

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**  
**IN THE SUB-REGISTRY OF MANYARA**  
**AT BABATI**

**CIVIL APPEAL NO. 21 OF 2023**

*(Arising from the Civil Case No. 1 of 2023 of the District Court of Hanang' at Katesh)*

**IZRAEL RAJABU DADIYA ..... APPELLANT**

**VERSUS**

**NMB BANK PLC ..... 1<sup>ST</sup> RESPONDENT**

**LOCUS DEBT MANAGEMENT ..... 2<sup>ND</sup> RESPONDENT**

**RULING OF THE COURT**

*11<sup>th</sup> and 22<sup>nd</sup> March 2024*

**MIRINDO, J.:**

At the commencement of the hearing of the appeal, the first respondent raised a point *in limine* that the District Court of Hanang' had no jurisdiction to try the action brought by Izrael Rajabu Dadiya, the appellant. Owing to the nature of the point raised, I ordered that it should be dealt with first as a result of which it might render the appeal redundant. Israel took a loan from the first respondent, NMB Bank PLC and apparently mortgaged his residential house for that loan. Before Hanang' District Court, Izrael sued NMB Bank PLC for effecting sale of the mortgaged property. He prayed mainly for orders of permanent injunction in respect of the mortgaged residential house and removal of different



labels on the mortgaged residential house indicating that the property was up for sale. The District Court dismissed the claim and Izrael has appealed to this Court on different grounds of complaint.

At the hearing of the appeal, Mr Rodgers Mlacha, learned Advocate, sought leave of this Court to argue a jurisdictional point before considering the merits of the appeal. He contended that in view of sections 3 and 167 (1) of the Land Disputes Courts Act [Cap 216 RE 2019 and the Land Act [Cap 113 RE 2019], respectively, there are specific courts which deal with land disputes and since this is a land dispute it should have been instituted in a land court. In support of this view, the learned counsel made reference to the decision of the Court of Appeal in *Bagamoyo District Council v A/s Noremco Construction and Another* (Civil Appeal 106 of 2008) [2009] TZCA 31 (23 July 2009), where it was stressed that specific courts have exclusive jurisdiction to deal with land disputes. He asked this Court to revise the proceedings before Hanang' District Court and then quash its proceedings and decision with costs.

Izrael who argued this issue by himself did not have much to argue rather than stating that as the District Court dealt with this case, it had jurisdiction. If it had no jurisdiction, it would not have entertained his case.

The question now is whether the action before Hanang' District Court was a land dispute. In an early leading case of *Exim Bank (T) Ltd v Agro Impex (T)*

*Ltd and 2 Others*, Land Case Appeal 29 of 2008, High Court, Land Division at Dar es Salaam (2009), Mziray J had the occasion to address the applicable test in determining what constitutes a land dispute for the purposes of land courts. He held that the court should be guided by the “controlling factor” in a given dispute

Two matters ...[have] to be looked upon before deciding whether the Court is clothed with jurisdiction. One, you look at the pleaded facts that may constitute a cause of action. Two, you look at the reliefs claimed and see as to whether the Court has power to grant them and whether they correlate with the cause of action....

Though not explicitly stated, this test is implicit in *Bagamoyo District Council* cited above. The Court of Appeal quashed the proceedings and decision of the High Court (Land Division) for having dealt with a suit for recovery of outstanding levy on hard rock and gravel. It held that the suit before the High Court (Land Division) was not a land dispute.

Applying this test in *Godlove Raphael Dembe v Philipo Paul Ndunguru and Others* (Civil Case 130 of 2022) [2023] TZHC 16690 (5 April 2023), Kakolaki J held that the suit seeking declaration that the defendant was a trespasser to the suit property was a land dispute not subject to the jurisdiction of normal courts.

In *Exim Bank (T) Ltd* cited above, Mziray J observed that where a mortgagor is seeking to enforce mortgage terms including the power to sale mortgaged property, such dispute is a land dispute. Addressing a similar test in



*Musa Makweta Musa vs Faraja Credit Finance* (Civil Appeal 8 of 2021) [2021]

TZHC 6744 (28 October 2021), Mlyambina J observed that:

whether the sale of the mortgaged land in issue is/was proper in recovery of the loan, then the Court must get satisfied on the decisive controlling factor in that dispute. If the Plaintiff/ Applicant wants to enforce mortgage rights, then the Land Courts as established under Section 167 (i) of the Land Act No. 4 of 1999 (R.E.2019) would be the proper Court to determine the dispute. In that respect the **decisive controlling aspect is a landed matter**. [Emphasis original]

The duty to distinguish between land disputes and those which are not was affirmed in *National Bank of Commerce Ltd v National Chicks Corporation Ltd and Others* (Civil Appeal 129 of 2015) [2019] TZCA 345 (23 September 2019) where the Court of Appeal observed that a dispute relating to mortgage is a land dispute where one of the parties to the mortgage seeks to enforce rights arising under a mortgage contract.

Given that the first respondent, the NMB Bank PLC is in the process of exercising its power of sale of the mortgaged property, I am of the considered opinion that the dispute in the present appeal is more of a land dispute.

As a result, I employ the revisional powers of this Court and proceed to quash the proceedings, set aside the judgment and decree of Hanang' District Court. If the appellant still feels aggrieved, he is at liberty to commence a fresh



case before a competent land court. From this holding there is no appeal before this Court for determination.

Although the first respondent was entitled to raise a jurisdictional point at the appellate stage, in the circumstances of this case, I order each party to bear its own costs.

It is so ordered.

DATED at BABATI this 15<sup>th</sup> day of March 2024.



**F.M. MIRINDO**

**JUDGE**

**Court:** Ruling delivered this 22<sup>nd</sup> day of March, 2024 in the presence of the Appellant in person and Mr Rodgers Mlacha, learned Advocate for the first Respondent and in the absence of the second Respondent. B/C: William Makori present.

Right of appeal explained.



**F.M. MIRINDO**

**JUDGE**

**22/3/2024**