

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 38 OF 2022

HALIMA MBILA..... 1<sup>ST</sup> PLAINTIFF  
SAAD KAWEMBA ..... 2<sup>ND</sup> PLAINTIFF  
OMARI JUMA ..... 3<sup>RD</sup> PLAINTIFF  
YUSUPH OMARY YENGA ..... 4<sup>TH</sup> PLAINTIFF  
ERASMO NYONGOLE ..... 5<sup>TH</sup> PLAINTIFF  
SAID NDEGE..... 6<sup>TH</sup> PLAINTIFF  
ALLY KAGIRE ..... 7<sup>TH</sup> PLAINTIFF  
SAMWEL IBRAHIM MWANDAMBO ..... 8<sup>TH</sup> PLAINTIFF  
FREDRIC AGREY MARIDADI ..... 9<sup>TH</sup> PLAINTIFF  
HAPPYNES A. MACHA ..... 10<sup>TH</sup> PLAINTIFF

VERSUS

VICTOR STEVEN MANG'NA (Being an Administrator of  
the estate of Steven Mang'ana) ..... 1<sup>ST</sup> DEFENDANT  
KAM COMMERCIAL SERVICES ..... 2<sup>ND</sup> DEFENDANT  
JUMA KALEMBO ..... 3<sup>RD</sup> DEFENDANT

RULING

*Date of last Order: 27.04.2022*

*Date of Ruling: 12.05.2022*

A.Z.MGEYEKWA, J

On 25<sup>th</sup> February, 2022 Halima Mbile & 9 others, the Plaintiff herein, instituted this suit against the Victor Steven Mng'ana the administer of

the estate of the late Steven Mang'ana, 1<sup>st</sup> Defendant, Kam Commercial Service, 2<sup>nd</sup> Defendant, and Juma Kalembo, 3<sup>rd</sup> Defendant seeking the following reliefs:-

- i. Decree which resulted from Land Application No. 15 of 2008 did not refer to Plaintiff's lands neither the Plaintiffs were parties to the suit.*
- ii. A Declaration that the act of the Defendants of intending to execute the decree in Land Application No.15 of 2008 on the Plaintiffs' lands is illegal and unjust.*
- iii. An order of perpetual injunction restraining the Defendants their agents, employees, or their workmen not to interfere with the Plaintiffs' lands in any way.*
- iv. General damages shall be assessed by this Honourable court.*
- v. Costs of this suit.*

The Plaintiff and the 1<sup>st</sup> and 3<sup>rd</sup> Defendants filed a Written Submission Defence and the 1<sup>st</sup> Defendant raised a point of Preliminary Objection as follows:-

- 1. That this court has no jurisdiction to entertain a suit that intends to challenge/ impeach the decision of the District Land and Housing Tribunal in Land Application No. 15 of 2008.*

When the matter was called for hearing of the preliminary objection on 27<sup>th</sup> April, 2022, the Plaintiffs enjoyed the legal service of Mr. Isaac

Tasinga whereas, the 1<sup>st</sup> defendant had the legal service of Mr. Francis Mgare, learned counsel.

As the practice of the Court has it, we had to determine the preliminary objection first before going into the merits or demerits of the suit.

The learned counsel for the 1<sup>st</sup> Defendant started his onslaught by submitting that this court has no jurisdiction to entertain this suit. To buttress his contention he referred this court to the prayers and allegations of the Plaintiffs as stated under paragraphs 5, 8, 9, 10 & 12 of the Plaint. He contended that the Plaintiffs are essence challenging the District Land and Housing Tribunal decision in Land Application No.15 of 2008, Misc. Land Application No. 113 of 2016 and Misc. Land Application No. 216 of 2020, all are attached to the Plaint. Mr. Francis argued that since the essence of the Plaintiffs was to challenge the decisions of the District Land and Housing Tribunal.

It is his submission that this court has no jurisdiction in regard to the claims to impeach or challenge the decisions of the District Land and Housing Tribunal. Supporting his submission, he referred this court to annexures MAC 3 & MAC 4. The learned counsel went on to submit that as long as the Plaintiffs were not part of the impugned applications, they were required to apply for revision to find out whether the said decisions of the District Land and Housing Tribunal were illegal or injustice.

Insisting, he claimed that the proper remedy was for the Plaintiffs to file a revision under section 3 (1) (b) of the Land Disputes Courts Act, Cap. 216 or in alternative if there was a lacuna then they could file the same under section 5 (2) Land Disputes Courts Act, Cap. 216 together with section 79 (1) (c) of the Civil Procedure Code Cap.33.

Mr. Francis went on to submit that Hon. Makani, J in the consolidated cases with respect to Land Case No. 101 of 2020 and Land Case No. 129 of 2020 directed the parties to file a revision. He referred this court to annexure MAC 5.

On the strength of the above submission, Mr. Francis beckoned upon this court to uphold the preliminary objection and dismiss the suit.

Mr. Isaac for the Plaintiffs resisted the preliminary objections with some force. He denied that it is a point of law since the preliminary objection did not disclose the point which is raised as a point of law. To buttress his contention he cited the case of **James Burchard Rugamalila v Republic & Mr. Harbinder Singh Sethi**, Criminal Application No. 59/19 of 2017. The Court of Appeal of Tanzania declared the preliminary objection did not exist. He added that this court is bound by the cited case. Thus, in his view, there was no any preliminary objection. He claimed that they have caught by surprise after the learned

counsel has cited section 51 of the Land Disputes Courts Act, Cap. 216 and section 79 of the Civil Procedure Code cap.33.

On the alternative, Mr. Isaac submitted that the 1<sup>st</sup> Defendant, counsel has referred this court to paragraphs 5, 8, 9, 10 & 12 of the Plaintiff, the said that the paragraphs narrate the gist of the matter. He lamented that Mr. Francis has referred this court to annexures while a preliminary objection must be a pure point of law without referring to annexures. Supporting his point he cited the famous case of **Mukisa Biscuit Manufacturing Company Ltd v West end Distributors Ltd** (1969) EA 696.

It was his further submission that there was an application for objection proceeding in Misc. Application No. 216 of 2020 at the District Land and Housing Tribunal the same emanated from Land Application No. 15 of 2018. He added that the Plaintiffs were not part of the suit and execution was to be effected, thus, the Plaintiffs reacted by filing the Objection Proceedings. He further went on to submit that under Order XXI Rule 62 of the Civil Procedure Code Cap. 33 [R.E 2019], the Plaintiffs filed the instant suit.

Insisting, Mr. Isaac submitted that the proper remedy is to file a fresh suit. To bolster his contention, he cited the cases of **Sembuli S/O Alli Ndaigiwe v Mwezi S/O Ramadhani**, Land Revision No. 1 of 2021, and

**Joyce Charles Mdimy & 2 Others v Mariam Yohana Kingazi & two others**, Civil Revision No. 32 of 2019. He stressed that the Plaintiffs have genuine reasons as to why they lodged the instant suit since there is no any order of the court that has identified their properties. Fortifying his position he cited the cases of **Omary Ibrahim Rajabu v Mana Company & Others**, Land Case No.113 of 2018, and **Daniel Dagala Kanuda (Administrator of the estate of the late Mbalu Kashaha Bulunda v Masaka & Others**, Land Appeal No. 26 of 2016.

On the strength of the above submissions, Mr. Isaac beckoned this court to dismiss the preliminary objection for being short of merit and proceed with hearing the main case.

In his rejoinder, Mr. Francis reiterated his submission in chief. Insisting, Mr. Francis submitted that the preliminary objection is clear. He stated that the Plaintiff's Advocate has not responded as to whether this court has jurisdiction as per pleadings and reliefs claimed by the Plaintiffs. He distinguished the cited case of **James Rugamalila** that in the cited case the Court of Appeal referred to Court of Appeal Rules which are not applicable in the High Court. He added that the Objection Proceeding was found time-barred. Mr. Francis strenuously argued that the Plaintiffs were required to pray for declaratory orders to declare them owners of the said properties and establish their rights in their claims. He

added this court cannot grant the reliefs sought in the absence of the District Land and Housing Tribunal's records.

He valiantly submitted that the circumstance of the case in referring to annexure; is different from **Mukisa's** case as the issue of jurisdiction does not contravene **Mukisa's** case. Stressing, Mr. Francis submitted that the Plaintiffs are challenging the Land Application No.15 of 2018 to be declared illegal and unjust which is not the gist of Order XXI Rule 62 of the Civil Procedure Code. He insisted that the consolidated cases are not different from the instant case; the Plaint and pleadings are the same. He also distinguished the cited case of **Omary and Daniel** that they are irrelevant as far as the preliminary objection is concerned because in the cited case the issue for discussion is a description of the suit land while in the instant suit the issue for discussion is jurisdiction.

On the strength of the above argumentation, the learned counsel for the respondent beckoned upon this court to dismiss the suit with costs.

Having heard the submission of both learned counsel for and against the preliminary objections, I have to say that the issue for determination is *whether the preliminary objection is meritorious.*

The issue which I am called upon to resolve in this ruling is whether the preliminary objection raised by the Defendant is meritorious. I have carefully summarized the submissions made by learned counsels for the

Plaintiffs and Defendant. Before I address the main issue, I find it necessary to consider the validity of the preliminary objection since the Plaintiff's counsel has contended that the point of objection does not disclose the point of law.

In view of that, the Plaintiff's counsel contended that the said objection does not disclose a point of law. Supporting his submission, he cited the case of **James Burchard Rugamalila** (supra). However, the Defendant's counsel has counteracted it by stating that, the objection is self-explanatory.

To address the above issue, let me revert to what the Court in **James Burchard Rugamalila** (supra) stated concerning improper objection. The Court of Appeal of Tanzania at page 9 of its Ruling observed that the application was incurably defective for non-complying with the law. The Court of Appeal stated that it was during the hearing of the objection that it was clarified that the court was not properly moved by an *omnibus* application.

The issue of jurisdiction is well explained in the objection raised by the learned counsel for the Defendant that this Court cannot proceed to exercise its jurisdiction over a suit improperly brought before it. I am holding so because the word jurisdiction simply means the official powers to make legal decisions and judgments. In the matter at hand,



the defendants are saying this Court lacks the requisite jurisdiction because the pleading purporting to carry the suit is bad. In my opinion, the preliminary objection meets the criteria of a preliminary objection as it is a matter of law. Therefore, Mr. Isaac's observation or objection is disregarded.

Back to on the wagon, in the instant case, the controversy on which the objection is anchored is whether *this court has no jurisdiction to entertain a suit that intends to challenge/ impeach the decision of the District Land and Housing Tribunal in Land Application No. 15 of 2008.*

The Defendant's counsels have locked horns with the Plaintiffs' counsel on this matter. Each part opposes the version of the other and above all. I had to peruse the Plaint and in fact, it is worth noting that the entire Plaint intends to challenge/ impeach the decision of the District Land and Housing Tribunal in Land Application No. 15 of 2008. The question is whether this is the proper take.

It is a trite law that the decision of a court or tribunal can be challenged in the same Court by way of an application for review, or objection proceedings. The decision of such a Court can also be challenged in a superior court by way of appeal, revision, or reference. Decisions of courts cannot be challenged by instituting a fresh suit similar to the existing decision.

I have perused the Plaint together with attachments thereto and found that the entire Plaint is faulting the decision of the District Land and Housing Tribunal for Kinondoni in Application No.15 of 2008. Annexures MC2, MC3, MC4, and MC5 in a Plaint make reference to Land application No. 15 of 2008, Land Application No. 216 of 2020 (District Land Housing Tribunal's for Kinondoni), and Land Case No. 101 of 2020 which was before this court. In paragraph 5 of the Plaint, the Plaintiffs are requesting this court to issue a declaratory order that the Decree in Land Application No. 15 of 2008 did not refer to the Plaintiff's land. They also pray for a declaration that the execution of the decree in Land Application No. 15 of 2008 is illegal.

It is my firm view that the fact the cause of action and the reliefs prayed to intend to challenge the decision of the District Land and Housing Tribunal in Land Application No.15 of 2008, this Court lacks jurisdiction to fault the said decision in this very matter brought by way of Plaint. It is also my firm view that if at all the plaintiffs intend to move this Court to impeach the said decision they ought to have knocked the gates of this Court by using vessels that could move this Court so to fault the said decision.

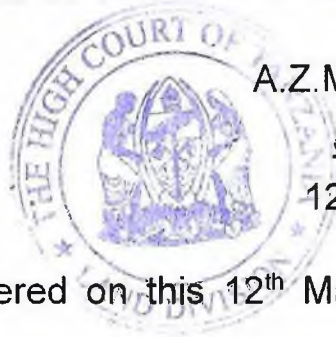
I have also noted that the reliefs sought do not relate to the claims of ownership of land. Looking at the reliefs, I do not see any issue of

ownership which can warrant this Court to reconstitute itself to resolve. In sort, the reliefs in the instant suit do not guide whether this court has the power to grant the same. I do not hesitate to say that in the context of the above, this matter is not within the province of this court.

In the upshot, for the reasons epitomized above, I proceed to strike out the suit with costs.

Order accordingly.

DATED at Dar es Salaam this 12<sup>th</sup> May, 2022.



A.Z.MGEYEKWA

JUDGE

12.05.2022

Ruling delivered on this 12<sup>th</sup> May, 2022 in the presence of Mr. Isaac Tasinga, learned counsel for the Plaintiffs, Mr. Francis Mgare, learned counsel for the 1<sup>st</sup> Defendant and the 3<sup>rd</sup> Defendant.



A.Z.MGEYEKWA

JUDGE

12.05.2022