

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

LAND CASE NO. 18 OF 2023

AMIRI HAMIS IDD..... PLAINTIFF

VERSUS

AKIBA COMMERCIAL BANK PLC.....1ST DEFENDANT

MAJEMBE AUCTION MART LTD.....2ND DEFENDANT

LILIAN FRANCIS MBETWA.....3RD DEFENDANT

R U L I N G

Date of Last Order: 04.09.2023

Date of Ruling: 25.09.2023

T. N. MWENEGOHA, J.

The 1st defendant above named, being against the instant suit, raised a preliminary objection on point of law that, the suit is unmaintainable for want of pecuniary jurisdiction. Winfrida Hombe, the learned counsel for the 1st defendant, argued in her written submissions that, the house in question is located at Plot No. 70 Block No. 18, Mwinyimkuu Street, Magomeni Mapipa Area, with Certificate of Title Number 100986. That, as per the valuation report, annexure ACB-7, attached to the Written Statement of Defense by the 1st defendant, its value does not exceed 300,000,000/- (Three Hundred Million). Therefore, the suit has been filed contrary to **Section 32(2)(a) of the Land Disputes Court's Act, Cap**

219, R. E. 2019. That, it ought to have been filed at the District Land and Housing Tribunal, as stated in the case of **Florian M. Manyama & Another vs. Maximillian Thomas, Civil Appeal No. 121 of 2020, Court of Appeal of Tanzania**, (unreported).

In reply, Advocate Thadeus Massawe for the plaintiff maintained that, the submissions in favour of the objection was supported by evidence, a valuation report. That is to say, this objection is not on point of law, rather on facts. Hence, it goes against the rules given in **Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd (1969) EA 966**. He insisted that, the same report is not genuine, hence the Court cannot rely on it as it has no evidential value.

In her brief rejoinder, the learned counsel for the 1st defendant reiterated her submissions in chief and insisted that, the suit at hand is unmaintainable. I have considered the submissions of both parties. The issue in need of determination is whether the objection at hand has merits or not.

In a course of answering this question, I decided to make a perusal of the pleadings, both the Written Statement of Defense, along with their annexures. Paragraph 13 of the Plaintiff states the value of the suit property to be 320,000,000/= (Three Hundred and 20 million Tanzanian Shillings). The Written Statement of Defence, contain an annexure, ACB-7, a valuation report, disputing the value of the suit property. I did that, to satisfy myself as to the correctness of the allegations by the counsel of the 1st defendant, as far as the jurisdiction of this Court over the matter is concerned.

The problem however, that has emerged in the course of hearing of the objection, is a dispute over the validity of the valuation report. Now we need evidence first to prove the authenticity of the report itself, for the Court to take judicial notice. For this reason, I find the objection at hand to be on factual issue than a point of law. Hence, I join hand with Mr. Massawe, that, it defeats the rules given in **Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd** (supra).

That being said, I find the objection raised by the counsel for the 1st defendant to have no merits and overrule it accordingly with costs. The main suit shall proceed into hearing until its final determination.

It is so ordered.



T. N. MWENEGOHA

JUDGE

25/09/2023