

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 23 OF 2022**

**ADINANI MOHAMED ALMASI**

**SILVESTER MATHIAS KIHAMBI**

**HARUFANI SEIF MTANGENANGE**

**JOSEPH KASHINJE KASHINJE**

**LUCY PAULO HOSEA**

**FATUMA KASSIMU MANGARE and 156 OTHERS**

**PLAINTIFFS**

**VERSUS**

**MWAJABU ABDALLAH JONGOA**

**ASHA JONGO ABDALLAH**

**SALEHE JONGO ABDALLAH**

**AMINA JONGO ABDALLAH**

.....**1<sup>ST</sup> DEFENDANTS**

**HERICK ERICK MGAYA.....2<sup>ND</sup> DEFENDANT**

*Date of last order: 28/6/2022*

*Date of ruling: 21/7/2022*

**RULING**

**A. MSAFIRI, J.**

On 8<sup>th</sup> day of February 2022, the above named plaintiffs on behalf of 156 others instituted the present suit against the defendants jointly and

*Adls.*

severally for reliefs *inter alia*; a declaration that the sale which happened between the 1<sup>st</sup> and 2<sup>nd</sup> defendants was unlawfully and illegal for not following proper procedure and involving property which was not fully owned by the 1<sup>st</sup> defendant.

On lodging their joint written statements of defence, the 1<sup>st</sup> and 2<sup>nd</sup> defendants raised a total of four points of preliminary objection to the effect that;

- i. That the matter is res-subjudice since there is application No. 105 of 2021 pending at Land Housing Tribunal of Mkuranga.*
- ii. That, the suit is bad in law for failure to disclose the course of action as required by Order VII Rule 1 (e) of the Civil Procedure Code Cap 33 R.E. 2019.*
- iii. That, this Honourable Court has no jurisdiction to determine this matter as the plaintiff failed to indicate the pecuniary value of the suit premises as required by the law.*
- iv. That, the verification clause is incurably defective and bad in law.*

*Adls.*

On 19<sup>th</sup> May 2022, this Court ordered the said preliminary objections to be disposed of by written submissions, the order was duly complied with by learned advocates for both parties, hence this ruling.

In determining the points of preliminary objection, I propose to begin with the 3<sup>rd</sup> preliminary objection as it touches the jurisdiction of this court.

Submitting on the 3<sup>rd</sup> preliminary objection, the 1<sup>st</sup> and 2<sup>nd</sup> defendants contended that this court has no jurisdiction to determine this matter as the plaintiffs have failed to indicate the pecuniary value of the subject matter as required by the law.

To buttress the point, the 1<sup>st</sup> and 2<sup>nd</sup> defendants have cited the provisions of Order VII Rule 1 paragraph (i) of the Civil Procedure Code CAP 33 R.E 2019] (the CPC) which requires a plaint to have a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants contended further that the plaint filed in the present suit is bad in law for not indicating the pecuniary jurisdiction of the court.

*Als*

On reply, the plaintiffs contended that the suit is properly before the court and the objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> defendants is without merits.

The 3<sup>rd</sup> preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> defendants revolves around the interpretation of Order VII Rule 1 of the CPC on the particulars which are to be contained in a plaint. Rule 1 of Order VII which has been couched in mandatory terms provides as follows;

“1. The plaint shall contain the following particulars-

(a) to (d) not relevant);

e) The facts constituting the cause of action and when it arose;

f) The facts showing that the court has jurisdiction;

g) The relief which the plaintiff claims;

i) a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees so as the case admits”

The advocate for the 1<sup>st</sup> and 2<sup>nd</sup> defendants has taken a particular issue that the value of the subject matter of the suit has not been indicated as required under Order VII Rule 1 (i) of the CPC. *Alls.*

According to paragraph 7 of the plaint which is the only jurisdiction paragraph in the plaint reads as follows;

*"7. That the cause of action arose in Pwani region, that the value of the claim is within the jurisdiction of this honourable court, and therefore, this honourable court has jurisdiction over the matter."*

From the foregoing quoted paragraph, truly the plaintiffs have not indicated the value of the subject matter of the claim. The issue to be resolved here is whether failure by the plaintiffs to indicate the value of the subject matter has effect on the competency of the Court to try the suit. In my view failure to state the value of the subject of the suit has impact on the jurisdiction of the court over the subject matter of the suit. It was not enough for the plaintiffs to state on paragraph 7 of the plaint that *"the value of the claim is within the jurisdiction of this honourable court"* without stating the actual value.

The wording of Order VII Rule 1 (i) of the CPC. is mandatory to the effect that, *"the plaint shall contain; a statement of the value of the subject matter of the suit for the purposes of jurisdiction."* This is so because the

Alls.

provision invokes the term "shall" in outlining the particulars of a plaint. The statement of the value of the subject of the suit in the plaint relates to both "jurisdiction" and "court fees". The statement clearly serves a dual purpose. First, it relates to the pecuniary jurisdiction of the court and secondly it assists in the assessment of court fees. The term value which appears in Order VII Rule 1 (i) of the CPC in plain language it means "the monetary worth or price of something". Order VII Rule 1(i) of the CPC therefore requires a statement to be made in the plaint of the monetary value of the subject matter of the suit.

I have also gone through the reliefs sought by the plaintiffs whereby they are claiming Tsh 50,000,000/= as general damages as well as Tsh 25,000,000/= as specific damages. It is trite law that what confers the court with jurisdiction is the specific damages and not general damages. After all general damages need not to be quantified, even if quantified they do not have any impact on the jurisdiction. In the case of **Tanzania-China Friendship Textile Co. Ltd v Our Lady of The Usambara Sisters** [2006] TLR 70, the Court of Appeal held;

*"It is the substantive claim and not the general damages which determine the pecuniary jurisdiction of the Court."* *Alles-*

The fundamental issues is whether this court has jurisdiction to try the matter in which the specific/substantive claim is Tsh 25,000,000/=.

The jurisdiction of the court is a creature of statute. This court derives its jurisdiction under section 37 of the Land Disputes Courts Act [CAP 216 R.E 2019], (the Act). The said provision reads as follows;

***37.-(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;***

*(b) In other proceedings where the subject matter capable of being estimated at a money value in which the value of the subject matter **exceeds two hundred***

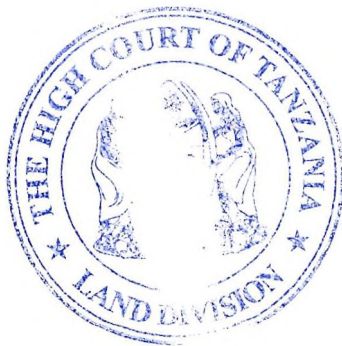
***million shillings;** [Emphasis added]*

It follows therefore that even by not stating the actual value of the claim in paragraph 7 of the plaint, this court lacks jurisdiction to entertain the suit basing on the value of the reliefs i.e. Tsh 25,000,000/= as specific damages. The matter ought to have been instituted before the District *Allo*

Land and Housing Tribunal which according to section 33 (2) of the Act has jurisdiction to entertain the matter.

It is for the foregoing reasons that I uphold the preliminary objection *that the court lacks jurisdiction to determine this matter.* This essentially disposes of the matter and thus I need not have to delve into the other points of preliminary objections raised and argued. This Court having struck out the suit, there is nothing on record and thus it renders academic the other points of preliminary objection. For those reasons, the suit is incompetent and accordingly it is hereby struck out with costs.

Order accordingly.



A handwritten signature in blue ink, appearing to read "A. Msafiri". The signature is written in a cursive style and is positioned above a horizontal dotted line.

**A. MSAFIRI,**  
**JUDGE**  
**21/7/2022**