

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 282 OF 2022**

**ATER CORPORATION LIMITED.....PLAINTIFF**

***VERSUS***

**MOHAMED AFRICA LIMITED.....1<sup>ST</sup> DEFENDANT**

**NMB BANK PLC.....2<sup>ND</sup> DEFENDANT**

**RULING**

21/02/2023 & 28/02/2023

**L. HEMED, J**

On 26<sup>th</sup> October 2022, the plaintiffs herein **ATER CORPORATION LIMITED** filed the present suit against the defendants **MOHAMED AFRICA LIMITED** and **NMB BANK PLC** claiming to be the lawful registered owner of the suit landed property located on Plot No.166, Block "A" Liganga Street, Kilolo, District in Iringa. The plaintiff claims for the following reliefs among others:

- a) *A declaratory order that, the 1<sup>st</sup> Defendant had fundamentally breached the subsisting Lease Agreement Terms, hence is the mere trespasser;*
- b) *A declaratory order that, the Plaintiff is the registered owner of the suit land entitled to operate the suit property petrol station therein*
- c) *An Order nullifying the purported Leases Agreement executed on 1<sup>st</sup> day of February 2021 between the Plaintiff and the 1<sup>st</sup> Defendant;*
- d) *An order that the 1<sup>st</sup> Defendant to quit and handover the suit property management and operations of the Petrol Station business in the suit property to the Plaintiff;*
- e) *An order against the 1<sup>st</sup> Defendant to pay the sum of TZS 350 M to the plaintiff being the fair and adequate compensation/specific damages to the Plaintiff's suit property use lost;..."*

The defendants, through their separate written Statement of Defence filed on 21<sup>st</sup> and 30<sup>th</sup> November 2022, disputed all the claims raised by the plaintiffs. Alongside with their written defence, they filed

the notice of preliminary objections on points of law against the plaint to the effect that;

- "
- 1. The plaintiff has no any cause of action against the 2<sup>nd</sup> defendant.*
  - 2. The plaintiff has no locus standi to sue under the title deed not registered in its name.*
  - 3. The suit is unmaintainable against the 2<sup>nd</sup> defendant as the prayer for temporary injunction cannot stand in the main suit without any pending proceedings between the parties.*
  - 4. The High Court Land Division at Dar es salaam has no territorial jurisdiction to hear and determine a suit over the landed property situated at Iringa."*

Practise of the Court entails that, having been seized with the preliminary objections, it is procedural to deal with them primarily before jumping into the determining the main suit. With the directives of this Court made on 30<sup>th</sup> day of November, 2022, the parties herein argued the preliminary objections by way of written submissions. The defendants were ordered to file their submissions in chief by 7<sup>th</sup> day of December, 2022. Reply submissions by the plaintiffs was to be filed on

or before 14<sup>th</sup> day of December 2022, while rejoinder submissions ought to be lodged by 19<sup>th</sup> day of December, 2022. Parties complied with the filing schedule as was directed by the Court.

In determining the preliminary objection, I have opted to begin with the 4<sup>th</sup> limb that, "*the High Court Land Division at Dar es salaam has no territorial jurisdiction to hear and determine a suit over the landed property situated at Iringa*".

To support the 4<sup>th</sup> limb of objection it has been argued that, according to paragraph 4(b) of the plaint, the suit premises, Plot No. 166, Block A, Liganga Street, Kilolo District, is situated in Iringa region. He was of the opinion that the High Court (land Division) at Dar es Salaam has no territorial jurisdiction. He referred this Court to the case of **Abdalla Ally Seleman t/a Ottawa Enterprises (1987) vs. Tabata Petrol Station Co. Ltd & Another**, Civil Appeal No. 89 of 2017 at page 18. To that end, it was prayed that, this Court be pleased to dismiss this suit in its entirety with costs for being untenable.

In reply, thereto, Mr. Alex Mashamba Balomi, appearing for the plaintiff contended that, the MoU was executed by the parties in Dar es salaam where both they have registered offices and carry out operations and where the breach has occurred. He went ahead saying that, the 1<sup>st</sup>

defendant was under clause 9 to take over the plaintiff's debt with the 2<sup>nd</sup> defendant operates with its headquarters in Dar es salaam in the sum of Tshs.123,000,000/= term loan and Tshs. 158,000,000/= overdraft (which was subject to arrears and penalties) hereinafter called the loans. He added that, the plaint was cleverly drafted to be within the territorial jurisdiction of this Court. Hence, he cited the case of **Attorney General vs. Lohay Akonaay & Another** [1995] TLR 80.

I have given careful deliberation to the rival arguments in support and opposition as to the preliminary objections advanced by both learned counsels. Having done so, the main issue for determination is whether this Court has the territorial jurisdiction to determine the matter.

Section 14 (d) of the Civil Procedure Code [Cap 33 R.E 2019], provides to the effect that for the determination of any other right to, or interest in, immovable property suits to be instituted where the subject matter is situated. It provides thus:-

*"14 Subject to the pecuniary or other limitations prescribed by any law, suits-*

*(a) for the recovery of immovable property with or without rent or profits;*

*(b) for the partition of immovable property;*

*(c) for foreclosure, sale or redemption in the case of a mortgage of or a charge upon immovable property;*

*(d) for the determination of any other right to, or interest in, immovable property;*

*(e) for compensation for a wrong to immovable property; or*

*(f) for the recovery of movable property actually under distraint or attachment,*

***shall be instituted in the court within the local limits of whose jurisdiction the property is situate...*** (Emphasis added)

By virtue of paragraph 5 of the plaint filed on 26<sup>th</sup> day of October, 2023, apart from the claim pleaded thereat, it further provides for the description of the landed property, the subject matter at hand being situated on Plot No. 166, Block "A", Liganga Street, Kilolo District in Iringa.

The 2<sup>nd</sup> defendant in her written statement of defence filed on 21<sup>st</sup> day of November, 2022 denied and disputed the claim by the plaintiff that she is the registered owner of the said property while the truth is one Gerald Wanda Sere Malongo. In fact, what is in dispute is who is the registered owner of the suit premises and not description of the suit

land. That being the case, the proper venue ought to have been the High Court of the United Republic of Tanzania, (Iringa District Registry) at Iringa vide the principle of *locus rei sitae* and not this Court. I am holding so because the rule states that the place where the land is located is the proper forum in a case involving real estate.

The *locus rei sitae* rule was applied by the Court of Appeal in the case of **Abdallah Ally Selemani t/a Ottawa Enterprises (1987) vs. Tabata Petrol Station Co. Ltd**, Civil Appeal No. 89/ 2017 (Unreported) at page 18 and 19 of the Judgment, where it was observed that:

*"We firmly think that only suits for immovable property were meant to be filed within the local limits in which such properties are situated. We uphold the learned High Court Judge in her conclusion that the High Court of Songea had no jurisdiction on the matter".*

In the matter at hand, the High Court – Iringa Registry, where the suit landed property is located, is the one with the prerequisite jurisdiction to determine any dispute concerning such landed property.

I am aware that the proviso to section 14 of the Civil Procedure Code, Cap 33, states exemption circumstances under which suits

concerning immovable properties can be instituted in the court whose jurisdiction the defendant actually and voluntarily resides, or carries on business or personally works for gain. It provides thus:-

*"Provided that, a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the court within the local limits of whose jurisdiction the property is situate or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business or personally works for gain."*(emphasis added)

The above said proviso has two exceptions to the general rule under section 14 of the Civil Procedure Code, [Cap 33 RE 2019], these are:-

- (i) It must be a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant;
- (ii) where the relief sought can be entirely obtained through the defendant's personal obedience,



I have examined the Plaint and found that, in the matter at hand, the plaintiff, among others, pray for the following reliefs:-

- (i) A declaratory order that, the Plaintiff is the registered owner of the suit land entitled to operate the suit property petrol station therein;
- (ii) An order the 1<sup>st</sup> Defendant to quit and handover the suit property management and operations of the petrol Station business in the suit property to the Plaintiff.

In my firm opinion, the above reliefs sought by the plaintiffs do not fall in the exceptions in the proviso to section 14 of the CPC. I have examined the reliefs sought, and have come to the firm conclusion that they can better be determined by the Court in *locus rei sitae*.

In the upshot, I see no need to address the other limbs of preliminary objections as the fourth limb has the capacity of disposing the entire suit. In view of the foregoing, this suit is untenable and stands to be struck out with costs. Order accordingly.

**DATED at DAR ES SALAAM this 28<sup>th</sup> February 2023**

  
**L. HEMED**  
**JUDGE**  
**28/02/2023**



**COURT:** Ruling is delivered this 28<sup>th</sup> February 2023 in the presence of Mr. Makaki Masatu for Balomi Advocate for the plaintiff and Twarah Yusuph adv for 1<sup>st</sup> defendant and Erick Denga for the 2<sup>nd</sup> Defendant. Right of appeal explained.

  
**L. HEMED**  
**JUDGE**  
**28/02/2023**

