

**IN THE UNITED REPUBLIC OF TANZANIA
IN THE HIGH COURT OF TANZANIA
LAND DIVISION**

LAND CASE NO. 81 OF 2017

CHRISTOPHER DEREK KADIO.....PLAINTIFF

VERSUS

HEAVEN ORIGENES MTUI.....1ST RESPONDENT

GEORGE SAATATU.....2ND RESPONDENT

GEOFFREY MUSHI.....3RD RESPONDENT

EDWIN MUANGI.....4TH RESPONDENT

DISMAS LYATUU.....5TH RESPONDENT

FANUEL MWAKAJILI.....6TH RESPONDENT

PROCHESS NJAU.....7TH RESPONDENT

SOPHIA MACHUI.....8TH RESPONDENT

WESTONE LUZILO.....9TH RESPONDENT

RULING

Date of the Ruling, 27th August 2018

R.J. KEREFU, J

In this case, the plaintiff has filed this case against the defendants seeking for, among others declaratory orders that:-

- (a) the plaintiff is the rightful owner of all that land known as Farm No. 3176, Goba Kinzudi, Kinondoni District, Dar es Salaam, (now Ubungo District).*
- (b) the defendants are trespassers in Farm No. 3176, Goba Kinzudi, Kinondoni District, Dar es Salaam;*
- (c) an order for vacant possession against the defendants, their agents, assignees and all other person(s) claiming under them to immediate vacate Farm No. 3176, Goba Kinzudi, Kinondoni District, Dar es Salaam;*
- (d) an order for perpetual injunction restraining the defendants, their agents, assignees and all other persons claiming under them, from interfering with the plaintiff's peaceful enjoyment of the suit property;*
- (e) the defendants pay the plaintiff's costs of and incidental to this suit;*
- (f) that the defendants pay the plaintiff general damages to be assessed by Honourable Court; and*
- (g) any other relief(s) that the Hon. Court may deem fit and just to grant.*

On the other side the 1st, 2nd 7th and 8th defendants have filed Written Statements of Defence, vehemently challenged the plaintiff's claims. In addition the 1st defendant has raised two points of Preliminary Objection that, *the plaintiff's plaint is incurably defective as it:-*

- (i) *offends Order VII Rule 1 (i) of the Civil Procedure Code, Cap. 33 [R.E.2002] and section 37 (a) and (b) of the Land Disputes Courts Act, Cap. 216 [R.E.2002];*
- (ii) *Order VI Rule 15 (2) of the Civil Procedure Code, Cap. 33 [R.E. 2002].*

On 27th August 2018 when the matter was called for hearing of the above points of preliminary objection, the plaintiff was under services of Mr. Makanja Manono, the learned Counsel, while the defendants were represented by Ms. Rachel Pallangyo, the learned Counsel, holding brief for Mr. Augustine Matherns Kusalika, the learned Counsel.

Mr. Manono informed the Court that after perusing the above points of objection he had since noted that the same have merit and as such, without wasting time for both the parties and the Court he decided to concede with the said points of the Preliminary Objection and prayed the Court to issue necessary orders. He however prayed the Court to refrain from issuing orders for costs at this stage.

I have as well perused the plaint against the points of objection and noted that the same was crafted contrary to the requirements of the law i.e *Order VII Rule 1 (i) of the Civil Procedure Code and section 37 (a) of the Land Disputes Courts Act, Cap. 216 [R.E 2002].*

The said provision provides *inter alia* provides mandatory requirements that a plaint should contain a statement on the monetary value of the subject matter for the purposes of, not only determining courts' pecuniary jurisdiction but also for assessing ***the court fees***. For instance Order VII Rule 1 of the Civil Procedure Code provides specifically that:-

*"The plaint **shall** contain the following particulars- a statement of the value of the subject matter of the suit for the purposes of **jurisdiction** and **of court fees**, so far as the case admits" [emphasis is added].*

In addition section 37 (a) of the Land Disputes Courts Act, (supra) states that, *"the High Court shall have and exercise original jurisdiction in proceedings for the recovery of possession of immovable property in which the value of the property **exceeds Fifty Million Tanzania shillings (Tshs 50,000,000/=)**. Moreover, Pecuniary jurisdiction of the High Court in movable properties is **One Hundred and Fifty Hundred Million (Tshs 150,000,000/=)** and above". (It has to be noted that this section was amended by the Written Laws (Miscellaneous Amendments) (No.4) Act, 2017 which came into force on 1st December 2017).*

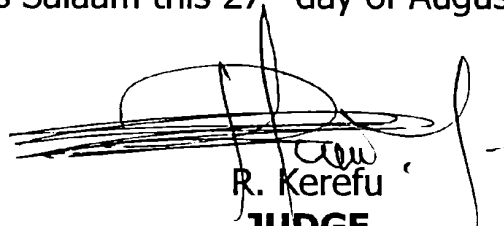
In the case at hand, it is very apparent and clear that the plaintiff's plaint at paragraph 12 only indicated that the value of the subject matter is seventy million, without specifying the type of currency

whether United States Dollars of Tanzanian Shillings or otherwise. It is also on record that, even that very paragraph is not verified.

I do therefore concur with the 1st defendant and Mr. Manono that failure of the plaintiff to clearly indicate the specific value of the subject matter and properly verify all paragraphs of the plaint had indeed rendered the plaint before me incurably defective in law.

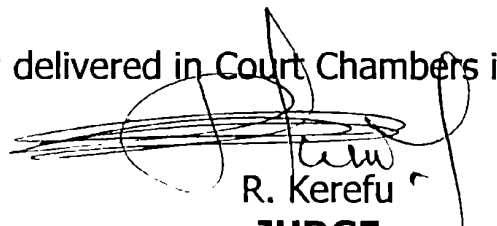
In the event, I hereby declare that the Land Case No. 81 of 2017 is incompetent and is hereby struck out from the record of this Court. I make no order as to costs.

DATED at Dar es Salaam this 27th day of August 2018.



R. Kerefu
JUDGE
27/08/2018

COURT- Ruling delivered in Court Chambers in the presence of the parties.



R. Kerefu
JUDGE
27/08/2018