court or tribunal which lacks jurisdiction. Reference was made to the case of **Shyam Thaki and others vs. New Palace Hotel** [1971] 1 EA 199. He however submitted that the trial tribunal misdirected itself in ruling out that it had no jurisdiction to entertain the matter referring paragraph 7 of the application on the reliefs sought. He contended that under section 3(2) of the Land Disputes Courts Act Cap 216 and Section 167 (1) of the Land Act Cap 113, the forum set by law in determining land disputes among other is the District Land and housing Tribunal. That, the fact that the application before the trial tribunal had some commercial element does not bar the trial tribunal from entertaining the application. The Appellant was of the view that the

trial tribunal mis-interpreted the NMB general terms and condition applicable to the facility as the same provides for a dispute settlement mechanism between parties and it does not confer jurisdiction to the Commercial Division of the High Court. The Appellant was of the view that the trial tribunal has the requisite jurisdiction to entertain the application before it thus, prayed for the appeal to be allowed.

The counsel for the respondents agrees to the fact that the jurisdiction to adjudicate land matters is vested to the trial tribunal and courts by virtual of the section 3 (1) (2) of the Land Disputes Courts Act Cap 219, the Land Act Cap 113 and the Village Land Act Cap 114. He however strongly opposed the appeal and submitted that the cause of action before the trial tribunal did not fall within the ambit of land dispute. Referring the case of **Clara Nyoyai Lowassa Vs, CRDB Bank PLC** (Land Case No 105 of 2011) [2012] TZHC 179 the counsel for the Respondents insisted that, land disputes does not arise from a cause of action which is a consequence of a contract not relating to land matters.

The respondent's counsel added that in order to ascertain whether the court has jurisdiction one has to look at the pleadings. That, reading paragraphs 6 and 7 of the Appellant's application before the trial tribunal, one will realize that the cause of action purely emanated from

allegation of breach of contract (loan facility agreement). He urged this court to refer the decision **Exim Bank (T) Ltd Vs. Anglo Impex (T) Ltd & Others**, Land Case Appeal No 29 of 2008.

The counsel for the respondent further submitted that on the reliefs sought, the Appellant sought for a declaration that the respondent breached the facility and mortgage agreement. He was of the view that the said prayers can only be made and granted in a normal civil suit hence, could not be dealt with by the trial tribunal which is established only for the purpose of entertaining land disputes. Reference was made to the case of **National Bank of Commerce Ltd Vs. National Chicks Corporation Ltd & Others** (civil Appeal 129 of 2015) [2019] TZCA 345.

I have gone through the record of the trial tribunal, the grounds of appeal and submissions for and against the appeal. I agree with the submission made by both parties that, jurisdiction is a creature of statute and parties cannot agree or confer jurisdiction to the court or tribunal. See, the case of **Tanzania Electric Supply Company (TANESCO) vs. Independent Power Tanzania Limited (IPTL)** [2000] TLR 324 where it was held that,

"it is a trite principle of law that parties cannot by agreement or otherwise confer jurisdiction upon the court"

It must be noted that the nature of the suit can be seen from the pleadings and its annexures. Looking at the application filed before the trial tribunal and the annexures thereto, the appellant's claim emanated from the loan agreement between him and the 1st respondent. The appellant pleaded breach of loan agreement by the first respondent for directing the 2nd respondent to issue 14 days' notice of intention to sale to security while the appellant was still servicing his loan and without serving the appellant with notice of default contrary to their contractual agreement. Reading paragraph 6 of the application one will note that the cause of action emanated from a breach of loan agreement. The annexures to the application is an offer letter for an overdraft as well as a 14 days' notice for payment of the loan.

From the wording of the application, the cause of action clearly arose from breach of loan agreement. The fact that the appellant used the house as collateral does not in itself turn the matter into a land dispute. What is disputed here is not land ownership and anything any property attached to land. Even the annexures to the application include offer letter for an overdraft facility which has nothing to do with the claim over land. Another annexure, a notice of intention to realize the security due to failure to service the loan does not also raise any issue

over land dispute. The pleadings generally shows that what was in dispute is the terms of loan agreement and not otherwise. That is also supported by the prayers sought under paragraph 7 of the application;

- i. Permanent injunction restraining the defendants, workmen, agents or any one working on their behalf from premature exercising sale of the mortgaged property.*
- ii. Declaration that the respondents are in breach of loan agreement and the mortgage agreement.*
- iii. Costs of the suit*
- iv. Any other relief the Honourable tribunal may find just and appropriate to grant.*

From the above prayers, there is nothing indicating that there was dispute over land or anything attached to land from parties. I therefore agree with the respondents' counsel that the facts constituting the cause of action and the reliefs sought are purely civil in nature and does not fall under land dispute.

In the event therefore, I am fully convinced that the cause of action in this matter emanated from a pure breach of contract and not land matter. Hence, the trial tribunal was correct to rule out that it had no requisite jurisdiction to entertain the matter as it does not fall under the land disputes to which it is clothed with jurisdiction to adjudicate. The

appeal is therefore devoid of merit and the same stand dismissed with costs.

DATED at **ARUSHA** this 11th day of December, 2023.



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora", is written over a circular stamp.

D.C. KAMUZORA

JUDGE