

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 125 OF 2019

**ARNOLD MOSHI 1ST PLAINTIFF
DAR EXPRESS COMPNAY LIMITED 2ND PLAINTIFF
VERSUS
SHIRWA COMPANY LIMITED 1ST DEFENDANT
THE REGISTERED TRUSTEES OF
CHAMA CHA MAPINDUZI 2ND DEFENDANT**

RULING.

S.M. MAGHIMBI, J:

On the 25/09/2019, the plaintiffs herein lodged this suit against the two defendants, jointly and severally, praying for judgment and decree as follows:

- a) An order for payment of Tanzania Shillings Five Hundred Twenty Five Million (TZS. 525,000,000/=) being estimated value of the demolished structure and land improvements previously carried out on the suit property;
- b) An order of payment of Tanzania Shillings Four Hundred Sixty Million (TZS. 460,000,000/=) being estimated costs of the movable assets lost during the unlawful demolition and evacuation process;
- c) An order of payment of Tanzania Shillings Five Hundred Million (TZS. 500,000,000/=) being compensation for the loss of income;

- d) An order for payment of interest in (c) above at Bank rate from 05th day of June, 2015 to the date of judgment;
- e) An order for payment of interest on the decretal amount at court rate from the date of judgment until the date of satisfaction/payment in full;
- f) Costs of this suit; and
- g) Any other or further relief(s) as this honorable court may deem fit and just to grant.

On the 20th day of August 2020, while filing their Written Statement of Defence, the 1st defendant filed along with it three points of preliminary objection on point of law to the effect that:

- 1. The Plaintiffs' claim being not based on ownership of land, this Court has no jurisdiction to entertain the matter;*
- 2. The suit being originated from the Tort of Trespass is bad in law for being out of time; and*
- 3. The Plaintiffs have no cause of action against the 1st Defendant.*

In this suit, the plaintiffs were represented by Mr. Moses Mwitete, learned advocate while the 1st defendant was represented by Mr. Paul Mkenda, learned advocate. By an order of the court dated 23/07/2020, the objections were disposed by way of written submissions.

At the onset of his submissions to support the application, Mr. Mkenda prayed to withdraw the third point of preliminary objection that the plaintiffs have no cause of action against the 1st defendant. He then submitted on the remaining points of objection as hereunder.

On the first point of objection that the Plaintiffs' claim being not based on ownership of land, this Court has no jurisdiction to entertain the matter, Mr. Mkenda submitted that Section 3 (1) and (2) of the Land Disputes

Courts Act, No. 2 of 2002 RE 2019 ("The Act") give powers to the Court to entertain matters concerning Land disputes. That the phrase '*dispute or complaint concerning land*' stated in the above provision has been interpreted by His Lordship Mlay J, (as he then was) in the case of **Anderson Chale vs. Abubakar Sakapara, Civil Appeal No. 121 of 2014** (unreported) to mean matter which a right on land or interest thereon is in dispute. He submitted further that in a simple language, we can say it is the matter where ownership of the land or interests is in dispute, the interpretation which was also adopted by Hon. Maige, J in the case of **Charles Rick Mulaki Vs. William Jackson Magero, Civil Appeal No. 69 of 2017**, High Court of Tanzania, at Mwanza. (Unreported). He pointed that on page 9 of the his judgment, the Hon. Judge had this to say:

"The phrase "any matter under the Land Act and Village Land Act" used in Section 4(1) of the LDCA, I agree with Mr. Silas, would be, if read in isolation, broader enough to capture all disputes arising from the rights and liabilities created under the Land Act. Nevertheless, since the provision of Section 3 (1) and 4 (1) of the LDCA are in effect subject to the provision of the LA and course including the provision of Section 167 (1) thereof, it can reasonably be implied that, the intention of legislature was that the two phrases would be used synonymously. In my view therefore, the phrase "any matter under the land Act" in the context, should be given narrow interpretation to mean a dispute pertaining to right on land or interest thereon.

He then argued that based on above interpretation, the dispute between the Plaintiffs and 1st Defendant is not a land matter to give this Honourable

Court powers to hear and determine. That in order to understand, whether the court has jurisdiction or not, the decision of Hon. Mziray, J (as he then was) stated in the **Exim Bank (T) Limited Vs Agro Impex (T) Ltd, Parvez Vira And Azmina Vira, High Court Tanzania, Land Division, at Dar Es Salaam, Land Case No. 29 of 2008** (Unreported,) is relevant. That in the decision, the Court introduced two criteria which when applied can assist the court to understand if it has jurisdiction to determine the matter or not. He then pointed to page 7 of his judgment, where Hon. Mziray had this to say:

"Two matters have to be looked upon before deciding whether the Court is clothed with the jurisdiction. One, you look at the pleaded facts that may constitute a cause of action. Two, you look at the reliefs claimed and see as to whether the Court has power to grant them and whether they correlate with the cause of action".

He then submitted that the first criteria/test is to look on the pleaded facts that constitute a cause of action. That in particular paragraphs No. 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the plaint which shows that the cause of action between the Plaintiffs and 1st Defendant, which is the basis of the claims, originated from the complaints as to the breach of the lease agreement, or relationship between the landlord (2nd Defendant) and his Tenant (the 1st Plaintiff). For the purposes of avoiding doubt he reproduced paragraphs 5, 6, 8 and 10 as they read in the plaint:-

"That the second Plaintiff, one, Dar Express Company Limited was the licensee over a portion of the peace of land located at Kinondoni Mkwajuni Area and owned by the 2nd Defendant, the area which is now described as plot No. 614 and 615 Block 40 Kinondoni in Dar es Salaam. The said licence of use was granted to it sometime in 10th

October 1993 by the office of Chama cha Mapinduzi (CCM), kata ya Kinondoni....."

He further pointed on paragraph 6 of the Plaintiff:

"That the first Plaintiff one Arnold Moshi on the other part was a lawful tenant over a portion of the peace of land located at Kinondoni Mkwajuni Area. The area which is now described as Plot No. 614 and 615 Block 40 kinondoni in Dar es salaam. The said portion was leased to him sometimes in 1993 by Chama Cha Mapinduzi (CCM)....."

And paragraph 8:-

"That the Plaintiffs were bonafide licensee and lessee of the portion located at Kinondoni Mkwajuni Area, the area which now is described as plot No. 614 and 615 Block 40 Kinondoni in Dar es Salaam, and which include three permanent structures that were run by the 1st Plaintiff as modern Bar famously known as Mamba Club, one permanent modern structure that was run by the 2nd plaintiff as a Yard".

Apart from the above mentioned paragraphs, Mr. Mkende also pointed on paragraph 10 of the Plaintiff which state as follows:-

"That on the 5th day of June 2015 the 1st Defendant through its agents and/ or workmen and without any lawful order or prior notice started to demolish a part of the landed properties. That upon seeing that the plaintiffs immediately inquired from them on the matter, but no assistance was provided to them whatsoever....."

He hence argued that the above piece of explanation shows that the plaintiffs' complaints have originated from the existence of a contractual

relationship of the landlord and tenant between the plaintiffs and the 2nd defendant. On the second criteria of the reliefs claimed, he submitted that in the case at hand, the relief clause shows that the Plaintiffs is praying against the Defendants to be compensated for the breach of the lease agreement. The reliefs read as follows;-

1. Payment of Tanzania Shillings Five Hundred Twenty Five Million (TZS. 525,000,000/=) being estimated value of the demolished structure and land improvements previously carried out on the suit property,
2. Payment of Tanzania Shillings Four Hundred Sixty Million (TZS. 460,000,000/=) being estimated costs of the movable assets lost during the unlawful demolition and evacuation process,
3. Payment of Tanzania Shillings Five Hundred Million (TZS. 500,000,000/=).

Mr. Mkenda then submitted that, as per the facts of the plaint, the Plaintiffs are claiming to be paid damages and compensation, following the breach of the lease agreement. That the Plaintiff is not complaining on the ownership of Land and that the reliefs claimed by the Plaintiffs are normal civil reliefs, which can only be granted by the civil courts and do not relate to ownership of land or matters concerning land as per Section 3(1) of the Act No. 2 of 2002 RE 2019.

He then argued that the issue is whether this Court, sitting as Land Court, has jurisdiction to hear, determine and grant reliefs which are not related to land. Negating the issue, he submitted that this court sitting as land court, has only exclusive powers to hear and determine the matter relating to ownership of land not otherwise. He concluded that this court sitting as land court has no jurisdiction to hear and determine the Plaintiffs case.

On whether if the dispute is not a matter related to land, Mr. Mkenda argued that it cannot be said that the law is silence and has not yet establish any mechanism to handle the disputes originating from the landlord and tenants contractual relation. He pointed out that subpart IV of the Land Act, Cap 113 of 2019 ("The Land Act") has been amended and is dealing with Landlord and Tenant relationship. Section 107 (1) of the Land Act CAP 113 RE 2019 requires any complaint originated from the landlord and Tenant to be referred to the District Court. Further that Sections 109(2) and (3) of the Land Act, gives direction to the lessee to claim reliefs for damages suffered as a result of the lessor's breach of the lease agreement. The reliefs include damages, decree of specific performance or an injunction. He submitted further that under Section 109(3), where the lessee commences an action for damages, the court may award damages for the inconvenience suffered by the lessee and those dependants living with him for the lessor failure to comply with the covenants and conditions under the lease. In addition may award an element of damages to the lease by way of a penalty on the lessor.

He then argued that the facts stated on paragraphs 5, 6, 7, 8, 9, 10, 12, 13 of the plaint and reliefs claimed herein are but lessee claims against the 1st Defendant for damages arising from the alleged eviction of the Plaintiffs and demolition of lease premises. Therefore, the Plaintiffs ought to comply with direction of the law stated in Section 107 (1) read together with Sections 109 (2)(3) of the Land Act, by referring their complaints to a District Court and not otherwise.

He concluded that the issue of the jurisdiction is the creature of the law and not wishes of the parties. That as Section 107(1) of the Land Act,

established the special mechanism, the parties have no option but to comply with the requirements of the law and that the Plaintiff has failed to comply with section 107 (1) of the Land Act, which confers jurisdiction to matters originating from the lease agreement hence the suit is improper for want of jurisdiction.

In reply, Mr. Mwitete submitted that the ground is fallacious and utopian as nowhere in the plaint the plaintiff has pleaded breach of lease agreement. That the contents of paragraph 5, 6, 8 and 10 of the plaint are there to establish the plaintiff's possessory rights over the landed property. That the 2nd defendant, being the landlord to the plaintiff, is a necessary party.

Mr. Mwitete also cited the case of Charles Ricki Mulaki (Supra) where the Court held that:

"that the expression "matters concerning land" would only cover proceedings for protection of ownership and or possessory rights in land"

He argued that being the licensee and/or tenants on the property, the plaintiff's acquire possessory rights over the land, therefore have every right to sue and bring an action before this Honorable Court against any party in violation of their possessory rights on that landed property.

Mr. Mwitete submitted further that Section 88(1)(a) of the Land Act provides for the implied rights of the lessee and that it is from this provision that the plaintiffs as tenants get their possessory rights in the leased land to sue against the 1st defendant. He submitted further that the second point of objection that the suit is time barred implies that the 1st defendant understands the cause of action that this case has been brought on which he termed to be a trespass to land. That Mr. Mkenda is trying to

sneak in the idea that the cause of action is breach of lease agreement in order to create a non-existing cause of action. He argued that there is no single paragraph in the plaint that the plaintiff mentions to have been wronged by the 2nd defendant who is their landlord neither is there a claim of breach of the lease agreement that exists between them hence the suit is not a breach of landlord-tenant relationship as the 1st defendant wrongly claims.

He submitted further that the reliefs sought in the plaint falls within the court's pecuniary jurisdiction and that this court has jurisdiction to determine the matter under the provisions of Section 37(2) of Land Disputes Courts Act. That the prayers are crystal that the plaintiff is seeking for compensation and damages for loss they have suffered due to the first defendant's trespass to a property which they hold possessory rights and not compensation on breach of lease of agreement. He submitted further that the jurisdiction of the court in this matter is ascertained by Section 37(b) of the Land Disputes Courts Act, which is an estimated value of Tshs. 200,000,000/-

Mr. Mwitete then distinguished the applicability of the Section 109(2) of the Land Act as claimed by the 1st defendant to the current situation on the ground that the plaintiffs are not suing the 2nd defendant for breach of covenant as it is evident in their pleadings. That the 2nd defendant joined the suit to help the court properly adjudicate the matter as he is indispensable in the institution of this suit. He supported his argument by citing the case of **Abdulatif Mohamed Hamis Vs. Mehboob Yusuf Osman & Another, Civil Revision No. 06/2017** (unreported) and

prayed that the objection has no merits and should be dismissed as it intends to impede the plaintiffs from justice they deserve.

I have considered the substance of the first preliminary point of objection which challenges the jurisdiction of this court to entertain the matter. It was Mr. Mkenda's argument that looking at both the pleaded facts that constitute a cause of action and the reliefs claimed, this court has no jurisdiction to entertain the matter. His submission was that the relief clause shows that the Plaintiffs are praying against the Defendants to be compensated for the breach of the lease agreement. On the facts that constitute the cause of action, he submitted that paragraphs No. 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the plaint shows that the cause of action between the Plaintiffs and 1st Defendant, which is the basis of the claims, originated from the complaints as to the breach of the lease agreement, or relationship between the landlord and tenant.

On his part, Mr. Mwitete argued that Mr. Mkenda is misleading the court because the contents of paragraph 5, 6, 8 and 10 of the plaint are there to establish the plaintiff's possessory rights over the landed property. Further that the 2nd defendant, being the landlord to the plaintiff, is a necessary party. That being the licensee and/or tenants on the property, the plaintiffs acquired possessory rights over the land, therefore have every right to sue and bring an action before this Honorable Court against any party in violation of their possessory rights on that landed property.

I will first define jurisdiction with regard to what the courts have to look upon in defining jurisdiction. According to **Halsbury's Laws of England, 4th Edition, Re issue Vol 10 para.314**, jurisdiction is defined as follows:

*"By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or take cognizance of matters presented in a formal way for its decision. **The limits of this authority are imposed by the statute**, charter or commission under which is constituted, and may be extended or restricted by similar means"*

It is obvious from the above definition that jurisdiction is a creature of a statute. As it was held in the cited case of **Exim Bank (T) Limited Vs Agro Impex (T) Ltd & Others** (Supra), generally, when we look at the statute to define jurisdiction, two matters are considered. The first thing the court will look at is the cause of action as gathered from facts of the case pleaded by the plaintiff. The second thing to look at is the reliefs that are sought in the claim. After looking at the two matters is when the courts can look at the statute upon which jurisdiction of the court to determine the reliefs is found.

In this case, the relevant facts which constitute the cause of action are on para 8 and 10 which are reproduced:

Para 8: *"That the **Plaintiffs were bonafide licensee and lessee** of the portion located at Kinondoni Mkwajuni Area, the area which now is described as plot No. 614 and 615 Block 40 Kinondoni in Dar es Salaam, and which include three permanent structures that were run by the 1st Plaintiff as modern Bar famously known as Mamba Club, one permanent modern structure that was run by the 2nd plaintiff as a Yard"*.

Para 10: *"That on the 5th day of June 2015 the 1st Defendant, through its agents and/ or workmen and without any lawful order or prior notice **started to demolish a part of the landed***

properties. That upon seeing that the plaintiffs immediately inquired from them on the matter, but no assistance was provided to them whatsoever"

What is gathered from those facts is that the plaintiffs are not owners of the disputed land, their only status in possession of the land prior to the demolition is the relationship they have with the 2nd defendant, that of landlord/tenant and licensor/licencee respectively. The actions of the 1st defendant affected the plaintiffs' property but the question remains why they sued the 2nd defendant as well. This is answered by para 4 of the plaint which reads:

"That the plaintiffs claim against the defendant jointly and severally is for an order for payment of compensation."

That para is self-expressing that the liability of the defendants is both jointly and severally, therefore Mr. Mwitete cannot succeed in his argument that the 2nd defendant was sued as a necessary party and that there is nowhere in the pleadings that she is mentioned. She is actually mentioned on the most important para of the plaint, para 4 which is the statement of the claim. At this point therefore, the pleadings are clear that the plaintiffs claim their right to sue from the relationship they had with the 2nd defendant, that of the lessor and lessee.

The next question is, if the 1st defendant is sued because of demolition on the property of the 2nd defendant, why are plaintiff's suing? Are they suing on behalf of the 2nd defendant? From the pleadings as they stand, the answer is no, the plaintiffs filed the plaint because they allege to be lawful lessee of the 2nd defendant hence their relationship cannot be defined any other way than that of landlord/tenant. It then follows that the action of the 1st and 2nd defendants jointly and severally affected the plaintiffs as

lessee and licensee and they have filed this suit claiming for damages. In the cited case of **Charles Ricki Mulaki** (Supra) my brother Judge Hon Maige held:

*"that the expression "matters concerning land" would only cover proceedings **for protection of ownership and or possessory rights in land**"(Emphasis supplied).*

In the pleadings, the plaintiff is not claiming for ownership or possessory rights over land but rather compensation for demolition of structures in which they were tenants and licensee, they have not made any claim to remain in possession of the suit property.

Having concluded that the claim is not of ownership or possessory rights, the next step is to look the most crucial determinant of jurisdiction, the statute which confer jurisdiction of the court to determine the claim. With respect however, I must make it clear of the misinterpretation of Section 3(1) of the Land Disputes Courts Act by Mr. Mkenda. Contrary to what he claimed, that jurisdiction of this court is on ownership to land, the jurisdiction of the Land Court established under the Section is not limited only to ownership of land, rather it expands to interest over land as well as possessory right hence the words used "every dispute or complaint **concerning land**". This cannot be construed to mean that it is only limited to disputes over ownership to the land. Therefore as I proceed to determine the objection, the Section 3(1) should not be confined to only disputes over ownership of land but should be given its wider context, as intended by the legislature, to mean any dispute or complaint concerning land.

Having said that let me now look at what the provisions of the statute on the jurisdiction provides. Section 107(1)(b) of the Land Act clearly confers jurisdiction of the District Court where it provides that:

"An application for relief may be made to a district Court- (b) in a proceeding brought for the purpose by any of the persons referred to in subsection (2) before the lessor commences a proceeding mentioned in paragraph (a)."

The persons referred in sub-section (2) include the lessee who is the 1st plaintiff in this case. Furthermore, in the cited case of **Charles Rick Mulaki** (Supra). The court had this to say:

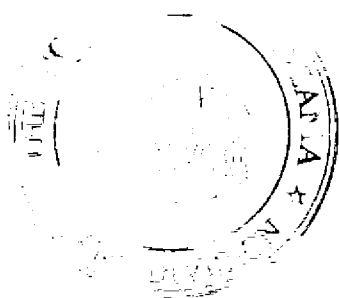
*"The phrase "any matter under the Land Act and Village Land Act" used in Section 4(1) of the LDCA, I agree with Mr. Silas, would be, if read in isolation, broader enough to capture all disputes arising from the rights and liabilities created under the Land Act. **Nevertheless, since the provision of Section 3 (1) and 4 (1) of the LDCA are in effect subject to the provision of the LA and course including the provision of Section 167 (1) thereof, it can reasonably be implied that, the intention of legislature was that the two phrases would be used synonymously.** In my view therefore, the phrase "any matter under the land Act" in the context, should be given narrow interpretation to mean a dispute pertaining to right on land or interest thereon."*

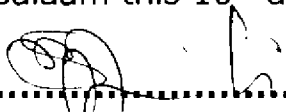
Having the holding of the court in mind, it is important that in their pleadings, the plaintiffs should clearly plead facts which disclose or establish their right on land or interest thereon. The plaint lacks such facts as the only claim established under para 4 is compensation for the demolished structures and not right to and or interest thereon. Their claim

is based on the demolished structures and forceful evacuation from the land and their properties demolished (para 13 of the plaint). These are all issues which fall under sub-part IV of Part IX of the Land Act particularly Section 107(1)(b); relief(s) to which are provided for under Section 109(2)(a). Under the Land Act, the court vested with jurisdiction to determine those claims is clearly stated by the statute to be the District Court and not this court as Mr. Mwitete would want the court to find. Jurisdiction cannot be assumed, it is statutorily provided for and once a statute has conferred jurisdiction on a particular court it cannot be ripped by a court order.

Owing to the above findings, it is obvious that pursuant to Section 3 of the Land Disputes Courts Act, this court has no jurisdiction to entertain the current matter which does not concern ownership or interest over land, but is on a tenancy relationship that existed between the plaintiffs and the 2nd defendant. Consequently, this suit is hereby dismissed for want of jurisdiction. The 1st defendant shall have their costs.

Dated at Dar es Salaam this 10th day of December, 2020




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S.M. MAGHIMBI
JUDGE