

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

AT TABORA

LAND CASE NO. 15 OF 2022

SHUKRANI CHACHA CHACHA PLAINTIFF

VERSUS

SHABAN ZUBERI MRUTU DEFENDANT

Date of Last Order: 03.05.2023

Date of Ruling: 25.05.2023

RULING

KADILU, J.

The plaintiff instituted in this court the suit against the defendant claiming for **first**, an order for declaration that the plaintiff is a lawful owner of the suit house on Plot No. 318 Block "D" in Mpela Ward within Tabora Municipality. **Second**, a declaration that the purported sale of disputed house to the defendant is null and void/or voidable. **Third**, an order for permanent restraint of the defendant, his agents and any person acting in his interests in connection to the suit property. **Fourth**, an order compelling the defendant to handover to the plaintiff all documents of title of the suit property. **Fifth**, general damages at the tune of Tshs. 30,000,000/=. **Sixth**, interest at 25% of specific damages from the date of filing the suit to the date of judgment. **Seventh**, interest at 12% of general damages from the

date of judgment to the date of final settlement. **Eighth**, any other reliefs that the court shall deem fit to grant and, **ninth**, costs of the suit.

The defendant filed a written statement of defence in which he raised a preliminary objection on point of law that the court has no pecuniary jurisdiction to determine this case. The plaintiff is represented by Mr. Kelvin Kayaga, the learned Advocate whereas the defendant enjoyed legal services of Ms. Flavia Francis, also the learned Advocate. Ms. Flavia submitted that this court has no jurisdiction to entertain this case since its original jurisdiction in land matters starts where the market value of the property exceeds Tshs. 300,000,000/= (Tshs. Three Hundred Million).

Ms. Flavia made reference to Sections 33 (2) (a) and 37 (1) (a) of Land Disputes Courts Act, [Cap. 216 R.E. 2019]. She submitted that the suit property which is the house built on Plot No. 318 Block "D" in Mpela Ward within Tabora Municipality, has market value of Tshs. Fifteen Million (15,000,000/=) as per paragraph 12 of the plaint, which is below the original jurisdiction of this court. The learned Advocate explained that it is from the pleadings that the plaintiff stated the amount of the disputed property as Tshs. 15,000,000/=. According to her, the suit falls under pecuniary jurisdiction of the District Land and Housing Tribunal and not the High Court.

It is the argument of the learned Counsel that in paragraph 6 of the plaint, the plaintiff claims that the value of the suit property is Tshs. Three Hundred-Five Million (305,000,000/), but the same is not supported by valuation report. She referred to Section 13 of the Civil Procedure Code,

[Cap. 33, R.E 2019] which requires every suit to be instituted in the court of the lowest grade competent to try it. To cement her argument, the learned Advocate cited the cases of ***Tanzania - China Friendship v Our Lady of the Usambara Sisters***, [2006] TLR 70, ***Mwanaidi Abdallah Juma v Damian Kimaro***, Land Case No. 64 of 2022, High Court of Tanzania, Land Division at Dar es Salaam and ***Alphone Kakweche & Another v Bodi ya Wadhamini BAKWATA Tanzania***, Land Appeal No. 97 of 2019, High Court of Tanzania, Land Division at Dar es Salaam.

Based on these authorities, Flavia urged the court to dismiss the case at hand with costs because the estimated value of the property does not amount to its actual value which should be supported by a valuation report. She invited the court to read the case of ***Alphone Kakweche*** (*supra*) in which it was stated that in the absence of valuation report, the purchase price of the landed property is considered to be its value. She opined that in the case at hand, not only the purchase price should be used to determine the value of the disputed property, but also the pleadings filed by the plaintiff in this court.

In reply, Mr. Kelvin Kayaga submitted that, it is true the value of the property in dispute is Tshs. 305,000,000/= as shown in paragraph 17 of the plaint. He argued that valuation report is not a legal requirement in filing a plaint as it is a matter of evidence which should be established where the value of property is disputed. According to him, the value of the property in dispute is not an issue before this court. He said, this argument makes a

preliminary objection raised by the defendant disqualified in law since it needs proof. To support his argument, he referred to Order XIII, Rule 1 of the Civil Procedure Code, [Cap 33, R.E 2019] and the cases of ***Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Ltd*** [1969] EA 696 and ***TANESCO Ltd v Mufungo Leonarld Majura & 14 Others***, Civil Application No. 94 of 2016.

Mr. Kelvin added that Section 13 of the CPC and cases cited by Advocate for the defendant are distinguishable because in the instant case, the alleged sale is also contested by the plaintiff hence, it cannot be used as the basis in determining value of the suit property. He prayed the court to dismiss the preliminary objection with costs.

Ms. Flavia re-joined that argument by Advocate for the plaintiff that the sale of disputed property is contested has no legal base because it is the plaintiff who has attached the sale agreement to the plaint which means that he recognises the said sale. She maintained that the point she has raised is a point of law which does not need any evidence since it is based on jurisdiction of the court. She insisted that the issue of jurisdiction is critical and it should be determined by the court at the initial stage or at any other point once it is raised.

I have gone through the rival submissions of the learned Advocates and I now resolve the question whether or not this court is vested with the requisite jurisdiction to determine the case at hand. It is undisputed that the

sale price of the suit property is Tshs. 15,000,000/= as shown in paragraph 12 of the plaint and the sale agreement attached thereto. The plaintiff has however, stated in paragraph 17 of the plaint that the value of the property in dispute is Tshs. 305,000,000/=. As argued by Advocate for the defendant, the plaintiff did not attach valuation report indicating that the market value of the suit property is Tshs. 305,000,000/=.

The position is now settled in our jurisdiction that annexures are part of pleadings and that parties are bound by their pleadings. (*See George Ndege Gwandu & Others v Kasturi Safari Tekko & Another*, Civil Appeal No.255 of 2018 and *Barclays Bank (T) Ltd v Jacob Muro*, Civil Appeal No. 357 of 2019, Court of Appeal of Tanzania at Mbeya. In the plaint, the plaintiff craved for leave of this court so that the sale agreement may form part of the plaint. However, in his reply the learned Advocate for the plaintiff submitted that the sale agreement itself is being challenged by the plaintiff. In my humble opinion, since the sale agreement as annexed by the plaintiff formed part of his plaint, I find it proper not to disregard it.

I fully agree with Ms. Flavia that the question of jurisdiction is very fundamental and should be determined before the case can proceed to its finality. It was held by the Court of Appeal in the case of *Sospeter Kahindi v Mbeshi Mashani*, Civil Appeal No. 56 of 2017 that, the question of jurisdiction of a court of law is so fundamental. Trial of any proceeding by a court lacking requisite jurisdiction to seize and try the matter will be

adjudged on appeal or revision. In the present case the question of jurisdiction is a point of law and it arose from the pleadings.

Since the subject matter of dispute is capable of being valued, the plaintiff was supposed to attach a valuation report rather than relying on a mere estimation of the value of the suit property. It was held in numerous cases that the estimated value does not amount to the factual value of the subject matter and in case the estimated value of the suit property exceeded the value in the contract of sale of the immovable property the estimated value must be proved by valuation report so as to get the actual value of the suit land in order to justify the jurisdiction of the court.

Ms. Flavia invited this court to the provisions of Sections 33 (2) (a) and 37 (1) (a) of the Land Disputes Courts Act which are to the effect that the High Court lacks original jurisdiction to hear matters for recovery of possession of immovable property whose value do not reach Tshs. 300,000,000/=. Moreover, Section 13 of the Civil Procedure Code requires every suit to be instituted at the lowest court competent to try it. It was held so by the Court of Appeal in the case of ***Manjit Singh Sandhu & Others v Robibi R. Robibi***, Civil Appeal No. 121 of 2014.

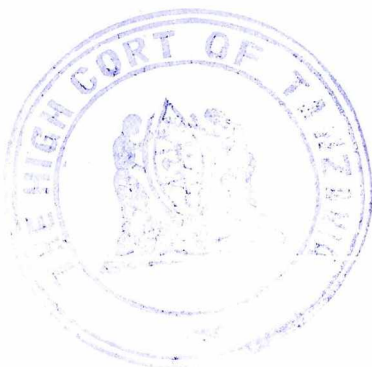
It was the contention by Mr. Kelvin that in the present case, the High Court is such the lowest court to try this case and that, valuation report is a matter of evidence which should be determined during the trial. With due respect to the learned Counsel, I do not agree with him that this case is fit

to be determined by the High Court in exercising its original jurisdiction. In ***Mwananchi Communications Ltd & 2 Others v Joshua K. Kajula & 2 Others***, Civil Appeal No. 126/01 of 2016, it was held that, matters challenging jurisdiction of a court are important and they should be disposed of as early as possible. Therefore, the question of jurisdiction raised by the Advocate for the defendant cannot wait to be determined at the trial stage.

The determination of court's jurisdiction requires visiting a wide spectrum of legislations. On my part, I cannot agree more that jurisdiction is a very crucial aspect in litigation. Without it, a court has no power to make any step. As such, a court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

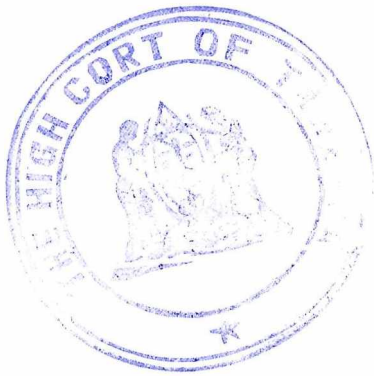
When all is said and done, the cumulative effect of the foregoing is that, I find the arguments by the Counsel for the defendant having merits. Therefore, the preliminary objection is sustained. The suit is incompetent before this court and it is hereby struck out. The plaintiff is at liberty to institute a fresh suit in the court with competent jurisdiction to entertain it of course, subject to the law of limitation. No order as to the costs.

Order accordingly.




KADILU, M.J.,
JUDGE
25/05/2023.

Ruling delivered in chamber on the 25th Day of May, 2023 in the presence of Mr. Kelvin Kayaga, Advocate for the plaintiff and Ms. Flavia Francis, Advocate for the defendant.




KADILU, M. J.

JUDGE

25/05/2023.