

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)
AT DAR ES SALAAM**

CIVIL CASE NO. 192 OF 2015

**BHUPESH AIMA.....PLAINTIFF
VERSUS**

**KIRTESH BABUBHAI LADWA.....1ST DEFENDANT
RIMIT BABUBHAI LADWA.....2ND DEFENDANT**

RULING

16th & 22nd Feb. 2018

DYANSOBERA, J.:

The defendants have raised a preliminary objection in respect of the suit filed by the plaintiff on the grounds that:

- i. The court has no jurisdiction to try the case
- ii. The plaintiff has not been signed or dated according contrary to
O.VI Rule 14 of the Civil Procedure Code [Cap.33 R.E.2002]

I will start with the issue of jurisdiction as this would determine whether this court should proceed with the matter or not.

Mr. Rutabingwa and Company Advocates strongly argued in support of the preliminary objection while Dennis Magnus Mdope, learned advocate for the plaintiff argued in opposition of the preliminary objection.

As far as the issue of jurisdiction is concerned, it was argued on part of the defendant that according to the nature of the pleadings, the plaintiff in particular, the dispute arises out of a land matter- a leased property Plot No. 50/154 Clock Tower (paragraph 5 of the plaint). Counsel for the defendant submitted that under section 167 (1) of the Land Act [Cap. 113 R.E.2002], the courts vested with exclusive jurisdiction to hear and determine disputes, actions or proceedings concerning land are the Court of Appeal, the High Court, the District Land and Housing Tribunal, the Ward Tribunal and the Village Land Council, that section 2 of the Act defines land to include buildings. Further that under section 3 (1) of the Land Disputes Courts Act No. 2 of 2002 it is enacted that subject to section 167 of the Land Act, 1999 and section 62 of the Village Land Act, 1999, every dispute or complaint concerning land shall be instituted in the court having jurisdiction to determine land disputes in a given area.

Counsel for the defendant submitted that although the High Court is one of the Courts, the registry concerned is the Land Registry and land cases and not an ordinary civil suit.

The other aspect in support of the incompetence of the matter was on the pecuniary jurisdiction of this court. It was contended by counsel for

the defendant that the plaintiff is claiming special damages to the tune of Tshs. 10,000,000/= which is below the jurisdiction of this court. Reliance was made under the provisions of section 33 (1) of the Land Disputes Courts Act and section 13 of the Civil Procedure Act and it was concluded that the court competent to try this matter would be the District Land and Housing Tribunal of Ilala District and not the High Court.

Replying to this submission, counsel for the plaintiff submitted that preliminary objection is totally baseless and unfounded. He argued that the plaintiff has filed the suit in the right court and that the contention by the defendants that the registry which is proper for the suit is the land registry does not hold water nowadays since there is no court with a title High Court (Land Division) as the same was abolished by the law i.e. section 19 (a) and (b) of the Written Laws (Miscellaneous Amendments) Act, No.3 of 2010 and recognized the High Court.

As to the pecuniary jurisdiction of the court, counsel for the plaintiff told the court that what determines the jurisdiction of the court is the subject matter of the suit and not the specific or general damages and that what made the plaintiff file this suit is the value of the property in dispute and not the specific damage which he claims against the defendant.

Counsel for the plaintiff argued that the value of the subject matter in question exceeds one hundred million.

As to the application of section 13 of the CPC, counsel for the plaintiff submitted that the said section was amended by Written Laws (Miscellaneous Amendments) Act, No.2 of 2016 which means that the jurisdiction of the court was not ousted by the said provision of section 13.


There is no dispute that the matter before this court is a land matter as it is in respect of dispute over ownership of two Plots with No. 506/154 located at Clock Tower round about, Uhuru Street, Ilala District in Dar es Salaam. It is true that by virtue of the Written Laws (Miscellaneous Amendments) Act, No.3 of 2010, the definition of the term "High Court (Land Division)" was substituted for it "High Court means the High Court of Tanzania established by Article 108 of the Constitution of the United Republic of Tanzania and the term "High Court (Land Division) was deleted and substituted for the term "High Court". The issue for determination is whether this Civil Case No. 192 of 2015 has been filed in the proper registry of the High Court .

As correctly argued by learned counsel for the defendant despite that amendment and deletion, the High Court being one of the courts stipulated under section 3 (1) of the Land Disputes Courts Act [Cap. 216 R.E.2002], the registry concerned is the Land Registry where land cases are filed under the land registry as land cases etc. and not as ordinary civil suits. In other words, what was deleted by amendment are the words "Land Division" meaning that the Land Registry in the High Court remained intact and that is the current practice and procedure.

As this matter was filed not as a land case but a mere civil suit though filed in the High Court, this court has no jurisdiction to entertain it. This ground, I think disposes the whole matter.

I therefore, sustain the preliminary objection that this court has no jurisdiction to try this matter and accordingly, the suit is struck out with costs to the defendants.

Order accordingly.


W.P. Dyansobera

JUDGE

6.4.2018

Delivered this 4th day of April, 2018 in the presence of Mr. Waziri Mchome, learned counsel for the applicants and Mr. Charles Mtae, learned State Attorney for the respondent.



W.P. Dyansobera

JUDGE