

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

LAND CASE No. 12 OF 2023

MORITIES CORPORATION LIMITED PLAINTIFF

VERSUS

1. CRDB BANK PLC

2. ACCURATE RECOVERY AND AUCTION LTD DEFENDANTS

RULING

31st October & 01st December 2023

OTARU, J.:

This Ruling is in respect of a point of Preliminary Objection (PO) raised by the Defendants herein that *the case has been filed in a wrong registry of the High Court of Tanzania, being a commercial case with commercial significance therefore cannot be filed in a normal Land Registry and tried as a land case.*

When the matter was scheduled for hearing, parties agreed to dispose of it by way of written submissions. A schedule was arranged and complied with. Written submissions on behalf of the Defendants were drafted by Mr. Abel E. Rugambwa learned Advocate, while for the Plaintiff, the same were drafted by Dr. Anatory John Aman, the Managing Director of the Plaintiff company.

Mr. Rugambwa expounded on the objection by submitting that since the case is based on a loan agreement between the Plaintiff and the 1st Defendant, by its very nature, it is of commercial significance. That the Plots of land listed are mere security for the loan, thus it cannot be treated as a land case. In

support of his arguments, learned Advocate defined a commercial case under Rule 3(a), (b), (c), (e), (f) and (g) of **the High Court, (Commercial Division) Procedures** (GN No. 250 of 2012). Counsel also cited the case of **Maduhu Sang'udi Investment v Kasonzo Car Hire Company**, Civil Appeal No. 148 of 2021, CAT at Songea (unreported), **Gosbert Mutagaywa v. Jamila Kassim Ramadhani Kizenga and 2 Others**, Commercial Case No. 162 of 2014, HCT Commercial Div. (unreported), **the National Bank of Commerce Ltd v. Maisha Mussa Uledi (Life Business Centre)**, Civil Appeal No. 501 of 2022, CAT Mtwara (unreported) and **Onesmo Kamugisha Selestine v. CRDB Bank Plc**, Land Case No. 6 of 2022, HCT at Bukoba (unreported).

On the other hand, Mr. Amani did not dispute the matter being of commercial significance. He however argued that despite of it being of commercial significance, it is as well a land case because the claim against the 1st Defendant is discharge of mortgaged titles under the **Land Act** (supra). He thus argued that the matter could be filed either as a commercial case or a land case and that it is not mandatory for a commercial case to be instituted in the Commercial Division of the High Court. To fortify his arguments, Mr. Aman cited Article 108(1) of the **Constitution of the United Republic of Tanzania** (Cap. 2), section 7(1) and Order IV Rule 1(3) & (4) of the **Civil Procedure Code** (supra), the cases of **Rama and Salum Engineering Group (RSEG) Ltd v Mbasira Food Industries Ltd**, Civil Case No. 40 of 2022, HCT Dsm, [2022] TZHC 11027, as well as **Lucas Pius Mallya trading as Baraka Store**

v Enos K. Matongo and Vincent Mungo, Commercial Case No. 133 of 2015, HCT Commercial Division Dsm (unreported) and prayed for dismissal of the PO.

In rejoinder, the learned Advocate for the Defendant reiterated his stance on the ground that the matter is commercial in nature and not land, therefore the objection should be upheld.

I have considered the rival parties' submissions. Having done so, the issue for determination before this court is whether the PO has merits.

The cause of action as disclosed in the Plaint is based on a Loan Agreement between the Plaintiff and the 1st Defendant. The said loan is secured by the Plaintiff's landed properties. These facts are not disputed by the parties. As provided in the case of the **National Bank of Commerce** (supra) a loan arrangement creates a commercial relationship. Now, does the status change because the loan is secured by landed properties as argued by the Plaintiff? The same was tested in the case of the **National Bank of Commerce Ltd** (supra) where the court stated that;-

*'according to the definition of a commercial case, it includes a contractual relationship of a commercial organization and a person outside it. **Since the certificate of the right of occupancy was offered as security for the loan, it had a direct connection with the contractual relationship between the parties. The discharge thereof was still within the ambit of a commercial relationship***.

[Emphasis provided]

It can therefore be gathered that even if landed property is used as security in a commercial relationship, the status does not change to make it a land matter. Further, the argument on behalf of the Plaintiff that the matter may be instituted either as a commercial or a land matter carries no water because, a commercial case may not be filed as a land case and a land case may not be filed as a commercial case. The same has also been dealt with in the case of **Lucas Pius** (supra) where the court stated that;-

... it is optional to institute a commercial case in the commercial division of the High Court. Commercial case can be instituted in any registry of the High Court perhaps with exclusion of the Labour and Land Division of the High Court.'
emphasis provided.

I therefore totally agree with Mr. Aman that the High Court has jurisdiction to try all suits of civil nature. That jurisdiction is however not absolute. Section 7 of the **Civil Procedure Code** (Cap. 33 R.E. 2019) provides for an exception, that is; where the cognizance of the matter is either expressly or impliedly barred. Section 3 of the **Land Act** (Cap 113 R.E. 2019) confers jurisdiction to specific courts and tribunals to determine land disputes in a given area, the same includes the High Court. As stated earlier, the matter filed by the Plaintiff being of commercial significance may not necessarily be filed in a Commercial Division yet it is barred from being filed in a Land Division. I therefore wish to borrow a leaf from my learned brother, Mwenda J who in the


case of **Onesmo** (supra) advised parties that '*before filing a suit, a party must ensure the same is properly described and filed in a proper registry*'. Parties are therefore urged to satisfy themselves as to the jurisdiction of the courts to try the cases they are filing in order to avoid unnecessary inconveniences.

Consequently therefore, I am in agreement with the counsel for the Defendant on the point of objection to the extent that this case was wrongly filed as a land case. I therefore sustain the objection and order that Land Case No. 12 of 2023 be struck out from the registry of the High Court of Tanzania at Bukoba. The Defendant to get his costs.

It is so ordered.

DATED at BUKOBA this 1st day of December, 2023.




M.P. Otaru
Judge