

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO.188 of 2022**

**ASALEA LUJABIKO KIHUPI.....1ST PLAINTIFF
ELESIA A. KIHUPI.....2ND PLAINTIFF
ELDA G. MSENGI.....3RD PLAINTIFF
CAROLINE S. MLAWA.....4TH PLAINTIFF**

VERSUS

**KISONGOI TIKWA MORETO.....1ST DEFENDANT
GEORGE SIMON KIFUKO.....2ND DEFENDANT**

RULING

04/7/2023 & 26/07/2023

A. MSAFIRI J

On 4th August 2022, the plaintiffs herein Asalea Lujabiko Kihupi, Elesia A. Kihupi, Elda G. Msengi and CAROLINE S. MLAWA, filed the instantaneous suit against the defendants Kisongoi Tikwa Moreto and George Simon Kifuko, claiming for a declaration that all land now trespassed by defendants at Mpelamumbi Village in Chalinze, Coast Region, belongs to the plaintiffs who are entitled to keep possession thereof and be registered as its owners according to the demarcation as per sale agreements. *Alle*

On 5th July 2023, when the matter was already scheduled for commencement of hearing, the defendants file a notice of preliminary objection on point of law to the effect that;

- 1. That, this Honourable Court has no pecuniary jurisdiction to entertain this suit per provisions of Section 37 (1) The Land Disputes Court Act [Cap 216 R:E 2019] this is from the pleading filed the land in dispute which is unsurveyed land comprising of 147.71 acres purchased from different owners between year 2017 and 2020.*

The preliminary objection was argued by way of written submissions. The plaintiffs were represented by Mr Roman Selasini Lamwai, learned counsel, whereas Mr Faraji Mangula learned counsel appeared for the defendants. The Court set the order schedule whereby both parties filed their submissions on time in supporting and opposing the preliminary objection respectively.

Mr. Mangula, in support of the preliminary objection submitted that this Court has no pecuniary jurisdiction to entertain this suit as per section 37(1) of the Land Disputes Courts Act which direct that the High Court

Ally.

can entertain a matter whose subject matter exceeds TZS. 300,000,000/=.

He averred that the objection is based on paragraphs 4, 6 and 7 of the plaint which states that the disputed land comprises **147.71** acres, and paragraph 12 of the plaint stated that the allegedly disputed land exceeds the value of TZS 350,000,000/=.

He contended that this Court has no pecuniary jurisdiction to entertain this suit per provision of Section 37 (1) of the Land Disputes Courts Act [Cap 216 RE 2019] as the value of the subject matter exceeds TZS 300,000,000/=.

He further referred the cases of **Moto Matiko Mabanga vs Ophir Energy Plc and 6 others**, Civil Appeal No. 119 of 2021 and **Ali Saidi Kurungu and 4 others vs. The Administrator General and 12 others**, Civil Appeal No. 148 of 2019.

Mr Mangula further submitted that as per annexures attached to the Plaint which are referred at paragraph 6 of the Plaint, each plaintiff has separately bought the piece of land which is unsurveyed from different owners whereby the total sum is TZS 29,606,000/= and this amount does not exceed TZS 350,000,000/=. Therefore, he prayed to the Court to dismiss the suit for want of pecuniary jurisdiction with costs. *Adls* .

In response thereto, Mr Lamwai submitted that the Plaintiff is governed by the provisions of Order VII Rule 1 (f) of the Civil Procedure Code [Cap 33 R: E 2019] (the CPC) which provides that the Plaintiff shall state facts which are showing the jurisdiction of the court and the law imposes a duty for the plaintiff to specify the pecuniary and territorial of the jurisdiction of the court.

He cemented his arguments by citing the decision of **Ahmed Chilambo vs Murray and Roberts Contractors (T) LTD**, Civil Case No. 44 of 2005.

He further contended that paragraph 12 of the Plaintiff has adhered to Order VII Rule 1 (i) of the CPC. He also referred to the book of Mulla- The Code of Civil Procedure, 16th Ed Vol, page 65, and the case of **Mohamed M. Likoti vs Mohamed R. Kaunda and Hamisi R. Kaunda**, Land Case Appeal No. 23 of 2015.

He submitted further that the cited cases of **Moto Matiko Mabanga(supra)** and **Ali Saidi Kurungu (supra)** by the counsel for the defendants are distinguishable. That the cited cases are based on the preliminary objection regarding the time limits, and not pecuniary jurisdiction. He prayed for the preliminary objection to be overruled with costs. *Alls.*

Having gone through the rival arguments regarding the preliminary objection, the issue is whether the raised preliminary objection by the defendants has merit.

Indeed, the pecuniary jurisdiction of the High Court in determining land matters is governed under Section 37 (1) of the Land Dispute Act (supra) which reads as follows:-

37.-(1) Subject to the provisions of this Act, the High Court shall have and exercise original jurisdiction-

(a) in proceedings for the recovery of possession of immovable property in which the value of the property exceeds three hundred million shillings;

The law as quoted above is clear. The Plaintiff states that the land in dispute has an estimated value which exceeds TZS 300,000,000/=, hence the High Court has the original jurisdiction to entertain the matter. I agree with submission by Mr Lamwai that it is the duty of the plaintiff to specify the jurisdiction of the case by stating facts in the Plaintiff as per Order VII Rule 1 (f) of the CPC which provides that the Plaintiff shall contain facts showing that the court has jurisdiction, the duty which has been effected by the plaintiffs in their Plaintiff.

The argument advanced by Mr Mangula that the disputed land is below the pecuniary jurisdiction of this Court invite the facts which has to be

Adls.

ascertained by evidence in order to prove exact value of the property. This disqualifies the preliminary objection raised as it contains mixture of law and facts while it is the trite law that a preliminary objection must be on pure point of law as it was held in the famous case of **Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd** [1969] EA 696.

In the present case in paragraph 12 of the plaint, the plaintiffs clearly have stated that the land in dispute has an estimated value of TZS 350,000,000/=. Therefore, it is my finding that the suit is within the jurisdiction of this Court as per Section 37 (1) of the Land Dispute Act. The issue raised herein is answered in the affirmative that the preliminary objection does not have merit and it is hereby overruled.

Costs shall be in the cause.

Order accordingly



A. MSAFIRI

JUDGE

26/7/2023

