

TANZANIA / JUDGMENT

20100610 TZHC Dar es Salaam

COURT
TZHCDECIDED
10 June 2010

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-1 I IN THE HIGH COURT OF TANZANIA I AT DAR ES SALAAM I CIVIL CASE NO. 153 OF 2007
ABISAI EMANUEL PANDE 1st PLAINTIFF MARY
MASSAWE 2ND PLAINTIFF I VERSUS I INSPECTOR
GENERAL OF POLICE ... 1st DEFENDANT I HON. ATTORNEY GENERA11 2ND
DEFENDANT MARIAM NASSOR KISANGI 3RD DEFENDANT Date of last order 19/3/2010
Date of Ruling .. 16/6/2010 I

RULING

Shangwa, J. On 16/9/2008, the Adrcate for the 3 rd defendant in this case raised a point preliminary objection that this · · d'lction court h as no Juris . t0I entertain . L an d matters. 0 n 8/5/2009, I ordered that thJ point of preliminary objection 2, I should be argued by way of written submissions and I counsel for the parties complied with the order. 1 In brief, the Advocate for the 3 rd defendant submitted I that the plaintiffs among other things claim for restoration I of the document of title and a, house. He contended that as ' the claim concerns Land matters, the plaintiffs ought to have filed the suit in the High: Court, land Division or in the I District Housing and Land , Tribunal depending on the I pecuniary value of the claim. I In reply, counsel for the plaintiffs submitted that the I point of preliminary obj ectioA raised by counsel for the 3 rd I defendant is misconceived, · groundless, unfounded and I frivolous. He referred the court to paragraph 6 of the plaint ! where the plaintiffs clearly points out that the suit concerns a claim of damages for malicious prosecution of 3 the plaintiffs by the defendants, and restoration of the properties taken from the residential premises of the plaintiffs, and restoration of all documents which were taken from the plaintiffs' premises at Ubungo, and restoration of the plaintiffs' house which was illegally handed over to the 3 rd defendant. According to the Notice of Preliminary Objection, the court has been called upon by counsel for the 3 rd defendant to determine as to whether or not this court has jurisdiction to entertain the suit. There is no where in the Notice of Preliminary Objection is it indicated that this court is also required to decide as to whether or not the plaint was properly signed or verified. I will therefore deal with the issue of jurisdiction only. 4 In order to find out as to whether or not this court has jurisdiction to entertain the suit, I went through the plaint by reading each paragraph. Paragraph 6 of the plaint by clearly shows that the plaintiffs' claim against the 1st , 2nd and 3 rd defendants who are jointly and severally sued is for the payment of Tshs 200,000,000/= (Two hundred million shillings only) being damages for malicious prosecution of the plaintiffs by the defendants, restoration of all properties taken from

the plaintiffs' residential premises, restoration of documents of title and other documents taken from the plaintiffs' premises at Ubungo and restoration of the plaintiffs' house which was illegally handed over to the 3 rd defendant. In my view, the claim involved between the parties is not land. The claim. is founded on malicious prosecution. As correctly submitted by counsel for the plaintiffs, the 5 plain tiffs' claim is not founded on ownership of land. The mere fact that the plaintiffs· are inter - alia seeking for restoration of documents of title and restoration of the house which was illegally handed over to the 3 rd defendant in a suit founded on malicious prosecution does not render the dispute between the parties turn into a land dispute. Therefore, I overrule the preliminary objection raised by counsel for the 3 rd defendant. I make no order as to costs. A.Shangwa JUDGE 10/6/2010 t I I 6 I Delivered in open court this +0 th day of June, 2010 in the presence of Mr. Mosha for th~ plaintiffs, Ms Temi for 1st & I 2 nd defendant and Mr. Shirima for 3 rd defendant. I I A.Shangwa I I JUDGE 10/6/2010 I MR. MOSHA FOR THE PLAINTIFFS: My Lord, we pray 1 for a date of holding the First. pre - trial conference. ORDER: First pre - trial conference is fixed on 18/6/2010. ~ A.Shangwa JUDGE .~ .A~ 10/6/2010 • "

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