

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

AT DAR ES SALAAM

LAND CASES NO. 175 OF 2023

BADDI TWAHA ALLY PLAINTIFF

VERSUS

CRDB BANK PLC 1ST DEFENDANT

BANI INVESTMENT LIMITED 2ND DEFENDANT

16th & 25th September, 2023

L. HEMED, J.

This ruling is in respect to the preliminary objection raised by the 1st Defendants herein **CRDB BANK PLC**, against the suit on the point of law thus:

"...this Honourable Court has no requisite jurisdiction to entertain this suit as it is not a land matter"

The preliminary objection is based on what is pleaded in the Plaint. The plaintiff, one **BADDI TWAHA ALLY**, claims against the defendants for refund of the sum paid to them for the purchase of the house with residential licence No. KNDO26371, LO No. KND/UBG/UBK 21/60 situated at Ubungo Kibo Area, Ubungo Municipality within the city of Dar



es Salaam. The basis for the claim is that he found that the property sold to him is within the demarcated land for road expansion by Tanzania National Roads Agency (TANROADS).

Hearing of the preliminary objection proceeded by way of written submissions, where, the plaintiff was represented by **Mr. Emanuel Saghan**, learned advocate while the 1st defendant enjoyed the service of **Mr. Boniface Woiso**, learned advocate.

In support of the preliminary objection, Mr. Woiso asserted that in view of section 3(1) and (2) of the Land Disputes Courts Act [Cap 216 R.E 2019], this suit is not a land matter and thus this court has no jurisdiction to entertain it. To bolster his argument, he cited the case of **Amon Petro Amon and Another vs Nakuha Moses Myombo and Another**, Civil Review No. 02 of 2022, High Court of Tanzania at Arusha and the case of **Bhupesh Aima vs Kirtesh Babubhai Ladwa and Another**, Civil Case No.192 of 2015, High Court of Tanzania at Dar es Salaam (Unreported).

In reply thereof, Mr. Saghan cited the case of **National Bank of Commerce vs National Chicks Corporation and Others**, Civil Appeal No. 129 of 2015 (CAT) (Unreported) and stated that, any division of the High Court can now hear and determine any case that is brought



before it, irrespective of the designated divisions.

He contended that, the dispute between the plaintiff and the defendants is purely on land, as it originates from the transaction involving land. It was his view that if the court will find that the transaction that led to the institution of this suit is not a land dispute as claimed by the 1st defendant, still this court would have jurisdiction to try this suit, because, the High Court of Tanzania derives its jurisdiction from Article 108 of the Constitution of The United Republic of Tanzania, Cap 2. He insisted that, the High Court has unlimited jurisdiction, and any judge of the High Court can try any matter that is brought before him/her pursuant to the constitution.

Mr. Saghan submitted further that, this court has equally powers to try the suit, and since the matter has already been filed in this court, it should proceed in this court. To support his argument, he referred to the decision in **National Bank of Commerce vs National Chicks Corporation and Others** (Supra) at page 31. He ultimately urged the court to dismiss the preliminary objection with costs.

In his rejoinder submission, Mr. Woiso was of the view that, the counsel for the plaintiff mixed between transactions involving land and the dispute concerning land. He insisted that the plaint clearly shows that



the suit at hand does not concern land in view of section 3(1) of the Land Disputes Courts Act.

Regarding the cited case of **National Bank of Commerce vs National Chicks Corporation and Others (Supra)**, Mr. Woiso submitted that, the cited case is distinguishable to the instant matter as in the said case the court was called to determine whether a suit arising out of mortgage was properly filed at the commercial division. After scrutiny, the Court found that the suit was commercial case as the claim was not on the mortgaged land but only on the breach of mortgage contract and hence it was properly filed at the commercial division. He stated that, this is not the case in the instant suit; hence, the cited case is misplaced.

Having gone through the rival submissions by both parties, the issue for determination is whether this court has jurisdiction to hear and determine this suit. In order to properly determine whether or not this court has jurisdiction over the matter at hand, first we must resolve the question as to what constitute a land dispute. A "**land dispute**" involves conflicting claims to rights in land by two or more parties, focused on a particular piece of land, which can be addressed within the existing legal framework. The parties to a land dispute must have conflicting



interests/claims on either ownership, usage or possession of land.

In making an assessment as to whether the matter at hand falls within the category of land disputes, I went through the contents of the plaint together with the reliefs claimed. In fact, I found that, the plaintiff claims for the refund of the sum paid to the defendants for the purchase of the house and for payment of the costs incurred as the result of the misrepresentation done by the defendants in the process of selling the house to the plaintiff.

From the contents of the plaint and the reliefs claimed, it is obvious that, the plaintiff does not claim ownership, or the right to use or possess the house as against the defendants. The plaintiff's interest is only for the money he paid to the defendants as purchase price. The dispute is thus not a land one. The matter being not a land dispute, can this Division of the High Court have the requisite jurisdiction to determine it?

The learned counsel for the plaintiff contended that this court has jurisdiction to hear and determine this suit because it has all powers of the High Court. I am at one with the learned counsel for the plaintiff that the High Court of Tanzania derives its jurisdiction from Article 108(1) of the Constitution of the United Republic of Tanzania, Cap.2 which provides thus: -



*108(1) There shall be established a High Court of the United Republic of Tanzania (to be referred in short as the High Court), the jurisdiction of which shall be specified in this constitution **or any written law**". (Emphasis added).*

The words "**or any written law**" in the cited article hereinabove suggests that the jurisdiction of the High Court is not derived only from the Constitution of the United Republic of Tanzania. It implies that there are other pieces of legislation, from which the jurisdiction of the Court can be specifically provided.

It should also be noted that based on the provision of Article 108(1) of the Constitution of the United Republic of Tanzania (supra), the Legislature of Tanzania has passed a number of legislation that confer jurisdiction to the Court. Among the legislation is the Land Disputes Courts Act, [Cap.216 RE 2019], which gives jurisdictions over the land matters to this Court. Section 3(1) and (2) of the Act, provides thus: -

"3.-(1) Subject to section 167 of the Land Act and section 62 of the Village Land Act, every dispute or complaint concerning land shall be instituted in the Court having jurisdiction to determine land disputes in a given area.



- (2) *The Courts of jurisdiction under subsection (1) include-*
- (a) *N.A*
 - (b) *N.A*
 - (c) *N.A*
 - (d) *the High Court; or*
 - (e) *N.A"*

The above provision appears to empower the entire High Court over land matters. However, the High Court Registries Rules, GN. No.96 of 2005, appear to limit the jurisdiction of this division to land matters only. Rule 5E, of the Rules provides thus:-

*"5E. There shall be a land division of the High Court within the Registry at Dar es Salaam and at any other registry or sub-registry as may be determined by the Chief Justice **in which, subject to the provision of any relevant law, appellant proceedings or original proceedings concerning land may be instituted.**" (Emphasis added)*

From the above provision, nothing other than proceedings concerning land may be instituted in the Land Division of the High Court. I have also noted that my sister at the bench **Hon. Dr.**



Mwenegoha J, encountered similar situation in **Ally Shaibu Khamis vs Sher – Mohamed Bahdour (As a Person Representative of Hajra Bibi Mohamed Hussein (Deceased) Land Case No.117 of 2021**, she had this to say: -

"It is not in dispute that the High Court is creature of the Constitution and all High Court judges when entertaining matters before them in courts, have equal jurisdiction.....However, the High Court Land Division at Dar es Salaam, was left with full mandate of dealing with land matters only. Henceforth, Judges sitting before this division have no jurisdiction to hear or determine cases not related to land disputes....."

I totally subscribe to the above position taken by my sister and insist that though all High Court judges have equal jurisdiction, but those placed at Land Division, will exercise only the powers vested to the division that is, admitting and determining only proceedings concerning land. Before I pen off, I must comment that the purpose of establishing divisions or registries is to facilitate the administration and dispensation of judicial functions. They are meant to enhance

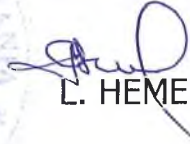


expeditious and proper administration and dispensation of judicial functions. Therefore, every division, registry or sub-registry must exercise its function pursuant to its mandate provided by the law establishing it, not otherwise.

In the final analysis, I find merits on the preliminary objection. This suit being in the wrong forum, I have no option other than to strike it out. The entire suit is hereby struck out without costs. It is so ordered.

DATED at **DAR ES SALAAM** this 25th day of September, 2023.




L. HEMED

JUDGE