

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

**LAND CASE NO. 93 OF 2022**

**DEOGRATIAS HENRY RUTABANA ..... PLAINTIFF**

**VERSUS**

**MWANGA HAKIKA MICROFINANCE BANK LIMITED (formerly known as  
EFC MICROFINANCE BANK LIMITED) .....1<sup>ST</sup> DEFENDANT**

**COMMISSIONER FOR LANDS ..... 2<sup>ND</sup> DEFENDANT**

**REGISTRAR OF TITLES ..... 3<sup>RD</sup> DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**NUTMEG AUCTIONEER & MANAGERS CO. LIMITED..... 5<sup>TH</sup> DEFENDANT**

**JOHN ZUBERI ZIMBO ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

**A. MSAFIRI, J.**

On 28/4/2022, the plaintiff instituted this suit, by lodging in this Court a plaint claiming against the defendants, seeking for a Court declaration that the sale of his property (the disputed property) by way of public auction was illegal, null and void.

On filing their respective joint written statement of defence, the 1<sup>st</sup> and 5<sup>th</sup> defendants raised two preliminary objections on point of law to the effect that;

1. This Court has no pecuniary jurisdiction as per the Valuation Report dated 21/9/2017. *Adle*

2. That, this suit has been overtaken by event in terms of section 51 (1) of the Land Registration Act, Cap 334. 2019, hence the Court has no jurisdiction.

The 6<sup>th</sup> defendant also while filing his written statement of defence, raised a preliminary objection on point of law that; the suit is time barred.

On the raised preliminary objections, the defendants prayed for the dismissal of the suit with costs. The preliminary objections raised were disposed of by way of written submissions.

The 1<sup>st</sup> and 5<sup>th</sup> defendants were represented by Mr. Cleoplace James, learned advocate, the 6<sup>th</sup> defendant was presented by Mr. Bernard Ngatunga, learned advocate, and the plaintiff was represented by Mr. Ramadhani Sebuku, learned advocate.

Submitting in support of preliminary objections by the 1<sup>st</sup> and 5<sup>th</sup> defendants, Mr. James contended that, this Court lacks pecuniary jurisdiction as per valuation report dated 21/9/2017. That, the suit property is determined by Valuation Report and not a mere allegations. He stated that the market value of the suit property is TZS 215,000,000/= and that is below the pecuniary jurisdiction of this Court as per section 37(1) (a) of the Land Disputes Courts Act, Cap 216 R.E 2019.

Mr. James contended further that the estimated value does no amount to factual amount of the disputed property, but ought to be proved by valuation report in order to justify the pecuniary jurisdiction of the Court. To buttress his points, he cited the case of **Alphonse Kakweche vs. Bodi ya Wadhamini BAKWATA**, Land Appeal No. 97/2019, HC. (Unreported).

*Adle*

On the second limb of preliminary objection, Mr. James contended that the suit has been overtaken by events. That, the suit property has been registered in the name of the 6<sup>th</sup> defendant and in terms of section 51(1) of the Land Registration Act, Cap. 334 R.E 2019, he is protected as the bonafide purchaser, and the plaintiff is barred to challenge the sale of the suit property at this stage. To cement his point, the learned counsel referred several cases including the case of **Moshi Electrical light Co. Ltd vs. Equity Bank (T) Limited & 2 others**, Land Case No. 55 of 2015 HC (Unreported).

Replying in opposition of the preliminary objection, Mr. Sebeku submitted that, the raised preliminary objections lacks merit and should be disregarded. On the first point of objection, Mr. Sebeku argued that, it is not on pure point of law but rather it needs evidence, so it is contrary to the provisions of Order VIII Rule 2 of the Civil Procedure Code Cap 33 R.E 2019 (the CPC) and the principle set in the case of **Mukisa Biscuits Manufacturing vs. West End Distributors** (1669) 16 A 696 (CAN).

He contended that, if one has to determine the pecuniary jurisdiction of this Court, he or she must be acquainted with current and latest valuation report as documentary evidence, evidencing a market value of the suit premises hence, the point is too evidential rather than point of law.

Mr. Sebeku added further that, institution of this suit to this Court was inevitable since the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants are Government institutions. As per section 6(4) and 7 of the Government Proceedings Act, Cap.5 R.E 2019, all suits against the Government shall have to be instituted in the High Court. He stated that, this Court has a mandate to adjudicate the matter at hand. *Alle.*

On the second point of objection, Mr. Sebeku pointed that, the 1<sup>st</sup> and 5<sup>th</sup> defendants did not specify what kind of jurisdiction this Honourable Court lacks as per terms of Section 51(1) of the Land Registration Act. He stated that, the preliminary objection should be clear, but in the submissions by the 1<sup>st</sup> & 5<sup>th</sup> defendants, there is no clear explanation on what kind of jurisdiction as there are different kind of jurisdictions in the legal system.

He submitted that, section 167(1) of the Land Act, Cap. 113 R.E 2019 gives exclusive jurisdiction to different courts to entertain all disputes in relation to land, and this Court is among them.

In rejoinder, on the first preliminary objection, Mr James reiterated his submissions in chief. He added that the plaintiff ought to be acquainted with the current/latest valuation report.

On the second preliminary objection, Mr James argued that the argument of suing the Government institution is misplaced, for the reasons that, Cap. 5 is not applicable in this suit as the plaintiff is praying for declaratory order that the sale is illegal and nullity. That, there is nowhere it is indicated that the Government is involved.

Having gone through the submissions in support and against the two preliminary objections raised by the 1<sup>st</sup> & 5<sup>th</sup> defendants, the main issue is whether the two preliminary objections raised has merit. On the first limb; the pecuniary jurisdiction of the Court to entertain the present matter is being questioned for not being supported by current/latest valuation report. Mr. James avers that this Court lacks pecuniary jurisdiction as per valuation report dated 21/9/2017. He added that the estimated value ought to be valuation report. On paragraph 21 of the plaint, the land in dispute is stated to have a value of TZS 450,000,000=.

It is apparent that as the 1<sup>st</sup> and 5<sup>th</sup> defendants states that the market value of the disputed property is TZS 215,000,000/= as per the 2017 valuation report, and demand the current/latest valuation report, then evidence is needed to ascertain whether this Court has jurisdiction or not.

In addition, Order VII Rule 1 of the CPC provides that the plaint shall contain a statement of the value of the subject matter and not the valuation report which has been done in the case at hand.

I feel I should also point out that the case referred to this Court by the counsel for the 1<sup>st</sup> & 5<sup>th</sup> defendants of **Alphonse Kakweche vs. Bodi ya Wadhamini BAKWATA (supra)** is clearly distinguishable from the current case. In the former case, the matter was at the appeal stage where the trial has already been conducted and the evidence from both parties adduced before the trial Tribunal. In the current case, the case is at a preliminary stage where the evidence is yet to be adduced, and any raised preliminary objection ought to be on pure point of law. I find the first limb of objection to have no merit and I hereby overrule it.

On the second limb of preliminary objection, the 1<sup>st</sup> and 5<sup>th</sup> defendants contend that the suit has been overtaken by event as the suit property has been registered in the name of 6<sup>th</sup> defendant. That in terms of section 51(1) of the Land Registration Act, the 6<sup>th</sup> defendant is protected as the bonafide purchaser.

Again, whether the suit property has already been transferred and registered in the name of 6<sup>th</sup> defendant or not is a matter of evidence. I agree that section 51 (1) of the Land Registration Act provides for the protection of a bonafide purchaser. However, in the circumstance of the case, it has to be first established by evidence that the 6<sup>th</sup> defendant is

*Alle.*

indeed a bonafide purchaser. It has also to be established that as per section 51(1) of the Act that the plaintiff was served with the 30 days' Notice of transfer and did not challenge the same. It is my view that this cannot be determined as preliminary objection because an objection should be on pure points of law. I also find the second preliminary objection to have no merit and I overrule it.

Coming to the objections raised by the 6<sup>th</sup> defendant, it is contended that, this suit is time barred. In his submission, Mr. Ngatunga averred that, the plaintiff is challenging the sale of the suit property conducted on 04/4/2018. That, in the 6<sup>th</sup> defendant's written statement of defence, he has annexed a Notice of Transfer under power of sale dated 12/7/2018 from the Assistant Registrar of Titles, addressed to the plaintiff.

Mr. Ngatunga said that, by that notice, the plaintiff was notified that the 1<sup>st</sup> defendant has presented an application which will have the effect of changing ownership of the suit property to the 6<sup>th</sup> defendant. The counsel argued that, the plaintiff did not take any action within thirty (30) days as required of him by the said Notice.

He pointed that, if the plaintiff wanted to challenge the registration of the suit property to the 6<sup>th</sup> defendant, he was required to challenge the same before the High Court, before the expiration of 30 days from the date of notice. That the fact that the plaintiff did not do so, renders the suit to be time barred.

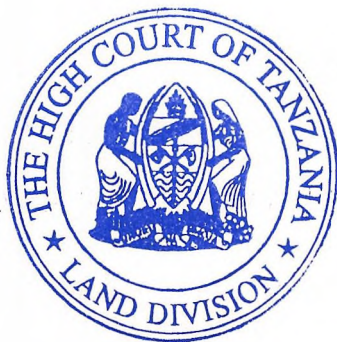
Again, it is my view that this point of objection raised needs evidence to ascertain it. It needs to be established whether or not the notice was issued to the plaintiff as claimed. The preliminary objection which needs evidence to ascertain it does not qualify to be a pure point of law as per the

*Alle.*



principle in the famous case of MUKISA BISCUITS. It is for this reason that I overrule this preliminary objection.

Consequently all preliminary objections are here by overruled with costs, for lack of merit.



**A. MSAFIRI**

**JUDGE**

**30/9/2022**