

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 327 OF 2022

**MAALIM A MIKONGO(As a personal Representative by ABDALLAH
MOHAMED NYAGANGAPLAINTIFF**

VERSUS

DEO JONAS MPERA..... 1ST DEFENDANT

SHARIFA OMARI NYAMPAWANE.....2ND DEFENDANT

RULING

6th July 2023 & 20th July, 2023

L.HEMED J.

On 26th January, 2023 the plaintiff herein one **MAALIM A MIKONGO**, suing under Power of Attorney of **ABDALLAH MOHAMED NYAGANGA**, filed the instantaneous suit against the defendants **DEO JONAS MPERA** and **SHARIFA OMARI NYAMPAWANE** praying for judgement and decree on the following reliefs among others:-

- 1.The 1st and 2nd defendants be declared trespassers in the suit land owned by Abdallah Mohamed Nyanganga.
- 2.Declare the Plaintiff owner of the suit landed property.

3. The defendants be ordered to compensate the plaintiff the amount of Tshs 30,000,000/= for disturbances caused.
4. The defendants be ordered to vacate from the suit landed property.

Upon being served with the Plaint, the defendants filed their Written Statement of Defence. The defendants raised the preliminary objections on the following points of law, quoted herein below verbatim thus;-

- 1. Mgogoro huu umekiukwa takwa la kisheria ambapo wadaawa hawakuwahi.*
- 2. Mleta Maombi hana Mamlaka ya kuendesha shauri hili hivyo mahakama yako tukufu imeombwa kutoa amri ambapo mdai hajulikani.*
- 3. Hati ya Mdai imesainiwa na mtu ambaye hafahamiki hivyo kupelekea kukosa uhalali wa kisheria*
- 4. Mahakama yako tukufu inakosa mamlaka ya kusikiliza mgogoro huu ambapo thamani ya shamba bishaniwa ni ndogo kinyume thamani ya Mahakama yako tukufu.*

The preliminary objection was argued by way of written submissions. Mr. **Abdallah Mohamed Nyanganga** appeared in the capacity of personal representative of the plaintiff while Mr. **Akiza Rugemarila**, learned counsel appeared for the defendants. It should be noted that in the course of arguing the preliminary objection the learned counsel for

the defendants opted to abandon the first limb of the preliminary objections.

In determining the objections, I have opted to begin with the fourth limb of preliminary objection that "*Mahakama yako tukufu inakosa mamlaka ya kusikiliza mgogoro huu ambapo thamani ya shamba bishaniwa ni ndogo kinyume thamani ya Mahakama yako tukufu*" (that the court has no jurisdiction over the matter because the suit land has the value below the pecuniary jurisdiction of the Court).

On the fourth limb of objection, Mr. Rugemarila submitted that paragraph 11 of the Amended Complaint filed on 26th January 2023, states that the suit landed property has the value of three hundred million Tanzanian Shillings. He contended that the suit land is below the pecuniary jurisdiction of this court. He cemented his argument by citing section 13 of the Civil Procedure Code [CAP 33 RE 2019] and relied on the decision of the Court of Appeal in **Fanuel Mantiri Ngunda vs Herman M. Ng'unda**, Civil Appeal No 8 of 1995. He concluded by praying the case to be struck out with costs.

In response thereto, Mr Abdallah Mohamed Nyanganga had no much to say. He only stated that the suit has been properly filed before this court as the High Court has unlimited jurisdiction to entertain all civil

suit regardless of the value. He asserted that the suit land has the value of Tshs 300,000,000/= thus falling in the jurisdiction of this Court. He prayed for the dismissal of the preliminary objection.

Having gone through the rival arguments regarding the 4th limb of objection, I feel apt to discuss it before embarking into other limbs. I am aware of section 13 of the Civil Procedure Code, [Cap 33 R.E 2019], which provides thus:-

*"Every suit shall be instituted in the **court of the lowest grade competent to try it ...**" (Emphasis supplied).*

From the above-cited provision, the key words are "competent" which simply means having jurisdiction, while the word "lowest" relates to the court's power to try cases of certain monetary valuation in the judicial hierarchy. The language of section 13 suggests that there may be more than one court competent to try a suit. Where there are more than one courts having jurisdiction to try a matter, the same has to be instituted in the court of the lowest grade in the ladder competent to handle it.

The object of the section is to ensure that suits are instituted in the court of the lowest grade to widen avenue of appeal and to reduce

concentration of cases in the higher courts. Being mindful of this position, the Tanzanian legislature in 2016 amended section 13 of the Civil Procedure Code *vide* section 9 of the Written Laws (Miscellaneous Amendment Act No.4 of 2016) by introducing a proviso to section 13 thus:-"*Provided that, the provisions of this section shall not be construed to oust the general jurisdiction of the High Court*".

The provision of section 13 of the Civil Procedure Code is couched to let the High Court enjoy the general jurisdiction over all matters triable by the subordinate courts. The legislature had in mind that there are circumstance where a suit's subject matter may have the pecuniary value that falls within the jurisdiction of the subordinate court, but due to some other factors, such as application of the Government Proceedings Act, it may not be possible for the matter to be tried by a subordinate court regardless of the pecuniary value of the subject matter.

The question that arises is whether the provision of section 13 of the Civil Procedure Code,(supra) gives freedom of choice of forum to institute a suit between the High Court and subordinate courts. To answer this question, I had to read an Indian decision in **Nidhi Lal v. Mazhar Huassan** (1885)ILR 7 All 230 the Allahabad High Court interpreted section 15 of the Code of Civil Procedure, 1908 which is in

pari materia with 13 of our Civil Procedure Code,(supra). In the said case, the Court was of the view that the requirement to institute a case in the lowest court is the rule of procedure and not jurisdiction. A rule of jurisdiction means a rule setting the confines within which a court can exercise its power in terms of geographical area, the pecuniary value and the subject matter of the suit. A rule of procedure is that which does not affect the jurisdiction of a court of higher grade to try a suit that may be entertained by a lower court. Breach of rule of procedure only amounts to an irregularity and does not invalidate the verdict if the matter has been conclusively determined. Therefore, it is not a matter of choosing where to lodge the suit, rather, as a matter of procedure, a person who wants to institute any civil proceeding is bound to lodge the same in the court of the lowest grade competent to try it.

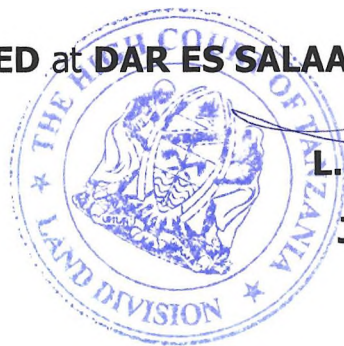
With regard to the matter at hand, I have perused the pleadings, particularly the Amended Plaintiff and found that in paragraph 11 the value of the suit property stated is Tshs 300,000,000/=. I have also noted that the suit involves natural persons. I am aware that section 33(2)(a) of the Land Disputes Court Act, [Cap. 216 R.E. 2019], provides thus in respect to the pecuniary jurisdiction of the District Land and Housing Tribunal:-

*"... in proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property **does not exceed three hundred million shillings;**" (Emphasis added).*

From the above provision, the suit landed property whose value does not exceed the value of Tshs 300,000,000/= falls within the jurisdiction of the District Land and Housing Tribunal and the High Court as well. Nevertheless, as a matter of procedure, this matter ought to have been instituted in the District Land and Housing Tribunal which is the court of the lowest grade competent to try it.

From the foregoing, I find that the instant suit was wrongly filed in this Court. I thus proceed to strike out the entire suit without costs. If still interested, the Plaintiff has to file it in the competent court of the lowest grade. It is so ordered.

DATED at **DAR ES SALAAM** this 20th July 2023.




L. HEMED
JUDGE