

IN THE HIGH COURT OF TANZANIA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 8 OF 2003

BONIFAS PAULO APPLICANT

Versus

BURKA COFFEE ESTATE LTD. .. . RESPONDENT

R U L I N G :

R. SHEIKH, J.

This is an application by the applicant Bonifas Paulo brought under Section 63 (1) of the Magistrates' Courts Act No. 2 of 1984, for an order that the applicant be granted leave of this court to institute Civil Proceedings in respect of land held under customary law in the Arusha Resident Magistrate's Court instead of the said proceedings commencing in the primary court. The application is supported by an affidavit deposed by the applicant. The respondent resisted the application by filing a counter-affidavit. The respondent also filed a Notice of Preliminary Objections on points of law on the following grounds:-

1. That the applicant's application is incompetent as the applicant ought to have sent his intended suit to the Land Tribunal.

2. That the applicant ought to use services of the Village Land Council in terms of Part V of the Village Act, 1999 and the Regulations made thereunder in the way of G.N. No. 83 of 2001.

3. That the applicant should have filed or file his complaint before the Village or District Adjudication Committee in terms of Part IV of the Village Act, 1999 and the Regulations made thereunder in the way of G.N. No. 86/2004."

Citing in his support the decision of the Court of Appeal of Tanzania in the case of Attorney General Versus Lohar Akonaay and another T.L.R. (1995) 80 and the case of Day and Night Pharmacy Ltd. Versus Tanzania Sewing Machine Company Ltd, Arusha High Court Civil Case No. 22/1999 (unreported), counsel for the respondent submitted inter-alia that the intended suit ought to be instituted in the land tribunal established under Act No. 22 of 1992 or the Village Land Council established under the Village Land Act, 1999.

In reply Mr. Lundu, learned counsel for the applicant submitted that the legal position was confusing, and the forums alleged by the respondent being only quasijudicial bodies, the applicant is not precluded from filing his suit in the Ordinary Courts, and that the Land Tribunal has as yet not been established within the area.

Having carefully considered the written submissions by the respective learned counsels in the context of recent changes in the relevant provisions of the law, I am inclined to agree with the respondents counsel, to the extent that the Resident Magistrate's Court is not the

right forum for instituting the intended suit.

Section 4(1) of the Land Disputes Courts Act, 2002 expressly ousts the Civil Jurisdiction of Magistrates Courts established by the Magistrates' Courts Act, 1984 over any matters under the Land Act, 1999 and the Village Act, 1999. Section 167 of the Land Act, 1999 expressly provide that the courts vested with jurisdiction to determine disputes or complaints concerning land are the following:-

- a) The Village Land Council
- b) The Ward Tribunal
- c) The District and Housing Tribunal
- d) The High Court (Land Division.)
- e) The Court of Appeal of Tanzania.

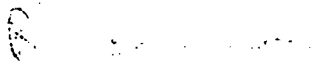
By reason of the aforesaid amendments of the law and with the coming into force of the Land Disputes Courts Act No. 2 of 2002 which came into operation on 4th October, 2003 (See G.N. No. 223 of 2003) the Primary Courts as well as the District and Resident Magistrates Courts have no jurisdiction over disputes concerning land.

Under Section 63(1) of the Magistrates Courts Act, 1984 as amended by section 57 of the Land Disputes Courts Act No. 2 of 2002. (See paragraph 7 of the Schedule thereto) read together with sections 3 and 4 of the aforesaid Land Dispute

Courts Act, it is in my view no longer necessary or proper to seek leave of this court under section 63 (1) of the Magistrates Courts Act, 1984 for purposes of commencing proceedings concerning disputes over land, notwithstanding that the land is held under customary law. Nor in my considered opinion does this court have jurisdiction to entertain any application for such leave under Section 63(1) of the Magistrate's Courts Act as amended by the Land Disputes Courts Act, 2002.

For the above reasons I am satisfied that this application is incompetent and further, that since the coming into force of the Land Disputes Courts Act, 2002, this court does not have the discretion under Section 63(1) of the Magistrates Courts Act to grant leave to institute Civil Proceedings in respect of land held under customary law in the Arusha Resident Magistrates' Court or any other Magistrates Court for that matter.

The application is accordingly dismissed with costs.

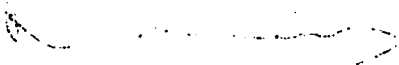

R. SHEIKH

JUDGE

26/03/2004

....5

28th
Ruling read in Chambers this/day of May, 2004 in the presence
of Mr. Urbulla, learned Advocate holding brief for both Mr.
Lundu, Advocate for the applicant and Mr. Sang'ka, Advocate
for the respondent, and in the presence of Marian, Court
Clerk.


R. SHEIKH

JUDGE

28/05/2004

RS/vii.