

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA SUB-REGISTRY)
AT ARUSHA
LAND CASE NO.71 OF 2023
MATILDA SIMON MNDEME..... PLAINTIFF

VERSUS

ADAM PETER MSURI.....DEFENDANT

RULING

27/03/ & 18/04/2024

KIWONDE, J.:

The defendant, Adam Peter Msuri, along with his written statement of defence, filed notice of preliminary objection based on two points namely:

- (a) That this court lacks jurisdiction to entertain the suit,
- (b) The suit is bad in law for being *res sub judice*.

The defendant asked this court to strike out (sic) the plaint with cost.

On 7th March 2024, it was agreed by the counsels and ordered by the court that the preliminary objection be disposed of by way of filing written submissions and both sides filed them.

In his submissions in-chief, the counsel for the defendant argued the first point of objection that the court lacks territorial jurisdiction since among the landed properties claimed by the plaintiff, that is, Plot No. 14, is



located in Kondoa town, Dodoma Region. The counsel cited section 18 of the Civil Procedure Code, Cap 33, the decisions in **S. H. Y. M Thamki & others New Palace Hotel** {1972} E. A 199 and **Fanuel Mantiri Ng'unda V. Herman Mantiri Ng'unda** [1995] T. L. R 159 to the effect that even the said property has not been properly described.

In the second limb of objection, the counsel for the defendant submitted that the suit is *res sub judice* since there is a pending suit in Arusha Urban Primary Court, Probate Cause No.215 of 2023 and there is a caveat raised by the defendant as to the ownership of the landed property located at Block X, Plot No.22 Levulosi area in Arusha, the same parties, same subject matter. He referred the court to section 8 of the Civil Procedure Code, Cap 33 (R. E 2019). The counsel asked the court to dismiss the suit with cost.

In reply, the counsel for the plaintiff started by challenging the manner the objection has been raised that the first point was not particularized enough to enable the court and the adverse party understand the gist of the objection and that the defendant is suspected not to comply with the schedule of filing written submissions.

Alternatively, the counsel for the plaintiff said the preliminary objection is hopelessly misconceived, frivolous and devoid of merits since the High



Court is one and has unlimited jurisdiction. Also, the counsel said the cause of action arose here in Arusha where the defendant resides and that the cited case laws are distinguishable from this one.

Besides that, the counsel for the plaintiff said the Probate Court is limited to appointing an administrator of the deceased estates only while the case at hand is for determining the ownership of the land in dispute which the Arusha Urban Primary court lacks jurisdiction and the reliefs sought are different. He asked the preliminary objection to be dismissed with cost.

In rejoinder submissions, the counsel for the defendant argued that this court has no territorial jurisdiction since the landed properties, the Plot No. 14 is located in Kondoa District in Dodoma Region, while this court, has jurisdiction within Arusha only, citing for reference, rules 5 and 6 of the High Court Registry (Amendment) Rules.

Also, the counsel for defendant said in Probate and Administration Cause No.215 of 2023, the defendant is challenging inclusion of the house located at Plot No.22 Block 'X' area 'F' Levulosi in the estates of the late Peter Adam Msuri and the same has not been determined.

From the pleadings and the written submissions, the main issue for determination is whether the preliminary objection is sustainable in law.



Before I determine the objection, it is imperative to resolve the concern raised by the counsel for the plaintiff that the defendant's written submissions did not comply with the scheduling orders of the court. According to the records, the defendant had to file his written submissions on 14/03/2024 and he filed them on 13th March 2024. Thus, it is apparent that the submissions were filed well within time.

Also, it was said that the first point of objection bore no particulars to let the court and the adverse party know the basis of the objection. But the notice clearly shows that the court lacks jurisdiction. The kind of jurisdiction was elaborated in the written submissions to be territorial one. Therefore, there was no need to give detailed explanation when raising the point of objection.

In the first point of objection, the defendant said this court is not clothed with territorial jurisdiction to hear and determine the suit on reason that one of the properties claimed is in Kondo town. It is true that the High Court has jurisdiction over the entire country, but there are High court zones (sub-registries) established by rules to bring the services close to the justice consumers. Also, it is correctly argued that the suit can be instituted where the cause of action arose or where the defendant ordinarily resides or where the immovable property is situated. But in this



suit, it is clearly shown that these properties are the deceased belongings, and, one located on Plot No. 22 Block 'X' area 'F' 'Levolosi, is the subject matter in Probate and Administration Cause No.215 of 2023 where caveat is raised. So, there is an issue of ownership of the landed properties which are among the claimed reliefs in this suit.

In law, where the ownership of the deceased properties is in dispute, then the probate court is empowered to determine it whether it is part of the deceased estates or not. In **Mgeni Seif Versus Mohamed Yahaya Khalfani**, Civil Application No.1 of 2009, Court of Appeal of Tanzania sitting at Dar-es Salaam (unreported), it was stated that where dispute arises as to the ownership of the deceased properties, the probate court has jurisdiction to decide on it.

Both counsels for the parties do not dispute that there is a probate cause pending in Arusha Urban Primary Court and the same is invited to determine the ownership of the deceased properties. The defendant raised caveat that the property located on plot No. 22 Block 'X' area 'F' 'Levolosi, does not belong to the deceased. It was thus, not proper for the plaintiff to institute this suit requiring this court to decide on the ownership of the said deceased properties. For that matter, the first point of preliminary objection is sustained, though in a different approach. This



suffices to dispose of the entire suit, thus, there is no need to go on expounding on the second limb of objection.

As to the way forward, the counsel for the defendant asked this court to strike out the plaint and at other time, he asked for dismissal of the suit with cost. In law, where it is found that the court has no jurisdiction to entertain the suit, the same has to be struck out for it has not been heard on merits. I have borrowed this position of law from **Shukrani Chacha Chacha Versus Shabani Zuberi Mrutu**, Land Case No.15 of 2022, High Court of Tanzania at Tabora (unreported) (Kadilu, J.). Also, in **Cyprian Mamboleo Hizza Versus Eva Kioso and another**, Civil Application No.3 of 2010, Court of Appeal of Tanzania at Tanga (unreported), it was stated *inter alia* that dismissal of the matter entails that it has been heard on merits, while, striking out means it has not been heard on merits.

Consequently, the first point of objection is sustained and the suit is hereby struck out for want of jurisdiction. No order as to cost since the matter has been disposed of at the preliminary stage.

Dated at Arusha this 18th April 2024



F. H. Kiwonde

Judge

18/04/2024.

Court: Ruling is delivered in chamber in the presence of Mr. Stephen Mhando counsel for the plaintiff, Ms. Winie Evarist for the defendant, the plaintiff and defendant; and Maryciana (RMA) this 18th April, 2024 and the right of appeal is explained.



F.H. Kiwonde

Judge

18/04/2024.

