

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO.71 OF 2020

**SAID ATHUMANI MBUGURU (as the administrator of
the Estate of the Late Athumani R. Mbuguru) PLAINTIFF**

VERSUS

1. RICHARD K. RWEYONGEZA
2. AFRICAN BANKING CORPORATION (BANK ABC) DEFENDANTS
3. MSETO AUCTIONEER & DEBT COLLECCTOR

RULING

Date of Last Order: 03/05/2021 &
Date of Ruling: 02/07/2021

S.M KALUNDE, J:-

This ruling is intended to resolve a preliminary objection raised by the counsel for the 2nd defendant that the plaint is incompetent for failure to incorporate the value of the subject matter as required by **Order VII Rule 1 (i) of the Civil Procedure Code, Cap. 33 R.E. 2019**. Initially, the 2nd defendant had raised four objections, but preferred to argued only one, relating to the value of the subject matter.

In support of the objection, **Mr. Peter Kibatata**, learned advocate, argued that the plaint did not include a paragraph containing a statement of value of the subject of the suit for purposes of ascertaining the jurisdiction of the Court and Court

Fees. To support his view he cited the case of **Kastan Mining PLC vs. Colom Investment (T) Limited**, Civil Case No. 61 of 2015.

On their part the plaintiff, through their counsel, **Mr. John E. Mponela**, learned advocate, submitted that under paragraph 5 of the plaint the plaintiff has categorically stated that the value of the suit property is Tshs. 300,000,000/= . He concluded that the plaint had complied with the provisions of Order VII Rule 1 (i) of Cap. 33 and invited the Court to dismiss the preliminary objection with costs.

Having gone through the pleadings before me and the rival submissions of the counsel representing the parties, the question for my determination is whether the preliminary objection is merited.

Indeed, Order VII Rule 1 (i) of Cap. 33, requires the plaint to include a statement of value of the subject matter. For ease of reference the provision reads:

"1. The plaint shall contain the following particulars: -

(i) 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."

The above quoted provision is couched in mandatory terms entailing that the requirement being made is compulsory. Mr. Mponela argued that the value of the suit property is contained under paragraph 5 of the plaint. For ease of reference the relevant paragraphs are reproduced here under:

"5. That on the 29th May, 2009 the 1st Defendant filed a case No. 137 of 2009 against the Plaintiff claiming among other

things a piece of land worth Tshs. 300,000,000/= known as Farm No. 2019 situated at Disunyara Visiga in Kibaha District, Coast Region which has been registered as C.T. No. 52398. Refer Annexure MBUGURU 1 to form part of this Plaintiff.

6. *That the said matter was fully heard and determined by Honourable Wambura, J on the 29th July, 2016 in favour of the Plaintiff herein. Refer Annexure marked as MBUGURU 2 to form part of this Plaintiff.*
7. *That on the 6th April, 2016 before Judgment was read the Plaintiff passed away and Said Athumani Mbuguru was appointed the Administrator of the deceased Plaintiff namely Athumani Mbuguru. Refer Annexure Mbuguru 3 (Form No. IV) forming part of this Plaintiff.*
8. *That the Plaintiff through his Advocate made some efforts by writing several letters to the High Court seeking to be availed copies of Judgment and decree of which were duly received in April, 2020.*
9. *That while the Plaintiff was contemplating to file execution application be discovered that the disputed land C.T. No. 52398 was about to be sold through auction by the 2nd and 3rd Defendants upon default by the 1st Defendant who had mortgaged the disputed land after securing a loan from the 2nd Defendant while fully aware that the land in question does not wholly belong to the 1st Defendant.*
10. *That the 1st Defendant default to repay the loan to the 2nd Defendant resulted in the 2nd Defendant deciding to sell the disputed land by public auction.*
11. *That the actions of the 1st Defendant of mortgaging the disputed land while well aware that there is a judgment against him was actually denying the rights of the Plaintiff enjoying his award as granted by the Court.*
12. *The Plaintiff came aware of the existence of the Notice of sale on Monday the 11th May, 2020 and thereafter rushed to prepare this Plaintiff.*
13. *That 2nd Defendant has instructed the 3rd Defendant to auction the disputed land on the 16th May, 2020. Refer Annexure Mbuguru 4 collectively forming part of this Plaintiff"*

That was all provided in terms of explaining the substance of the present suit. From the wording of paragraph 5 above, it is clear that the Tshs. 300,000,000.00 was the value of the property involved in **Case No. 137 of 2009**, that is **Farm No. 2019 situated at Disunyara Visiga in Kibaha District**, which has also been registered as C.T. No. 52398. Under paragraph 6, the plaintiff states categorically that Case No. 137 of 2009 was determined by this Court in 2016.

Nonetheless, through paragraph 9 one notes that the present suit relates to a portion of C.T. No. 52398 which does not belong to the 1st defendant. In the subsequent paragraphs the plaintiff does not state the value of the portion, the basis of this suit. In absence of a statement of the value of the claimed portion, this Court cannot assume its jurisdiction for it would be dangerous to proceed under such circumstances. The plaint is incompetent.

In the circumstances I find merit in the preliminary objection raised by the counsel for the 2nd defendant, the same if sustained. The suit is truck out with costs.

DATED at DAR ES SALAAM this 02nd day of JULY, 2021.



A handwritten signature in blue ink, appearing to read 'S.M. Kalunde'.

S.M. KALUNDE

JUDGE