

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

**LAND CASE NO. 117 OF 2021**

**ALI SHAIBU KHAMIS.....PLAINTIFF**

**VERSUS**

**SHER-MOHAMED BAHDOUR**

(As a Legal person Representative of

Hajra Bibi Mohamed Hussein (deceased).....**DEFENDANT**

**R U L I N G**

*Date of last Order: 29/11/2021*

*Date of Ruling: 18/02/2022*

**T. N. MWENEGOHA, J.**

This is the ruling on the preliminary objections that were raised by the respondents that;

- 1. That this court has no jurisdiction to hear, determine this matter and grant the reliefs sought by the plaintiff as the plaintiff's claim relates to a breach of joint venture agreement which is a commercial transaction, and thus not a matter of land contract to Section 3(1) (2) of the Land Disputes Courts Act Cap 216 R. E. 2019 and Section 167(1) of the Land Act, Cap 113 R. E. 2019.**

Hearing of the preliminary objection proceeded by way of written submissions. During the hearing of the preliminary objection the plaintiff

was represented by Daudi Mzeri, Advocate and the respondent was represented by Advocate Shehzada Walli.

Supporting the preliminary objection Mr. Walli argued that, the issue of jurisdiction is a paramount matter that need to be considered before the court adjudicate a matter before it. He cited the provision of Section 3(1) and (2) of the Land Disputes Courts Act, Cap 216 R. E. 2019, Section 167 of the Land Act Cap 113 R. E. 2019 and Section 62 of the Village Land Act Cap 114 R. E. 2019, as the laws which provides courts with exclusive jurisdiction to entertain land matters.

He further submitted that, the nature of the relief sought by the plaintiff does not fall within the jurisdiction of this court; that paragraph 3 of the plaintiff's plaint which shows the cause of action provides that;

*"That, the plaintiff's claim against the defendants for breach of joint venture agreement in respect of Plot No.18, Block 34, House No.3, Donge street, Kariakoo Area- Dar es Salaam and the said plot for now has the value of eight hundred million shillings (TZS 800,000,000=)"*

He went further to define the term joint venture to mean:

*" A cooperative business agreement or partnership between two or more parties that is usually limited to a single enterprise and that involves the sharing of resources, control, profits and losses".*

He argued that as per the quoted definition of the term joint venture, it is clear that this suit does not fall under the jurisdiction of this court (Land division). To support his argument, he cited the cases of **M/S Tanzania-China Friendship Textiles Co. Ltd vs. Our Lady of Usambara Sisters (2006) TLR 70, Manjit Singh Sandhu and 2 others vs.**

**Robiri R. Robiri, Civil Appeal No. 121 of 2014, CAT at Mwanza and Anseline Amiri Mrisho and Another vs. Shophia Amiri Mrisho and 2 Others.**

He finalized his submission by praying that the plaint be dismissed with costs.

In reply, Mr. Mzeri raised two guiding legal issues that;

1. Whether instituting a case sharing both land and commercial elements before the high Court- Land Division is a fatal defect to the conclusion that the court lacks jurisdiction to hear and determine the same.
2. Whether the defendant's preliminary objection is maintainable in law.

On the 1<sup>st</sup> issue, Mr. Mzeri submitted that, the high court and its mandate is a creature of **the Constitution of the United Republic of Tanzania, 1977** as amended from time to time, established under **article 108(1) of the Constitution of United Republic of Tanzania (herein after the Constitution)** which provides that;

*"There shall be a high court of the united republic (to be referred as the high court) the jurisdiction of which shall be specified in this constitution or any other law"*

He also cited the provision of **Section 5 of the Judicature and Application of the Laws Act, Cap 358 R. E. 2019** which provides as follows;

*"Subject to any written law to the contrary, a judge of the high court may exercise all or any part of the jurisdiction of which shall be specified in this Constitution or any other law"*

He submitted that from the cited provisions, this country is one with unlimited jurisdiction and that judges of the high court are mandated to exercise all or any part of the powers conferred on the high court. To support his argument, he cited the case of **National Bank of Commerce Limited vs. National Chicks Corporation Limited and others, Civ. Appeal No. 129 of 2015, Court of Appeal of Tanzania at Dar es Salaam** (unreported).

Mr. Mzeri continued to submit that, while the High court is the creature of the constitution, the registries divisions of it are a creature of rules and the provisions of the rules cannot override the provisions of the constitution. Therefore, that the respondent's contentions that the high court (land division) has no jurisdiction to adjudicate commercial matters is not true. To support his argument, he cited the case of **The National Bank of Commerce Limited vs National Chicks Corporation Limited and others** (supra), which stated that;

*"Designation by the Chief Justice as a specialized court for adjudicating certain matters in our views, does not abrogate that division's general mandate as stipulated by the constitution (supra) and Judicature and Application of Laws Act (supra) as a part of the high court. Establishment of registry or division is quite distinct from establishment of a court."*

The court of appeal further held that:

*"....a case not of the division's specialization is instituted in any of the divisions, the parties should not be thrown out as was the case herein in the pretext of lack of jurisdiction. Instead, the parties should either be advised to withdraw and file the same in another court competent to try it; otherwise, such a case should be heard to its conclusion..."*

On the 2<sup>nd</sup> issue as to whether the preliminary objection is maintainable in law, he said that the defendant's preliminary objection aims at nothing legitimate in law but rather at abusing the legal process. He added that **Article 107(2) (e) of the Constitution** discourages entertainment of unfounded legal technicalities as the objection at hand. That this position is also supported by Section 3A (1) and (2) and 3B (1) (a)(c) of the Civil Procedure Code Cap 33 R.E 2019 (herein after the C.P.C), which calls for the observance of the Overriding objective, therefore, the plaintiff prayed the court to dismiss the preliminary objection with costs.

Having gone through the parties submission the main issue for determination is whether the preliminary objection raised has merit. It is not in dispute that the High Court is creature of the Constitution and all High court judges when entertaining matters before them in courts, have equal jurisdiction. Although Sections 3(1) and (2) of the Land Disputes Courts Act,(Supra), 167 of Land Act (supra) and 62 of the Village Land Act (supra) provides for ranks of courts with the jurisdiction to entertain land matters, but then again, Section 4 of the Judicature and Application of Laws Act (supra) and the High Court Registries rules of 1984 empowered the Hon. Chief Justice of Tanzania to make Rules for

as sub-registries of the Land Court. The High Court Land Division deals with matters relating to land only. Although all High Court judges have equal jurisdiction, but those sitting in the High Court Land Division are mandated to hear and determine matters related to land only. Other matters unrelated to land are not permitted to be instituted into the land registry.

In 2010, the Parliament through **Written Laws (Miscellaneous Amendments) Act No. 2 of 2010**, amended the Land Act, the Village Land Act and the Land Disputes Courts Act by deleting the words "Land Division" henceforth, the entire High Court enjoys jurisdiction over land matters. See **National Bank of Commerce Limited vs. National Chicks Corporation Limited and others, Civil Appeal No. 129 of 2015, Court of Appeal of Tanzania at Dar es Salaam** (unreported). However, the High Court Land Division at Dar es Salaam, was left with full mandate of dealing with land matters only. Henceforth, Judges sitting before this division have no jurisdiction to hear or determine cases not related to land disputes. This is similar with the commercial division. It cannot entertain land or criminal matters while it is designated to deal only with commercial cases. The establishment and jurisdiction of the Commercial Court is provided under **Rule 5 of the High Court (Commercial Division) Procedure (Amendment) Rules, 2019, G.N. 107 of 2019** which states that: -

*"...The Commercial Division of the High Court of Tanzania established under the High Court Registry Rules, shall be vested with both original and appellate jurisdiction over commercial cases..."*

Going through the records of this case I noted the cause of action of the main case which is stated in paragraph 3 as follows;

*"That, the claimant's claim against the respondent is for the breach of joint venture agreement worth Tanzania Shillings Two Hundred, Fifty-Three Million (TSZ. 253,000,000/=), emanating from failure to complete building construction within the stipulated contractual period, and construction of nine (9) storey building instead of eight floors, and eleven (11) shops instead of 10 shops contrary to clause 2 and 7 of the joint venture Agreement."*

Clearly this shows that the dispute is on breach of joint venture agreement and not land dispute. Henceforth, joint venture agreement being a commercial related matter, the case was not supposed to be instituted in this court. As it was held by the Court of Appeal in the case of **The National Bank of Commerce Limited vs. National Chicks Corporation Limited and others** (supra), that;

*".....where a case not of the division's specialization is **instituted in any of the divisions.... the parties should .....be advised to withdraw and file the same in another court competent to try it;** (emphasize applied).*

As regard to the application of the overriding objective principle, it cannot be applied in the instant case which was not properly filed before the court. The preliminary objections raised is sustained.

Owing to the above observation, the current suit, is hereby struck out with costs for being improperly instituted before this court. In case the plaintiff

As regard to the application of the overriding objective principle, it cannot be applied in the instant case which was not properly filed before the court. The preliminary objections raised is sustained.

Owing to the above observation, the current suit, is hereby struck out with costs for being improperly instituted before this court. In case the plaintiff is still interested in pursuing his rights he has to file a fresh case before a proper forum.

**It is so ordered.**

Dated at Dar es salaam this **18<sup>th</sup>** day of **February, 2021.**

  
**T. N. MWENEGOHA**  
**JUDGE**

