

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 95 OF 2017

ESTHER ALPHONCE MAHENDE.....1ST PLAINTIFF
GODFREY MASERO MAHENDE 2ND PLAINTIFF
VERSUS
MAENDELEO BANK PLC..... 1ST DEFENDANT
BEST GROUP (T) LTD2ND DEFENDANT

Date of last order: 28/02/2018
Date of Ruling: 14/03/2018

RULING

Makuru, J

In their joint written statement of defence the Defendants in this suit have raised a preliminary objection on point of law that the jurisdiction clause is in violation of the provisions of Order VII Rule 1(f) of the Civil Procedure Code, Cap 33 R.E. 2002 (CPC).

Mr. Mwarabu, learned counsel represented the Plaintiffs while the Defendants enjoyed the legal services of Mr. James Bwana, learned counsel. The matter was disposed of by way of written submissions. Submitting in support of the preliminary objection Mr. Bwana argued that the Plaintiffs have not complied with the provisions of Order VII Rule 1 (f) and (i) of the CPC. According to him, the provisions of law quoted above demand that the plaint must show that the court trying it has jurisdiction and that the statement of the subject matter of the suit is also declared.

It is Mr. Bwana's further submission that in the present suit the jurisdiction clause is in paragraph 10 of the plaint but it falls short in that it neither shows the facts that give the court both territorial and pecuniary jurisdiction nor does it show that this suit is a land dispute. To support his argument, the learned counsel cited the case of **China Pesticide (T) Ltd Vs Safari Radio Ltd, High Court Commercial Case No. 170 of 2014 (Dar es Salaam, unreported)**. It is therefore his contention that the present suit ought to be struck out with costs for failure to comply with the provisions of Order VII Rule 1(f) of the CPC.

On the second limb of the preliminary objection it is argued that, paragraph 10 of the plaint does not comply with Order VII Rule 1 (i) of the CPC as there is no statement of the value of the subject matter. Citing the case of **Hertz international Ltd & Another Vs Leisure Tours & Holidays Ltd & 3 Others, High Court Commercial Case No. 74 of 2008 (Dar es Salaam, unreported)**, Mr. Bwana argued that the omission to state the value of the subject matter renders the suit incompetent.

In reply thereto Mr. Mwarabu submitted that, the learned counsel has raised a new preliminary objection which was not raised in the notice of preliminary objection. It is the learned counsel's argument that save for objections on jurisdiction and Limitation all preliminary objections are to be raised along with the pleadings. He contended that, since the preliminary

objection which was raised by the Defendant's counsel in the written submission is not on jurisdiction or Limitation and no leave of the court was sought, the court should disregard the same.

Embarking on the preliminary objection raised in the written statement of defence, Mr. Mwarabu stated that, the decisions cited by the learned counsel for the Defendants are distinguishable from the facts of the case at hand. He also submitted that paragraph 10 of the plaint shows that the court has jurisdiction and that the value of the subject has been stated under paragraph 6 of the plaint.

In rejoinder Mr. Bwana argued that, although the preliminary objection was not raised in the pleadings failure to do so does not exonerate the Plaintiffs from their non-compliance of Order VII Rule 1 (i) of the CPC. The Learned Counsel further reiterated his submission in chief.

Before determining the merits of the preliminary objection, I will first deal with the concern raised by Mr. Mwarabu regarding the preliminary objection on violation of Order VII Rule 1 (i) of the CPC. For the purpose of clarity, I will reproduce the said provision as here under:

"VII (1) The plaint shall contain the following particulars:

a)

b)

c)

d)

e)

f)

g)

h)

i) *a statement of value of the subject matter of the suit for the purposes of jurisdiction and court fees, so far as the case admits."*

From the wording of this provision of law it is apparent that this is an issue of jurisdiction because it is the value of the subject matter which determines the jurisdiction of the court. Hence, Mr. Mwarabu's assertion that this is not a matter jurisdiction and thus it is un-procedural to raise the same in the written submissions is unfounded for.

Now embarking on the merits of the preliminary objection, it is a mandatory requirement that the plaint must disclose the facts showing that the court has jurisdiction. In paragraph 10 of the plaint it is averred that:

"That this court has Territorial and pecuniary jurisdiction to determine this case."

The Plaintiff is claiming that this suffices to clothe this court with jurisdiction and that it is in compliance with the provisions of **Order VII Rule 1(f)** of the CPC. I am of the considered view that it does not. I say so because, upon perusal of the plaint, the value of the subject matter has not been indicated, which is the determinant factors of jurisdiction. In his submission, Mr. Mwarabu stated that the value of the subject matter has

been stated in paragraph 6 of the plaint. However, the cause of action in this case arose from the Defendants' intention to sell the 2nd Plaintiff's mortgaged properties. Thus, the subject matter in the case at hand is the Plaintiffs' properties whose value ought to have been indicated in order to determine the jurisdiction of this court as per the requirement of Order VII Rule 1 (f) and (i) of the CPC. Hence, the cited authorities are relevant.

In the upshot and for the foregoing, I find the preliminary objection raised to be meritorious and hereby uphold it. Consequently, I reject the plaint with costs.



C.W. Makuru
JUDGE
14/03/2018

Court: Ruling delivered in court this 14th day of March, 2018 in the presence of Mr. Deogratias Mwarabu, learned counsel for the Plaintiff and in the absence of the Defendants.



C.W. Makuru
JUDGE
14/03/2018