

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

LAND CASE NO 163 OF 2020

SUBIRA AMON MWAMUNYANGE.....PLAINTIFF

VERSUS

EFC TANZANIA MICROFINANCE LTD.....1ST DEFENDANT

NUTMEG AUCTIONEER & PROPERTY MANAGER LTD....2ND DEFENDANT

NABOS N. NZYOGOLI.....3RD DEFENDANT

RULING

Date of Last Order: 12/11/2021

Date of Ruling: 25/11/2021

T.N. MWENEGOHA,J:

The plaintiff instituted this suit against defendants claiming for the following reliefs: -

- i. A declaration that, the sale of the collateral property was illegal.
- ii. A declaration that, the plaintiff is the legal owner of the suit land.
- iii. An order restraining permanently the defendant from suit land.
- iv. A declaration that, plaintiff is free from debts for not rescheduling the debt and illegally selling plaintiff's house.
- v. Costs of the suit.
- vi. Interest on the decretal sum at Court's rate at 12% from date of judgment until payment in full.
- vii. Any other relief(s) that this Honourable court may deem fit and just to grant.

The 1st and 3rd defendant filed separate written statement of defence where 1st defendant raised preliminary objection on point of law that this court has no pecuniary jurisdiction to determine this matter. The 3rd defendant has also raised a preliminary objection that this court lacks

jurisdiction to entertain this suit by virtue of the provisions of Section 33(2)(a) and 37(1)(a) of the Land Disputes Courts Act (Cap 216 R. E 2019). Hearing of the preliminary objection was by way of written submission whereas the plaintiff was unrepresented, the 1st defendant had the services of Mr. Cleoplace James (advocate) and 3rd defendant enjoyed services of Mr. Martin Frank (advocate).

Mr. Cleoplace submitted that this court has no jurisdiction to entertain this matter since its original jurisdiction in proceedings for possession of immovable property market value should exceed Tshs. 300,000,000/= (Say Tanzania Shillings Three Hundred Million) per Section 37(1)(a) of Land Disputes Courts Act. He submitted that the suit property which is located at Makumbusho with Residential License No. KND/MBS/MCG28/74, has market value of Tshs. 113,000,000/= (Say Tanzania Shillings One Hundred and Thirteen Million), as per valuation report (Annexure PS5 of the plaint), which is below the original jurisdiction of this court. He referred also to Section 13 of the Civil Procedure Code, Cap 33, R.E 2019 which require every suit to be instituted in the court of the lowest grade competent to try it.

He cited the cases of **Fanuel Mantiri Ng'unda Vs. Herman Mantiri Ng'unda [1995] TLR 159, Shyam Thanki & Others Vs. New Palace Hotel [1971] 1AE 199, Musoma District Council Vs. Mraga Mukana Selemani, Civil Appeal No. 40 of 2020 (Unreported) at page 7-9** and **Dr. Deodatus Mwombeki Ruganuza Vs. Abdulkarim Meza, Land Case No. 04 of 2020 (HCT) at page 8**. He prayed this suit be dismissed with costs.

Mr. Martin's submission did not fall far from what was submitted by his fellow learned counsel. Further he added that, Section 33(2)(a) of the Land

Disputes Court Act provides for original jurisdiction of the District Land and Housing Tribunal to entertain matters for recovery of possession of immovable property, to proceedings in which the value of the property does not exceed three hundred million shillings.

He contended that, it is from the pleading that the plaintiff states the amount of the disputed property is between Tshs. 70,000,000/= to 113,000,000/= the suit falls in jurisdiction of the District Land and Housing Tribunal and not this court. He cited the case of **Mkurugenzi Mtei Express Ltd Vs. Peter Shauri, Civil Revision No. 02 of 2019, HCT** and the case of **Kingolo Limu @ Tina and Another Vs. R, Criminal Appeal No. 445 of 2017 (CA) at page 5** to support his argument. He prays for dismissal of this suit with costs.

In reply the plaintiff submitted that, it is true the value of suit property is Tshs. 113,000,000/= as per valuation report of October 2014. She further submitted that the record of this case shows, the suit started with Misc. Application No. 582 of 2020 for grant of temporary injunction. Since the valuation report is of 2014, she submitted the value of the suit land cannot be as it was in 2014. She referred to the case of **Mukisa Biscuits Manufacturing Co. Ltd Vs. West and Distributors Ltd (1996) EA pg 696** (sic) where the court stated that:-

"it was wrong for the learned counsel for the defendant to make reference to the valuation report annexed to the written statement of defence dated 4/12/2020 while the suit was filed on 2/10/2020"

And the case of **Julius Raphael Maitarya Vs. Commissioner for Lands & Other, Land Case No. 109 of 2018 HCT (Land Division)** which sustained the preliminary objection raised by the 3rd defendant that, and

stated that it is not mandatory for a valuation report to accompany the plaint so as to determine the value of the subject matter. She thus prayed for this court to proceed with hearing the main suit until its finality, as the valuation report of October 2014 was filed in this court a long time before.

In a brief rejoinder, Mr Cleophas reiterated what he stated in his submission in chief and added that the allegation that the suit was filed long time ago and the valuation also conducted a long time ago has no merit at all. In the plaint, at paragraph 10 and 19 the plaintiff has stated value of suit property to be Tshs. 113,000,000/= and the plaintiff has admitted in her submission that indeed value of suit property is Tshs. 113,000,000/=. He further contended that the cases of **Mukisa Biscuit** and **Julius Raphael Maitarya** are irrelevant since the question of jurisdiction of this court is fundamental. Citing Order VII Rule 1(f) and (i) of the Civil Procedure Code [Cap 33 R.E 2019], he submitted that plaint must contain facts showing that the court has jurisdiction and a statement of value of the subject matter for the purposes of jurisdiction and of court fees. And in the present case, he submitted this court has no jurisdiction and the suit should be dismissed with costs.

Having gone through submissions of both parties, I will now go straight to determine whether the preliminary objection raised by 1st and 3rd defendants has merit. It is undisputed fact that the market value of the suit property is Tshs. 113,000,000/=. The plaintiff has, at paragraph 19 of the plaint, stated the suit property has the value of about Tshs. 113,000,000/= to Tshs. 70,000,000/=. She further attached the valuation report of October 2014 which stipulated the market value of the suit property to be Tshs. 113,000,000/=. It is well known that annexures are part of pleadings (See **George Ndege Gwandu & Others vs Kasturi Safari Tekko & Another, Civil Appeal No.255 of 2018.**). In the plaint,

the plaintiff craved for this Court for the valuation report to form part of the plaint. However, in her reply the plaintiff submitted that the value of the suit property can not be the same since the property was valued in 2014 way before this matter was instituted in this court. Since, the valuation report as annexed by the plaintiff formed part of her plaint, I find it proper not to disregard it. As stated earlier it is not contentious that the suit property has a value of Tshs. 113,000,000/=.

The question of jurisdiction is very fundamental and should be determined before the case can proceed to its finality. It was held in the case of **Sospeter Kahindi Vs. Mbeshi Mashani, Civil Appeal No. 56 of 2017 CAT (Unreported)** that

"The question of jurisdiction of a court of law is so fundamental. Any trial of any proceeding by a court lacking requisite jurisdiction to seize and try the matter will be adjudged on appeal or revision"

In the present case the question of jurisdiction is a point of law and it arose from the pleadings. Though Article 108 of the Constitution of United Republic of Tanzania, 1977, confers on the High Court to hear and determine all matters at first instance provided that no other law has expressly specified for another court to entertain such matter at first instance. Mr Cleoplace and Mr Martin have invited this court to the provision of Section 33(2)(a) read together with Section 37(1)(a) of the Land Disputes Courts Act that the District Land and Housing Tribunal has original jurisdiction to hear matters for recovery of possession of immovable property which have value not exceeding three hundred million shillings.

Moreover, Section 13 of the Civil Procedure Code require every suit to be instituted at the lowest grade competent to try it. It was also held by the


Court of Appeal in the case of **Manjit Singh Sandhu & Others Vs. Robibi R. Robibi, Civil Appeal No. 121 of 2014**, that;


"Since Section 13 of the Civil Procedure Code requires that every suit be instituted in the Court of the lowest grade competent to try it, and in the view of the fact that the High Court, in this case, was not a court fitting that description, the trial High Court had no jurisdiction to try the respondent's suit".

From the above excerpt, it is a requirement that any suit should be instituted at the lowest court or tribunal competent to try it. Since the value of the suit property in this case does not exceed the pecuniary jurisdiction of the District Land and Housing Tribunal (Tshs. 113,000,000/=), therefore the suit could properly be instituted and entertained in the District Land and Housing Tribunal. I find that the arguments by 1st and 3rd defendants counsels have merits. I therefore find this suit is incompetent before this court and hereby struck it out. Plaintiff is at liberty to institute a fresh suit at a competent court or tribunal of lower grade with jurisdiction to entertain the matter subject to the law of limitation. No order as to costs.

It is so ordered.

Dated **at** Dar es Salaam on this **25th** day of **November, 2021**.




T. MWENEGOHA
JUDGE