

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

LAND CASE NO. 314 OF 2023

RAIYAN BONIFACE.....PLAINTIFF

VERSUS

AMAN HAMISI CHUMA1ST DEFENDANT

FEDERAL TRADING CO.LTD.....2ND DEFENDANT

FEDERAL COMPANY LIMITED.....3RD DEFENDANT

PAGU LOGISTICS CO.LTD.....4TH DEFENDANT

BANK OF AFRICA TANZANIA LTD.....5TH DEFENDANT

LELO POLE MMASSY.....6TH DEFENDANT

JUSHUA ELIAS MWAITUKA t/a

FOSTERS AND CO.LTD.....7TH DEFENDANT

RULING

19/02/2024 &15/03/2024

GWAE, J

The issue that gives rise to the ruling of the Court is the preliminary objection (PO) raised by the Mr. Mweng'ezi Mapembe, the learned counsel for the 5th and 7th defendant herein through their joint written statement of defence. The PO raised reads;

"That, this Honourable Court has no territorial jurisdiction to determine the matter."

It is through the plaintiff's plaint at paragraph 6, the plaintiff one Raiyan Boniface has claimed against the defendants jointly and severally is on court's declaration that, the plaintiff being a legal wife of the 1st defendant, Hamisi Amani Chuma has an interest in a matrimonial property located at Plots No. 564 & 565 Shangani area, Low Density, Mtwara Township ("suit property"). It her further averment that, her interest that, the 1st defendant cannot pledge as loan Security without the plaintiff's consent. The plaintiff's plaint also reveals that, plaintiff has an interest in the above suit land at paragraph 11, which is best told by reproducing it herein under;

"11. That, being a legal wife of the 1st defendant, the plaintiff has an interest in the above stated property situated at Plots Nos. 564 & 565 Shangani, Low Density, Mtwara Township since the same has been acquired through joint efforts of the 1st defendant and the plaintiff has an interest in the said property of which she had never given any consent to anyone, to alienate the same or have the said property pledged as security to any bank or any other financial institution whatsoever, including that of the 5th defendant."

As used to be the correct position of the law that, whenever a court or quasi-judicial body hears and determines a matter without the requisite territorial or pecuniary jurisdiction such proceedings, judgment

or any other ancillary orders thereto, will be nothing but a nullity. This position of the law was appropriately stressed in **Shyan Thanki and Others vs. Palace Hotel** (1971) EA at 202 where it was stated that;

"All the courts in Tanzania are created by statute and their jurisdictions are purely statutory. It is elementary principle of the law that parties cannot by consent give a court jurisdiction which it does not possess".

In the light of the above legal position, a court of law or quasi-judicial body has the duty to ascertain whether indeed has the jurisdiction provided by an applicable statute. Equally, the litigants ought to find out if the court to which he or she is intending to institute the matter is conferred with the requisite jurisdiction to entertain the same.

It is this position of the law above, which leads the learned counsel for the 5th and 7th defendant to move the court determining the issue of territorial jurisdiction of the Court for claimed interest over the immovable property, suit land located at Shangani are in Mtwara Region and not Dar es salaam Region.

On the 19th day of February 2024 when this suit was placed before me for hearing of PO, the parties' learned advocates namely; Mr. Charles Mutakyahwa for the plaintiff, Mr. Sixbert Ngemela for the 1st, 2nd, 3rd 4th

and 6th defendant and Mr. M. Mapembe who appeared for the 5th and 7th defendant argued it orally.

Praying for the plaintiff's suit to be struck out for what he termed as lack of territorial jurisdiction by the Court to entertain it, Mr. Mapembe relied on section 14 and 18 of the CPC. According to him, High Court at Mtwara is the one vested with territorial jurisdiction and not High Court at Dar es salaam.

Mr. Mapembe also referred to the case of **Abdallah Ally Selemani t/a Ottawa enterprises (1987) vs. Tabata Petrol Station Co. Ltd and another**, Civil Appeal No. 89 of 2017 [2019] TZCA 636 (29 August 2019) where sections 18, 13, 14 were interpreted at page 18 of the judgment. It was his opinion that the decision in **Abdallah** (supra) where it was insisted that, all cases pertaining with immovable properties must be filed in local limits, the authority which binds the court. He also cited the decision of this court in **KG-Intertrade Company (T) Ltd vs. TIB Development Bank Ltd**, Land Case No. 292 of 2023 (unreported), in **KG's** case, the suit land was located at Songea but the case was filed in Dar es salaam, which lacked territorial jurisdiction. Eventually, the case was struck out for want of territorial jurisdiction.

On the other hand, the defence counsel present were of the view that, this court has the requisite jurisdiction in terms of Proviso of section

14 of the Civil Procedure Code (supra) and that, all the defendants are the residents of the Dar es salaam. According to the defence counsel, the plaintiff has an option to either file the suit in the local limits or where defendants do reside and working for gain and the fact that, reliefs sought can be entirely obtained through obedience of the court.

In his rejoinder, Mr. Mapembe briefly stated by way of reiteration that in terms of section 14 (b) of the CPC that, institution of a suit relating to immovable property is where subject matter situates. He distinguished section 14 from section 18 of the Act by stating that section 18 of CPC, which wholly dependent on the place where cause of action arose or where the defendant resides carries business or a place where defendant personally works for gains.

Having briefly summarized the rival oral arguments advanced by the parties' advocates, it is now my obligation to scrupulously look at the wording of the law and courts' interpretation of relevant and applicable provisions of the law (Civil Procedure Code, Cap 33 Revised Edition, 2019 (the CPC) relating to the territorial jurisdiction of the court. Generally, the Court may lack territorial jurisdiction in respect of immovable property in a situation where the subject matter situates outside the local limits of the Court or where the defendant is not a residents within the court local limits or cause of action arose out of the local limits.

In our present matter, the 5th and 7th defendant's P0 is dependent on the section 14 of the CPC whilst the plaintiff's counsel has relied on the Proviso of section 14 and 18 of the CPC. It is therefore apposite to have the said section and section 18 of the Code reproduced herein under;

"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 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 right to, or interest in, immovable property;

(e) For compensation for a wrong to immovable property; or

(f) For the recovery of movable property actually under distraint or attachment shall be instituted in the court within the local limits of whose jurisdiction the property is situate:

*Provided that, a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, **where the relief sought can be entirely obtained through his personal obedience**, be instituted either in the court within the local limits of whose jurisdiction the property is situate or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business or personally works for gain."*

"18. Subject to the limitations aforesaid, every suit shall be instituted in a court within the local limits of whose jurisdiction

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain;

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the court is given or the defendants who do not reside or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or part, arises.

Carefully looking at the wordings of the above quoted provisions of the law, I am of the view that, section 14 of CPC reproduced above entails that generally institution of suits is where a subject matter situates, which is in two categories;

One, on immovable properties pertaining claims of ownership, rights to or interests in or wrongful acts or complained acts done to immovable property and **two**, in claim of recovery of movable properties under distraint or attachment.

Nonetheless, section 14 of CPC the also provides exception to the general principle in a circumstances where the plaintiff claims relief or

compensation to a wrongful act done to immovable property on condition that the sought relief is entirely obtained through the defendant's personal obedience.

Whereas section 18 of the CPC is all about institution of suits, where cause of action wholly or partly arose or where defendant resides or where he or she carries on his or her business, he, or she personally works for gains. The position under section 18 of the Code was well articulated in **Abdallah case** (supra) whose judgment was delivered by the Court of Appeal on 29th August 20219 where the appellant's motor vehicle was allegedly attached or seized in Dar es salaam and the cause of action was based on tort of conversion and it was held;

"The appellant was bound by his own pleadings that is tort. In his submissions, Mr. Nduguru submitted that the tort complained of is that of converting the certificate of title and that of seizing the vehicle. We are conclusively decided that both took place in Dar es salaam."

Coming to the issue before me, it is the plaintiff's pleadings at paragraphs 6 and 11 of the plaint that there is an interest over the suit property a matrimonial asset and that, he has not consented to it being a security for the loan facility offered by the 5th defendant herein. Thus, her reliefs are on declaratory orders that she is interested in the property, that the act of the 1st defendant of pledging the suit property is illegal and

unjustifiable as well the release of the suit property. In my view the plaintiff's pleadings and prayers thereof cannot be salvaged by the Proviso of section 14 of the Code as the reliefs sought are not entirely obtainable through the defendants' personal obedience. In my opinion, if it were a caveat, the finding of the court would be different.

Since the plaintiff is plainly found claiming ownership /an interest in the suit, property and not for compensation or a wrong to immovable property whose reliefs sought are achievable through personal obedience by the defendant (s). I am humbled to subscribe to the case cited by the counsel for the 5th and 7th defendant in **Abdallah Ally Selemanni t/a Ottawa** Enterprises (supra) where it was stated;

"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 also think the appellant could not eat his cake and have it".

Basing on the above judicial precedent and reasons alluded herein the plaintiff's suit does not follow under the exceptions to the general rule, which is to effect that, suits over immovable properties should be instituted in the courts within local limits of whose jurisdiction the property is situate. That is general principle and its exception, unless the suit is in

relation of movable property, which is under distraint or attachment. In our present case, it goes without saying that, it is the High Court at Mtwara, which has territorial jurisdiction over the matter and not Land Division at Dar es salaam.


I am aware of the fact that, all the defendants are residents of Dar es salaam and the fact that, the pledge complained of arose in Dar es salaam as well as the judiciary mission of the need of accessible justice for all at affordable costs. Yet, according to the law in force, this court lacks the requisite territorial jurisdiction as correctly raised and argued by the counsel for the 5th and 7th defendant unless the law is amended to remedy the situation.

In the light of the foregoing reasons, I find the PO raised by the learned advocate for the 5th and 7th defendant not lacking merit, it is hereby sustained. I therefore proceed striking it out the plaintiff's suit for lack of territorial jurisdiction. Given the nature of the case, I make no orders as to costs.

It is so ordered.

DATED at DAR ES SALAAM this 15th February 2024




SGD. M. R. GWAE
JUDGE