

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 389 OF 2017

METTELUS CAESAR.....1ST PLAINTIFF

METERPLAN INTERNATIONAL CO. LTD2ND PLAINTIFF

VERSUS

SAFINA HUSSEIN MSUYA1ST DEFENDANT

STANBIC BANK (T) LIMITED.....2ND DEFENDANT

ADILI AUCTION MART LTD.....3RD DEFENDANT

Date of last Order: 14/5/2018

Date of Ruling: 18/5/2018

R U L I N G

MGONYA, J.

The 2nd Defendant in this suit have raised two points of preliminary objections to the effect that:

- 1. This Honourable court has no pecuniary jurisdiction to entertain this matter;***
- 2. That this Suit is bad in law for being res sub judice to Land Revision No. 12 of 2017.***

Mr. Zacharia Daudi Advocate represented the 2nd Defendant while Mr. Nyari learned Counsel appeared for the Plaintiff. In course of his submission Advocate Daudi abandoned the 2nd preliminary objection and proceeded to determine the 1st preliminary objection.

Learned Counsel told the court that, before the court is the suit among other things seeking for declaratory orders / reliefs as reflected in the Plaint. He further averred that, **Section 13 of the Civil Procedure Code Cap. 33 [R.E. 2002]** provides that every suit shall be instituted in the court of the lowest grade competent to try it. From this provision, it is the learned Counsel view that the suit before the court ought to have been instituted to the lowest competent court to determine the same.

In support of his argument Mr. Daudi cited a High Court case of ***DURA ABEID AWADHI V DIAMOND TRUST BANK (T) LTD AND 2 OTHERS*** where he said the Plaintiff was claiming for declaratory orders and the court held that it had no jurisdiction to entertain the suit since the order sought can be granted in the lowest court. He thus pray the suit before the court be dismissed with cost for lack of jurisdiction.

In reply thereto, Mr. Nyari the learned Counsel objected the point of preliminary objection raised saying that the suit is proper before this court and the same does not deserve to be dismissed.

The Counsel was of the view that the suit is in the proper jurisdiction since the High Court Land Division have jurisdiction to hear and determine the instant matter since the issue before it is all about land matter and the property involved exceeds fifty Million Shillings, that being before pecuniary amendment; proper to be filed in this court.

Mr. Nyari further submitted that the cited case of ***DURA ABEID AWADH (Supra)***, is distinguishable since the main issue before it was mortgage, the matter which can be instituted in any ordinary court not in relation to land matters.

Having considered the submissions of both Counsel, let me now determine the merits or otherwise of the preliminary objection. I understand the spirit of **section 13 of the Civil procedure Code Cap. 33 [R. E. 2002]**. However, in the instant matter, having careful gone through the contents of paragraph 22 of the Plaintiff which categorically plead the value of the suit premise to be **Tshs. 200,000,000/=**, with the cause of action and prayers sought, I am persuaded the amount of money pleaded in the Plaintiff, prescribes the matter is properly before the court.

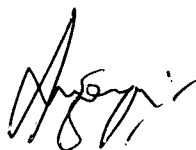
Consequently, I find that the filing of suit to this court did not offend Section 13 of the Civil Procedure Code which requires every suit be instituted in a court of lower grade; because the amount of money claimed exceeded the pecuniary jurisdiction of the lower court; in this

matter a District Land and Housing Tribunal since the matter involves land being **Tshs. 200,000,000/=**.

From the above explanation, **preliminary objection is dismissed with costs.**

The case is to proceed accordingly on merit.

It is so ordered.



L. E. MGONYA

JUDGE

18/5/2017

COURT: Ruling delivered in the presence of Advocate Zacharia for 2nd Defendant and Ms. Emmy B/C in my chamber today 18th day of May, 2018.



L. E. MGONYA

JUDGE

18/5/2017