

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 296 OF 2022

WERASIMBO JOHN EMMANUEL.....1ST PLAINTIFF

JACQUILINE WILLY MAUKI.....2ND PLAINTIFF

VERSUS

STANBIC BANK TANZANIA LIMITED.....1ST DEFENDANT

JOSEPH JOHN SHUMA.....2ND DEFENDANT

STEAM GENERAL RECOVERIES LIMITED.....3RD DEFENDANT

RULING

3rd April 2023 & 16th May 2023

L. HEMED, J.

The suit property in this matter is **Plot No.67 Block "E" Ilemela Area, Mwanza City with Certificate of Title No.41023**. On 9th November, 2022, the plaintiffs herein **WERASIMBO JOHN EMMANUEL** and **JACQUILINE WILLY MAUKI** filed the present suit against the defendants **STANBIC BANK TANZANIA LIMITED,**

JOSEPH JOHN SHUMA and **STEAM GENERAL RECOVERIES LIMITED** claiming to be the lawful registered owners of the suit landed property. They also pray for an order among others that permanent injunction be issued against the respondents restraining them, their agents, workmen or any other persons working under them, from selling and or disposing, in anyhow, the suit property.

Only the 1st defendants who responded to the Plaint by filing Written Statement of Defence. They also raised a counter claim against the plaintiffs for the sum of TZS.401,365,284.69 (Tanzania Shillings Four Hundred One Million, Three Hundred Six-Five Thousand, Two Hundred Eighty Four and Sixty Nine Cents.).

On 3rd May 2023 when the matter came for mention the Court, *suo moto*, raised a point of law on **territorial jurisdiction in determining the matter in view of section 14 of the Civil Procedure Code, [Cap.33 RE 2019] taking into account that the suit property is located in Mwanza**. We directed counsel for the parties to address the Court by way of written submissions. Both submissions were filed on 17th April 2023.

The counsel for the plaintiffs Mr. Fredrick Massawe, submitted agreeing that section 14(c) and (d) of the Civil Procedure Code, Cap 33 requires suits for determination of any rights or interests of immovable property have to be instituted where the subject matter is situated. However, he asserted that the present case was filed in this Court based on the proviso to the said section as the defendants reside and carry their businesses in Dar es Salaam.

It was the submissions of the plaintiffs' advocate that based on the fact that the suit property is held by the 1st Defendant under mortgage, the proviso to section 14 of the CPC directly apply in this case. He also stated that even the reliefs prayed in the Plaint is for the orders of permanent injunction to issue against the defendants restraining them from selling the suit property. He was of the opinion that the Court has jurisdiction.

The learned counsel was of the opinion that in the alternative, if the Court finds that the matter was to be filed in the High Court Mwanza registry, to serve costs and time the remedy is to transfer the suit to its jurisdiction. He tried to cement his point by the case of **CR.F Lwanyamatika Masha v The attorney General**, Civil Case No.136 of 2001 (unreported).

The counsel for the defendants Mr. Magee A.M. submitted to support the point that this Court has no territorial jurisdiction to try the matter before it in view of section 14 of the Civil Procedure Code, Cap 33. He was of the view that the provision of section 14 of the Code is clear that a case for immovable property should be filed where the subject matter is situated. To support his assertion he cited the decision in **Ester James Magitta v Christopher Marwa Mkami**, Civil Case No.33 of 2022, **Sikudhani Abdallah Mshana v Bank of Africa(T) Limited**, Land Case No.28 of 2017 and in **Ater Corporation Limited v. Mohamed Africa Limited**, Land Case No.282 of 2022, that suit should be instituted in the court within the local limit of whose jurisdiction the property is situated. He finally submitted the Court to find that it has no jurisdiction and proceed to dismiss it.

I have given careful deliberation to the rival arguments in support and against the point advanced by both learned counsel. Having done so, the main issue for determination is whether this Court has the territorial jurisdiction to determine the matter at hand. 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 have 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)

Section 14 of the CPC as cited herein above, embraces the *locus rei sitae* rule which requires that the place where the land is located is the proper forum in a case involving real estate. The rule was applied by the Court of Appeal in Abdallah **Ally Selemanni 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".

Going through the Plaint filed in this Court on 9th November 2022, particularly in paragraph 5(i), it has been clearly pleaded that the subject matter to the suit at hand is Plot. No. 67, Block "E" Ilemela Area, Mwanza City with Certificate of Title No.41023. Thus, it is undisputed fact that the immovable property involved in the present suit is located outside the local limits of this Court.

The dispute emanates from a mortgage facility and thus falling under section 14 (c) of the CPC that requires mortgage cases involving immovable property to be instituted in the court within the local limits whose jurisdiction the property is situate. In other words, mortgage cases do not fall into the exceptions in the proviso to section 14.

That being the case, the proper venue for this matter ought to have been the High Court of the United Republic of Tanzania, (Mwanza District Registry) at Mwanza. In view of the foregoing, this suit is untenable and improper before this Court for being filed in a wrong forum.

Thus the point raised by the Court *suo moto* is sustained, the entire suit including the counter claim is struck out for contravening section 14 of the CPC. The fact that the point was raised by the court each party to bear its own costs. **DATED at DAR ES SALAAM this 16th May 2023.**



COURT: Ruling is delivered this 16th May 2023 in the presence of Ms. Judith Prosper/Mr. Fredrick Massawe, Advocate for the plaintiff and Mr. Mudhihir Magee, Advocate for 1st defendant. Right of appeal explained.

