

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

**LAND CASE NO. 114 OF 2021**

**LAURENT GAGI KIYENZE.....PLAINTIFF**

**VERSUS**

**ALBERT AND 32 OTHERS .....DEFENDANT**

**RULING**

*Date of last Order:16/12/2022*

*Date of Ruling:20/12/2022*

**K. D. MHINA, J.**

In this suit, the Plaintiff, Laurent Gagi Kiyenze, sues the respondents, who are thirty-three in number, for trespassing into his land measuring 24 acres located at Goba Kunguru area within Ubungo Municipality.

However, on the first day of the hearing of the appeal, when there were two witnesses for the plaintiff's case, Mr. Derick Kahigi, Advocate, raised a preliminary objection on the point of law that the Court lacks jurisdiction to entertain this matter.

Having been seized with the preliminary objection, as it is trite that when the Court is seized with the preliminary objection, it has to

deal with it first before going into the substance of the suit, I invited the counsel to address the court on the preliminary objection raised.

At the hearing of the preliminary objection, Mr. Emmanuel Machibya, learned counsel, appeared for the plaintiff, whereas Mr. Derick Kahigi, also learned counsel, appeared for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup>, 16<sup>th</sup>, 18<sup>th</sup>, 22<sup>nd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup>, 30<sup>th</sup>, and 33<sup>rd</sup> respondents. The 12<sup>th</sup> respondent settled the matter in the early stages, while the remaining respondents were absent, and there was an order dated 23 June 2022 to proceed ex parte against them.

In essence, Mr. Kahigi's submission was that, according to paragraphs 5 and 11 of the plaint, the plaintiff alleges that the land in dispute was allocated to him by the Goba Village Council in 1969 and that he was a member of Goba Ujamaa Village. Therefore, the plaintiff's claims were pegged to Goba Ujamaa Village and Goba Village Council.

Further, he cited section 15 (9) of the Land Village Act, Cap 114, which provides for dispute resolution arising from what the plaintiff alleges in paragraphs 5 and 11 of the plaint. That provision directs that

the disputes be referred to the Land Village Council for reconciliation first.

He concluded by submitting that, as per the pleadings, the matter was supposed to be referred first at the Village Land Council; therefore, this Court does not have jurisdiction.

In response, Mr. Machibya submitted that paragraph 5 of the plaint narrated the history that the Goba Village Council allocated to the plaintiff the land in dispute. Further, he said that Goba does not have the Village Council as it is within the Ubungo Municipality.

The reason to lodge this suit in this Court was because of the pecuniary jurisdiction of the matter; therefore, this Court has jurisdiction to entertain the case.

He concluded by submitting that the courts are now encouraged to invoke the principle of overriding objection to expedite trials.

In a short rejoinder, Mr. Kahigi submitted that the counsel for the plaintiff conceded that the Village Council allocated the land to the plaintiff. Further, the counsel for the plaintiff did not mention section 15 of the Land Village Act in his reply.

In his further argument, Mr. Kahigi submitted that the issue that Goba is no longer a village was pleaded anywhere, and no annexure indicated to the contrary. Therefore, the plaintiff did not indicate if the status of Goba had changed.

Having listened to the counsel for the parties, I should begin by determining whether the preliminary objection was raised properly or not or not. And my take off in this matter as a starting point is the decision of the Court of Appeal of Tanzania in **Tanzania – China Friendship Textile Co. Ltd vs. Our Lady of the Usambara Sister (2006) TLR 70**, where it held that:-

*"The question of jurisdiction can be raised at any stage."*

In this application, the issue raised by Mr. Kahigi was that this Court lacks jurisdiction to entertain this suit.

Though jurisdiction can be raised at any stage of the trial but there are some conditions. The Court of Appeal enunciates these conditions in **Yusuf Khamis Hamza vs. Juma Ali Abdalla, Civil Appeal No. 25 of 2020** (Tanzlii), where it was held that:-

*"We are alive with the settled position of the law that time limitation goes to the Jurisdiction issue of the Court, and it can be raised at any time, even at the Appellate stage by the Court, but in order for it to be noted and raised it would require material evidence to be placed before the Court."*

Therefore, from two cited Court of Appeal decisions, the conditions for raising the issue of jurisdiction are three;

- i. It can be raised at any stage of proceedings.
- ii. Parties must be afforded the right to be heard.
- iii. There must be material evidence to be placed before the Court to enable the Court to determine the matter.

In the present matter, as I said earlier, the preliminary objection was raised before the hearing commenced, and advocates were afforded the right to be heard and presented their submissions on the jurisdiction of the Court.

Therefore, the counsel for the respondent rightly raises the issue of jurisdiction. Further, the right to be heard was availed to both parties

who submitted material evidence for and against the jurisdiction of the Court.

Now the issue for deliberation is whether this Court has jurisdiction or not.

The gist of the preliminary objection is in paragraphs 5 and 11 of the plaint.

For convenience, it is necessary to reproduce the said paragraphs.

Which read as follows;

*"5. That, the Plaintiff acquired the suit premises land measuring 24 acres situated at Goba Kunguru area within Ubungo Municipality in Dar es Salaam with the following boundaries; North: Rough road; South: various residential houses; East: Songosongo Pipeline and Zanzibar Electric Transmission Poles; West: Various residential houses since 1969 after being allocated the said land by the Goba Village Council".*

*"11. That, the Plaintiff was a member of Ujamaa Goba Village with all membership compliance since its establishment while living in the suit premises land who paid TZS 20/= out of TZS 50/=.*

From the above, it is quite clear that the plaintiff alleged that the land in dispute was allocated to him by the Village Council of Goba. Further, he alleged that he was a member of the Goba Ujamaa Village.

The question is whether this Court has the jurisdiction to entertain the matter where the Village Council allocates the land. This is because the counsel for the respondent had submitted that the body with the mandate to deal with the land allocated by the Village council is the Land Village Council.

To answer this question, I will start by citing section 167 (1) of **the Land Act**, which vests jurisdiction of all land matters exclusively on the land courts. The provision reads;

*"The following courts are hereby vested with exclusive jurisdiction, subject to the provisions of this Part, to hear and determine all manner of disputes, actions, and proceedings concerning land, that is to say, the;*

*(a) Court of Appeal;*

*(b) High Court;*

*(c) District Land and Housing Tribunal;*

*(d) Ward Tribunals and;*

*(e) Village Land Council.*

Section 8 (1) of the **Village Land Act** provides for the Village Council established under section 2 of the same Act as a body responsible for the management of the village land. It is a body with the power to allocate the land to the requesting party.

In case of a dispute arising from the land allocated by the village council, the Act itself provides for the solution, and section 15 (9) is relevant in this aspect. The section read;

*"(9) Where there is a dispute between two or more persons, family units or groups of persons as to which of the parties is entitled to land under any of the provisions of subsections (1), (2) or (3), the village council **shall** refer the matter to the Village Land Council to mediate between the parties and where the Village Land Council is unable to resolve the dispute between the parties, the village council **shall** refer the dispute to the Ward Tribunal and may further refer the matter to the court having jurisdiction in the area where the land is situated".*

**[Emphasis provided]**

I have reproduced the above section *in extenso* with a view of scrutinizing it and unveiling what is inside that provision of law. Having observed the same, it is my observation;



- i. **One**, a dispute between persons arising from the land allocated by the village council shall be referred first to the village council itself.
- ii. **Two**, upon receiving the dispute, the village council shall refer the matter to the land village council to mediate between the parties.
- iii. **Three**, in case the land village council fails to mediate the parties it shall refer the matter to the Ward Tribunal and may further refer the matter to the court having jurisdiction in the area where the land is situated.

Further, section 15 (9) of the Village Land Act is couched in mandatory terms because of the word "shall," which is imperative and obligatory to perform an act.

The word shall have been interpreted under Section 53 (2) of the Interpretation of Laws Act, Cap 1 [RE: 2019] to mean and apply:-

*"53 (2) Where in a written law the word "shall" is used in conferring a function, such word shall be interpreted to mean that the function so conferred must be performed."*

Therefore, section 15 (9) of the Land Village Act makes it mandatory for the parties in a dispute arising from the land allocated by the Village Council to be referred first to the Village Council, which will refer the same to the Land Village Council. Although Section 62 (1) on the reference of disputes from the council to the court with competent jurisdiction provides for a procedure that

*"(1) Where the parties or any of them do not accept the conclusions of any mediation into a dispute or*

*(2) Parties wish to cease to make use of the services of the village land council, they may refer the dispute to a court having jurisdiction over the subject matter of the dispute.*

Still, the requirement of referring the dispute to the council is mandatory. Therefore, referring the land dispute arising from the land allocated by the Village Council to the Land Village Council is a mandatory, conditional precedent. In the event of failure, the council will refer the matter to the Ward Tribunal.

In the final analysis, I agree with Mr. Kahigi Advocate that the matter was supposed to be referred to the Village Land Council for reconciliation before being referred to this Court. Therefore, the

preliminary objection raised has merits, and the plaintiff is advised to follow the proper procedure.

Consequently, the suit is hereby struck out.

It is so ordered.



  
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**K. D. MHINA**  
**JUDGE**  
**20/12/2022**