

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 94 OF 2023**

**MWAZANI RAMADHANI DUMA**

**(An Administratrix of the Estate of the**

**late Hamisa Abdallah Chenja) ..... PLAINTIFF**

**VERSUS**

**PETER KIULA .....1<sup>ST</sup> DEFENDANT**

**FREEMAN SHIRIMA ..... 2<sup>ND</sup> DEFENDANT**

**UBUNGO MUNICIPAL COUNCIL ..... 3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL .....4<sup>TH</sup> DEFENDANT**

**RULING**

*21.06.2023 & 06.07.2023*

**A.MSAFIRI, J.**

This is the Land Case, whereas, the plaintiff is claiming jointly and severally against the defendants to give vacant possession of the un-surveyed piece of land located at Goba Centre, Ubungo Municipality in Dar es Salaam, the alleged lawful property of the late HAMISA ABDALLAH CHENJA on which the plaintiff is the Administrator of the estate of the same. *Alle*

On 23.05.2023 when the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed their written statement of defence they also raised one point of preliminary objection that:-

- i. That, the plaintiff's Complaint contravenes the order of the court, The District Land and Housing Tribunal for Kinondoni District, at Mwananyamala dated, 19<sup>th</sup> August, 2019.*

As it is the law, the preliminary objection has to be determined first. The disposition of the said preliminary objection took form of oral submission before me.

When the matter came for hearing of the preliminary objection on 21.06.2023, the plaintiff was represented by Mr. Amon Rwiza learned Advocate, the 1<sup>st</sup> and 2<sup>nd</sup> defendants enjoyed the legal service of Mr. Eliezer Kileo learned Advocate while, the 3<sup>rd</sup> and 4<sup>th</sup> defendants were represented by Ms. Victoria Lugendo, Caroline Lyimo, and Ipyana Msiba, all learned State Attorneys.

Mr. Kileo submitted in support of the preliminary objection that the plaintiff's Complaint contravenes the District Land and Housing Tribunal order (the Tribunal) in the previous Land Application No. 587 of 2018 before Hon. Chenya, Chairperson, whereas, the Tribunal ordered the 1<sup>st</sup> defendant not to be sued on his individual capacity. *Alls.*

He further stated that, the plaintiff had instituted the said above Land Application No. 587 of 2018 against the 1<sup>st</sup> defendant, which was struck out for failure to join the Ubungo Municipal Council, the said ruling has been attached to the Plaint as Annexure KF-2.

He contended that the plaintiff has again in the case at hand sued the 1<sup>st</sup> defendant on his individual capacity contrary to the Tribunal directives, hence, he prayed that this suit be struck out with costs. He referred this Court to the case of **Esther Malongo Simwatimwa & 2 Others vs Registered Trustees of Moravian**, Misc. Land Appeal No. 58 of 2021, HCT Mbeya(Unreported).

In response, Mr Rwiza learned Advocate for the plaintiff admitted Land Application No. 587 of 2018 to have been struck out by the Tribunal for failure to join the Ubungo Municipal Council, but that it is not true that the Tribunal ordered the plaintiff not to sue the 1<sup>st</sup> defendant.

He added that, in whatever circumstances, this Court is not bound by the Tribunal directives or its decision therefore there is no order of the Court that has been contravened. He prayed that this preliminary objection be dismissed with costs. *Aille*

In rejoinder, Mr. Kileo reiterated what was submitted in chief, and further added that the 1<sup>st</sup> defendant has no interest over the suit property hence should not be sued.

Having gone through the rival submissions of the parties, I am of the view that the issue for determination is whether the raised preliminary objection falls under the scope of what is called preliminary objection.

What a preliminary objection ought to be was discussed in the case of **Mukisa Biscuits Manufacturing Co. L.T.D versus West End Distributors L.T.D** (1969) EA 696, which affirmed a preliminary objection to have the following tests; -

*"A preliminary objection consists of a **point of law** which has been **pleaded**, or which arises by clear implication **out of pleadings**, and which if argued as a preliminary point **may dispose of the suit**". (emphasis added).*

Besides, in the case of **Lyamuya Construction Company Ltd vs Board of Registered Trustees of Young Women's Christian Association of Tanzania**, Civil Appeal No. 2 of 2010, CAT at Arusha (Unreported), gives a detailed account of what a point of law is. It was observed in the said case that; -

*" ..... a point of law must be that of sufficient importance and, I would add that **it must also be apparent on the face of record,*** *Atle*

*such as the question of jurisdiction; not one that would be discovered by a long drawn argument or process.”(Emphasis supplied).*

The above position means that a preliminary objection must consist of a point of law. In the present suit, the raised preliminary objection is that the plaintiff’s plaint contravenes the order of the District Land and Housing Tribunal for Kinondoni District, at Mwananyamala on its decision made on 19<sup>th</sup> August, 2019 at page 3.

I am of the view that the same would require evidence and that is why the 1<sup>st</sup> and 2<sup>nd</sup> defendant attached Annexure K2 for this Court to go through as evidence, that is not what a preliminary objection should be as far as the principle established in **Mukisa Biscuit** (Supra) because the same does not consist of point of law, the point of law must indicate which provision of the law has been violated, the District Land and Housing Tribunal directives cannot be regarded as point of law to accommodate the raised preliminary objection herein.

However, the point of law which is purportedly contravened is not apparent on the face of records and it invites long drawn arguments and certainty of facts by evidence.

*Aelle*

Resultantly, it is my finding that this preliminary objection has no any merit. I dismiss it with costs.

  
**A. MSAFIRI**  
**JUDGE**  
**06/07/2023**

