

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

**AT DAR ES SALAAM
LAND CASE NO. 237 OF 2023**

**ISSA HAMAD KIVINA.....1ST PLAINTIFF
FATUMA ISSA KIVINA.....2ND PLAINTIFF**

VERSUS

EQUITY BANK TANZANIA LIMITED.....DEFENDANT

RULING

14th September, 2023 & 6th November, 2023

L. HEMED, J.

ISSA HAMAD KIVINA and **FATUMA ISSA KIVINA** are the Plaintiffs in this case. They are suing the respondent herein, **EQUITY BANK TANZANIA LIMITED** for breach of loan agreement. They also allege that the defendant is causing nuisance and chaotic environment by taking pictures of the landed properties, Plots No. 11 and 12 Block 'J', Ilala Area in Ilala Municipality contrary to what is stipulated in the Agreement. They thus pray for Judgment and Decree against the Defendant as follows:-

"a) For a declaration order that the defendant has breached an agreement.

b) For a permanent restraining order against the Defendants not to trespass to the plaintiff's property.

c) For a declaration order to freeze the interest accrued on the facility pending hearing and determination of this matter.

d) Costs of the suit.

e) Any other relief this honorable court deems fit and just to grant."

The defendant filed written statement of defence (WSD) disputing all the claims. In the written statement of defence, the Defendant raised a preliminary objection on point of law to the effect that;

"i. The Honorable Court is not clothed with jurisdiction to hear and determine the plaintiffs' suit because the cause of action there of is not founded on land.

ii. That at plaintiffs' suit is Resjudicata."

The preliminary objection was argued by way of written submissions. Parties promptly filed their submission as per the schedule directed by the court. The defendant argued the preliminary objection through the service

of Mr. Karoli Valerian Tarimo, learned advocate, while the plaintiffs enjoyed the service of Ms. Jacqueline Jackson Rwakabwa, advocate.

I opted to start with the 1st limb of the objection which is on jurisdiction of this court over the matter. The counsel for the defendant argued that the plaintiffs' cause of action as pleaded in paragraph 3 of the plaint is based on the failure of the Defendant to adhere to what was agreed between the parties in the facility Agreement and for the unlawful trespass by the defendant's officers into the plaintiffs' properties. He was of the view that since the cause of action and reliefs sought are based on breach of agreement and trespass, this court has no jurisdiction.

The learned counsel for the defendant stated that the jurisdiction of this court is only on proceedings related to land. He bolstered his argument by referring to section 37 of the Land Disputes Courts Act, [Cap 216 RE 2019]. He concluded by stating that since the pleaded facts constituting the cause of action and reliefs sought are on contract and tort, this court lacks the requisite jurisdiction to try the matter.

In reply thereto, the counsel for the Plaintiff asserted that the suit at hand is on land as the disputed land is Plot No. 11 and Plot No. 12 Block 'J'

Ilala Municipality. She also insisted that even the reliefs prayed are purely founded on land.

Having gone through the rival submissions in respect of the preliminary objection on the jurisdiction of this court, the question for determination is whether this court is vested with jurisdiction over the matter at hand. I am at one with the learned counsel for the defendant that jurisdiction of a court is a creature of statute and that it goes to the root of the power of such court to determine the matter before it. Being a creature of statute, it cannot be assumed or exercised on the basis of likes and dislikes of the parties.

In view of section 167 of the Land Act, [Cap. 113 RE 2019], section 62 of the Village Land Act, [Cap. 114 RE 2019] and sections 3 and 37 of the Land Disputes Courts Act, [Cap. 216 RE 2019], the High Court generally has jurisdiction to entertain land matters. However, the High Court Registries Rules, 2003, GN. No. 96 of 2005 establishes this Court, the Land Division as a specialized division in land matters Rule 5 E of the Rules, provides thus: -

*"There shall be a **Land Division of the High Court within the Registry at Dar es Salaam** and at any other registry or sub-registry as may be determined by the Chief Justice in which, subject to the provision of any*

relevant law appellate proceedings or original proceedings concerning land may be instituted."

[Emphasis added].

From the above quoted provision, Land Division of the High Court has jurisdiction to deal with land matters only. All other categories of disputes such as probate, tort, constitutional, contracts not related to land, to mention just a few, cannot be dealt with by the Land Division of the High Court.

In her submissions, the learned counsel for the plaintiff contended that the matter before this Court is a land dispute because it emanates from Plots No. 11 and 12 Block "J", Ilala Municipality. This prompted me to look for a definition of a land dispute. I could not find it in the Land Act (supra) and the Village Land Act (supra). The Land Disputes Courts Act, (supra) only defines the word 'dispute' under section 2 of the Act, it is provided thus: -

" 'despute' includes any case where a person complains of and is aggrieved by the actions of another person, or any case in which a complaint is made in an official capacity or is a complaint against an official act;"

The definition herein above is so wide to understand a land dispute. I managed to access the USAD Paper on LAND DISPUTES AND CONFLICTS,

composed by John Bruce (March 2013). In the said paper, 'a Land dispute' has been defined to,

"involve conflicting claims to rights in land by two or more parties, focused on a particular piece of land, which can be addressed within the existing legal framework."

I subscribe to the above definition. It is also my firm view that for a dispute to be 'a land dispute', parties must be competing on ownership, possession or usage of land.

The next question is whether the instant matter is on land in view of the preceding definition. To answer the question, the pleadings, the Plaintiff in particular has to guide the court as it was observed in **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd** (1969) EA 696, that:

"so far as I am aware, 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."

I have gone through the Plaintiff to find out if the cause of action raises a land dispute. I realized that the Plaintiffs are blaming the Defendant for

The reliefs sought are:

"a) For a declaratory order that the defendant has breached and agreement.

b) for a permanent restraining order against the Defendants not to trespass to the plaintiffs property.

c) costs of the suit.

d) any other relief....."

From the above reproduced cause of action and reliefs claimed, it is obvious that the suit at hand is on 'breach of contract' and trespass (tort). Disputes arising from breach of contract and tort do not fall within the jurisdiction of this court.

I am aware that trespass to land is among of the land disputes triable by this court. However, it must be pleaded that the defendant has trespassed the suit land claiming interest in it. Trespass with claims of interests in land falls in disputes of ownership of land.

In the instant case, the alleged trespass is by taking pictures, making noise and causing nuisance and chaotic environment. I am of the firm view that trespass of this nature is purely tort as there is no claimed interests in

land. Torts of this kind which are not connected to land dispute cannot be tried by this court.

In the final analysis, I find merits in the 1st limb of preliminary objection. The suit being founded on tort and contract, this court is not clothed with jurisdiction to try it. Having found merits in the 1st limb of objection and the fact that it suffices to dispose of the entire suit, I find no need of canvassing to determine the remaining limb, for so doing will only have an academic importance. In the upshot, the preliminary objection is sustained. The entire suit is hereby struck out with costs. It is so order.

DATED at DAR ES SALAAM this 6th November, 2023.




L. HEMED
JUDGE