

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)
AT ARUSHA**

LAND CASE NO. 10 OF 2023

**ELIMELECK FRANCIS MCHALLO (as Administrator of Estate of the late
JANETH FRANCIS MCHALO) PLAINTIFF**

VERSUS

**LAWRANCE SIMON MCHALLO.....1ST DEFENDANT
VICKY LAWRANCE MCHALLO2ND DEFENDANT
ADOLF ATHONY MSELE3RD DEFENDANT
ADELINA ADOLF MSELE4TH DEFENDANT
FIRST WORLD INVESTMENT COURT BROKER5TH DEFENDANT**

RULING

27/03/2023 & 24/04/2023

GWAE, J

This ruling emanates from the preliminary objection canvassed by the 3rd and 4th defendants' advocate, **Mr. Allen Godian**. The preliminary objection founded in two points of law to wit;

- 1. That, this court lacks jurisdiction to entertain the plaintiff's case against the respondent*
- 2. That, the plaint is fatally defective for contravening mandatory provisions of Order VII Rule 1 (i) of the Civil Procedure Code (Cap 33, R. E, 2019).*

It is perhaps apposite to outline the genesis of the parties' dispute resulting into this court's ruling. It is as follows; the plaintiff's mother, Janeth Francis Mchallo filed an abjection proceeding in the Resident Magistrate's Court against the defendants herein through Miscellaneous Civil Application No. 90 of 2018 emanating from a civil Case No. 89 of 2017 also in RM's Court-Arusha. The said civil case was successfully instituted by the 3rd respondent who lent money to the 1st respondent, security being the suit properties located at Kambi ya Fisi-Ngarenaro Ward within District and Region of Arusha.

In the course of enforcing his decree, the deceased person emerged before the executing court by way of an objection proceeding contending that, the suit houses subject of intended attachment are the belongings of the family, therefore not subject of attachment for the satisfaction of the decretal amount. Before conclusion of the objection proceeding by the RM's Court, the said Janeth Mchallo (Hereinafter deceased person) passed away on 16th day of March 2021.

Subsequent to the deceased person's demise, one Elimeleck Francis Mchallo now plaintiff suing as an administrator of the estate of the late Janeth Francis Mchallo appointed an administrator. Arusha Urban Primary Court granted the plaintiff letters of administration to the plaintiff on 6th

July 2021. As the matter was pending before the RM's Court for a long period, it thus passed through hands of Different Resident Magistrates in-charge of the trial court. The latter learned Resident Magistrate i/c made investigation as to the complaints in the Land Office and ultimately he was given information by the land officers that, Plot No. 510 Block "EE" Ngarenaro area within Arusha District (Suit properties) is the belonging of the decree debtor now the 1st respondent. Ultimately, the objection was determined not in favour of the deceased person now plaintiff on the 31st January 2021.

The order of the executing officer dismissing the objection proceeding filed by the deceased person provoked the plaintiff's institution of this suit for declaration that, the plaintiff is the lawful owner of the suit houses located at Ngarenaro Ward in Arusha Region, declaration that, the disputed property is not subject for sale and other reliefs. The defendant's counsel as earlier intimated challenges the competence of the plaintiff's suit before the court. Hence, this ruling.

Submitting on the impugned jurisdiction of the court, Mr. Allen stated that, this court has no jurisdiction to entertain the suit since it had been filed after the order of Resident Magistrate's Court of Arusha via Civil Case No. 89 of 2017 delivered on 31st January 2023 through Miscellaneous

Application No. 2018. It is his view that Order XXI Rule 62 of CPC provides that if an objection proceeding does not succeed, the only remedy to the aggrieved party is to institute the suit before the court where the objection proceeding was heard and determined. He sought guidance of the court by this court's decision in **ALAF Ltd vs. Said Ndyamkama**, Land Case No.12 of 2015 (unreported) at Page 12-13 of the typed judgment, this court where it was held that, the suit would be conveniently filed to the court, which overruled the objection proceedings that is RM's Court. Also, **Sosthenes and another vs. Flora shauri**, Civil Appeal No.249 of 2020 (unreported) where the Court of Appeal stated that after the objection is pursued under Order XXI Rule 62 of CPC, a subsequent civil case may be filed in the same court that entertained objection proceeding. He concluded arguing the first limb by stating that, the suit was to be filed in the RM's Court.

It is further the argument of the defendants' counsel in respect of the second limb of the objection that, the plaint filed by the plaintiff is in contravention of Order VII Rule (i) of the CPC requiring statement of value of the subject matter for the purpose of the court's fees and jurisdiction. The defendants' counsel went on arguing that the plaintiff's statement at paragraph 25 of the plaint that, the value is in excess of 300, 000,000/=

does not vest the court with the requisite pecuniary jurisdiction. He the bolstered his argument with the decision of the Commercial Division, Commercial Case No. 12 of 2013 between **Keramas and others v. Exim Bank** (unreported) at page 16 of the judgment, the court emphasized the requirement of indicating the value of the subject matter. He added that, the specific amount be clearly stated as the pecuniary jurisdiction is not determinable by the judge but the Registry Officer.

In his response to the defendants' submission, Mr. George Njooka argued that, he is of the view that, the suit ought to have been filed in the court of competent jurisdiction to hear and determine the matter in dispute, which is the High Court. He went on submitting that, jurisdiction being the creature of the statute, thus, all land matters have to be dealt with proper machineries established by the Land Disputes Courts Act Cap 216, Revised Edition, 2002. He submitted that, the RM's Court is not one of the courts vested with the jurisdiction. He invited the court to adhere to section 3 (2) of the cap 216 (Supra).

Furthermore, the plaintiff's counsel argued that, the defendants' counsel has wrongly interpreted the decision in **ALAF's case** (supra). plaintiff's counsel further cemented that, the decision of the Court of Appeal in **Sosthenes and another vs. Flora shauri (supra)** is to the

effect that, the institution of a fresh suit where objection proceedings are heard and determined is done in the court with competent jurisdiction. It is also his view that, the Court of Appeal stated that the RM's court would have jurisdiction where there was no land dispute resolution Machineries in place unlike in our instant case as the dispute between the parties arose in the year 2018 when there were land courts in place. He cited the case of **Metoldi Domel vs. Samson and two others**, Civil Appeal No. 14 of 2022 (unreported).

Responding to the 2nd point, Mr. Njoka argued that, section 37 (1) (a) of Cap 216 (supra) the court has pecuniary jurisdiction where a subject matter has value in excess of Tshs. 300,000,000/=. He further submitted that, in practice, if one says the amount in excess of three hundred million it means it exceeds three hundred million and that the fees payable as per first schedule. He also argued that the fees paid is correct, Cap 358 of the revised Edition and Court fees Rules of 2018.

Through his brief rejoinder, the learned counsel for the 3rd and 4th defendant stated that, a court with competent jurisdiction for entertaining a suit after a decision in an objection proceeding against the intended attachment, is the Resident Magistrate's Court. His reason being that, it is the order or decision passed by the Resident Magistrate's Court. He also

reiterated that, the plaintiff ought to have specifically indicated the value of the subject matter.

That briefly outlined herein, it is now for the court to determine the preliminary objection as raised and argued.

Starting with the **1st limb of objection**. It is undisputed fact Mr. Allen based his PO in Order XXI and Rule 61 of CPC and case, with its clear wording that, once an application for objection proceeding fails the remedy available is to institute a suit and not filing an appeal to an appellate court. In **National Housing Corporation vs. Peter Kassidi & 4 Others**, Civil Application No. 294/16 of 2017 (unreported), delivered on 27th July, 2022, where the upper Bench interpreting the said Order reasoned as hereunder:

*"Going by the above-cited two authorities, we take it to be firmly established law that, pursuant to Order XXI Rule 57(1) of the CPC, **where an objection is preferred and an order determining that objection is subsequently made, in terms of Rule 62 of the same Order, the only remedy available to the party against whom that order is made is to institute a regular suit to prove his claim.** Put in other words, after the decision on an objection proceeding has been made by a competent court, there is no remedy for appeal or revision. The rationale behind the above-stated stance of the law is not farfetched. We hope that it will be immediately appreciated even by the*

*doubting Thomases that, not emanating from a suit, an order determining objection proceedings is not appealable. (See **Ibrahim Mohamed Kabeke v. Akiba Commercial Bank and***

The same position was also recapped in **Thomas Joseph Kimaro v. Apaisaria Martin Carl Mkumbo and Oscar Carl Mushin (2002)**

TLR 369

"Where a claim or objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute but, subject to the result of such suit, if any, the order shall be conclusive".

The position of the law when an objection proceeding is determined by the court which hosted it, the remedy available is to file a suit and that is what the plaintiff has precisely done. However, indeed the present parties are not in controversy in that regard save to a place of suing subsequent to a decision determining the objection proceedings filed by the plaintiff.

It was the view of Mr. Allen that, a competent court is the one entertained the objection proceeding. His decision is founded on the case law especially the case of **Sostheness Bruno** (supra) and that this court in **ALAF** (supra) whereas Mr. Njooka was of the view that, the counsel for

the defendant wrongly understood **ALAF**'s case. He thus invited the court to diligent scrutiny the decision in the **Sostheness Bruno** as well as this court's decision in **Metoldi Domel** (supra). For easy of understanding the parts of holdings of the said decisions are reproduced herein under;

The court of Appeal through its verdict delivered on 14th June 2022 in **Sosthenes and another vs. Flora shauri**, Civil Appeal No. 249 of 2020 (unreported) held inter alia;

*"However, a party aggrieved by the decision, under rule 62 of Order XXI, may lodge a suit **in the court of competent jurisdiction** as per this court's decisions on the **Bank of Tanzania v. Verram P. Valambia**, Civil Reference No. 4 of 2013 and **Kezia Violet Mato v. The National Bank of Commerce and three others**, Civil Appeal No. 127 of 2005. Obviously, where one loses in a subordinate in a suit filed pursuant to the order XXI Rule 62 has a right to challenge such decision to the High Court according to the law (emphasis added)"*

And this court in **Metoldi Domel vs. Samson and two others**, Civil Appeal No. 14 of 2022,

"Similarly, in the present matter, I find that the appellant's remedy was to file fresh suit to establish the right over the property in dispute. Considering the matter is over the land dispute, therefore the appellant was proper to file the suit before the land tribunal as

machinery vested with jurisdiction to deal with land matters.”

In **ALAF’s** case, the learned High Court Judge in his respectful judgment relying on two (2) decisions of the High Court, Land Division in which the Commercial Division of the High Court entertained the objection proceedings emphasized that, no other than the court which determined objection proceeding can entertain a suit in terms of Order XXI Rule 62 of CPC. Those two decisions are; **Rosebay Eton Kwakabuli vs. Aziza Selemani & two others**, Land Case No. 57 of 2019 and **Jaquiline Donath Kweka vs. Exim Bank (T) Ltd and 4 others**, Land Case No. 57 of 2019 (both unreported).

On my party, I have carefully traversed on the statutory provision as well as the courts ‘decisions cited by the parties’ counsel. Perhaps I would hold that, the words, “court of competent jurisdiction or machinery vested with jurisdiction to deal with land matters” used by the Court of Appeal and this court in the case of **Sostheness Bruno** (supra) and **Metoldi Domel** (supra) respectively are relevant and I wholly subscribe to them. The court that is conferred by law to hear and determine a matter before it. According to the Black’s Law Dictionary the term a “*Court of competent jurisdiction*” is defined as follows;

"A court that has the power and authority to do a particular act; one recognized by law as possessing the right to adjudicate a controversy. Also termed competent court."

While adhering to the principle in **Sostheness Bruno** (supra) I would like to add the following options or scenarios, which may not be exhaustive;

Firstly, where an objection proceeding is filed in a Labour Court during an application for execution of a decree by a holder of the decree of either the Labour Court or the Commission for Mediation and Arbitration. In this situation, in my view, whenever an objection relating to an intended attachment and sale of a landed property flops, a losing party **cannot** subsequently file a suit over ownership of the landed property in the Labour Court but to a court vested with power and authority to adjudicate on land matters. In **Shyam Thanki and Others vs. New Palace Hotel** (1972) HCD 92 where it was held and I quote;

"Since jurisdiction of any court of law is a creature of a statute, therefore it follows that, any case must be filed in a court or quasi-judicial body vested with power by a statute. All courts in Tanzania are created by statutes and their jurisdiction is purely statutory. It is an elementary principle that parties cannot give court jurisdiction which does not possess".

That being that case, such an aggrieved party shall not be curtailed from filing a suit in a competent court in either District Land and Housing Tribunal or High Court simply because it is not the court that heard and determined the original suit and or objection proceedings. In the situation where a dispute is over ownership of a piece of land, a court bestowed with power to hear and determine is a land court created by the statute. As of now, hearing and determination of land disputes are domain of land courts as provided under section 3 of the Land Courts' Act, Cap 3 R.E, 2019.

Secondly, When the value of the subject matter for the intended attachment and sale in the satisfaction of a court's decree exceeds the pecuniary jurisdiction of the court or quasi-judicial body which heard and determined either both original suit/dispute and objection proceeding or objection proceedings where a decree is transferred to another court. For example if the Resident Magistrate's court is after enforcing a decree by a way of attachment and sale over a motor vehicle whose value is Tshs. One billion. The one claiming to be owner of that motor vehicle whose value exceeds three hundred (300,000,000/=) million shillings, shall not file a suit in the Resident Magistrate's court merely on the basis that, the Resident Magistrate Court's heard and determined an objection proceeding. It is so, for an obvious reason that, the pecuniary jurisdiction

of the RM's Court is limited to three hundred million (Tshs. 300,000,000) pursuant to section 40 (2) (a) of the Magistrate's Court Act, Cap 11 Revised Edition, 2019 which is mutatis mutandis with section 33 (2) of the Land Disputes Courts' Act, Revised Edition Act (supra)

Thirdly, where a subordinate court is vested with a power to hear and determine a matter, for instance a claim of ownership of a tractor or bus whose value does not exceeds its pecuniary jurisdiction. In this situation a losing party is entitled to file a suit in such subordinate court or District Land and Housing Tribunal in order to establish the right which he claims to be owner of the property in dispute after his objection proceeding has been decided not in his favour.

Fourthly, that, where a government's institution or its agency or authority was a party to an objection proceeding. After decision thereof, the proper forum is neither the subordinate Court nor the District Land and Housing Tribunal but the High Court. This position is clearly stipulated under section 7 of the Government Proceedings Act, Cap 5, Revised Edition, 2019 which reads;

"Notwithstanding any other written law, no civil proceedings against the Government may be instituted in any court other than the High Court."

See also section 16 as amended by Written Laws (Miscellaneous Amendments) Act No. 1 of 2020 amending section 16 of the Government Proceedings Act by adding subsection 4 immediately after subsection (3) of the Act).

Having discussed as herein above, I find that, the proper court for the plaintiff's claim on ownership of the suit houses after the order of Resident Magistrate's Court dismissing his objection proceeding is either to file the suit to this court as a land court or the District Land and Housing Tribunal depending on the value of the subject matter. Consequently, the 1st limb of objection is overruled and

Coming to the **second point** of preliminary objection. Since parties are in controversy, as to whether an indication of the value of the subject to in excess of three million shillings contravenes Order VII Rule 1 of CPC. In order to be safer in determining this issue I find it pertinent to have Order VII Rule 1 and section 33 (2) of the Land Disputes Courts Act which is reproduced herein under;

Order VII

1. *The plaint shall contain the following particulars-*

(a) *N/A*

(b) *N/A*

(c) N/A

(d) N/A

(e) N/A;

(f) The facts showing that the court has jurisdiction;

(g) N/A

(h) N/A

(i) A statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits

Section 33 (2) of Cap 216

(2) The jurisdiction conferred under subsection (1) shall be limited-

(a) In proceedings for the recovery of possession of immovable property, to proceedings in which the value of the property does not exceed three hundred million shillings; and

According to the Order VII Rule 1 (F) and (i) of the Civil Procedure Code, a plaintiff presenting a suit to a court of law where the Code (supra) is applicable must display value of the subject matter in his plaint for the determinations of the requisite jurisdiction and for court fees assessment. The words used, in my firm view, couch to the mandatory requirement. This requirement was stressed in the case of **Kerama Enterprises Co. LTD and 2 others vs Exim Bank**, Commercial Case no. 12 of 2013 (unreported) where, stated;

"I should point out here also that, apart from the statement in the plaint of the value of the subject matter of the claim being crucial in the determining the jurisdiction of the court, it is also important for the filling fees"

In our present matter, the plaintiff has clearly indicated the value of the suit property to be in excess of Tshs. 300, 000, 000/= but he has not specifically indicated the value of the disputed property. The plaintiff's indication of value of the property in dispute is not far from section 37 (1) (a) of the Land Disputes Act (supra) which reads;

"37 (1) Subject to the provisions of this Act, the High Court shall have and exercise original jurisdiction-
(a) In proceedings for the recovery of possession of immovable property in which the value of the property exceeds three hundred million shillings."

According to the above quoted provision of the law, the court shall have original jurisdiction in claims on immovable property whose value exceeds three hundred million. That means in excess of the threshold of Tshs. 300,000,000/= entertainable by the District Land and Housing Tribunal. In our instant suit the plaintiff has categorically stated that, the value of the subject matter is in excess of Tshs. 300,000,000/= in my ordinary understanding that, the plaintiff's statement signifies that, the

value of the subject matter is in addition to Tshs 300,000,000/=or more than Tshs. 300,000,000/=

The question that follows is, whether this court would have jurisdiction of the value of the subject was indicated to be less than, Tshs. 300, 000, 000/=. It is trite law that, suits should be filed in the court of the lowest grade as envisaged by section 13 of the Civil Procedure Code (supra) which reads;

*"Every suit shall be instituted **in the court of the lowest grade competent to try it** and, for the purposes of this section, a court of a resident magistrate and a district court shall be deemed to be courts of the same grade:*

***Provided that, the provisions of this section shall not be construed to oust the general jurisdiction of the High Court.**" Emphasis added."*

According to the above proviso, requirement of institution of a suit to the court of the lowest grade does not mean to overthrow the jurisdiction of the High Court unless and until a relevant piece of legislation expressly provides to that effect. The Court of Appeal of Tanzania judiciously emphasized the jurisdiction of the High Court in **National Bank of Commerce Limited vs. National Chicks Corporation Limited & 4 Others**, Civil Appeal No. 129 of 2015 (unreported) where it was stated that;

"It is manifest that the High Court is one in this country and it derives its jurisdiction or mandate from either the Constitution or any law to that effect. It is also absolutely clear that it has unlimited jurisdiction and judges of the High Court are mandated to exercise all or any part of the powers conferred on the High Court."

More so, this court has rightly held in various occasions that, parties are advisable to institute the matter in the court of the lowest rank in order to enable the parties to exhaust all remedies available. However, that alone cannot take away jurisdiction of the High Court statutorily provided unless expressly provided by a statute as per Article 108 (1) of the Constitution as the case here where section 37 (1) (a) of the Land Disputes' Courts Act, Cap 216, R.E, 2019 has specifically provided the jurisdictional threshold

Having demonstrated as herein, both defendants limbs of objection are overruled with costs

It is so ordered.

Dated and delivered at Arusha this 24th April, 2023




M.R. GWAE,
JUDGE