

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 216 OF 2023

LEO DEVELOPERS LTD 1ST PLAINTIFF

KEVAL DINESH BHIKHA (the Administrator of

The Estate of the late JYOSTANA DHANJI BHIKHA..... 2ND PLAINTIFF

VERSUS

AZANIA BANK LIMITED 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

SHARIFA MUSTAFA JUMBE (the Administrator of

The estate of the late ISMAIL HAMIS KALOLO 3RD DEFENDANT

RULING

Date of Last Order: 22.09.2023

Date of Ruling: 29.09.2023

A.MSAFIRI, J.

The plaintiffs claim among other things for declaration that they are legal owners of the suit property on Plot No. 12 Block 29, Sukuma Street in Kariakoo, Dar es Salaam, and that there was no legal sale by auction to the 3rd defendant, the plaintiffs be restored to the suit property and that the 1st defendant be ordered to release the sum balance of USD *Alls.*

52,000 to the plaintiffs being the balance of money required for the completion of the construction of the suit house.

On 23.08.2023 when the 3rd defendant was filing his written statement of defence, he raised a preliminary point of objection to the effect that;

1. *This court lacks jurisdiction to entertain this suit as it is pure commercial matter.*

The disposal of the preliminary objection was by way of oral submissions whereby the plaintiffs were represented by Mr Barnaba Lugua, learned advocate, 1st and 2nd defendants were represented by Ms Caroline Lyimo, learned State Attorney while the 3rd respondent was represented by Mr Francis Makota learned advocate.

Submitting on the preliminary objection, Mr Makota was of the view that the suit at hand is purely commercial transaction matter. He referred Section 3(1)(2) of the Land Disputes Courts Act, Cap 216 [R.E.2019], which empowers this Court to determine all matters concerning the land hence that this Court has no jurisdiction to entertain the matter at hand as it is commercial.

He stated further that this Court has no jurisdiction because the pleaded facts in the plaint does not relate with land issues capable of *Allo*.

being entertained by this Court. That at paragraph 6 of the plaint, the plaintiffs challenges the contract which was executed between the plaintiffs and the 1st defendant. He added that, paragraph 17 of the plaint puts it clear that the plaintiff challenges the contract which was executed between the plaintiff and the 1st defendant and specifically seeks for the order of specific performance of the contract. He added that, except for the relief under (ii), all the reliefs prayed are purely commercial that cannot be awarded by this court.

To fortify his points, he cited the cases of **Exim Bank (T) Limited vs. Agro Impex (T) Ltd & 2 others**, Land Case Appeal No. 29 of 2008 and **Camel Oil (T) Limited vs. Bahdela Company Limited**, Land Case No. 104 of 2021.

He prayed that the suit be struck out with costs.

In response Mr Lugua was of the view that the cause of action is very clear that there was no sale but that the plaintiffs were evicted from the suit property. He further contended that there is nothing commercial between the plaintiffs and the 3rd defendant in the case at hand and that the plaintiffs are seeking to recover their house, which is a pure land matter and that all the reliefs prayed can be granted by this Court. He argued that the cases referred to this court by the counsel for the 3rd

Adls

defendant are all distinguishable from the circumstances in the suit at hand.

He insisted that this is a land matter and not commercial one, and prayed that the preliminary objection be overruled.

On rejoinder, Mr Makota reiterated what was submitted in chief.

After a careful scrutiny of the parties' submissions, the issue in controversy here is whether this Court has jurisdiction to entertain the suit at hand.

In order for this Court to determine as to whether the matter is land matter or not, one would have to look on whether the proceedings cover protection of ownership and/or possessory rights in land, as it was stated in the case of **Charles Rick Mulaki vs William Jackson Magero**, HC. Civil Appeal No. 69 of 2017 at page 9.

The same was discussed in the case of **Abdul Rahim Shadhili as the Gurdian of Miss Fatuma A.R. Shadhili vs. Mandhar Govind Raykar**, Civil Appeal No. 296 of 2014 HC. DSM (Unreported).


In this suit at hand, looking at the pleadings in the Plaint, the plaintiffs claim to have interests and or right over the suit property, in that

Alls.

regard I find that this Court has jurisdiction to entertain such matter as it qualifies to be land matter.

Having said so, I find this preliminary objection to have no merit and it is hereby overruled. Costs shall be in the cause.

It is so ordered.


A. MSAFIRI
JUDGE
29/09/2023

