

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 200 OF 2023

LIGATE GIDION SANDEPLAINTIFF

VERSUS

THINK BIG REAL ESTATE.....1ST DEFENDANT

REHEMA ELRAS.....2ND DEFENDANT

AMOS NGAVO.....3RD DEFENDANT

LATAA AYOUB.....4TH DEFENDANT

HAPPY MZENA.....5TH DEFENDANT

MPENDE ADEN.....6TH DEFENDANT

KHADIJA KISHIMBA.....7TH DEFENDANT

ASIMWE KISHENYI.....8TH DEFENDANT

RAHMA KASANGA.....9TH DEFENDANT

PASCAL IGNAS.....10TH DEFENDANT

EPHESY SEDEKRA.....11TH DEFENDANT

ELIYA MBALWA.....12TH DEFENDANT

KULWA MBENA.....13TH DEFENDANT

SUBIRA BENEDICT.....14TH DEFENDANT

HELLEN ANDERSON.....15TH DEFENDANT

HAMAD MWADINI.....16TH DEFENDANT

FATMA AHMED.....17TH DEFENDANT

ROMONO BUJIKU.....18TH DEFENDANT

BELLA JOHN.....	19TH DEFENDANT
OMBENI MWILE.....	20TH DEFENDANT
MAUWA KOKOLWA.....	21ST DEFENDANT
OMARY IDDY.....	22ND DEFENDANT
MOSES MINYERERE.....	23RD DEFENDANT
HUSSEIN NURU.....	24TH DEFENDANT
WILLIAM FRANK.....	25TH DEFENDANT
METHOD ERNEST.....	26TH DEFENDANT
CHRISTOPHER CHARLES.....	27TH DEFENDANT
MWANAISHA MTORO.....	28TH DEFENDANT
AMON NDOVEN.....	29TH DEFENDANT
DENICE RETACHURA.....	30TH DEFENDANT

RULING

24th August 2023 & 28th September 2023

L. HEMED, J.

The plaintiff herein, through the legal service of Mr. Mnyira M. Abdallah, advocate is suing the defendants for trespass into the suit piece of land measuring 7 acres situated at Ungindoni within Kigamboni Municipality. The plaintiff claims to own the entire suit landed property.

The defendants through the legal service of Mr. Godon Nason Waduma and Mr. Issa Mrindoko, advocates, filed written statements of defence disputing the

entire claims. Alongside their defence they raised the preliminary objections. The counsel for the 1st, 2nd, 4th, 6th, 7th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 29th and 30th had the following points:-

"1. The Court has no jurisdiction to determine this suit for it concerns breach of contract.

2. The plaintiff has no cause of action against with the defendants."

On his part, the learned counsel for the 3rd, 5th, 8th, 16th and 28th defendants had only one point of preliminary objection thus:-

" The plaint having not disclosed the pecuniary value of the suit property is the subject matter of this case, this court lacks pecuniary jurisdiction to entertain the same." (sic)

When the matter was called on 24th August 2023, I directed parties to argue the preliminary objection by way of written submissions. The learned counsel complied with the order as they filed their submissions promptly as ordered. I have gone through the submissions and opted to begin with the point of the plaintiff failure to disclose the value of the suit property.

Generally, the learned counsel for the defendants have argued that the legal basis of the point is Order VII Rule 1(i) of the Civil Procedure Code, Cap.33. According to the learned counsel, the said provision provides a legal requirement that a plaint must contain a statement of the value of the subject matter involved in the suit for the purposes of determining the pecuniary jurisdiction of the court. In substantiating their point, they cited the decisions of this court in **Fereji Said Fereji vs Jaluma General Supplies Limited & Another**, Land Case No.86 of 2020 and **Joha Ismail & Another vs Juma Kilongozi & 7 others**, Land Case No.3 of 2021 which insisted on the requirement of stating the value of the suit landed property.

In reply thereof, the counsel for the plaintiff refuted the point and argued that the court has jurisdiction to determine the matter at hand. He asserted that the value is stated under paragraph 4 of the Plaint where it has been stated thus, *"...the plaintiff sues the defendants for trespassing into his piece land (sic) and failure to pay tzs 380,463,00 (sic) being principal consideration for agreement to survey and sell the land"*. He also argued that the jurisdiction of this court is unlimited and can be determined by the substantive claim which in his view, has been stated under paragraph 4 in the Plaint. He cited the decision of the Court of

Appeal in **Tanzania – China Friendship Textile Company vs Our Lady of Usambara Sisters**, (2006) T.L.R 70 to cement his point.

Having gone through the rival submissions, the question for determination is whether the Plaintiff has stated the value of the suit property and if not, whether it is fatal. What to be contained in the Plaintiff is provided under Order VII Rule 1 of the Civil Procedure Code, [Cap.33 RE 2019]. Among the requirements in the Plaintiff is to state the value of the suit property. Rule 1(i) of Order VII of the Code, provides thus:-

"The plaintiff shall contain the following particulars-

(a)...

(b)...

(c)...

(d)...

(e)...

(f)...

(g)...

(h)...

(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.” (Emphasis added)

From the provisions above cited, it is mandatory to state the value of the suit property. The rationale behind the provisions is to enable the court to ascertain if it has jurisdiction and for purposes of determining the amount of court fees upon admission.

It is trite law that, in determining preliminary objection like the one at hand, one has to look at the pleadings and their annexures. This was elucidated in **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd** [1969] E.A 696 that:-

".....a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as preliminary point may dispose of the suit."

In the present matter, the plaint is the one to be looked at in order to find out if the value of the suit property has been stated. I have gone through all 27 paragraphs in the plaint and I could not find any stating the value of the suit landed property.

I have noted that in paragraphs 4 and 11 of the Plaint, the Plaintiff has stated the amount of Tshs. 380,963,000/=which he claims from the 1st Defendant. The said amount is not the value of the suit landed property alleged to have been trespassed by the defendants. From the foregoing, it is obvious that the value of the suit landed property has not been stated.

The question is whether it is fatal. The wording of the provision of Order VII Rule 1(i) of the CPC, uses the word "shall" to imply mandatory requirement to make a statement of the value of the subject matter of the suit property. Failure to state the value of the suit landed property renders the suit incompetent before the court. As stated in the provision, the purposes of stating the value of the suit property is to enable the court ascertain if it has pecuniary jurisdiction over the matter before it. Failure to state the pecuniary value of the suit land as it is in the matter at hand, incapacitates the court in making assessment as to its jurisdiction. Having found merits in the limb of failure to state the value of the suit property in the plaint, I see no need of wasting time and energy to determine the other limbs, for doing that will only amount to an academic exercise.

In the upshot, this suit is incompetent for failure to state the value of the suit landed property contrary to Order VII Rule 1(i) of the Civil Procedure Code, [Cap.33 RE 2019]. The entire suit is thus struck out with costs. It is so ordered.

DATED at **DAR ES SALAAM** this 29th September, 2023.



A handwritten signature in blue ink, appearing to read "L. Hemed". The signature is fluid and cursive, with a large loop at the end.

L. HEMED

JUDGE