

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF
TANZANIA2
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO.131 OF 2022

SALMA SAIF ABDALLAH.....PLAINTIFF

VERSUS

**SALUM ALI (Adminstrator of the Estate of the late Ali Salim
Ali).....1st DEFENDANT**

**MOHAMED ALI(Adminstrator of the Estate of the late Ali Salim
Ali).....2ND DEFENDANT**

RULING

Date of Last Order: 15.11.2022

Date of Ruling: 12.12.2022

T.N. MWENEGOHA, J

In the case at hand, the plaintiff claims a refund of 140,000,000/= from the defendants jointly. The said claim arises from a breach of contract and costs of this suit. It was alleged by the plaintiff that, she entered into a contract to buy a landed property, located at Plot No. 386, Sharif Shamba Area, Ilala District within Dar es Salaam region belonging to the defendants' late father. The contract in question was executed in June 10th 2016, between the plaintiff and the defendants to the tune of 350,000,000/=. The plaintiff paid a total of 120,000,000/= as advanced payment and it was agreed that, in return, the defendants were to process

the Title Deed in favour of the plaintiff within four months. The defendants failed to discharge their duties as agreed to date, hence this case.

However, after going through the plaint, especially the clause stating the cause of action, this Court raised an issue suo motto regarding the competence of the case at hand. The parties were therefore ordered to address the Court on whether it has jurisdiction to entertain a case arising out of breach of contract as the one at hand.

Advocate Abdul Aziz, arguing for the plaintiff has insisted that, the plaintiff's claim is based on breach of sale agreement touching a landed property. Further that, there is an issue of transfer of title of ownership of the said property. Therefore, this Court has a jurisdiction to entertain the matter in question as the relationship between the plaintiff and the defendant is purely on the disposition of land.

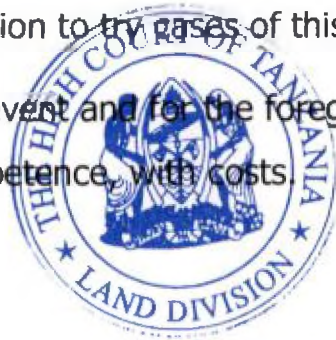
On the other hand, Advocate Frank Ntuta for the defendants, maintained that, the Court has no jurisdiction to entertain this matter. That, the same is not a land matter, rather a contractual dispute. He cited the case of **Charles Rick Mulaki versus William Jackson Magero, HC Civil Appeal No. 69 of 2017, High Court of Tanzania at Mwanza(unreported)**, where it was stated that, land matters include disputes which a right on land or interest thereon is in conflict.

After going through the plaint and the arguments of parties through their learned counsels, I am of the settled conclusion that, this is not a land matter, falling within the jurisdiction of this Court. For a party to move this Court the nature of dispute has to be concerning a land as subject matter, be it the dispute on possession, ownership or any interest over it, claimed by the plaintiff as against the defendant. That is the spirit of the

expression *Land Matter* as provided for under **section 167 of the Land Act, Cap 113 R.E 2019**. This was very well elaborated by this Court in **Charles Rick Mulaki versus William Jackson Magero**, (supra).

It is evident from the submissions and records at hand, the suit before me is not a land dispute but rather a contractual dispute. The fact that the said contract was on sale of an immovable property (land); its breach thereof, does not constitute a land dispute. It remains to be a breach of contract, capable of being enforced in other Courts of competent jurisdiction to try cases of this nature.

In the event and for the foregoing reasons, I struck out this suit for want of competence, with costs.





T.N. Mwenegoha.

Judge

12/12/2022