

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 288 OF 2023

LILIAN FELIX MSELE.....PLAINTIFF

VERSUS

NMB BANK PLC.....1ST DFEFENDANT

ADILI AUCTION MART.....2ND DEFENDANT

FELIX PETER MSELE.....3RD DEFENDANT

RULING

21/11/2023 to 8/12/2023

E.B. LUVANDA, J

The First Defendant above named raised a preliminary objection embedded into a written statement of defence, thus the plaint does not disclose the value in dispute for purpose of establishing the jurisdiction of the court consequently, the court is not vested with pecuniary jurisdiction to adjudicate this matter.

Mr. Mohamed Muya learned Counsel for First Defendant, submitted that the plaint filed by the Plaintiff is apparent that a crucial and essential element is lacking that, the plaint does not disclose the value of the subject matter, which is contrary to Order VII rule 1(i) of the Civil Procedure Code, Cap 33 R.E. 2019. He submitted that the value of the subject matter assists the court

to establish the pecuniary jurisdiction of the court and to calculate fee for filing a suit. He cited the case of **Saning'o Kaleku vs Tanzania Electric Supply Company Limited and Two Others**, Civil Case No. 25 of 2022 HC; **Mwananchi Communication Limited and Two Others vs Joshua K Kajula and Two Others**, Civil Appeal No. 126/01 of 2016 CAT; **Fereji Said Fereji vs Jaluma General Supplies Limited and Another**, Land Case No. 86/2020 HC.

In reply, Mr. Bwire Benson Kuboja learned Counsel for Plaintiff submitted that in the plaint the reliefs sought are declaratory orders, arguing it cannot therefore be objected to. He cited section 7(2) Cap 33 (supra); **Mary Erasmo Mangasi vs CRDB bank PLC and Another**, Land Case No. 100 of 2011. He distinguished **Fereji Said, Saning'o Kaleka** and **Mwananchi Communication** (supra), for argument that the pleadings therein failed to highlight specific claims and only had a general statement of claims.

He submitted that the matrimonial properties listed in the plaint were used to secure a facility from the First Defendant to the Third Defendant worth Tsh 600,000,000/=, arguing this Court is the court of the lowest grade (sic) competent to try the matter contrary (sic) to section 13 Cap 33 (supra) and section 33(2)(a) (sic) of the Land Disputes Courts Act, Cap 216 R.E. 2019.

It is true that in the plaint the Plaintiff is claiming for declaratory orders in respect of the landed properties listed therein.

At a statement of value of the subject matter, the Plaintiff inserted wording that the prayers are declaratory in nature therefore this Court has jurisdiction to entertain the matter. It is to be noted that a long list of landed properties was subject for mortgage by the Third Defendant to secure a loan from the First Defendant. Among the attachments to the plaint there is a fourteen days' notice annexure L1 depicting a debt of 591,857,086 and offer letter annexure L2 depicting principal amount of Tsh 600,000,000/=. However, in the contents of a plaint, the Plaintiff neither mentioned the value of a debt, principal sum or properties subject to mortgage which is being contested for lack of consent and knowledge on the part of the Plaintiff.

It is true that the provision of section 7(2) Cap, is to the effect that no suit shall be open to objection on the ground that a merely declaratory judgment or order is sought.

However, in the reply by the learned Counsel for Plaintiff submitted, I quote,

'The said matrimonial properties which were listed in the plaint, were used to secure a facility from the First Defendant to the Third Defendant worth 600,000,000'

As I have said above, the Plaintiff avoided completely to mention the amount subject for mortgage or value of the listed properties. Section 37(1)(a) and (b) of Cap 216 (supra) provide,

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

- (a) In proceedings for recovery of possession of immovable property in which the value of the property exceeds three hundred million shillings;*
- (b) In other proceedings where the subject matter capable of being estimated at a money value in which the value of the subject matter exceeds two hundred million shillings'*

To my respect view, a statement by the learned Counsel that the listed properties were used as collateral to secure a loan valued Tsh 600,000,000/=, it suggests the subject matter is capable of being estimated at a money value. Above all in the said declaratory, the plaintiff is claiming for orders against the First Defendant return of original certificates subject for mortgage. Therefore, by implication, the Plaintiff is claiming recovery of mortgaged property intended to be disposed by sell by the First and Second Defendant. In that regard, avoiding to mention the value of the subject matter might have been done deliberately and by design, to evade proper

assessment of court fees, being a mischief which for all purpose and intend was intended to be cured by enactment of the provisions of Order VII rule 1(i) Cap 33.

A case of **Mary Mangasi** (supra) is by and large distinguishable to the facts herein. Therein the amount of loan subject for mortgage under dispute was disclosed to be 50,000,000. Indeed the objection therein was that a plaint does not disclose a cause of action for merely pleading declaratory orders, locus standi and for contravening Order VII rule 1(f) Cap 33 (supra) which is all about the facts showing that the court has jurisdiction. There was no objection or argument or orbiter which was taken to the effects that the plaint contravened Order VII rule 1(i) for failure to state the value of the subject matter.

That said, I uphold the preliminary objection.

The suit is struck out with costs.



E.B. Luvanda
Judge
8/12/2023

Ruling delivered in the presence of Mr. Kelvin Ngeleja learned Counsel for the First Defendant also holding brief for Mr. Bwire Benson Kuboja learned Counsel for Plaintiff, in the absence of the Second and Third Defendants.



E.B. Luvanda
Judge
8/12/2023