

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 292 OF 2022**

**KG – INTERTRADE COMPANY (T) LTD.....PLAINTIFF**

**VERSUS**

**TIB DEVELOPMENT BANK LTD.....1<sup>ST</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**MELVA INTERNATIONAL LTD.....3<sup>RD</sup> DEFENDANT**

**TRUST COMPANY LTD.....4<sup>TH</sup> DEFENDANT**

**RULING**

*17<sup>th</sup> July, 2023 & 16<sup>th</sup> August, 2023*

**L. HEMED, J.**

**KG - INTERTRADE COMPANY (T) LTD**, the Plaintiff in this matter instituted this suit on 3<sup>rd</sup> November, 2022. The plaintiff's claims against the defendants jointly and severally is for declaratory orders that the auction conducted by the 3<sup>rd</sup> defendant in March, 2022, selling farm No. 38, 50/No. 4199, situated at Mlilayoyo village in Songea District, Ruvuma Region is a nullity on account of illegality and throw away price.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants, **TIB DEVELOPMENT BANK LTD** and **HON. ATTORNEY GENERAL** disputed the claims and raised a counter

claim against the plaintiff. **MELVA INTERNATIONAL LTD** and **TRUST COMPANY LTD**, the 3<sup>rd</sup> and 4<sup>th</sup> defendants respectively, could not file their defence despite being duly served.

On 17<sup>th</sup> July 2023 when the matter was called for 1<sup>st</sup> PTC this court observed two points of law that needed to be addressed. The 1<sup>st</sup> point was on the propriety of the suit in this court taking into account that the suit property is in Songea District. Another point was on the importance of the Board Resolution for the plaintiff to institute this suit. Parties were required to address the court on the said points in writing by 31<sup>st</sup> July, 2023. Upon perusal of the case file, I noted that both learned counsel complied with the court order.

It should be noted that in arguing the points, the plaintiffs were represented by Mr. Daniel Haule Ngudungi, learned advocate while Ms. Tausi Swedi, learned state attorney acted for the 1<sup>st</sup> and 2<sup>nd</sup> defendants. The 3<sup>rd</sup> and 4<sup>th</sup> defendants never appeared despite the substituted service by publication effected in Mwananchi Newspaper of 26<sup>th</sup> April 2023 and Nipashe News paper of 30<sup>th</sup> April, 2023.

Let me start with the point on the propriety of the suit before this court. Mr. Ngudungi addressed that the plaintiff instituted this suit in this court according to proviso to section 14 of the Civil Procedure Code, [Cap. 33 R.E 2019]. He asserted that the proviso gives exceptional condition by looking on the reliefs sought, if are obtained through personal obedience, the suit may be instituted at the local limit where the property situated or where the defendants resides or carry on business.

Mr. Ngudungi stated further that the relief sought in this case among others, is an order for the court to nullify sale or alternatively the plaintiff be allowed to dispose the property in dispute within a period to be fixed by the court so that the total outstanding debt is cleared. In his opinion, this suit is properly instituted in this court.

In reply thereof, Ms. Tausi Swedi, learned state Attorney submitted that the plaintiff has misconceived the requirement of the law on land litigation based on disposal of the mortgaged landed property which is situated in Songea. She cited the decision of this court in **Musa Makweta Musa vs. Fafaja Credit Finance**, Civil Appeal No. 08 of 2021, (High Court – Iringa) where the court was of the view that when the litigation arised from the disposal of the mortgaged landed property like the case herein then

the land court shall have jurisdiction. However, she was of the view that this court would have no jurisdiction to determine this matter as the suit land has not been instituted where the local limit of the mortgaged property situate, as per mandatory wording of section 14 of the Civil Procedure Code [Cap 33 R.E. 2019] requires.

Ms. Swedi contented further that the plaintiff's averments that this court has jurisdiction based on cause of action and where defendants reside and carry on business are misconception of the law, since section 18 of the Civil Procedure Code [Cap. 33 R.E 2019] does not apply in landed properties. She averred that the provision of section 14 has been couched in mandatory term "shall" showing mandatory compliance.

I have given careful deliberation to the rival arguments in support and against the point raised by the court. The point for determination is whether the matter is proper before this court. Section 14 (d) of the Civil Procedure Code [Cap. 33 R.E 2019] provides to the effect that for determination of any other right to, or interest in, immovable property suits to be instituted where the *subject matter is situated*. I 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 the 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 rights to, or interesting, immovable property;
  - (e) for compensation for a wrong to immovable property; or
  - (f) for the recovery of movable property actually under distract or attachment,
- shall be instituted in the court within the local limits of whose jurisdiction the property is situate..."
- (Emphasize added)

According to paragraph 6 of the plaint, it has been stated thus: -

*"6. That the plaintiff's claim against the Defendants jointly and severally is for Declaratory orders that the auction conducted by the 3<sup>d</sup> defendant in March, 2022 auctioning the **mortgage property over Farm No. 38, 50/No. 4199, letter of Right of occupancy with L.O. No. 84211 situated at Mlilayoyo village in Songea District, Ruvuma Region** in the name of Ms. K.G. intertrade company Tanzania Ltd is nullity or account of illegality and*

*throw away price, general damages, interest and cost of the case.” (Empasis added)*

From the above quoted paragraph, it is evident that the suit property is located in Songea District. The principle of *locus rei sitae* requires 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 **Abdallah Ally Selemani t/a Ottawa Enterprises (1987) vs Tabata Petrol Station Co. Ltd**, Civil Appeal No. 89 of 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 – Songea Registry, where the suit landed property is located, is the one with the territorial jurisdiction to determine any dispute concerning the suit landed property.

From the foregoing, I find that the suit at hand was wrongly filed in this court. The fact that the first point surfices to dispose of the suit, I find

no reason of determining the 2<sup>nd</sup> point for so doing so will amount to an academic exercise. The entire suit is hereby struck out. The fact that the point of law was raised by the court *suo moto*, each party to bear its own costs. I order so.

**DATED at DAR ES SALAAM this 16<sup>th</sup> August, 2023.**

