

THE HIGH COURT OF TANZANIA

(AT DAR ES SALAAM)

LAND DIVISION

LAND CASE NO. 104 OF 2021

CAMEL OIL (T) LIMITED PLAINTIFF

VERSUS

BAHDELA COMPANY LIMITED DEFENDANT

RULING

Date of Last Order: 30.07.2021

Date of Ruling: 04.08.2021

A.Z.MGEYEKWA, J

The Plaintiffs herein have instituted this land suit on 15th July, 2021 in this Court against the above Defendant praying for the following:-

- a) This Honourable Court to issue a declaratory order that the Defendant is in breach of the agreement entered with Plaintiff on 1st June, 2016;*
- b) This Honourable Court issue an order that Defendant should by paragraph 1 and 14 of the agreement dated 1st June, 2016;*
- c) This Honourable Court to issue an order to stop the Defendant and her agent from the Plaintiff's business;*
- d) That the Defendant to pay the general damages.*
- e) That the Defendant be ordered to pay the cost of the suit;*
and
- f) Any other reliefs the Court may deem fit and just to grant.*

On the other side, the Defendant has filed a Written Statement of Defence vehemently challenging the Plaintiffs' claims and he also raised preliminary objections as follows:-

- 1. That this Honourable Court has no jurisdiction to entertain this suit being a commercial dispute as per Written Law (Misc. Amendment) Act No. 4 of 2004.*

2. That the Complaint offends mandatory provision of Order VII Rule 1 (e) of the Civil Procedure Code Cap.33 [R.E 2019] as it does not constitute facts showing when the cause of action arose.

On 30th July, 2021 when the matter was called for mention, Plaintiff enjoyed the legal service of Mr.Twarah Yusuph, learned counsel whereas Defendant enjoyed the legal service of Mr.Samson Mbamba, learned counsel assisted by Mr. Mussa Mwapongo, learned counsel.

Opposing the case, Mr. Samson was the one who started to kick the ball rolling. On the first limb of the objection, the learned counsel for the Defendant contended that this court has no jurisdiction to determine this suit since the same is a commercial dispute. To bolster his submission he referred this court to section 7 (1) of the Written Laws Act. No. 4 of 2002 which state that all courts shall have jurisdiction in all civil cases except where the jurisdiction is expressly or impliedly. He added that the jurisdiction in land cases is provided for under section 167 (1) of the Land Act No.4 of 1999.

Mr. Samson emphasized that, in the case at hand, the centre piece of controversy between the parties is concerning fuel station whereas, the parties had a partnership agreement. He strenuously argued that it is not

a lease agreement, rent dispute and no any documents is showing that the parties are contesting on land ownership. He further contended that it is all about the question of joint operation of business and division of property. Fortifying his submission he referred this court to the case of **Shirima and Others Express Bus Service v Humphrey Maine Comfort Bus Service** [1992] TLR.

Mr. Samson did not end there, he referred this court to the case of **Shirima** (supra) and questioned the wrong complaint by the Plaintiff in exclusion of the reliefs. He continued to state that in the instant case the wrong which has been addressed by the Plaintiff is the outstanding debt, and Plaintiff's alleges that he is entitled to continue to run the business because he has not recovered his debts.

Insisting, Mr. Samson stated that the issue of jurisdiction is paramount, the first thing to be determined by the court before determining the suit is the jurisdiction of the court. To buttress his position he cited the cases of **Sospeter Kahindi v Mbeshi Mashini**, Civil Appeal No.56 of 2017 and **Tanzania Revenue Authority v Kotra Company Limited**, Civil Appeal No. 12 of 2009. He stressed that this is not a land

matter as per section 167 of the Land Act, No.04 of 1999 and the Plaintiff's reliefs cannot establish the subject matter.

On the strength of the above submission, he beckoned upon this court to strike out the suit with costs for want of jurisdiction.

On his side Mr. Mussa, learned counsel for the Defendant emphasized that the dispute between the Plaintiff and Defendant is well elaborated under paragraphs 6, 7, 8 and 9 of the Plaint and 'annexure Camel 1' which shows that the dispute is a commercial dispute in nature. He stated that the parties agreed to share profit out of the business contract. To support his submission he referred this court to item 1.3 of 'annexure Camel 1'. Insisting, Mr. Mussa contended that the cause of action accrued from the business transaction and not from the ownership of land. He continued contended that the parties divided obligations; the Plaintiff was in charge of business while the Defendant was waiting for share profit based on equal share.

He added that the 50 % shares which were required to be handed over to Defendant was utilized to liquidate the commercial claim against the Plaintiff. It was in his view that the matter is purely a commercial matter

and not a landlord and tenant matter. To substantiate his position he referred this court to GN No.250 of 2012, Item 3, and GN No.4 of 2004.

On the second limb of the preliminary objection, Mr. Mussa contended that as per the Plaint, the Plaintiff claimed that the agreement was for a duration of five years from 1st June, 2016 to 30th May, 2021. He went on to state that the agreement was ending after five years unless the other party has given notice in writing. Fortifying his submission he referred this court to 'annexure Camel 1' Item No. 1.1.4 and 1.1.5. He continued to state that the five years lapsed and the Plaintiff said that the Defendant does not want to continue with the said agreement. Mr. Mussa blamed the Plaintiff for not stating or make any claim to the Defendant upon receiving the said notice. He continued to claim that the Plaintiff did not provide any outstanding instead he came before this court to force the renewal. He insisted that the Plaintiff has not demanded any outstanding, thus, he has no any cause of action. He added that in case the Plaintiff could have replied then he could have a claim.

On the strength of the above submission, Mr. Mussa valiantly contended that the Plaintiff case is in the wrong forum and he has no cause of action and if there is any then the same is prematurely before this court.

Responding, the Plaintiff's Advocate confutation was strenuous. Mr. Twarah came out forcefully and defended the suit before this court as proper and fit case to be decided by the High Court Land Division. The learned counsel for the Plaintiff started by referring this court to the definition of a land dispute as defined under section 3 of the Land Act. He stated that the 'annexure Camel 1' draws attention to how parties came to conclude the contract.

Mr. Twarah continued to submit that the Defendant owes the Plaintiff Tshs. 2,053,143,825/= being outstanding debt arises during the course of their business. He went on to state that the debtor gave the company to the Plaintiff to run the station under terms and conditions that Camel oil had the sole management and the Defendant was required to give 50 % of the operational costs to the Plaintiff. To support his submission he refereed this court to 'annexure Camel 1' paragraph (d) and paragraph 1.6 of the Plaint. It was his view, Camel Oil had the sole management by itself was paying all land taxes and the Defendant used the outstanding amount as rent to allow the Plaintiff to possess the fuel station. He added that the Defendant did not shift business operation but the petroleum substance. He claimed that in accordance with paragraph 1.4 of the contract the land terms of five years were automatically renewable.

Insisting, Mr. Twarah submitted that the matter before this court is concerning land whereas the Plaintiff's interest is on land tenure, he wants to protect it. To support his argumentation he referred this court to the following annexures; Camel 1, Camel 2, and Camel 3. Stressing, Mr. Twarah stated that the dispute is related to eviction from the land since the Plaintiff was in possession of the said land.

On the strength of the above submission, the learned counsel for the Plaintiff stated that the Plaint is clear and the cause of action is also clearly stated.

In his rejoinder, Mr. Samson averred that the Plaintiff is aggrieved after the termination of the contract. He fervently argued that the instant dispute is not related to land ownership, lease of land, or mortgage of land. He submitted that the letter required the Plaintiff to hand over the station which means handing over the business not otherwise. He added that the Plaintiff was given five years of business tenure and not tenure over a piece of land.

Mr. Mussa reiterated his submission in chief and stressed that there is nowhere in the Plaint where the Plaintiff stated that he was paying rent. To support his position he referred this court to section 100 (1) of the Evidence Act, Cap.6 [R.E 2019]. Mr. Mussa went on to submit that the

Plaintiff's Advocate has not challenged the issue of cause of action instead he wants this court to consider that the letter as a cause of action. He valiantly argued that the issue of lacuna is the contract between the parties and the Plaintiff is the one who prepared the said contract.

In conclusion, he insisted that this suit is not related to land matter and does not belong to this court and in case the same is proper before this court then the Plaintiff has come to this court prematurely.

Having digested the learned counsels' submissions and the pleadings before me, I proceed to determine the preliminary objections raised by the Defendant's learned counsels. In determining the first objection, I will find out whether the High Court (Land Division) has jurisdiction over disputes concerning the business transaction. I should start by emphasizing that, the issue of jurisdiction is fundamental and a root of the case. If the court will proceed and determine the matter without the required jurisdiction the entire proceedings will be declared, "*null and void ab initio*".

In order to ascertain whether this is a land matter, I had to peruse the Plaintiff to find out whether the wrongdoing is related to land matter; the Plaintiff under paragraph 8 of the Plaintiff is claiming that the defendant purposely communicated to Plaintiff her intention to terminate the

contract. Again in paragraph 13 of the Complaint, Plaintiff claims that the Defendant through his letter dated 14th July, 2021 insisted termination and to remove the Plaintiff's staff and belongings in the Defendant's petrol station.

In the due cause, it is my view that land matters and commercial matters touching 'land' should be dealt with in the Land Division and the Commercial Division of the High Court respectively. In the holding of Kalegeya, J. in the case of **Rashimi Mangaldas Taichura & Others v Lavender Villas Ltd & Others**, Comm. Case No. 197 of 2002 w (supra) in this case the learned judge had this to say: -

*"... provided that the transaction involving selling and buying, whether for profit or for any other reason, even if it be a sole transaction, is commercial... **What is important is the nature of the centre-piece of the controversy.** The question is who, flowing from the series of these commercial transactions, has a paramount title to the premises. And the alleged flaws and illegalities cannot be separated to form separate actions as indeed there are the veins and blood that make these commercial transactions controverted".*
[Emphasis added].

I am in accord with the learned counsels for the Defendant that the Land Act, No. 4 of 1999 invests exclusive jurisdiction of determination of land disputes to the Land Division of the High Court. Section 167 of the Land Act, No. 4 of 1999 is very clear on this and the Act did not repeal the establishment of the Commercial Division nor inhibit its jurisdiction. See the case of **Rashimi Mangaldas** (supra). Moreover, I agree with Mr. Samson that this Court's exclusive jurisdiction has been abrogated by Act section 167 (1) of the Land Act No. 04 of 1999. This Act, indeed, has uplifted the exclusive jurisdiction of the Land Division of the High Court on disputes over land matters.

I have examined closely the Plaintiff, I am convinced that the dispute is related to commercial matter than land matter. The relationship between the Plaintiff and the Defendants is termed as a contractual relationship. The transactions, from the beginning of the contract agreement is a commercial nature. Therefore, I differ with Mr. Twarah submission that the suit before this court is related to the land matter to the contrary the same relates to commercial matter.

The aim of the Plaintiff and the Defendant, in this case, was *ab initio* not to change ownership of the land. So, what is to be looked upon in determining the jurisdiction of the Court is the *prima facie* intention of the

parties to a transaction. It is worth noting that a business transaction is not a transfer of ownership over the land. All learned counsels in their submission made it very clear that the owner of the petrol station is the Defendant. Therefore, the ownership never changed, thus, the same is not in dispute, rather, what is in dispute is the breach of the business agreement.

The Plaintiff claims that there was no performance of the contract, it is worth noting that the mere fact that landed properties was in dispute will not turn the matter to a land dispute since the ownership did not change. For that reason, I fully subscribe to the learned counsels for the Defendant that the matter is purely commercial in nature and it is an outcome of an unperformed commercial transaction which is far away from the jurisdiction of the Land Division of the High Court. This position is fortified with the holding of Hon. Mziray J (as he then was) in his ruling in the case of **Exim Bank (T) Limited v Agro Impex (T) LTD & Others, Land Case Appeal No. 29 of 2008** where he held as follows:-

*“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 the power to grant*

them and whether they correlate with the cause of action... The claim therefore against the first defendant is found on a credit facility. On the part of the second and third Defendant the cause of action is founded on a contract of guarantee." [Emphasis added].

Scrutinizing the prayers in the Plaint specifically the third prayer, it states that the Honourable court to issue an order to stop the Defendant and her agents from the Plaintiff business, one can see that the centre piece of controversy between the parties is concerned business transactions disputes. The record is silent whether the matter involves land ownership or trespass, thus, the issue of ownership is not the subject matter neither disposition of land.

In the end result, I see nothing which would give jurisdiction to this Court to entertain this suit. I hold so because.

Addressing the second objection, the cause of action, and the claims in this matter, the cause of action accrued from a purely commercial transaction. It must be understood that any litigation whose cause of action accrued from a transaction or a commercial contract, regardless of its aftermath to landed property, is not a matter of the Land Division of the High Court. It is a result of commercial transactions and it has to be dealt with by the Commercial Division of the High Court, not the Land Division.

The facts are very clear that the cause of action arose after the Defendant issued a notice to require the plaintiff to vacate the petrol station which is a business premises not an ownership claim over a piece of land. With due respect to Mr. Twarah, the issue of land tenure does not arise in this suit. Equally, the issue of eviction from land possession cannot arise since the owner of the fuel station is the Defendant. The tenure in question is business tenure which is related to a commercial dispute.

Moreover, as rightly submitted by Mr. Mussa that the Plaintiff does not state when the cause of action arose as per Order VII Rule 1 of the Civil Procedure Code Cap.33 [R.E 2019] which state that:-

“ 1. The plaintiff shall contain the following particulars -

*(e) the facts constituting the cause of action **and when it arose.**” [Emphasis added].*

Applying the above provision of the law in the instant suit, the time when the action arose is not stated in the Plaintiff which means the Plaintiff is prepared contrary to the requirement of the law. Therefore, failure to mention when the cause of action arose in the Plaintiff is fatal, since the court cannot determine the time limit of the suit, whether the suit was within time or not.

For the said reasons I hold that this is not a proper forum for adjudicating this dispute. I, therefore, proceed to uphold the Preliminary Objection on points of law raised by the Defendant's Advocates. In the end result, I strike out this suit without costs.

Order accordingly.

DATED at Dar es Salaam this 04th August, 2021.


A.Z.MGEYEKWA

JUDGE

04.08.2021

Ruling delivered on 04th August, 2021 in the presence of Mr.Twarah Yusuph, learned counsel and Mr. Samson, and Mr. Mussa Mwapongo, learned counsels for the Defendant.




A.Z.MGEYEKWA

JUDGE

04.08.2021