

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

LAND CASE NO 139 OF 2021

HUSSEIN M. MAGOTTAPLAINTIFF

VERSUS

RAMADHANI MNYONGA.....1ST DEFENDANT
SAUDA HUSSEIN.....2ND DEFENDANT

(Administrator and administratrix respectively of the Estate
of the late HAWA DARABU)

Date of last Order: 16.05.2022
Date of Ruling: 23.05.2022

RULING

V.L. MAKANI, J

This is the ruling in respect of preliminary objection raise by
defendants that:

- 1. The suit is bad in law as it contravenes section 37 (1) (a)
and (b) of the Land Disputes Courts Act (Cap 216 R.E
2019).*
- 2. This suit is an abuse of Court process.*

The raised preliminary objections were argued by way of written
submissions. Submissions on behalf of the defendants were drawn
and filed by Mr. Msengezi. The plaintiff personally drew and filed
submissions in reply.

Submitting for the first point of preliminary objection, Mr. Msengezi said that under section 37 (1) of the Land Disputes Courts Act, CAP 216 RE 2019 this court has no pecuniary jurisdiction to entertain this matter. That the section confers original jurisdiction to this court in the proceedings for recovery of possession of immovable property in which the value of the property exceeds Three Hundred Million (TZS 300,000,000/=). He said under paragraph 3 of the plaint the plaintiff has pleaded that the value of the property is One Hundred and Five Million and Five Hundred Thousand (105,500,000/=). He said the same is also pleaded in paragraph 11 of the plaint.

Mr. Msengezi further said in his reply to the joint written statement of defence that the plaintiff has cited a dead provision of the Land Disputes Courts Act, that the High Court has jurisdiction in the proceedings for recovery of immovable property in which the value of the property exceeds Shillings Fifty Million. He said the plaintiff is not aware of the Written Laws (Miscellaneous Amendments) (No.4) Act of 2017. That the said amendments amended section 37 (1) of Land Disputes Courts Act, by deleting the words "Fifty Million" appearing in paragraph (a) and substituting for them the phrase "Three Hundred Million". He said since the value of the subject matter

is TZS 105,000,00/= this court lacks jurisdiction to entertain the matter. That the suit is incompetent before this court and should be dismissed with costs.

Mr. Msengezi also added that section 13 of the Civil Procedure Code, CAP 33 RE 2019 (the **CPC**) also requires every suit to be instituted in the courts of the lowest grade competent to try it. He submitted further that Article 108 of the Constitution of the United Republic of Tanzania, 1977, as amended from time to time confers the High Court with the power to hear and determine all matters at first instance. He said the general jurisdiction is subject on matters where no specific court has been set for those matters, whether by the Constitution or any other law. Counsel said, where there is any other court specified by the Constitution or any other law then the High Court lacks jurisdiction. He pointed out that the District Land and Housing Tribunal (the **District Tribunal**) has power to try this matter at hand under section 33 (2) (a) of the Land Disputes Courts Act, to try this matter. And to support his arguments Counsel relied on the cases of **Subira Amon Mwamunyange vs. EFC Tanzania, Land Case No.163 of 2020 (HC-Land Division)** (unreported) and the case of **M/s Tanzania China Friendship Textile Co. Ltd vs. Our Lady**

of the Usambara Sisters, Commercial Case No.69 of 2002 (HC-Commercial Division). On that basis Counsel prayed for the court to sustain the preliminary objection and dismiss the suit with costs for want of jurisdiction.

On the second point of preliminary objection Mr. Msengezi said that the first point of preliminary objection is self-explanatory that the suit is an abuse of the court process. In that regard he prayed for the second point of preliminary objection to be sustained and the suit be dismissed with costs.

In reply, the plaintiff said that the value of the property is TZS 105,000,000/=. He prayed for this court to transfer the suit with all the claim to any court competent to try or dispose of the same as per section 21 (1) of the CPC. He said in so doing the costs of filing the suit again in another court shall be reduced. He thus prayed for the suit not to be dismissed until the rights of the plaintiff are determined by the court of competent jurisdiction.

In rejoinder, Mr. Msengezi said that the plaintiff is trying to pre-empt the preliminary objection by arguing the court to transfer the matter

to the court of competent jurisdiction. That at this stage this suit cannot be transferred to the said court and it would cause inconvenience as all the documents bears the title of the High Court. He said if the plaintiff had intended to transfer the suit, he should have done so before disposition of the preliminary objection.

Mr. Msengezi on the first point of preliminary objection argued that the jurisdiction of this court under section 37 (1) of Land Disputes Courts Act, is for immovable property worth TZS 300,000,000/=. That the value of the property in this matter is TZS 105,000,000/= as pleaded by the plaintiff. Therefore, this court lacks jurisdiction to entertain the matter. He said the plaintiff has conceded to the objection and prayed for this court to transfer the matter to the lower court competent to try it.

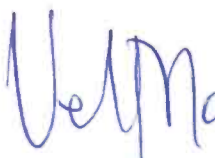
Having heard the submissions by the parties, the duty of the court is to analyse the merit of the raised preliminary objection. As correctly stated by Mr. Msengezi the plea by the plaintiff to transfer the matter to the lower court competent to try would amount to pre emptying the objection. The matter at hand finds its way to this court as an

original suit, and Section 37 (1) of the Land Dispute Courts Act clearly provides:

"7(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."

The value of subject matter stated by the plaintiff in paragraph 3 of the Plaint is TZS 105,000,000/= and this is far below the amount of TZS 300,000,000/= provided by the law, and the plaintiff has so conceded this fact. In view thereof, the preliminary objections raised are upheld, and consequently, the suit is hereby struck out with costs for want of jurisdiction.

It is so ordered.


V.L. MAKANI
JUDGE
23/05/2022

