

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

**LAND CASE NO. 105 OF 2022**

**UKODI INTERNATIONAL  
COMPANY LIMITED ..... PLAINTIFF**

**VERSUS**

**J. M HAULIERS (T) LIMITED ..... 1<sup>ST</sup> DEFENDANT  
RIO DEVELOPMENTS LIMITED ..... 2<sup>ND</sup> DEFENDANT  
FAHAD SAID MOHAMED ..... 3<sup>RD</sup> DEFENDANT**

*Date of Last Order: 15/07/2022*

*Date of Ruling: 29/07/2022*

**RULING**

**I. ARUFANI, J**

The plaintiff filed in this court the present suit against the defendants praying for the following orders: -

- (i) The declaration that 1<sup>st</sup> defendant breached the lease agreement, she had with the plaintiff.*
- (ii) The declaration that the lease agreement between the plaintiff and the 2<sup>nd</sup> defendant was voidable or void ab initial.*
- (iii) Payment of TZS 600 million damages as stipulated under paragraph 3 of the plaint.*
- (iv) Compound interest on (iii) above at the prevailing commercial banks' rate of 28% per month from the date of the cause of action to the date of judgment.*

- (v) *General damages as may be assessed by the court.*
- (vi) *An Order for payment of interest on the above as per the court rate per annum from the date of judgment to the date of satisfaction of decree.*
- (vii) *costs of the suit, and*
- (viii) *Any other compensation or payment as this court may deem fit and just to grant.*
- (ix) *Any other relief this Honorable court may deem fit and just to grant.*

Upon the defendants being served with the plaint they filed in the court their written statement of defence and in addition to that the counsel for the second and third defendants raised in the joint written statement of defence of the second and third defendants a point of preliminary objection which states that: -

*"That the Plaintiff's claim being not based on ownership or interest over the land exclusively, this court lacks jurisdiction to entertain this suit."*

When the matter came for hearing the point of preliminary objection raised by the counsel for the second and third defendants the plaintiff was represented by Mr. Jimmy Mrosso, learned advocate. While the first defendant was represented by Mr. Mohamed Muya, learned advocate, the second and third defendants were represented by Mr. Ngassa Ganja, learned advocate. The preliminary objection was heard orally (*viva voce*).

Mr. Ngassa Ganja told the court in support of the point of preliminary objection that, section 3 (1) and (2) of the Land Disputes Courts Act, Cap 216 R.E 2019 and section 167 (1) (b) of the Land Act, Cap 113, R.E 2019 gives this court exclusive jurisdiction to determine disputes, actions and proceedings concerning land only. He argued that, the "phrase concerning land" was defined by the court in the case of **Arnold Moshi & Another V. Shirwa Company Limited**, Land Case No. 125 of 2019, HC Land Division at DSM (unreported) to mean a proceeding for protection of ownership or possessory right.

He argued that, in looking for jurisdiction of a court it was stated in the afore cited case that the court is supposed to look for the cause of action and the reliefs sought in the plaint. He stated that, paragraph 5 of the plaintiff's plaint shows the claim is for compensation of TZS. 600,000,000/= from the defendants. He stated further that, paragraph 5 (v) and (vi) of the plaint shows the claim of the plaintiff is for refund of balance of rent which is approximately TZS. 130,000,000/=. He went on arguing that, as indicated at paragraph 5 (viii) of the plaint, the plaintiff is claiming for compensation of damages caused to her properties which is TZS. 80,000,000/= and paragraph 5 (ix) is a claim for compensation of items stolen from the plaintiff's truck worth TZS. 387,000,000/=.



He argued that, the claims of the plaintiff as averred in the afore mentioned paragraphs of the plaint is not for protection of ownership of land or possessory right in land but compensatory right. He argued further that, according to what was stated in the case of **Arnold Moshi** (supra) the said claims are not matters concerning land. He referred the court to the case of **Camel Oil (T) Limited V. Bahdela Company Limited**, Land Case No. 104 of 2021, HC Land Division at Dar es Salaam (unreported) where it was stated that, in looking as to whether a suit is a land matter the court is required to look into the plaint and the reliefs sought in the matter. He submitted that, if you read the reliefs claimed at paragraphs (i) and (ii) of the reliefs clause of the plaint you will find the plaintiff is seeking for declaratory orders in respect of lease agreement alleged was breached by the first defendant.

He argued that, as stated in the case of **Arnold Moshi** (supra) jurisdiction of the court is limited by statutes. He submitted the issues relating to tenancy and rights accrued from tenancy agreement are vested to the District Courts exclusively. To fortify his submission, he referred the court to section 107 (1) (b) of the Land Act and stated subsection 2 of the cited provision of the law gives tenants right to commence proceedings before the District Courts if there is a breach of lease agreement and the claim is for reliefs arising from the stated breach.



He submitted further that, section 109 (2) and (3) of the Land Act empowers District Courts to award damages arising from breach of lease agreement. He told the court that, claims for compensation arising from breach of lease agreement brought to this court by the plaintiff was supposed to be taken to a District Court and not to this court. At the end he prayed the point of preliminary objection he has raised be upheld and the plaintiff's suit be dismissed with costs.

In his reply the plaintiff's counsel argued that, the counsel for the second and third defendants is misleading the court. He argued that, as rightly argued by the counsel for the defendants, this court is a creature of statute and the statute gives the court exclusive power to deal with land matters. He stated that, section 3 (1) of the Land Disputes Courts Act gives the court jurisdiction to deal with land matters subject to section 167 of the Land Act.

He argued that, their case has multiple prayers as indicated in their plaint. He stated that, all matters concerning land are land matters and to support his argument he referred the court to the case of **Charles Rick Mulaki V. William Jackson Magero**, HC Civil Appeal No. 67 of 2017 HC at Mwanza (Unreported) where the court stated that, although an overdraft facility is not a land matter but as the party was claiming for injunction that is a land matter.

He submitted that Section 107 of the Land Act which the counsel for the second and third defendants has stated is taking the matter to the District Courts is wrong. He said the word used in the cited provision of the law is the word "may" which when used it connotes it is not mandatory for what is directed to be done. He stated further that, section 107 (1) of the Land Act is talking about a lessor to institute an application for termination of lease and not a lessee. He stated that, the cited provision of the law is talking of termination of lease made by the land lord and not otherwise. He submitted that section 107 of the Land Act has not excluded jurisdiction of this court to entertain matters of this nature. He stated the cited provision of the law was intended to protect tenants from being evicted from a leased premises without following the required procedures.

He contended that, all cases cited by the counsel for the second and third defendants are totally distinguishable from the case at hand. He stated that, in the case of **Arnold Moshi** (supra) plaintiff was claiming for compensation for properties destroyed while he was not a tenant in the suit premises. He stated the dispute in the case of **Camel oil (T) Limited** (supra) was about partnership and not about lease agreement. He submitted that shows the cited cases are distinguishable from the present case. He went on submitting that, he agrees with the counsel for second and third defendants that, when determining whether the court

has jurisdiction to entertain a matter the court is required to look into the cause of action and the relief sought and stated the plaintiff in the present suit is disputing to be evicted from the suit premises.

He argued further that, although the counsel for the second and third defendants argued compensation of stolen items is not a land matter but in the case of **Kashinde Rajabu Mrisho & Another V. Selemani Ally Madohola**, Land Case No. 361 of 2014, HC Land Division at DSM (unreported) it was stated even claim of utensils was land matters. He submitted that, under the circumstances of the present matter section 107 of the Land Act is not applicable in the matter.

He argued it is not true that the matter to be tried by District Court is not a land matter because all matters provided under the Land Act are land matters. He prayed the court to go through the whole of the plaint to see the court has jurisdiction to entertain the matter at hand. Finally, he prayed the court to dismiss the point of preliminary objection raised by the counsel for the second and third defendants with costs as the issue before the court is purely a land matter.

The counsel for the first defendant supported the submission by the counsel for the plaintiff and stated that, the court has jurisdiction to entertain the present matter. He stated the counsel for the second and



third defendants has talked about para 5 of the plaint but he has not talked about para 6 of the plaint. He submitted that, lease is a land matter and it cannot be separated from land matters.

In his rejoinder, the counsel for the second and third defendants reiterate his submission in chief and added that, the case of **Kashinde Rajabu Mrisho** (supra) was dealing with the issue of possessory right in land which was whether the sale agreement made by the parties was lawful or not. He stated that, the case of **Charles Rick Mulaki** (supra) was extensively discussed in the case of **Arnold Moshi** (supra) and it has no any new development in the latter case. He submitted that, if you read the plaint, you will find the cause of action and reliefs sought are not based on ownership or possessory right in land. In fine, he prays the court to find the point of preliminary objection raised by him has merit and dismiss the suit with costs.

After going through the rival submissions from the counsel for the parties the court has found the issue to determine here is whether the court has jurisdiction to entertain the present suit. The court has found as stated in the case of **Fanuel Mantiri Ng'unda V. Herman Mantiri Ng'unda & Two Others**, [1995] TLR 155 the question of jurisdiction for a court or tribunal to entertain a matter is basic as it goes to the very root of the authority of a court or tribunal to adjudicate upon cases of different

nature. When it is raised, it is supposed to be determined first because if the court or tribunal proceed to entertain a matter without jurisdiction the whole proceedings may end up in futility as null and void on ground of lack of jurisdiction when it is proved later.

That being the position of the law the court has found jurisdiction of this court to entertain land matters is provided under section 3 (1) of the Land Disputes Courts Act which states that: -

*"Subject to section 167 of the Land Act and section 62 of the Village Land Act, every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area."*

The court has found section 3 (2) of the Land Disputes Courts Act lists down the courts vested with jurisdiction to entertain every dispute or complaint concerning land to be the Village Land Council, the Ward Tribunal, the District Land and Housing Tribunal, the High Court and the Court of Appeal of Tanzania. The court has also found Section 167 (1) of the Land Act referred in the afore quoted provision of the law states that, the above listed courts are vested with exclusive jurisdiction to hear and determine all manner of disputes, actions and proceedings concerning land. That being the position of the law the question to determine here is whether the plaintiff's suit is a matter concerning land.

The court has found the phrase "matters concerning land" used in the above cited case was defined by his Lordship Mlay, J (as he then was) in the case of **Anderson Chale V. Abubakar Sakapara**, Civil Appeal No. 121 of 2014 (unreported) which was cited with approval by my learned brother Maige, J (as he then was) in the case of **Charles Rick Mulaki** (supra) and by my learned Sister Maghimbi, J in the case of **Arnold Moshi** (supra) to mean a matter on which a right on land or interest thereon is in dispute. I totally subscribe to the meaning of the stated phrase as given by my learned brothers and sister.

To the view of this court, a right or interest on land can be as stated by the counsel for the second and third defendants a proprietary or possessory. The court has found it was stated in the case of **Charles Rick Mulaki** (supra) that, while possessory rights are of temporary duration, proprietary rights are of permanent, ultimate and residuary nature. While bearing in mind the afore stated interpretation of the phrase "matters concerning land" the court has found that, since section 3 (1) of the Land Disputes Courts Act is subjected to section 167 (1) of the Land Act, then as rightly stated in the above cited cases the complaints, disputes or proceedings which are supposed to be entertained by the land courts are disputes or complaint pertaining to proprietary or possessory right in land or interest thereon.



The question to determine here is whether the plaintiff's claim is a dispute or complaint pertaining to proprietary or possessory right in land or interest on land. In order to be able to know whether the plaintiff's claim is falling in the stated categories of the dispute or complaint which is supposed to be entertained by this court, the court has found as rightly argued by the counsel for the parties the court is required to look into the cause of action stated in the pleadings filed in the court by the plaintiff and the reliefs sought thereon. The court has come to the stated view after seeing the matters to be looked upon for the purpose knowing whether a claim is concerning land were stated in the case of **Exim Bank (T) Limited V. Agro Impex (T) & Another**, Land Case No. 29 of 2008 where his Lordship Mziray, J (as he then was) stated 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 power to grant them and whether they correlate with the cause of action."*

While being guided by the above stated position of the law the court has gone through the facts pleaded in the plaint of the plaintiff and find that, as rightly argued by the counsel for the second and third defendants the claim of the plaintiff as stated at paragraphs 5 of the plaint is a

payment of TZS. 600,000,000/= arising from breach of lease agreement entered by the plaintiff and the first defendant. The claim under paragraphs 5 (vi) and (vii) of the plaint is for refund of TZS 105,000,000/= being balance of rent for unconsumed tenure of lease agreement and refund of TZS 28,000,000/= paid to the second defendant by the plaintiff which the plaintiff alleged was made out of coercion, intimidation and undue influence.

The court has found the further claim by the plaintiff as stated under paragraph 5 (viii) of the plaint is for payment of TZS 80,000,000/ being compensation for damages caused to the plaintiff's properties following the forceful evictions attempt made by the second and third defendants on 04<sup>th</sup> March, 2022. The claim under paragraph 5 (ix) of the plaint is for TZS 387,000,000/= being compensation for stolen items from the plaintiff's trucks following the eviction attempted by the second and third defendants on 04<sup>th</sup> March, 2022.

The court has found the reliefs the plaintiff is seeking against the defendants as listed at the outset of this ruling is for declaration that the first defendant breached the lease agreement entered between the plaintiff and the first defendant and declaration that, the agreement entered between the plaintiff and the second defendant was voidable or void ab initial. The plaintiff is also claiming for payment of TZS

600,000,000/= being various damages stated at paragraph 5 of the plaint plus interest, general damages and costs of the suit. From the above stated facts and the reliefs, the plaintiff is claiming against the defendants it is to the view of this court that, the cause of action in the present matter is not about proprietary or possessory right in land but compensatory right arising from breach of a lease agreement entered by the plaintiff and the first and second defendants.

Since the claim of the plaintiff against the defendants is based on breach of lease agreement, the court has found the law governing termination and breach of lease agreement and the remedies and the reliefs available is Sub Part 4 of the Land Act which as provided under sections 99 and 100 of the Land Act it applies to all leases and licenses with exception of customary lease. As the lease agreement alleged was breached by the first defendant is not a customary lease the court has found the present matter is falling squarely under the stated part of the Land Act. The court has found section 107 (1) and (2) of the Land Act cited by the counsel for the parties is dealing with application for reliefs arising from termination of lease agreement and it states an application for reliefs arising from the stated termination of lease agreement may be made to a District Court.



From the wording of section 107 (1) and (2) of the Land Act cited above it is crystal clear that, District Courts are vested with jurisdiction to entertain applications for remedies and reliefs arising from termination of lease agreement. Since the matter at hand is not about termination of lease agreement but breach of lease agreement the court has found the appropriate provision of the law to govern the matter at hand is section 109 (2) of the Land Act which states as follows: -

*"Where a lessor is in breach of a covenant or condition in a lease which he is under an obligation to observe and comply with, the lessee may-*

*(a) Commence an action against the lessor-*

*(i) For damages;*

*(ii) For a decree of specific performance; or*

*(iii) For an injunction."*

From the above cited provisions of the law, it is the view of this court that, although District Court is not listed under section 3 (1) of the Land Disputes Courts Act and under section 167 (1) of the Land Act as the court with competent jurisdiction to entertain dispute or complaint concerning land matters but the District Court is vested with jurisdiction to entertain matters concerning termination and breach of lease agreement. The above view of this court is getting support from the case of **Charles Rick Mulaki** (supra) where the court had the following remarks: -

*"From the express provisions of sections 107, 108 and 109 of the Land Act I am settled, in my mind that, the exclusion of the jurisdiction of Magistrates' Courts in matters concerning land, does not affect the jurisdiction of District Courts to deal with the claims covered by Sub Part 4 of the Land Act."*

Having found the District Court has jurisdiction pursuant to the above cited provision of the law to entertain application for remedies and reliefs arising from breach of lease agreement the court has found that, the court vested with competent jurisdiction to entertain the present matter is District Court and not his court. The court has found that, although the counsel for the plaintiff tried to distinguish the case of **Arnold Moshi** (supra) from the present case but the court has found that, as rightly stated by the counsel for the second and third defendants in his rejoinder the case of **Charles Rick Mulaki** cited to the court by the counsel for the plaintiff was extensively discussed in the said case and the court came to the finding that, the court had no jurisdiction to entertain a matter which does not concern proprietary or possessory right in land.

The court has also considered the argument by the counsel for the plaintiff that the court has jurisdiction to entertain the present matter because the plaintiff's suit has multiple prayers of reliefs but found all reliefs sought in the plaint of the plaintiff can be awarded by District Court

pursuant to section 109 (2) and (3) of the Land Act cited earlier in this ruling. The court has found that, although the counsel for the plaintiff stated in his submission that the plaintiff is resisting to be evicted from the suit premises but after going through the pleadings filed in the court by the plaintiff the court has failed to see anywhere that the plaintiff is resisting to be evicted from the suit premises. To the contrary the court has found the rights the plaintiff is seeking from the court against all defendants are compensatory rights alleged to arise from breach of the lease agreement entered by the plaintiff and the first and second defendants.

As for the argument that the word used in the provision of the law cited by the counsel for the second and third defendants is the word "may" which connotes it is not mandatory to be complied with the court has found that, the word "may" was used in the cited provision of the law to mean it is not mandatory for the lessor or lessee to institute an application in the court and it does not mean a lessor or lessee has an option of deciding to file the matter in this court instead of filing the same in the District Court which is vested with jurisdiction to entertain the matter.

The court is in agreement with the counsel for the plaintiff that matters to be entertained by District Courts are also land matters because as provided under section 3 (1) of the Land Disputes Courts Act the



jurisdiction of the court is not for determination of ownership of land matters only, but rather it extends to interest on land as well as possessory right. Therefore, as stated in the case of **Arnold Moshi** (supra) the phrase "every dispute or complaint concerning land" should not be limited to ownership of land only. However, as the claim of the plaintiff in the present suit is based on compensatory rights based on breach of lease agreement and not proprietary or possessory right in land the court has found it has not been clothed with jurisdiction to entertain the same.

The court has also considered the argument by the counsel for the first defendant who argued the counsel for the second and third defendants argued about paragraph 5 of the plaint only and he didn't argue anything about paragraph 6 of the plaint. The court has found it is true that the counsel for the mentioned defendants did argue anything about what is averred at paragraph 6 of the plaint. However, after going through the referred paragraph of the plaint the court has failed to see anything averred therein which is giving this court jurisdiction to entertain the matter at hand. The court has found the paragraph is talking about breach of lease agreement which as stated hereinabove is supposed to be heard and determined by District Court and not this court.

It is because of the above stated reasons the court has found the point of preliminary objection raised by the counsel for the second and third defendants that this court has no jurisdiction to entertain the present suit has merit and it deserve to be upheld. Consequently, the point of preliminary objection raised by the counsel for the second and third defendants is hereby upheld and the plaintiff's suit is accordingly dismissed for want of the court's jurisdiction and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 29<sup>th</sup> day of July, 2022



I. Arufani

**JUDGE**

29/07/2022

**Court:**

Ruling delivered today 29<sup>th</sup> day of July, 2022 in the presence of Mr. Oscar Millanzi, advocate holding brief of Mr. Jimmy Mrosso, advocate for the plaintiff and in the presence of Mr. Mohamed Muya, advocate for the first defendant and in the presence of Mr. Ngassa Ganja, advocate for the second and third defendants. Right of appeal to the Court of Appeal is fully explained to the counsel for the parties.



I. Arufani

**JUDGE**

29/07/2022