

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

**LAND CASE NO. 159 OF 2019**

**FRANSISCA KOKUGANYWA ..... PLAINTIFF**

**VERSUS**

**MAENDELEO BANK PLC ..... 1<sup>ST</sup> DEFENDANT**

**MUSSA SALLEH ..... 2<sup>ND</sup> DEFENDANT**

**RULING.**

**S.M. MAGHIMBI, J:**

On the 13/07/2020, this Court, *suo moto*, raised an issue of jurisdiction of the court to entertain the current suit. Owing to that, the parties were ordered to address the court by filing their respective submissions in writing. The Plaintiff was ordered to file her submissions in chief on or by the 03<sup>rd</sup> day of August, 2020 while the Defendants were to file their reply by 20<sup>th</sup> August, 2020 and rejoinder, if any, on or by the 15<sup>th</sup> October 2020. However, the plaintiff did not file any submissions in support of the issue raised. I therefore much appreciate the respect and professionalism shown by the defendants by adhering to the Court order and file their respective submissions as scheduled.

The reason why I ordered the parties to address me on jurisdiction may be well captured in the history of the matter before hand. This suit emanates from a transaction, a loan agreement of a total of Tshs. 85,000,000/- entered between the plaintiff herein and the 1<sup>st</sup> defendant, on the 29<sup>th</sup> day

of May, 2014 ('The transaction') for renovation of the suit property which was used by the plaintiff for both commercial and residential purposes. The loan was to be repaid within a period of 36 months and the same suit property was mortgaged as a security for the said loan. Following the demolition of part of the building by Kinondoni Municipal Council, the plaintiff defaulted the loan and subsequently on the 30/08/2015 the suit property was sold by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant. Aggrieved by the sale, the plaintiff filed in this court a Land Case No. 304 of 2015 ('The Previous Suit') challenging the sale and seeking for orders to nullify the sale, orders which were granted by this court on the 27/08/2019 the sale was consequently nullified.

After the nullification of the said sale, the plaintiff sought a meeting with the 1<sup>st</sup> Defendant, which meeting was convened on 25<sup>th</sup> October 2019 and the plaintiff demanded payment of interest for the period the plaintiff was living in other rented house, letting the plaintiff to see her house before she pays the 1<sup>st</sup> defendant. Unfortunately the 1<sup>st</sup> Defendant ignored all the plaintiff's concerns and instead, the plaintiff was served with the statutory 60 days' notice showing the sum outstanding then having escalated from Tshs. 119,000,00.00 to Tshs. 290,972,415.90, sum of Tshs. 171, 972, 241 .00 being interest accrued within three years during wrong occupation of the plaintiff's property. Owing to the said notice, the plaintiff has lodged this plaint praying for judgment and decree against the Defendants jointly and several as follows:-

- i. That the Defendants be ordered to pay the plaintiff loss of earnings of Tshs. 626,400,000.00 as per paragraphs 5 and 13 hereinabove.

- ii. That the defendants be ordered to pay the plaintiff a sum of Tshs. 680,000.00 per day being loss of earnings as illustrated in paragraphs 5 and 13 hereinabove.
- iii. That the Defendants be ordered to pay the plaintiff refurbishing costs to the tune of Tshs. 350,000.000. as per paragraphs 5 and 14 hereinabove
- iv. That the Defendants be ordered to compensate the plaintiff for her lost assets to the tune of Tshs. 600,461, 500.00 as per paragraphs 5 and 15 hereinabove.
- v. The Defendants be ordered to pay interest at Commercial interest rate of 30% from the 27<sup>th</sup> August 219 when the plaintiff was evicted from her property to the date of judgment.
- vi. The defendants be ordered to pay interest at Courts interest rate of 12% from the date of judgment to the date the decretal amount is paid in full.
- vii. That the defendant be ordered to pay general damage subject to the courts assessment.
- viii. That the defendant be ordered to pay costs of this suit.
- ix. Any other relief this court deems fit and just to grant.

It is from the prayers sought and the sequence of events that I have questioned the jurisdiction of this court to entertain the matter. Having gone through the records of this case and that of Land Case No. 304/2015, for the sake of clarity and ease understanding of the matter, I must also reproduce the prayers of the plaintiff herein in the original suit. In the suit,

the plaintiff prayed for judgment and decree against the defendants as follows:

- a) An order declaring the auction dated 30<sup>th</sup> August, 2015 null and void.
- b) An order directing the first defendant to sit with the plaintiff and determining the debt payable
- c) An order directing the first defendant to receive the amount payable within the contracted period of three years by rescheduling the mode of payment.
- d) An order of permanent injunction restraining the defendants from interfering with the possession of the suit premises as long as the plaintiff is complying to the rescheduled mode of payment.
- e) Payment of general damages suffered by the plaintiff as a result of first defendant conduct. (Emphasis is mine)***
- f) Costs of the suit to follow event
- g) Any other orders /reliefs this honourable court shall fit to make

It is owing to the fact that the prayers sought in this suit were partly determined and dismissed in the previous suit that I asked the parties to address me on whether I still have jurisdiction to determine a suit founded on claims and reliefs which were already dismissed in the original suit between the same parties.

In their submissions to support the point raised, both Mr. Muganyizi, learned advocate representing the 1<sup>st</sup> Defendant and Mr. Godon Nashon Waduma, learned advocate representing the 2<sup>nd</sup> defendant were of the view that this court has no jurisdiction to entertain the matter. I have

appreciated the well-researched submissions advanced by the two counsels, submissions which I shall take on board is due course of construction of this ruling.

It is trite law and has been held in many decisions of this court and the Court of Appeal that the issue of court's jurisdiction is not discretionary; it is rather a creature of statute. Jurisdiction cannot be imposed or imagined, it has to be ascertained in by either value of the subject matter, location or nature of the claim. Therefore apart from the value of the subject matter and the cause of action therein, another basis for determination of jurisdiction of the court is by looking at the pleaded facts and the reliefs sought by a party bringing an action. See the cited cases of **Ibrahim Ibata Sanane Vs National Bank Of Commerce, Land Appeal No. 44 of 2014**, High Court of Tanzania, Land Division (unreported) and **Tom Light vs Rehema Salim Amri, Land Case No. 300 of 2007** High Court of Tanzania (Land Division) (unreported).

In the case at hand, the pleaded facts narrate a series of events of the transaction to the point of disposition of the suit property and it is all these facts which formed the basis of claim during previous suit and they were determined therein. Therefore in the current suit as it stands, there is no new land dispute different from what was determined in the previous suit. The reliefs sought on the other hand, are a combination of two categories, there are reliefs which are rather commercial losses suffered by the Plaintiff at the time possession of her property was taken from her. The other part of the reliefs sought is on what was already determined in the previous suit.

Furthermore, the plaintiff in this suit is not at all challenging the intended sale of property of the plaintiff as per the notice served to her, instead, what the plaintiff is asking in this suit can be simply termed to as damages that she has suffered by the defendant's acts of still being in possession of the suit premises. All these prayers were made and should have been proved by the plaintiff in the previous suit, something which she did not do, and that is why in his judgment in the previous His Lordship Maige J, remarked on page 6:

*"In the circumstances, the prayers in items (b)(c)(d) and (e) of the prayers clause in the plaint **are marked abandoned.**"*

Looking at the 1<sup>st</sup>, 2<sup>nd</sup> 3<sup>rd</sup> and 4<sup>th</sup> prayers in the plaint, they address projected damages which are not specific hence despite the change of language, they are the general damages abandoned during the previous suit. To be more specific, the prayer of the plaint in the previous suit was for payment of general damages suffered by the plaintiff as a result of first defendant conduct something which is now projected in this case. It is apparent on its face that what the plaintiff claimed as damages suffered by her as a result of the conduct of the 1<sup>st</sup> defendant therein, are the same prayers that are in this suit. Only that this time, the plaintiff has quantified the losses incurred, but in an estimated manner which, as held in the case of **Bamprass Star Service Station Ltd. Vs. Fatuma Mwale, 2000 TLR 390**, they do not form specific damages.

In the case of **Mikoani Traders No. 49 of 2006 High Court Commercial division at Dar es Salaam**, (unreported), where his Lordship Massati J.(as he then was) had an opportunity of dealing with a

situation which is more akin to the purported one at hand, where he held at page 4 of the said ruling;

*"In the present case the Plaintiff has claimed 28,828,800 as loss of profit although the schedule of daily production capacity and margin is attached, that does in my view bring it any nearer to the specific damages; such as the purchase price and medical expenses supported by receipt and actual expenses. Loss of profit on the other hand is still at large. It needs to be ascertained that is why it cannot be regarded on equal footing with "special damages". It is a specie of general damages it is just fluid."*

Therefore what the plaintiff has claimed in this suit is the same general damages she claimed in the previous suit and abandoned. As correctly argued by Mr. Muganyizi, the claims in this suit formed part of the claim in the previous suit but there was no leave sought or granted to refile the suit on the same claims, since they were abandoned, they cannot be reclaimed in a fresh suit like what the plaintiff is attempting to do.

In addition to the above, this suit may as well be termed as an abuse of process a result of which will overwhelm Defendants with multiplicity of suits arising from the same cause of action. Am in full subscription to the holding of the Court of Appeal in the cited case of **Mathias Rweyemamu vs General Manager (KCU) Limited, Civil Application No. 3 of 2014**, where the Court of Appeal at page 11 held that:

*"The object of Order II Rule 2(3) of the CPC is to prevent plaintiffs from overwhelming defendants with multiplicity of suits arising from common cause of action. We hasten to reiterate that these*

*provisions also give room to the plaintiff who could not pursue reliefs arising from the same cause of action in their first suit, to seek leave of the court before they can file fresh suits to pursue reliefs they could not have claimed in the first suit. It is during the application for leave when the second court is seized with an opportunity to verify if the plaintiff concerned has advanced any good reason to justify the filing of the second suit."*

Therefore, since the prayers sought in the previous suit were for general damages which are now quantified in this plaint, having been abandoned in the previous suit and owing to the fact that the plaintiff's claim at hand is not a land issue, rather prayers for compensation for loss incurred during restitution of the property, this court lacks jurisdiction to entertain the current matter as the prayers sought herein are the prayers abandoned in the previous suit. Consequently, this suit is hereby dismissed with costs.

Dated at Dar es Salaam this 15<sup>th</sup> day of October, 2020



  
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**S.M MAGHIMBI**  
**JUDGE**