

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

LAND CASE NO 43 OF 2020

BEATRICE STANLEY SALAKANAPLAINTIFF

VERSUS

**CRDB BANK PLC.....1ST DEFENDANT
BAN INVESTMENT LIMITED.....2ND DEFENDANT
SOFIA SEIF MADOFFE.....3RD DEFENDANT
COMRADE AUCTION MART LTD.....4TH DEFENDANT**

Date of Last Order: 19.05.2022
Date of Ruling 13.06.2022

RULING

V.L. MAKANI, J

This ruling is in respect of the preliminary objection raised by the 4th defendant that:

"This Honourable Court lacks both pecuniary and territorial jurisdiction to hear and determine the suit."

With leave of the court the raised preliminary objection was argued by way of written submissions. Submissions on behalf of the 4th defendant were drawn and filed by Mr. Tony Mushi, Advocate while Ms Pendo Ngowi, Advocate drew and filed submission on behalf of the 1st and 2nd defendants; while Mr. Abraham Hamza Senguji,

Advocate drew and filed submissions in reply on behalf of the plaintiff.

It was Mr. Mushi's submissions that the plaintiff has failed to comply with the mandatory requirements of Order VII Rule 1 (f) and (i) of the Civil Procedure Code cap 33 RE 2019 (the **CPC**), that he should have specifically stated the value of the subject matter for purposes of jurisdiction as well as court fees. He said paragraph 24 of the plaint does not state the value of the subject matter, but only that the house is located at Plot No.350 Block F Bunju Area within Kinondoni Municipality (the **suit property**). He relied on the case of **Mansoor Kasimu Rwehumbiza vs. Awadh Z. Athuman t/a AZA Investment and General Supplies, Commercial Case No.11 of 2011 (HC-Commercial Division, DSM)** (unreported). He said that under paragraph 10 of the plaint the plaintiff has pleaded that the 1st defendant issued a default notice of TZS 26,366,287.46 and that paragraph 17 is the alleged price of the house in dispute. He said the parties are bound by their pleadings and from the pleadings it is established that the default notice was in respect of TZS 26,366,287.46 and the house was sold at TZS 110,000,000/=. He said that under section 33 (2) of the Land Disputes Courts Act, CAP

216 RE 2019, the jurisdiction of this court is above TZS 300,000,000/= That even section 13 of the CPC requires the suit to be instituted in the court of lowest grade to try it. He said since the amount claimed is below TZS 300,000,000/=, this court therefore lacks jurisdiction to try the same. He relied on the case of **Stanbic Bank Tanzania Limited vs Abercrombie & Kent (T) Limited, Civil Appeal No.21 of 2001 (CAT-DSM)** (unreported).

Further, Mr. Mushi said that the matter at hand has its origin in a pure commercial transaction and not a land matter. He said the proper forum ought to be the Commercial Division of the High Court. He relied on the case of **Britania Biscuits Limited vs National Bank of Commerce Limited & 3 Others, Land Case No 4 of 2011 (HC-Land Division)** (unreported). Ms. Ngowi submissions were more or less similar to those by Mr. Mushi. They both prayed for the suit to be dismissed with costs.

In reply, Mr. Senguji said that the plaintiff had sometimes in May, 2014 applied for a loan from the 1st defendant amounting to TZS 85,000,000/= and the plaintiff mortgaged the suit property. That on 4/5/2016 the plaintiff was served with notice of default and was required by the 1st respondent to rectify the principal sum plus interest

within 60 days. In the circumstances the plaintiff filed an application in Kinondoni District Land and Housing Tribunal (the **District Tribunal**). That the application was rejected on the ground that the mortgage was valued at more than TZS 10,000,000/=. That the plaintiff instituted Land Case No.365 of 2016 in this court. That while the case was pending the 1st defendant exercised her right to sell under section 127 of the Land Act, Cap 113 RE 2019. That the plaintiff in this case is seeking a declaration order that the 1st defendant is in breach of the Loan Agreement, that the sale of the suit property is illegal for non-compliance of the procedural and order that she be allowed to take possession of the mortgaged house. He said that the law applicable in instant matter is section 140 (3) of the Land Act and not the Land Disputes Courts Act. He said section 140 (4) provides that any action for possession of the mortgaged property or exercise power of sale under the Land Act shall not be entertained in any other forum. He thus insisted that this court has jurisdiction to entertain the matter. He said that paragraph 6 of the plaint clearly claims TZS 300,000,000/=being the value of the house sold and even paragraph 7 shows the amount suffered by illegally selling the suit property. He added that the plaintiff is not suing on the overdraft facility per se but he is seeking to repossesses the suit property which was illegally sold to the 3rd

defendant, and all these are not based on commercial transaction. He said that the matter has already been filed in this Land Division of the High Court and it is wise to proceed with the hearing at this court. he said that the case of **National Bank of Commerce** (supra) is distinguishable to the case at hand since in the former the facts clearly shows that the suit based on an overdraft perse while the present case is on possession of the mortgaged property and vacant possession. He prayed for this court to dismiss the preliminary objection with costs.

The main issue for consideration is whether the preliminary objection raised by the 4th defendant has merit. Mr. Mushi contended that this court has both pecuniary jurisdiction and territorial jurisdiction. That the value of the subject matter was not specifically stated. His counterpart, Mr. Senguji pointed out to the court that the value of the suit property is stated in the paragraph 6 of the plaint.

I have revisited paragraph 6 of the plaint. The paragraph is long and comprises the particulars of claim. At the end of the statement of claim, the plaintiff prays for:

".....an order for payment of Tanzania shillings Three hundred Million (Tsh 300,000,000/=) being the value of the house in dispute"

Now, where does this court derive its pecuniary jurisdiction? It is from section 37 (1) of the Land Disputes Courts Act which 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 above provision empowers this court to entertain proceedings for recovery of immovable property whose value exceed Three Hundred Million Shillings. In simple language, this court entertains matter valued at TZS 301,000,000/=. Since the value of subject matter stated by the plaintiff in paragraph 6 of the plaint is TZS 300,000,000/=: it follows therefore that this court lacks jurisdiction to entertain this suit as the amount pleaded in the said paragraph 6 of the plaint is below the pecuniary jurisdiction of this court.

Having so observed, I will not consume much time in discussing the other concerns as the issue of pecuniary jurisdiction alone disposes the whole matter. In the end result, the suit is hereby struck out with costs for want of jurisdiction. It is so ordered.



V.L. Makani
V.L. MAKANI
JUDGE
13/06/2022