

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

LAND CASE NO. 168 OF 2021

SEIF MTIARA PLAINTIFF

VERSUS

JUMANNE JUMA SHAHA 1ST DEFENDANT

YONO AUCTION MART 2ND DEFENDANT

Date of last order: 30/11/2022

Date of ruling: 14/12/2022

RULING

I. ARUFANI, J.

The plaintiff filed in this court the instant suit against the defendants praying the court to compel the defendants to rebuild his three houses they unlawfully demolished. In alternative the plaintiff is praying the court to order the defendants jointly and severally to pay him Tshs. 300,000,000/= being general damages for their unlawful act of demolishing his three houses.

After the defendants being served with the plaint, they filed in the court their written statement of defence to rebut the claim of the plaintiff, and in addition to that, the second defendant raised a point of preliminary

objection against the plaintiff's suit that, the court has no pecuniary jurisdiction to determine the plaintiff's claim. The court directed the parties to argue the stated point of preliminary objection by way of written submissions and I commend both sides for complying with the schedule given to them for filing their written submissions in the court.

The submission of the second defendant was prepared and filed in the court by Mr. Samuel Shadrack Ntabaliba, learned advocate who stated in his submission that, paragraphs 5 and 12 of the plaint indicates the plaintiff's claim against the defendants jointly and severally is for the payment of general damages for demolished houses. He argued that, jurisdiction of any court to determine a matter is conferred by specific damages and not general damages.

He stated that, the plaint shows the plaintiff is claiming for two main prayers which are defendants to be compelled to rebuild the plaintiff's three houses and to pay him Tshs. 300,000,000/= as general damages. He stated the first prayer is a declaratory order which can be determined by the subordinate courts and not by the High Court. He went on arguing that, even if it will be assumed the estimated value of the three houses is Tshs.

300,000,000/= as stated at paragraph 17 of the plaint but this court has no pecuniary jurisdiction to entertain the matter.

He argued that, the estimated value of Tshs. 300,000,000/= cannot determine pecuniary jurisdiction of the court to entertain the matter because it is a mere estimation. He referred the court to section 40 (2) (a) of the Magistrates' Courts Act, Cap 11 R.E 2019 (henceforth, the MCA) which states the District Court when held by a Civil Magistrate can entertain a dispute for recovery of possession of immovable property in a proceeding in which the value of the property does not exceed three hundred million shillings.

He submitted that, as the claim of the plaintiff is based on declaratory order and payment of estimated value of Tshs. 300,000,000/=, the stated relief falls within pecuniary jurisdiction of the District Court. He referred the court to the case of **Noel Dominic Mambo V. The Director General, Consolidated Holding Corporation**, Civil Case No. 68 of 2007 which quoted with approval the case of **Tanzania China Friendship Textiles Co. Ltd V. Our Lady of the Mount Usambara Sisters**, Civil Appeal No. 84 of 2002 where it was held that, general damages do not confer jurisdiction to court. He based on the above argument to pray the court to struck out the plaintiff's suit with costs.

In reply the counsel for the plaintiff stated the argument by the counsel for the second defendant that the court has no pecuniary jurisdiction to entertain the present suit because the relief claimed in the first item is a declaratory order is misconceived. He submitted that, the court has jurisdiction to enter declaratory reliefs provided the value of the claim or subject matter is within pecuniary jurisdiction of the court. He referred the court to section 7 (2) of the Civil Procedure Code, Cap 33 R.E 2019 (henceforth, the CPC) which states no suit shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby.

He went on arguing that, section 40 (2) (a) of the MCA cited in the submission of the counsel for the second defendant is not applicable in the present case. He argued the cited provision of the law provides for claim relating to recovery of possession of immovable property while the claim of the plaintiff in the present suit is a declaratory order to compel the defendants to rebuild his three houses which were unlawfully demolished by the defendants. He stated the court has pecuniary jurisdiction under section 37 (1) (b) of the Land Disputes Courts Act, Cap 216 R.E 2019 (henceforth, the LDCA) to entertain the present suit.

He argued that, as the estimated value of the demolished three houses is Tshs. 300,000,000/= which exceeds Tshs. 200,000,000/= provided under section 37 (1) (b) of the LDCA, the court has pecuniary jurisdiction to entertain the matter. He also referred the court to Order VII Rule 1 (i) of the CPC which states the plaint is required to contain a statement of value of the subject matter of a suit for the purposes of jurisdiction and court fees. He submitted that, as the plaint contain the statement stating the estimated value of the demolished houses is Tshs. 300,000,000/= the court has pecuniary jurisdiction to entertain the suit.

The counsel for the plaintiff argued further that, he is aware that a claim for general damages dose not determine pecuniary jurisdiction of the court. He however stated that, jurisdiction of the court can be determined by looking into what is claimed at paragraph 17 of the plaint which states the estimated value of the demolished houses and part (a) of the relief clause where the plaintiff is praying for an order of compelling the defendants to rebuild his three houses which were unlawfully demolished.

He rebutted the submission by the counsel for the second defendant which states the estimated value of Tshs. 300,000,000/= for the demolished houses cannot be used to determine jurisdiction of the court. He submitted

that, section 37 (1) (b) of the LDCA contain a phrase stating "*being estimated at money value*" which shows the value of the subject matter can be estimated to establish jurisdiction of the court. He based on the above stated argument to pray the court to overrule the preliminary objection raised by the second defendant with costs.

In his rejoinder the counsel for the second defendant reiterated what he argued in his submission in chief and insisted that, the court has no pecuniary jurisdiction to entertain the present suit. He stated the declaratory order and general damages claimed by the plaintiff can be sought in the subordinate courts. He referred the court to section 13 of the CPC which states every suit shall be instituted in the court of the lowest grade competent to try it.

He argued that, section 7 (2) of the CPC cited by the counsel for the plaintiff is not applicable in the scenario of the present suit. He insisted that, if it is assumed the value of the claim of the plaintiff is Tshs. 300,000,000/= the court has no pecuniary jurisdiction to entertain the stated claim because as provided under section 40 (2) of the MCA the court has no pecuniary jurisdiction to entertain proceedings relating to immovable property which

its value is more than three hundred million shillings. At the end he prayed the suit be struck out with costs.

Having carefully considered the point of preliminary objection raised by the second defendant and the rival submissions filed in the court by the counsel for the parties in relation to the raised point of preliminary objection the court has found the issue to determine in this matter is whether the court has pecuniary jurisdiction to entertain the matter at hand. I wish to preface my determination of the stated point of preliminary objection by stating it is an established principle of law that jurisdiction of a court to entertain any matter is a creature of a statute or instrument establishing it and not a power which a court can confer itself or by anybody. The stated statement is beacons by the definition of the term jurisdiction provided in the **Halsbury's Laws of England**, 4th Edition Re-issue Vol. 10, Para 314 where it is stated that: -

*"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. **The limits of this authority are imposed by the statutes, charters or commission under which is constituted, and may be extended or restricted by similar means.**"* [Emphasis added].

That being the meaning of the term jurisdiction of a court to entertain a matter the court has found as the objection raised by the defendant is based on pecuniary jurisdiction of the court to entertain the matter at hand it is pertinent to start by seeing what is pecuniary jurisdiction of this court to a matter like the one filed in the court by the plaintiff. The court has found while the counsel for the second defendant has based his submission on section 40 (2) (a) of the MCA and section 13 of the CPC to show the court has no pecuniary jurisdiction to entertain the instant suit, the counsel for the plaintiff based his submission on section 37 (1) (b) of the LDCA and section 7 (2) of the CPC and states the court has pecuniary jurisdiction to entertain the present suit.

The question to determine here is which provisions of the law out of the cited provisions is relevant in determination of the issues of whether the court has pecuniary jurisdiction to entertain the present suit or not. The court has found section 3 (2) of the LDCA states the courts having jurisdiction to entertain every dispute or complain concerning land includes the High Court and pecuniary jurisdiction of the High Court to entertain the stated disputes or complain is section 37 (1) of the LDCA which states as follows: -

37.-(1) Subject to the provisions of this Act, the High Court shall have and exercise original jurisdiction-

(a) in proceedings for the recovery of possession of immovable property in which the value of the property exceeds three hundred million shillings;

(b) in other proceedings where the subject matter capable of being estimated at a money value in which the value of the subject matter exceeds two hundred million shillings.”

The wording of paragraph (a) of the above quoted provision of the law is apparent clear that the High Court has pecuniary jurisdiction to entertain proceedings for recovery of possession of immovable property in which its value exceed three hundred million shillings. The court has also found paragraph (b) of the cited provision of the law states the High Court has pecuniary jurisdiction to entertain any other proceedings where the subject matter is capable of being estimated at a monetary value which exceed two hundred million shillings.

The court has gone through the provision of section 40 (2) (a) of the MCA upon which the counsel for the second defendant based his submission in support of the preliminary objection and found is providing for jurisdiction of the District Court to entertain proceedings for the recovery of possession of immovable property which its value does not exceed three hundred million shillings. The court has found as rightly argued by the counsel for the plaintiff the cited provision of the law is not applicable in the plaintiff's suit. The court

has come to the stated finding after seeing the claim of the plaintiff as indicated at paragraphs 4, 12 and paragraph (a) of the relief clause is for the court to compel the defendants jointly and severally to rebuild the plaintiff's three houses which he alleged were unlawfully demolished by the defendants.

Since the claim of the plaintiff is about rebuild of his demolished houses and not about recovery of possession of immovable property governed by section 37 (1) (a) of the LDCA and section 40 (2) (a) of the MCA, the plaintiff's suit is supposed to be governed by section 37 (1) (b) of the LDCA and not section 40 (2) (a) of the MCA relied upon by the counsel for the second defendant in support of the objection raised by the second defendant. Therefore, section 40 (2) (a) of the MCA is not applicable in the suit at hand.

The court has found as rightly argued by the counsel for the second defendant the value of the claim of the plaintiff as indicated at paragraphs 5, 12 and part (b) of the relief clause of the plaint is general damages of Tshs. 300,000,000/= and as stated in the case of **China – Tanzania Friendship Textile Co. Ltd** (supra) general damages does not establish jurisdiction of the court to entertain a matter. However, the court has found

as indicated at paragraph 5 and paragraph (b) of the relief clause of the plaint the stated claim of general damages is claimed as alternative because paragraphs 4, 12 and part (a) of the relief clause of the plaint shows the basic claim of the plaintiff is for the court to compel the defendants to rebuild his three houses which were unlawfully demolished by the defendants.

Therefore, to say the plaintiff is claiming for general damages which does not establish jurisdiction of the court is a misconception of the claim of the plaintiff on the side of the second defendant and his counsel. The court has also come to the stated finding after seeing paragraph 17 of the plaint shows the plaintiff states the value of the three houses which were demolished by the defendants for the purposes of jurisdiction and court fees is estimated to be Tshs. 300,000,000/= . The stated estimated value makes the court to find that, although the plaintiff is claiming for general damages of Tshs. 300,000,000/= but the stated amount is claimed as an alternative to the basic prayer of the order to compel the defendants to rebuild his three houses which he alleged were unlawfully demolished by the defendants.

The court has found the counsel for the second defendant contended that, the estimated value of a subject matter in a proceeding does not constitute pecuniary jurisdiction for a court to entertain a matter. The court

has found there are two school of thought in relation to the issue of whether estimated value of a subject matter to a suit can be used to determine jurisdiction of a court to entertain a matter or not. The first school is the one which states the estimated value can be used to determine jurisdiction of the court to entertain a matter and the second school of thought is the one taken by the counsel for the second defendant which states it cannot.

The court has found the second school of though is more plausible than the first school because there is no provision of the law stating estimated value of a subject matter cannot be used to determine jurisdiction of a court to entertain a matter. To the contrary the court has found Order VII Rule (1) (i) of the CPC states the plaint is required to contain a statement of the value of the subject matter of the suit for the purposes of jurisdiction and court fees and does not state the required value must be ascertained by a valuation report as held in the first school of thought which the counsel for the second defendant based his submission.

The court has also found section 37 (1) (b) of the LDCA which provides for pecuniary jurisdiction of this court to entertain a matter relating to land states the court can exercise original jurisdiction in a proceeding where the subject matter is capable of being estimated at a money value. The court

has also found Regulation 3 (2) (d) of the GN No. 174 of 2003 and section 33 (2) (b) of the LDCA which governs jurisdiction of the tribunal requires the applicant filing a suit in the tribunal to give an estimated value of the subject matter and not actual monetary value.

The court has also found it is not only that the estimated value of a subject matter of a suit is acceptable and provided in various legislations as demonstrated hereinabove but also serve costs and it gives equal access to justices to the parties wants to seek for their remedy in the court because most of the people cannot afford the costs of seeking for scientific valuation report of their property which also requires money before going to the court. In the premises the court has found difficult to side with the view of the counsel for the second defendant that the estimated value of a subject matter cannot be used to determine jurisdiction of a court to entertain a matter unless there is a reason to believe the value of a subject matter to a suit has been overvalued or undervalued for the purpose of deceiving the court has jurisdiction to entertain the suit while in the circumstances of the matter the court has no jurisdiction.

Having found the court has jurisdiction under section 37 (1) (b) of the LDCA to entertain proceedings which are not about recovery of immovable

properties which its estimated value exceeds two hundred million shillings and as the claim of the plaintiff is for the order to compel the defendants to rebuild the plaintiff's three houses which its estimated value is three hundred million shillings, the court has found it has jurisdiction to entertain the present suit. Consequently, the point of preliminary objection raised by the second defendant is hereby overruled for being devoid of merit and the costs to follow the event. It is so ordered.

Dated at Dar es Salaam this 14th day of December, 2022



I. Arufani

JUDGE

14/12/2022

Court:

Ruling delivered today 14th day of December, 2022 in the presence of Mr. Alexander Kyaruzi, learned advocate for the plaintiff, in the absence of the first defendant and in the presence of Mr. Paulo Mtui, learned advocate for the second defendant. Right of appeal to the Court of Appeal is fully explained.



I. Arufani

JUDGE

14/12/2022