

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

AT DAR ES SALAAM

LAND CASES NOS. 54 & 75 OF 2023

MOHAMED ENTERPRISES (TANZANIA) LIMITED PLAINTIFF

VERSUS

ADILI AUCTION MART LIMITED 1ST DEFENDANT

NMB BANK PLC 2ND DEFENDANT

RAMJI DHAVJI MAYANI 3RD DEFENDANT

AND

GLENRICH TRANSPORTATION LIMITED PLAINTIFF

VERSUS

ADILI AUCTION MART LIMITED 1ST DEFENDANT

NMB BANK PLC 2ND DEFENDANT

RAMJI DHAVJI MAYANI 3RD DEFENDANT

CONSOLIDATED RULING

15th May 2023 & 19th June 2023

L. HEMED, J

On 18th May 2023 it was ordered that Land Case Nos. 54 of 2023 and Land Case No. 75 of 2023 be consolidated as they originate from the same transaction. In Land Case No.54 of 2023, **MOHAMMED**

INTERPRISES (TANZANIA) LIMITED instituted the said suit claiming *inter alia* thus:-

"i. For orders of declaration that the tendering process in respect of the property located on Plot No. 45, Mandela Express-way, Buguruni Industrial Area and comprised on CT.No.33358 (herein the "suit property") made pursuant to tender No. AAM/NMB/Mayo/01/2023(herein the bid) was illegally procured; illegally opened and therefore null and void"

The defendants in Land Case No 54 of 2023, **ADILI AUCTION MART, NMB BANK PLC** and **RAMJI DHAVJI MAYANI** disputed the entire claims through their written statement of defence.

In another Land Case No.75 of 2023 **GLENRICH TRANSPORT LIMITED** instituted similar suit against the same defendants, that is, **ADILI AUCTION MART, NMB BANK PLC** and **RAMJI DHAVJI MAYANI** on the cause of action thus:

"i. For orders of declarations that the 1st and 2nd Defendants acts of nullifying tender NO.AAM/NMB/MAYO/01/2023(herein the tender) for

the purchase of Industrial Property located at Plot No.45 Mandela Express-Way Buguruni Industrial Area, comprised on CT No.33358(the suit property) on the pretext that no bidder was able to reach reserved price is null and void ab initio.”

Having gone through the pleadings, on 4th May 2023, the court *suo moto* observed that the plaintiffs in both suits are challenging the tendering process of the house in question. It came into question as to whether the matter fall in land disputes category for it to be properly before this court.

The learned counsel for the parties were directed to address the court regarding the point of law by way of written submissions. The plaintiffs were duly represented by **Mr. Elisa Abel Msuya**, learned advocate; **Mr. Khalid Suddy Rwebangila**, learned advocate acted for the 1st defendant. The 2nd Defendant enjoyed the service of **Mr. Seni Malimi**, learned counsel, while **Mr. Senen Mponda**, learned advocate represented the 3rd defendant.

The counsel for the defendants supported the point raised by the court. They argued with reference to the provisions of law that gives exclusive jurisdiction to the Land Division of the High Court over the

land matters. They cited sections 3(1) and (2) and 37 of the Land Disputes Courts Act [CAP 216 R.E 2019], Section 167 of the Land Act [Cap 113 R.E 2019] and Section 62 of the Village Land Act [Cap 114 R.E 2019]. They asserted that, section 37 of the Land Disputes Courts Acts provides for original jurisdiction to the High Court over the proceedings for the recovery of possession of immovable property, proceedings under the Tanzania Investment Act, the Land Act and the Land Acquisition Act.

They stated that, the cause of action and nature of the reliefs sought in the complaints do not fall within the exclusive jurisdiction of this court as provided for under section 37 of the Land Disputes Courts Act [Cap 216 R. E 2019]. They cited the case of **Petro fuel (T) Ltd & Another vs Educational Books Publishers Ltd & Others**, Land Case No.54 of 2016, (HC.DSM) and **Ally Shaibu Khamis vs Sher – Mohamed Bahdour (As a Legal Person Representative of Hajra Bibi Mohamed Hussein (deceased))** Land Case No.117 of 2021, (HC-Land Division at Dar es Salaam). They submitted that the present matter is not a land dispute and was improperly filed in this court. They prayed the two consolidated cases be struck out with costs.

Replying to submissions made by the counsel for the defendants,

Mr. Msuya, learned counsel for the plaintiffs referred to Article 108(1) of the Constitution of the United Republic of Tanzania, Cap.2, that establishes the High Court of the United Republic of Tanzania and section 5 of the Judicature and Application of Laws Act,[Cap 358, R.E 2019]. According to the learned counsel, the two provisions give powers and authorities to the judge of the High Court to exercise all or any part of the jurisdiction conferred to the High Court. He referred to the decision of the Court of Appeal of Tanzania in **National Bank of Commerce Limited vs National Chicks Corporation Limited and 4 Others**, Civil Appeal No.129 of 2015, CAT at Dar es Salaam, in relation to the general and unlimited powers of judges of the High Court.

Mr. Msuya contended that, GN No. 63 of 2001 established the High Court Land Division, Dar es Salaam and designated all other High Court registries as sub registries of the Land division, whereby Section 19 of the said GN amended the definition of the term "High Court (Land Division)" and substituted it by the word "High Court". It was added that, GN No.63 of 2001, that establishes Land Division was not repealed by the amendment made by Act No. 2 of 2010, rather this court now is designated as "High Court" established by article 108 of the Constitution

of United Republic of Tanzania, enjoying concurrent jurisdiction with other registries of the High Court. He added that this court, apart from being vested with jurisdiction over land matters, it has jurisdiction to hear matters which are not considered to be land matters.

The learned counsel for the plaintiffs cited Section 36(1) of the Interpretation of Laws Act and stated that, although Act No. 2 of 2010 did not disestablish GN No. 63 of 2001 establishing the Land Division, the GN is inconsistency with Act No. 2 of 2010. It follows therefore that Land Division established under GN No. 63 of 2001 is void to the extent it violates Act No. 2 of 2010. He stated that section 4 of the JALA gives power to the Chief Justice to make rules for regulating practice and procedure of the High Court and all other courts established in Tanzania, with the aim of facilitating the administration and dispensation of justice.

As to the case of **Ali Shaibu Khamis** (supra), cited by the counsel for the defendants, he submitted that it is erroneous and bad in law because it has misquoted the holding in **NBC Limited Case** (supra). He stated that even after the amendment of JALA by Act No.3 of 2016, the Constitution has continued to mandate the registries and divisions of the High Court with all general powers as part of the High Court. He asserted that in **NBC Limited Case** (supra), the CAT

underscored that, the purpose of establishing specialized divisions and registries was to facilitate administration in dispensation of judicial functions and not to oust the jurisdiction of the court which is traced from Article 108 of the Constitution of the United Republic of Tanzania and sections 4 and 5 of JALA.

Finally, as to the prayer of the defendants to strike out the two suits, the counsel for the plaintiffs relied in the case of **NBC Limited** that this court has jurisdiction to hear the case. He insisted that, in the event this court finds the two suits should be heard by another registry, they prayed that the plaint be returned to be presented to the registry in which the suit should be instituted as per Order VII Rule 10(1) (2) of the Civil Procedure Code, [Cap 33 R. E 2019].

In rejoinder submissions, the counsel for the defendants reiterated their submissions in chief and averred that the **NBC case** is distinguishable. He contended that, in **NBC case**, the matter was of commercial in nature, the claim being payment of loaned amount and interest thereon. Therefore, the matter was rightly instituted in the Commercial Division of the High Court.

As to the prayer for transfer of the cases to where they were supposed to be filed, the counsel for the defendants submitted that, the

plaintiffs have the options either of filing their respective suits in the Commercial Division or in the General Registry. To conclude, they asserted that, sustaining the plaintiffs' position will lead to chaos and effectively make this Land Division like another general registry.

Having gone through the rival submissions of the counsel for both parties, the issue for determination is whether this court has jurisdiction to determine these suits. From the pleadings, it is obvious that both suits are centred on the legality of the tendering process. In other words, the disputes in the two suits are not concerned with ownership, possession or usage of the land. They are thus not land disputes.

Being not land disputes, the question is whether they were properly lodged in this Division. I am at one with the learned counsel that this Division, which is part of the High Court of Tanzania was established under Article 108 (1) of the Constitution of the United Republic of Tanzania, Cap.2, which provides thus: -

*"There shall be established a High Court of the United Republic of Tanzania (to be referred in short as the High Court), the jurisdiction of which shall be **specified in this constitution or any written law**". (Emphasis added).*

This division was established specifically for land disputes. From the wording of Article 108(1) of the Constitution of the United Republic of Tanzania cited herein above, the written laws that give jurisdiction to this division are all legislation governing land matters. They include but not limited to the Land Act, Cap.113; the Village Land Act, Cap.114; the Land Registration Act, Cap.334; the Land Acquisition Act, Cap.118; and the Land Disputes Courts Act, Cap.216.

I am aware of the amendments made by the Written Laws (Miscellaneous Amendments) Act No. 2 of 2010. The said amendment was intended to reduce backlog of cases in the Land Division of the High Court by empowering the other registries of the High Court to deal with land disputes. However, the said amendment did not widen the jurisdiction of this Division to other type of cases. In other words, all kind of disputes including land cases can be filed and tried in any Registry of the High Court, but not all kind of disputes, other than those related to land can be instituted in the Land Division of the High Court.

It should also be noted that, Section 4 the Judicature and Application of Laws Act, Cap.358, gives power to the Chief Justice to make rules for regulating practices and procedure of the High Court and all other courts established in Tanzania. The purpose of establishing

divisions and registries was stated in the case of **NBC Limited** (Supra) that is to facilitate the administration and dispensation of judicial function and to enhance expeditious and proper administration and management of certain categories of cases. Section 5 of the Judicature and Application of Laws Act (supra) provides that:-

*"Subject to **any written law to the contrary**, a judge of the High Court may exercise all or any party of the jurisdiction of and all or any powers and authorities conferred in the High Court."*
(Emphasis supplied)

The above-cited provision, envisages that a judge of the High Court will exercise all or any party of the jurisdiction conferred in the High Court subject to any written law. The said provision does mean that, a judge will exercise powers conferred to the Court in which he/she is sitting. For instance, a Judge sitting in Commercial Division will exercise only powers conferred to the High Court-Commercial Division. Likewise, judges who sit in the Land Division of the High Court will only exercise powers conferred to the Division. My sister at the bench, **Hon. Dr. Mwenegoha,J.** in **Ally Shaibu Khamis vs Sher – Mohamed Bahdour (As a Person Representative of Hajra Bibi Mohamed**

Hussen (Deceased), Land Case No. 117 of 2021, had this to say while confronted with similar question:

"It is not in dispute that the High Court is creature of the Constitution and all High Court judges when entertaining matters before them in courts, have equal jurisdiction....However, the High Court Land Division at Dar es Salaam, was left with full mandate of dealing with land matters only. Henceforth, Judges sitting before this division have no jurisdiction to hear or determine cases not related to land disputes. This is similar with the commercial division."

I actually, subscribe to the above position taken by her ladyship on the reason that if every division of the High Court could have general jurisdiction, there would have been no reason of having such divisions.

Mr. Msuya also contended that GN.No. 63 of 2001 which establishes the Land Division is inconsistency with Act No. 2 of 2010. I am of the firm view that the argument on the inconsistency of GN.No.63 of 2001 is misplaced as this case is not the proper forum for so to do.

From the foregoing, I find the two suits to have been wrongly

lodged in this Court as they are typically not land matters. Therefore, this court lacks jurisdiction to hear and determine them. The only remedy to the matter at hand is to strike out and not to transfer the suits to the proper forum as prayed by the learned counsel for the plaintiffs. I have opted to refuse the prayer to transfer the suits because, (i) every forum has its procedure on how to initiate matters before it; and (ii) It is not the duty of the Court to direct parties where to institute their matters, that duty rests on their shoulders.

In the premises, Land Case No. 54 of 2023 and Land Case No. 75 of 2023 are hereby struck out. Having considered that this point of law was raised by this court *suo moto*, each party to bear its own costs.

DATED at **DAR ES SALAAM** this 19th day of June 2023.


L. HEMED
JUDGE

