

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 125 OF 2022**

**EXAUD ELIAS MACHANGE.....1<sup>ST</sup> PLAINTIFF**

**CLAUDE PAUL FERDINAND.....2<sup>ND</sup> PLAINTIFF**

**THEOBARD MUGANDA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**VICTOR STEVEN MANG'A (BEING AN ADMINISTRATOR OF THE ESTATE OF  
STEVEN MANG'ANA.....1<sup>ST</sup> DEFENDANT**

**KAM COMMERCIAL SERVICE AUCTION MART.....2<sup>ND</sup> DEFENDANT**

**JUMA KALEMBO.....3<sup>RD</sup> DEFENDANT**

*Date of last order: 14/11/2022*

*Date of ruling: 22/11/2022*

**RULING**

**A. MSAFIRI, J.**

On 26<sup>th</sup> May 2022 the above named plaintiffs instituted the present suit against the defendants jointly and severally for assortment of reliefs including declaration that the latter are trespassers on the disputed different pieces of un-surveyed land situated at Kilimahewa Juu Wazo Ward (Salasala in Kinondoni Municipality).

*Alls*

The defendants lodged their respective written statements of defence disputing the plaintiffs' claims. On paragraph 11 of the of the 1<sup>st</sup> defendant's written statement of defence the jurisdiction of this Court is being contested hence parties had to address the Court whether it has jurisdiction.

On 14<sup>th</sup> November 2022 when the matter was fixed for hearing of the objection Mr. Isaac Tasinga learned advocate appeared for the plaintiffs while the 1<sup>st</sup> defendant had the services of Mr. Francis Mgare learned advocate. The 2<sup>nd</sup> defendant did not enter appearance despite being served. Mr. Innocent Mwelelwa learned advocate represented the 3<sup>rd</sup> defendant.

Mr. Mgare submitted that this Court lacks jurisdiction to entertain this matter for two reasons;

First, there was an Application No. 216 of 2020 filed by the plaintiffs before the District Land and Housing Tribunal for Kinondoni (DLHT) and it was decided on 11/6/2020. Mr. Mgare submitted that in the said application the plaintiffs had filed objection proceedings to challenge the execution of decree of DLHT but the said objection proceedings were

*Atts.*

struck out for being time barred. Hence as their application for objection proceedings was struck out the remedy available to the plaintiffs was to either appeal against such order or refile an application before the DLHT as provided under Section 51 (1) of the Land Disputes Court Act [CPA 216 R.E 2019], (the Act) read together with Order XXI Rule 62 of the Civil Procedure Code [CPA 33 R.E 2019 (the CPC).

Second, the Court lacks jurisdiction as the value of the disputed premises is low. According to Mr. Mgare, the sale agreements attached to the plaint specify sale price which was executed between the plaintiffs and the 3<sup>rd</sup> defendant whereby for the 1<sup>st</sup> plaintiff the purchase price was Tshs. 10 million while on the 2<sup>nd</sup> plaintiff the price was Tshs. 2.8 million. On the other hand the 3<sup>rd</sup> plaintiff's sale price is Tshs. 350,000/=.

According to Mr. Mgare if the three sale prices are summed up together the total sale price will be Tshs 13,150,000/=. Mr. Mgare contended that in terms of Order VII Rule 1 paragraph (i) of the CPC the plaintiffs are required to state the value of suit property for the purposes of determining jurisdiction of the Court and court fees.

*Aelle*

Mr. Mgare submitted that in the present suit the plaint states the estimated value and not the actual value. Hence the claim by the plaintiffs that the value of the subject matter is Tshs. 400 million is an imaginary value which has no backing from the law. Hence as per value indicated on the sale agreements that is Tshs. 13,150,000/= the matter ought to have been filed before the DLHT and not before this Court. Mr. Mgare therefore prayed for the suit to be dismissed or struck out with costs.

On reply, Mr. Tasinga learned advocate for the plaintiffs contended that preliminary objection raised by the 1<sup>st</sup> defendant does not qualify to be termed as preliminary objection because it is not based on pure point of law. Mr. Tasinga admitted that there was an application of objection proceedings which was filed before the DLHT and subsequently was struck out for being time barred since the plaintiffs had a remedy of filing a fresh suit they exercised such remedy by filing the present suit. Mr. Tasinga contended that the remedy was not to appeal as suggested by Mr. Mgare rather to file a fresh suit.

On the requirement that the suit should have been filed before the DLHT, Mr. Tasinga contended that there is no such requirement and Mr. Mgare could not cite any law which mandatorily requires the fresh suit be

*Alls.*

filed at the very same court/tribunal. Hence the plaintiffs had an option to file a fresh suit at the particular court with jurisdiction.

On issue of pecuniary jurisdiction Mr. Tasinga contended that the plaintiffs are not barred to estimate the value of the subject matter as they were unable to conduct valuation as they were caught in surprise after their houses were demolished.

Mr. Tasinga submitted that referring to the sale agreements to determine the jurisdiction of the Court is not proper as the said sale agreements are old one as they can be traced way back from 2007 and 2008 and taking into consideration the disputed land is at Salasala, the value of land goes up every day.

Mr. Tasinga submitted further that the plaintiffs have developed the area by erecting some buildings which were later demolished so one cannot determine the value of the subject matter by looking at the sale agreements. Hence that is a matter of evidence. Hence Mr. Tasinga submitted that the Court has jurisdiction to entertain the matter.

On rejoinder, Mr. Mgare essentially reiterated his submission in chief and he insisted that so long as the plaintiffs admitted that the matter ought *Alls-*

to have been filed before the DLHT because it has original jurisdiction in terms of Section 33 (2)(a) of the Act, this Court lacks jurisdiction.

Having gone through the parties' submissions rival and in support of the preliminary objection raised, the issue for determination by the Court is whether this Court has jurisdiction to try the matter.

The objection of jurisdiction as raised by Mr. Mgare is twofold. I propose to begin with the aspect of the pecuniary jurisdiction. Mr. Mgare's stance was that the value of the subject in dispute should be determined by looking at the value described in the sale agreements attached on the plaint. In which as claimed by Mr. Mgare the value of the land in dispute is Tshs. 13,150,000/=.

Mr. Tasinga is not at one with Mr. Mgare. He contended that the sale agreements cannot be relied upon to establish the jurisdiction of this Court since the sale agreements were executed some years back in 2007 and 2008 hence the value described thereon is not the same as of today.

It follows therefore that the question which begs an answer is *which is the appropriate value of the subject matter in dispute between the one claimed by Mr. Mgare i.e. Tshs.13,150,000/= and that of Tshs. 400 million* *Alle.*

*claimed by the plaintiffs on the plaint.* I must admit that, to rule out exactly which figure is correct is not a matter which can be resolved through a preliminary objection. This is because as rightly submitted by Mr. Tasinga if the sale agreements are to be relied upon to determine value of the disputed land it will not be appropriate because the value described in those agreements which were executed in 2007 and 2008 over 14 years ago is not the same as of today.

Now as the plaintiffs have estimated the value of the disputed land to be Tshs. 400 million which is being denied by Mr. Mgare then evidence has to be adduced by producing in Court by certified valuation report to disprove that value. This is not the object of preliminary objection as it has to be resolved by evidence.

It follows therefore that objection of pecuniary jurisdiction claimed by Mr. Mgare has failed the test in the case of **Mukisa Biscuits** and it is hereby overruled.

On the issue of objection proceedings to which was struck out and whether the matter should have been filed before the DLHT, unfortunately Mr. Mgare could not cite any provision or any decided case to establish that *Alte.*

after the objection proceedings had been struck out the plaintiffs should have not filed the present suit rather to appeal against the order striking out the objection. I agree with Mr. Tasinga that once the objection proceedings have been futile the remedy available is not to appeal or prefer revision rather is to file a fresh case as a remedy (See the decision of the Court of Appeal in **Katibu Mkuu Amani Fresh Sports Club v Dodo Umbwa Mamboya and Another** [2004] TLR 326). Now rightly as submitted by Mr. Tasinga it is not necessary for the fresh suit to be filed in the same court as this being a fresh case it depends on the nature and value of the claims. Hence it has to be filed in the court with competent jurisdiction.

In upshot the preliminary objection raised by the 1<sup>st</sup> defendant is without merits and it is hereby overruled with costs.

It is so ordered.



  
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**A. MSAFIRI,**  
**JUDGE**

**22/11/2022**