

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 110 OF 2022

MWANAHAMISI SEIFU PLAINTIFF

VERSUS

MWAJUMA SEIFU 1ST DEFENDANT

MR. ALLY 2ND DEFENDANT

HARUN VALENTINO NAMBWINDI 3RD DEFENDANT

RULING

Date of last Order 01.07.2022

Date of Ruling 06.07.2022

A.Z.MGEYEKWA, J

The Plaintiff brought this suit against the defendants on the ground that the Defendant jointly and severally invaded her piece of land situated at Kipawa Karakata within Dar es Salaam Region. The Defendants' filed a joint

Written Statement of Defence disputing the claims and they raised two points of Preliminary Objection that:-

- 1. That this court has no jurisdiction to determine this suit.*
- 2. That the Plaintiff has no locus to claim the disputed land since she is not the owner of the suit land.*

When the matter came for hearing on 22nd June, 2022, the matter was heard through video conference whereas the Plaintiff enjoyed the legal service of Mr. Mtatilo Itang'are and the Defendants had the legal service of Mr. Denis Mfinanga, learned counsel.

The learned counsel for the Defendants contended that this court has no pecuniary jurisdiction to determine the instant case. Mr. Denis contended that Plaintiff alleges that the value of the suit land is Tshs. 310,000,000 while the suit size is measuring 14 m x 24 m and is located at Kipawa Ward, Ilala District at Karakata. He lamented that the size of the suit land is small compared to the value stated by the Plaintiff is against section 34 of Land Disputes Courts Act, Cap. 216. He lamented that the value is not genuine. In their view, the value of the suit land ranges from Tshs.12, 000,000 to Tshs. 15,000,000/=.

As to the second limb of the objection, the Defendants' counsel contended that the Plaintiff has no *locus standi* to lodge this suit since he is not the lawful owner of the suit land. Mr. Denis submitted that the dispute started back in 2009 and on 22nd February, 2019 the Plaintiff's sister who is the 1st Defendant lodged a suit against the Plaintiff at the Ward Tribunal of Kipawa and the subject matter was trespass. He added that the Plaintiff did not object and did not tender any exhibit to prove her ownership, therefore, the trial tribunal declared the 1st Defendant a winner, the trial tribunal ordered the parties to sell the house and divide the money among themselves. He added the Plaintiff was ordered to pay the costs of the suit.

The learned counsel went on to submit that the 1st Defendant lodged a suit against the Plaintiff complaining that she denied to sale the suit house. He contended that on 27th July, 2017, the Plaintiff obtained a residential licence while at the hearing of the case at the Ward Tribunal the same implies that the Plaintiff did not obtain the residential licence legally.

On the strength of the above submission, he urged this court to dismiss the case with costs.

In reply, on the first objection, the learned counsel for the Plaintiff contended that this objection is a demerit. On the first limb of objection, the contended that the law requires the value of the suit land to be calculated based on market value. He argued that the market value is high because the suit land is located near the International airport therefore the estimated value is Tshs. 300,000,000/=. In his view the area is expensive because of its location; the plot is around an industrial area.

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 the Defendants are challenging the main case. He claimed that the Plaintiff is the lawful owner and they have documents to prove their case. He added that the Plaintiff obtained the residential licence on 14th July, 2007 and the plot contains 3 subplots. He insisted that this objection raises questions of ownership therefore the same cannot be entertained.

In conclusion, the learned counsel for the Plaintiff urged this court to dismiss the preliminary objections with costs.

In his rejoinder, the learned counsel for the Defendant reiterated his submission in chief. He insisted that the suit land is small, measuring 333 sqm and it is 6.2 km from the main road. Ending, he urged this court to sustain the preliminary object.

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 13 of the Plaint, the Plaintiff is alleged that the current estimated value of the suit land is Tshs.310,000,000/= and the suit land is measuring 333 sqm located at Karakata Street in Kipawa Ward in Ilala District with Dar es Salaam Region.

The Plaintiff’ counsel in his submission has stated that the estimated value is 310,000,000/= without stating any justification. It is worth noting that the estimated value of the suit property does not amount to the factual value of the subject matter. In my considered opinion, 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....”

Applying the above provision of the law, it is crystal clear that the estimated value does not suffice, in the absence of a Valuation Report, it is hard for this court to ascertain if the suit property is within its pecuniary jurisdiction because the suit landed property is measuring 333 sqm. 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 a factual basis to determine the pecuniary jurisdiction of the ward tribunal".

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 Plaintiff bore the burden of proving the value of the suit land and making sure that this court is clothed with jurisdiction to try the instant suit instead of forcing this court to rely on the estimated value.

Given 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. 110 of 2022 with costs.

Order accordingly.

DATED at Dar es Salaam this 6th July, 2022.




A.Z.MGEYEKWA

JUDGE

06.07.2022

Ruling delivered on 6th July, 2022 through video conferencing whereas Mr. Bennety Mtatilo, learned counsel for the Plaintiff, and Mr. Denis Mfinanga, learned counsel for the Defendants were remotely present.




A.Z.MGEYEKWA

JUDGE

06.07.2022