

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

LAND CASE NO. 101 OF 2020

**EXAUD ELIAS MACHANGE.....1ST PLAINTIFF
CONTRAD AUGUSTINE MAKETA.....2ND PLAINTIFF
CLAUDE PAUL FERDINAND.....3RD PLAINTIFF
INNOCENT MODEST TIBAIKANA.....4TH PLAINTIFF
THEOBARD MUGANDA.....5TH PLAINTIFF**

VERSUS

**VICTOR STEVEN MANG'ANA (as Legal Representative
of the late STEVEN MANG'ANA).....1ST DEFENDANT
KAM COMMERCIAL SERVICES.....2ND DEFENDANT
JUMA KALEMBO.....3RD DEFENDANT**

AND

LAND CASE NO. 129 OF 2020

**HALIMA MBILA.....1ST PLAINTIFF
FARAJA BOHELA & ALOYCE TEMBA.....2ND PLAINTIFF
MR & MRS VEDASTUS MKAMA BISEKO.....3RD PLAINTIFF
SAAD KAWEMBA/JOHA H. MBILA.....4TH PLAINTIFF
VENERANDA BULOYE CHARLES.....5TH PLAINTIFF
PRISCA AGUSTINO MAKETA.....6TH PLAINTIFF
OMARI JUMA.....7TH PLAINTIFF
SHUFEEA ATHUMANI.....8TH PLAINTIFF
PASENCE PAULO KATABALWA.....9TH PLAINTIFF
WILSON E. MBOYO.....10TH PLAINTIFF
YUSUPH OMARY YENGA.....11TH PLAINTIFF
ERASMO NYONGOLE.....12TH PLAINTIFF
SAID NDEGE.....13TH PLAINTIFF
ALLY KAGIRE.....14TH PLAINTIFF
SAMWEL IBRAHIM MWANDAMBO.....15TH PLAINTIFF**

VERSUS

VICTOR STEVEN MANG'ANA (as Legal Representative
of the late STEVEN MANG'ANA).....**1ST DEFENDANT**
KAM COMMERCIAL SERVICES.....**2ND DEFENDANT**
JUMA KALEMBO.....**3RD DEFENDANT**

Date of Last Order: 13.12.2021
Date of Ruling: 31.01.2022

RULING

V.L. MAKANI, J

This ruling is in respect of preliminary objection raised by the 1st defendant in Land Case No.101 of 2020 and Land Case No. 129 of 2020 as follows:

"The present suit cannot be used as an alternative to the Revision of Land Application No. 15 of 2008 therefore the 1st defendant's Counsel shall pray for the dismissal of the suit with costs".

This objection has been raised by the same 1st defendant in Land Case No. 101 of 2020 and Land Case No. 129 of 2020 (the **Land Cases**) whereby there are 5 and 15 plaintiffs respectively against the 3 defendants who are the same in both the Land Cases. When the matter came for mention on 13.12.2021 Counsel for the defendants Mr. F.A.M. Mgare prayed the ruling to cover both the Land Cases because the substance is the same and it would be repetitive to consider them separately. Ms. Gladys, Advocate for the plaintiffs who

was present on the said date found this to be plausible and left it to the court to decide. I have gone through the amended complaints, statements of defence in the Land Cases and I find the substance to be the same. In view thereof this ruling will cater for both the said Land Cases namely, **Land Case No. 101 and 129 of 2020.**

Mr. Mgare in his submissions gave a brief background of the matter. He said that the plaintiffs were also applicants in Misc. Land Application No.216 of 2016 which arose from Misc. Application No. 113 of 2016 and Land Application No. 15 of 2008 of Kinondoni District Land and Housing Tribunal at Mwananyamala (the **Tribunal**) where demolition order was given. He said the plaintiffs vide **Misc. Application No. 216 of 2016** jointly and severally applied for a stay of execution of the decree of the Tribunal in **Land Application No. 15 of 2008**. He said the demolition order by the Tribunal was vide **Misc. Application No. 113 of 2016**. He said the plaintiff prayed that the Tribunal make a finding that their suit premises were not subject of the attachment and that they were not parties to the Land Application No. 15 of 2008. The Tribunal upon hearing the objections raised by the 1st respondent (now the 1st defendant in the Land Cases)

ruled that the applicants had no *locus standi* and the application was time barred.

Mr. Mgare went further to state that instead of appealing against the Tribunal's decision on the issue of stay and limitation of time the plaintiffs have wrongly filed the present suits. He said the Land Cases are intended to challenge the decision of the Tribunal in that the two decisions were full of illegalities and irregularities. He said since the parties in the Land Cases were not parties in the matters before the Tribunal, they ought to have an application for revision and not suits as wrongly done in the Land Cases. He said the Court of Appeal has on many occasions given circumstances for the court to exercise revisionary powers namely where there is no right of appeal, where the right of appeal is there but it has been blocked by judicial process or where the right to appeal existed but was not taken because there was no good and sufficient reasons given for not having lodged an appeal. He cited the cases of **Moses Mwakibete Limited vs. Uhuru Limited [1995] TLR 134** and **Transport Equipment Limited vs. Devram P. Valambhia [1995] TLR 269**.

Mr. Mgare went on to say that since the plaintiffs in the Land Cases were not parties to Land Application No. 15 of 2008 and Misc. Application No. 113 of 2016, then they have no right of appeal to challenge the said decisions. And since the decree in Land Application 15 of 2008 has partly been executed and the fact that the plaintiffs want to declare that the Tribunal decision is illegal, then the court cannot do such things in these Land Cases but when exercising revisional powers of the decisions of the matters in the Tribunal. Mr. Mgare prayed for the preliminary objection to be sustained and the Land Cases be dismissed with costs for being untenable.

Mr. Tasinga filed submissions in reply on behalf of the plaintiffs. He addressed the issue of consolidation, which have already been decided hereinabove.

Mr. Tasinga went on submitting that it is the principle of the law that any objection based on a point of law the part who raises such objection must give the particulars of such point of law which has been offended by the other party. He said Counsel has not cited any provision of the law which has been offended by the plaintiffs by filing these suits, instead he has been referring to past judgments as

defence. He said the preliminary objection is null and void as it is the 1st defendant's Counsel who knows what is on his mind. He said the Court of Appeal has been discouraging the practice of not giving particulars when citing objection and in most instances such objections have been struck out. He cited the case of **Mathias Ndyuki & 15 Others vs. Attorney General, Civil Application No. 114 of 2015 (CAT)**(unreported) to support his arguments and he said in this case, the advocate has failed to cite the provision of the law thus the objection is rendered incompetent. He further cited the case of **James Burchard Rugemalila vs. The United Republic of Tanzania & Others, Criminal Appeal No. 59/19 of 2017** (unreported).

The other reason for want of dismissal of the preliminary objection as submitted by Mr. Tasinga is that the objection is not on matters of law but purely on matters of fact. He said with such kind of objection there is no way the court can decide the objection without demanding for evidence in the Land Applications which have been referred by Mr. Mgare. He said the objection offends the celebrated case of **Mukisa Biscuits Manufacturing Limited vs. West End Distributors (1969) EA 696** which was quoted in the case of **Shose Sinare vs.**

Stanbic Bank Tanzania Limited & Another, Civil Appeal No. 89 of 2020 (CAT-DSM) (unreported). He said Counsel for the 1st defendant is trying to convince the court that the proper way is for the plaintiffs to file an application for revision as they were not parties in Land Application No. 15 of 2008. However, since the matter had reached the stage of execution the only possible way was objection proceedings and not revision. He said after losing the objection proceedings, the plaintiffs have a right to file a suit under Order XXI Rule 57 and 62 of the CPC. **He relied on the case of Abdallah Salum Lukemo & 18 Others vs. Sifuni A. Mbwambo & 208 Others, Misc. Land Application NO. 507 of 2019 (HC-Land Division)** (unreported). In conclusion Mr. Tasinga said the objection raised has no merit and prayed for it to be overruled and costs to follow events.

Counsel for the 1st defendant did not file a rejoinder.

I have gone through the submissions by Counsel for the parties and the pleadings herein and the main issue to be addressed is whether the Land Cases before the court are competent.

It is not in dispute that the plaintiffs in the Land Cases herein were not parties in the original Land Application No. 15 of 2008 which was decided in favour of the 1st defendant. There is also no dispute that the plaintiffs herein filed objection proceedings which were dismissed and also an application for stay of execution which was also struck out.

I have gone through the pleadings and it is apparent that the plaintiffs are not satisfied with the decisions of the Tribunal. For instance, paragraphs 11 to 15 and of Land Case No. 101 of 2020 and paragraphs 12 to 17 in Land Case No. 129 Of 2020 are in respect of particulars of the illegalities and irregularities in respect of the decisions of the Tribunal and further misrepresentation in the getting the said decisions. The reliefs also show that the plaintiffs want this court to declare the decisions of court not correct/viable. For instance, some of the reliefs prayed are:

- 1. A declaration that the ruling in Land Application No. 15 of 2016 is irregular court document and was supposed to be corrected to before taking any other steps including execution.*
- 2. A declaration that the ruling and its accompanying decree in land application not 15 of 2016 is unexpectedable in law.*

- 3. A declaration that the act of the 1st and 2nd defendant to demolish the plaintiff' properties basing on a decree that which did not mention the said plainttifs' land was illegal and unjust.*
- 4. A declaration that the decree in Land Application No. 15 of 2008 did not or mention or refer to the plaintiffs'' land.*
- 5. A declaration that the act of the 1st and 2nd defendants to direct their demolition order to the plaintiff's lands which was not subject matter of Land Application No. 15 of 2008.*

These reliefs prayed in the plaints intend to impeach the decisions of the Tribunal, and once there are allegations of impeachment then the proper claim of such right is not by way of a suit but by way of an application for revision as correctly observed by Mr. Mgare. Now, where the decision of Tribunal has been impeached this court does not have the jurisdiction to entertain a fresh suit but rather it has revisionary powers under section 79(1)(c) of the CPC to investigate the records of the subordinate court where it is claimed that it has exercised its jurisdiction illegally or with material irregularity. Simple logic dictates that the court will find it very difficult to proceed without the records of the Tribunal considering that the said decisions have been repeatedly mentioned in the pleadings. In other words, the court would need to have the records of the Tribunal at its disposal for perusal. In that regard, this court has no jurisdiction to impeach the

decision of the Tribunal vide another suit but through an application for revision which unfortunately the plaintiffs have not done so. Subsequently, the suits before this court are incompetent.

Mr. Tasinga submitted that the preliminary objections are not purely on points of law as they require further ascertainment by way of evidence. However, the basis of the objection is on jurisdiction and the powers of this court which in my view is a point of law within the confines of the case of **Mukisa Biscuits Company Limited** (supra). This argument therefore has no merit.

Learned Counsel also pointed out that the preliminary objection was not supported by provision of the law but I have gone through the cited cases they all relate to the Court of Appeal Rules which are not applicable at the High Court.

From the above, explanation the preliminary objection on the point of law is sustained. And Land Case No. 101 of 2020 and Land Case No. 129 of 2020 are hereby struck out with costs.

It is so ordered.

V.L. Makani

**V.L. MAKANI
JUDGE
31/01/2022**

