

IN THE HIGH COURT OF TANZANIA

AT DODOMA

LAND CASE NO. 08 OF 2015

ERNEST KATO PLAINTIFF

VERSUS

JULIUS NYATUNYI.....DEFENDANT

RULING

12th & 21st July, 2017

KWARIKO, J.

The plaintiff alleged trespass in respect of mining area with mining licence no. PML 003960CZ and PML 003772 CZ on Plot no. 162/2 Block Chilwana Area Ihumwa within Dodoma Municipality against the defendant and filed this suit claiming for the following:-

- i. Payment of specific damages at a tune of Tshs 173,000,000/=.*
- ii. Payment of general damages at a tune of Tshs 1000,000/=.*

- iii. An order for perpetual injunction against the defendant from interfering with the plaintiff's plot.*
- iv. An order that the plot in dispute is legally owned by the plaintiff.*
- v. Costs of this suit.*
- vi. Interest at commercial rate from the date of filing this suit to the date on final payment.*
- vii. Any other reliefs.*

This court asked the counsel for parties to address whether this court has jurisdiction to entertain this suit. Mr. Mcharo and Mr. Matimbwi learned advocates appeared and addressed this legal issue on behalf of the plaintiff and the defendant respectively. On his part Mr. Mcharo contended that paragraph 10 of the plaint proves that the disputed land is valued at Tshs 173,000,000/= as also shown by the valuation report of the same hence this court has jurisdiction to determine the suit.

On the other hand Mr. Matimbwi argued that there is no valuation report to prove value of the disputed land hence the court cannot assume jurisdiction and the said Tshs 173,000,000/= is not backed- up by any documents. Also, it was Mr. Matimbwi's submission that Part VIII of the

Mining Act no. 14 of 2010 hereinafter to be called the Act ousted the jurisdiction of this court otherwise if it is an appeal against decision of the Commissioner for Minerals made under section 102 (1) of the Act. And the court can only enforce Commissioner's orders as per section 103 of the Act. That, since the plaintiff said under paragraph 8 of the plaint that the matter had been referred to the Commissioner and defendant was ordered to observe boundaries of the disputed land he ought to enforce that order in court or file appeal against the same if was aggrieved but not filing suit in court. It was Mr. Matimbwi's contention that this suit is improperly before the court as the court lacks jurisdiction over it.

This court is required to decide whether the court has jurisdiction to entertain this suit. As rightly submitted by Mr. Matimbwi learned advocate the plaintiff said that the dispute was heard by the Commissioner for Minerals and the defendant was ordered to comply with the order but violated the same. If that is the case then the Act speaks for itself as follows;

102.-(1) The Commissioner may inquire into and decide all disputes between persons engaged in prospecting or mining operations, either among themselves or in relation to themselves and third parties other than the Government not so engaged, in connection with-

a) the boundaries of any area subject to a mineral right;

- b) *the claim by any person to be entitled to erect, cut, construct or use any pump, line of pipes, flume, race, drain, dam or reservoir for mining purposes, or to have priority of water taken, diverted, used or delivered, as against any other person claiming the same;*
- c) *the assessment and payment of compensation pursuant to this Act; or*
- d) *any other matter which may be prescribed.*

(2) The Commissioner may make any order which may be necessary for the purpose of giving effect to the decision in proceedings pursuant to this Part, and may order the payment, by any party to a dispute, of such compensation as may be reasonable, to any other party to the dispute.

103.*-(1) The Commissioner may file for execution any order made under section 102(2) to a court presided over by a Resident Magistrate within the local limits of whose jurisdiction the subject matter of the order is situated.*

(2) On receiving the order under subsection (1), the court shall cause the order to be enforced as if that order was made by the court.

(3) The fees payable upon the enforcement of an order shall be those which would be payable upon the enforcement of the like order made by the court concerned. Appeal to High Court.

104. *Any person aggrieved by a decision or order of the Commissioner made or given pursuant to this Part may appeal to the High Court within the period of thirty days from the date on which the decision or order is given or made.*

Now, reading the law the plaintiff who said the dispute was heard by the Commissioner he ought either to appeal against it if was aggrieved by the same (section 104) or to report to the Commissioner if there was any violation so that the Commissioner may enforce the order in court (section 103). Thus, by bringing fresh suit in court the plaintiff contravened the law cited herein.

However, even if the plaintiff was entitled to file fresh suit but he has not shown that this court has jurisdiction to entertain it. He said he is

claiming specific damages of Tshs 173,000,000/= against the defendant but he has not specifically pleaded the same. The said area coverage of the disputed land shown under paragraph 10 of the plaint is his own creation and lacks any proof. No any valuation report has been shown or any receipt that he bought the land at that amount. The law under section 13 of the Civil Procedure Code [CAP 33 R.E. 2002] says that;

Every suit shall be instituted in the court of the lowest grade competent to try it.....

If that is the law then the question that follows is whether the High Court is the court of the lowest grade to entertain land matters. The answer to this question is in the negative since there is the District Land and Housing Tribunal and also the Ward Tribunal whose pecuniary jurisdiction is up to 50,000,000/= and Tshs 3,000,000/= as per sections 33 (2) (b) and 15 respectively both of the Land Disputes Courts Act [CAP 216 R.E. 2002].

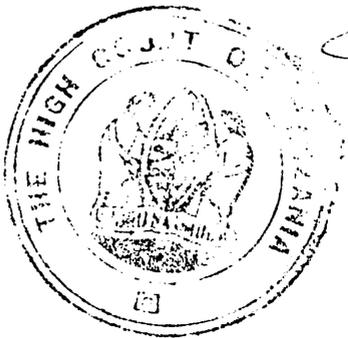
Therefore, it is up to a party wishing to file a suit to show that the same is supposed to be filed in the court having competent jurisdiction to try it.

Additionally, in the case of **TANZANIA-CHINA FRIENDSHIP TEXTILE CO. LTD V OUR LADY OF THE USAMBARA SISTERS [2006] T.L.R 70** it was also held that it is the substantive claim and not general

damages which determine the pecuniary jurisdiction of the court; in this case the plaintiff's substantive claim is Tshs 173,000,000/= which lacks prima facie proof.

For the foregoing it is clear that the plaintiff has not proved that this court has jurisdiction to entertain this suit and thus the same is improperly before the court and it is hereby struck out. As this legal issue has been raised by the court suo mottu each party to bear their own costs.

Order accordingly.



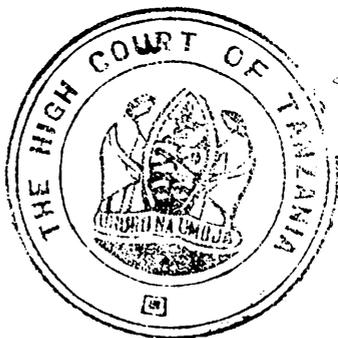
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M.A. KWARIKO

JUDGE

21/7/2017

DATED at DODOMA this 21st day of July, 2017.



A handwritten signature in black ink, appearing to be "M.A. Kwariiko", written over a horizontal line.

M.A. KWARIKO

JUDGE

21/7/2017

Date : 21/07/2017

Coram : Hon. M.A. Kwariko, J.

Plaintiff: Absent/Mr. Mkama Advocate for Mr. Mcharo Advocate

Defendant – Present

c/c : Ms. Judith

Mr. Mkama Advocate

The matter is for ruling. We are ready.

Court: Ruling delivered in court today in the presence of the Defendant and his Advocate Mr. Mkama learned counsel also holding brief for Mr. Mcharo learned Advocate for the Plaintiff.


M.A. KWARIKO
JUDGE
21/7/2017



Court: Right of Appeal Explained.


M.A. KWARIKO
JUDGE
21/7/2017

