

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 64 OF 2022

MWANAIKI ABDALLAH JUMA PLAINTIFF

VERSUS

DAMIAN KIMARO DEFENDANT

RULING

Date of last Order 16.06.2022

Date of Ruling 21.06.2022

A.Z.MGEYEKWA, J

The Plaintiff brought this action against the defendants on the ground that the Defendant invaded his piece of land situated at Vikawe Village Kibaha District in Pwani Region. The Defendant' filed a Written Statement of Defence disputing the claims and he raised two points of Preliminary Objection that:-

1. *That the Plaintiff's claim contravenes the provisions of sections 51 (2) and 33 (2) (a) of the Land Disputes Courts Act, Cap. 216 [R.E 2019] read together with section 13 of the Civil Procedure Code Cap. 33 [R.E 2019].*
2. *That the Plaintiff has no locus to claim the disputed land which she has already sold to the third parties per this court has no jurisdiction to determine the suit at hand.*

When the matter came for hearing on 16th June, 2022, the Plaintiff enjoyed the legal service of Mr. Joseph Mapunda and the Defendant had the legal service of Mr. Peter Madaha, learned counsel.

The learned counsel for the Defendant contended that this court has no jurisdiction to determine the instant case. He stated that the Plaintiff bought the suit land in 1988 from Hussein Mrisho and paid Tshs. 55,000/= and bought 15 acres from Kulenga Mazengo to a tune of Tshs. 75,000/= and the subject matter value of Tshs. 130,000/=. To fortify his submission he referred this paragraph 4 of the Plaint and sale agreements which are attached to the Plaint. He went on to submit that the Plaintiff was required to lodge the suit at the District Land and Housing Tribunal since this court has no pecuniary jurisdiction to determine the instant case. To buttress his contention he cited sections 37 (1) (a) and 33 (2) (a) of the Land Disputes Courts Act, Cap. 216

which provides that a dispute to be lodged before this court if the subject matter is not below Tshs. 35,000,000/=. The learned counsel went on to submit that in paragraph 6 of the Plaint the Plaintiff alleges that the value of the subject matter is Tshs. 400,000,000/= but they have no Valuation Report to prove and any document to prove their allegations. Supporting his submission he cited the cases of **Tanzania China Friendship Textile Company Ltd v Our Lady of Usambara Sisters** [1996] TLR 70 and **Samwel Kiven Kivuyo v Abraham Lengai Laizer**, Civil Appeal No. 35 of 2017.

As to the second limb of the objection, Mr. Madaha submitted that the Plaintiff has no *locus standi* to lodge the instant suit. He submitted that the Plaintiff lodge a Land Case No. 285 of 2019 against the Defendant before this court claiming ownership while at that time the Plaintiff had already transferred his ownership to another person. Mr. Madaha went on to argue that the Plaintiff sold the suit land to another person thus this court found that the Plaintiff had no locus stand as a result the court dismissed the case he added that astonishing. The Plaintiff has lodged the instant case while he did not challenge the decision of this court which was before Hon. Opiyo, J. He insisted that the Plaintiff is barred to lodge the instant suit on ownership because this court had already made its decision on the same matter. To

support his submission, he cited the case of **Umoja Garage v NBC Holding** (2003) TLR 339.

Arguing for the 3rd limb of the objection, the learned counsel for the Defendant contended that this court is *functus officio* because this court determined this suit and issued an order thus, it is *functus officio*. Mr. Madaha contended that since Hon. Opiyo, J has determined the matter and issued an order then the same court cannot depart from the said order. Fortifying his submission he cited the case **Malik Selemani v Mapinduzi Zanzibar** (2005) TLR 236.

In conclusion, the learned counsel for the Defendant urged this court to dismiss this court with costs since this court has no pecuniary jurisdiction.

In reply, on the first objection, the learned counsel for the Plaintiff contended that this court has unlimited jurisdiction. Supporting his submission he cited Article 108 (1) & (2) of the Constitution of the United Republic of Tanzania and section 37 (1) of the Land Disputes Courts Act Cap.216. Mr. Joseph argued that the subject matter involves immovable property which exceeds Tshs. 300,000,000/= as stated in paragraph 4 of the Plaint. It was his view that this court has jurisdiction to determine the case since the cause of action is Tshs. 400,000,000/=. He submitted that the sale

was done in 1988 and the value of the land was Tshs. 150,000 but this case was lodged in 2022 thus the value of the suit land cannot be the same as it was in 1988. The learned counsel for the Plaintiff argued that the issue of the Valuation Report requires evidence thus the same disqualifies the objection. Supporting his submission he cited the case of **Mukisa Biscuit Manufacturing Company Ltd v West end Distributors Ltd** (1969) EA 696.

On the second limb of the objection, the learned counsel for the Plaintiff submitted that the objection is not a pure point of law since the Defendant has referred to the ruling of this court. To buttress his contention he cited the case of **Mukisa Biscuits** (supra). He added that Land Case No. 285 of 2019 was struck out, therefore, it was not a bar to the Plaintiff to lodge a fresh case. He went on to submit that the Plaintiff has *locus standi* to lodge the instant case against the Defendant since the Defendant invaded the Plaintiff's land. The learned counsel for the Plaintiff contended that the subject matter in question is quite different from the previous case. Insisted that the Plaintiff was not restricted to lodge a fresh case. Supporting his position he cited Order VV Rule 13 of the Civil Procedure Code Cap.33.

On the strength of the above submission, the learned counsel for the Plaintiff beckoned upon this court to dismiss the objections with costs.

In his brief rejoinder, the learned counsel for the Defendant reiterated his submission in chief. He stated that the objections are pure points of law. He argued that the suit is not properly before this court. He insisted that this court in its order stated that the Plaintiff had no *locus standi*. Ending, Mr. Madaha urged this court to dismiss the Plaint with costs.

I have carefully gone through the respective submissions of both learned counsels at length and given them the due respect as deserve. I should state at the outset that the main issue for determination is *whether the objections raised are meritorious*.

With respect to the first limb of the objection, the Defendants' counsel submitted that this court has no jurisdiction to determine the suit at hand. I would like to make it clear from the outset that the issue of jurisdiction is crucial and the same must be determined first before this court proceed to determine the case in merit. This position was accentuated by the Court of Appeal of Tanzania in the case of **Alisum Properties Limited v Salum Selenda Msangi (As Administrator of the estate of the late Selenda Ramadhani Msangi)**, Civil Appeal No. 39 of 2018, it was held that:-

“..the said issue having bearing on the competence of the suit and the jurisdiction of the trial court to entertain the suit, was

required to be determined first before the learned trial Judge venturing into the merit of the case.” [Emphasis added].

In the record in particular paragraph 3 of the Plaint, the Plaintiff is claiming that the Defendant in 2017 invaded his piece of land located at Vikawe Village Kibaha District within Pwani Region without stating the size of the suit land. In paragraph 4 of the Plaint, the Plaintiff claimed that she bought 10 acres in 1988 and the said piece of land valued Tshs. 55,000/=. In paragraph 6 of the Plaint, the Plaintiff claimed that the value of the suit land is Tshs. 400,000,000/= without stating any justification. The estimated value of the suit property does not amount to the factual value of the subject matter. Since the estimated value to a tune of Tshs. 400,000,000/= exceeded the value in the Sale Agreements then the estimated value was required to be proved by a Valuation Report. This position was accentuated in the case of **Tropical Air (TZ) Limited v Godson Eliona Moshi**, Civil Application No. 09 of 2017 (unreported), the Court of Appeal of Tanzania held that:-

" The estimated value does not amount to the factual value of the subject matter and in case the estimated value of the suit property exceeded the value in the contract of sale of the immovable property the estimated value must be proved by Valuation Report so that to get the actual value of the suit land in order to justify the jurisdiction...."

I fully subscribe to the submission of Mr. Joseph, the learned counsel for the Defendants that in the absence of a Valuation Report, it is hard for this court to ascertain if the suit property is within its pecuniary jurisdiction. In such circumstances, the sale price of the suit land justifies the value of the suit property. I invoke this Court's jurisprudence in the case of **Chacha Muhogo v Wegesa Joseph M. Nyamaisa**, Land Appeal No. 52 of 2013, HC at Mwanza. Hon. Judge Bukuku (as she then was) held that:-

" In absence of a valuation report, there cannot be factual basis to determine the pecuniary jurisdiction of the ward tribunal".

Guided by the above authorities, renders this court to support the submission of Mr. Joseph, the learned counsel for the Defendants that in the absence of a Valuation Report, it is hard for this court to ascertain if the suit property is within its pecuniary jurisdiction. In such circumstances, the sale price of the suit land justifies the value of the suit property.

As I have pointed out earlier, this court first must certify itself if it is clothed with pecuniary jurisdiction to determine the suit and the appellant bore the burden of proving the value of the suit land and make sure that this court is clothed with jurisdiction to try the instant suit instead of insisting that the value of the suit land is Tshs. 400,000,000/= while she bought the suit land in a tune of Tshs. 55,000/= in 1988. Therefore, at this moment, the selling price

of the suit land justifies the value of the suit property as there is no any proof that the suit land had appreciated in value.

In his submission, the learned counsel for the Plaintiff submitted that this court has unlimited jurisdiction to determine civil cases. I am in accord with the learned counsel for the Plaintiff that this court has unlimited original jurisdiction to determine civil or criminal proceedings. However, in my considered view, the unlimited power to determine the case cannot be considered in every situation. There is mischief behind the pecuniary limits. As reasoned by Ndyasobera, J in **Peter Keasi Versus the Editor, Mawso Newspaper & Jabir Idrissa**, Civil Case No. 145 of 2014, HC DSM (unreported), the Court held that:-

"The object and purpose of the said provision are I think three-fold. First, it is aimed at preventing overcrowding in the court of higher grade where a suit may be filed in a court of lower grade. Second, to avoid multifariousness of litigation and third, to ensure that case involving huge amount must be heard by a more experienced court."

Based on the above authority, it is vivid that in the circumstances of the matter at hand, the learned counsel for the Plaintiffs' contention that this court has unlimited jurisdiction to determine this case cannot stand.

In view of the aforesaid, I find the first objection merited and it is sufficient to dispose of the suit and as such, I shall not belabour on other preliminary objections raised by the learned counsel for the Defendants.

All said and done, I sustain the first preliminary objection and proceed to strike out Land Case No. 64 of 2022 with costs.

Order accordingly.

DATED at Dar es Salaam this 21st June, 2022.



A.Z.MGEYEKWA

JUDGE

21.06.2022

Ruling delivered on 21st June, 2022 through video conferencing whereas Mr. Joseph Mapunda, learned counsel for the Plaintiff, and Mr. Peter Madaha, learned counsel for the Defendants were remotely present.



A.Z.MGEYEKWA

JUDGE

21.06.2022