

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

**LAND CASE NO. 37 OF 2022**

**EXAUD ELIAS MACHANGE ..... 1<sup>ST</sup> PLAINTIFF  
CLAUDE PAUL FERDINAND ..... 2<sup>ND</sup> PLAINTIFF  
THEOBARD MUG ..... 3<sup>RD</sup> PLAINTIFF  
INNOCENT MODEST TIBAIKANA ..... 4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**VICTOR STEVEN MANG'ANA (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: 12.05.2022*

*Date of Ruling: 20.05.2022*

**A.Z.MGEYEKWA, J**

On 25<sup>th</sup> February, 2022 Exaud Elias Machange & 3 others, the Plaintiff herein, instituted this suit against the Victor Steven Mang'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. A Declaration that the Decree which resulted from Land Application No. 15 of 2008 did not refer s to Plaintiff's lands neither the plaintiffs were parties to the said suit.*
- ii. A Declaration that the act of the 1<sup>st</sup> and 2<sup>nd</sup> defendants of demolishing the Plaintiffs' landed properties based on a Decree which did not refer to their lands and for the suit in which they were not parties was unjust, illegal and unfair.*
- iii. An order against the Defendants jointly and severally to compensate the plaintiffs for their demolished houses at their replacement values which totals up to Tshs. 596,738,840/= estimated for each individual as for each individuals as follows;*
  - a) Exaud Elias Machange ..... Tshs 301,916,840/=*
  - b) Claude Paul Ferdinand ..... Tshs 96,104,000/=*
  - c) Thebard Muganda ..... Tshs. 128,718,000/=*
  - d) Innocent Modest Tibaikana ..... Tshs. 70,000,000/=*
- iv. Payment of all tenancy costs from the date the said Defendants demolished the Plaintiffs houses 17 March 2020 up to the date of*

payments of the money being equivalent to the replacement values of the houses which were demolished.

- v. General damages as may be assessed by this Honourable court.
- vi. Interest of the compensation of house replacement values as will be decreed at a rate of 20% from the date of Judgement to the date of the final settlement.
- vii. An order of perpetual injunction of restraining the defendants their agents' employees, or their workmen not to interfere with the Plaintiffs' lands.
- viii. The cost of this suit to be borne by the defendants.

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 12<sup>th</sup> May, 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. That is the practice of the Court founded upon prudence which we could not overlook.

The learned counsel for the 1<sup>st</sup> Defendant was the first one to kick the ball rolling. He contended 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, 10, 11, 12, 13, 17, 18 & 20 of the Plaint. He strongly contended that reading the said paragraphs it is clear that the Plaintiffs are essence challenging the District Land and Housing Tribunal decision in Land Application No.113 of 2017 and Misc. Land Application No. 216 of 2020, the Plaintiffs are claiming that the judgments were issued illegally.

Mr. Francis argued that since the essence of the Plaintiffs was to challenge the decisions of the District Land and Housing Tribunal, it is their 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. He went on to submit that as long as the Plaintiffs were not part of the impugned applications then 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 the 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 the Plaintiffs' only remedy is to file a revision since they were not parties to the impugned decision.

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

Mr. Isaac for the Plaintiffs resisted the preliminary objections with some force. From the beginning, Mr. Isaac denied that it is a point of law. He claimed that the preliminary objection did not disclose the point which is raised as a point of law. To support his position 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 urged this court to disregard the point of objection.

Mr. Isaac continued to submit that it was worthless to state that the Plaintiffs' remedy is to lodge a revision since they were not parties. To support his stance he referred this court to Order XXI Rule 52 of the Civil Procedure Code Cap. 33 that after losing in the objection proceedings the parties were required to lodge a fresh case. To buttress his contention he cited the cases of **Sembuli S/O Ally Ndagiwe v Mwezi S/O Ramadhani**, Land Revision No. 1 of 2021, and **Amour Habib Salum v Hussein Bafagi**, Civil Application No. 76 of 2010. He claimed that this is not a normal case since the cause of action is caused by the tribunal orders. He submitted that in paragraph 5 the Decree did not refer to the Plaintiffs' lands thus they are not challenging the Decree. He claimed that in paragraph 10, it is the issue at hand is related to demolition.

Stressing, Mr. Isaac contended that the Plaintiffs do not have any other cause of action except the acts of the Defendants who used the court Judgment and ruling to interfere with the Plaintiffs' lands. In regard to paragraphs 11 & 12, Mr. Isaac argued that this fact does not challenge the Decree he claimed that the Plaintiffs had no any chance to challenge thus they are raising their claims. He added that paragraph 15 is in regard to the value of the Plaintiffs' properties which were demolished.

He further urged this court to go through paragraphs 17 and 20 of the Plaintiff and the reliefs. He insisted that reliefs are not part of the pleadings. He argued that the Plaintiffs are not intending to impeach the decision of the District Land and Housing Tribunal but they are saying that they have good cause of action and the suit was properly lodged before this court since the Plaintiffs were not parties to the Land Application No. 15 of 2008 but the judgment had an impact on their lands. Mr. Isaac went on to submit that the Plaintiffs lodged an Objection Proceedings in Misc. Land Application No. 16 of 2020. He valiantly argued that section 43 of the Land Disputes Courts Act, Cap. 216 is not related to objection proceedings.

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, the preliminary objection is clear. He stressed that the reliefs sought cannot be granted by this court. He distinguished the cited case of **Amour** (supra) and **Sampuli** (supra) that they are not similar to the circumstances of the case at hand.

In conclusion, he urged this court to sustain the Preliminary Objection raised the 1<sup>st</sup> Defendant 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 1<sup>st</sup> 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. On his side, the Plaintiffs' counsel contended that the said objection does not disclose a point of law. However, the 1<sup>st</sup> 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 on 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.



It is my respectful view that the issue of jurisdiction is well explained in the objection raised by the learned counsel for the 1<sup>st</sup> 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 1<sup>st</sup> Defendant is 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, I choose to disregard Mr. Isaac's contention in respect of the raised objection.

This takes me to the substance of the matter, the controversy on which the objection is moored 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 1<sup>st</sup> Defendant's counsel and Plaintiffs' counsel bandying words on this matter. Each part opposes the version of the other and above all. I had to peruse the Complaint and in fact, it is worth noting that the entire Complaint 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 way. 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 Complaint together with attachments thereto and found that the entire Complaint is faulting the decision of the District Land and Housing Tribunal for Kinondoni in Application No.15 of 2008. Annexures SS-4 and SSL-5, in a Complaint, make reference to Land Application No. 15 of 2008, Land Application No. 216 of 2020 both from the District Land Housing Tribunal for Kinondoni.

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 Complaint. 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 specifically (i) and (ii). 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 provide guidance on 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 Land Case No.37 of 2020 without costs.

Order accordingly.

DATED at Dar es Salaam this 20<sup>th</sup> May, 2022.



  
A.Z.MGEYEKWA

**JUDGE**

20.05.2022

Ruling delivered on this 20<sup>th</sup> May, 2022 in the presence of Mr. Isaac Tasinga, learned counsel for the Plaintiffs and the 1<sup>st</sup> Defendant.



  
A.Z.MGEYEKWA

**JUDGE**

20.05.2022