

TANZANIA / JUDGMENT

Land Case No

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TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND CASE NO. 15756 OF 2024 AML FINANCE LTD.....
PLAINTIFF VERSUS THE REGISTERED TRUSTEES OF JOYLAND FOUNDATION T/A JOYFULAND
SCHOOL..... 1stDEFENDANT CALISTER LUCAS
MUNGWE..... 2ndDEFENDANT FREDRICK OTIENO
OKUKU.....3rdDEFENDANT

RULING

Date of last Order: 13/11/2024 Date of Ruling: 18/11/2024 LA LTAl KA, J. This ruling arises from a preliminary objection raised by the 1st and 2nd Defendants, contesting the competence of this Court to adjudicate the suit filed by the Plaintiff. The preliminary objection is based on two grounds:

1. That this Court lacksjurisdiction to entertain the matter as it falls under the purview of the Commercial Division of the High Court. Page 1 of 11
2. That the plaint is fatally defective due to non-compliance with the verification clause requirements under Order VI7 Rule 15 of the Civil Procedure Code [Cap. 33 R.E. 2019]. When the suit was called on for mention, parties opted to dispose of the PO in the form of hearing by way of written submissions. Leave was granted and a schedule to that effect was ordered. Messrs. Claudio Msando and Robert Kipingili, learned Advocates, penned down the submission for the 1st and 2nd Defendants and the Plaintiff respectively. The next part of this Ruling is a summary of the submissions by parties followed by my analysis of the law and the consequential order. Mr. Msando, Counsel for the 1st and 2nd Defendants, contended that Section 7 of the Civil Procedure Code required all suits to be instituted in courts of proper jurisdiction. He also referred to Section 167 of the Land Act, which limited the jurisdiction of the High Court Land Division to matters exclusively related to land disputes. He emphasized that Rule 5E of the High Court Registry Rules, GN No. 96 of 2005, conferred exclusive jurisdiction on the Land Division to handle land-related matters, similar to the Commercial Division's limitation to commercial disputes. Page 2 of 11 To support his argument, he cited the case of Ally Shaibu Khamis vs. Sher-Mohamed Bahdour (Land Case No. 117 of 2021), where the court underscored that the Land Division could only adjudicate land matters. He noted that in the present case, the cause of action arose from a loan

agreement, which was inherently a commercial transaction, even though land had been offered as security. He referenced the case of Morities Corporation Ltd. vs. CRDB Bank PLC & Another (Land Case No. 12 of 2023), which affirmed that using land as collateral did not transform a commercial matter into a land dispute. Mr. Msando analysed the Plaintiff's complaint and identified several paragraphs that, in his view, established the matter as a commercial case. He argued that the Plaintiff ought to have filed the suit in a forum with jurisdiction over commercial matters. He also referred to statutory definitions of "commercial cases" and the authoritative interpretation in the case of National Bank of Commerce Ltd. vs. Maisha Mussa Uledi (Civil Appeal No. 501 of 2022), which categorized contractual relationships involving collateral as commercial matters. Turning to the second preliminary objection, he argued that while the complaint contained 20 paragraphs, the verification clause only covered 18 of Page 3 of 11 them. He submitted that this omission rendered the complaint defective and referred to Felician Mhere Mgoyo vs. David Joseph Mlay (Civil Reference No. 08 of 2023), which established that incomplete verification clauses could render pleadings defective. He further cited Anatol Peter Rwebangira vs. The Principal Secretary, Ministry of Defence and National Service and Another (Civil Application No. 548/04 of 2018), where the court held that such defects were fatal and justified striking out the pleadings. In conclusion, Mr. Msando prayed for the preliminary objections to be upheld, for the Plaintiff's complaint to be struck out and the suit dismissed for want of jurisdiction, and for costs to be awarded to the Defendants. Mr. Kipingili, on his part, vehemently objected to the PO. He referred to section 7(1) of the Civil Procedure Code [Cap.33, R.E.2019], which provides for general jurisdiction in civil suits, and emphasized that Order IV, rule 4 of the same Code explicitly states that filing a commercial case in the Commercial Division is not mandatory. He contended that the establishment of the Commercial Division was meant to enhance efficiency in resolving disputes, without stripping the High Court of its unlimited jurisdiction under Page 4 of 11 Article 108(2) of the Constitution of the United Republic of Tanzania, 1977, as amended. To support his position, he cited Court of Appeal decisions, including The National Bank of Commerce Limited v. National Chicks Corporation Limited and 4 Others, Civil Appeal No. 129/2015, and Morogoro Hunting Safaris v. Halima Mohamed Mamuya, Civil Appeal No. 117/2011. He argued that these precedents established that divisions of the High Court are not separate courts but are meant to facilitate efficiency and that the High Court retains jurisdiction in cases involving overlapping subject matters. He maintained that filing the case in the Land Division was neither fatal nor prejudicial to the Defendants, as they had failed to demonstrate any resulting unfair prejudice. Regarding the second limb, Mr. Kipingili asserted that all paragraphs of the complaint were verified in accordance with the law, and the objection was based on a misapprehension of facts. He distinguished the cases cited by the Defendants, including Felician Mhere Mgoyo v. David Joseph Mlay (Supra) and Anatol Peter Rwebangira v. The Principal Secretary, Ministry of Defence and National Service and Another (Supra), arguing that they were inapplicable to the present case. Page 5 of 11 In conclusion, Counsel for the Plaintiff urged the court to find both preliminary objections baseless and to overrule them with costs. Alternatively, he requested that the court grant the Plaintiff leave to

withdraw the suit and refile it before the appropriate division. He emphasized the principle of equity, referencing the maxim *de minimis non curat iex* and reiterating that technicalities should not obstruct the dispensation of justice, as per Article 107A(2)(e) of the Constitution. Mr. Msando, in his rejoinder submission, remarked that the Plaintiff had contended that jurisdiction was a statutory prerogative, integral to a court's authority to hear cases. He asserted further that the Plaintiff had conceded that Section 7(1) of the Civil Procedure Code (CPC) [Cap. 33, R.E. 2019] conferred general jurisdiction for civil suits while asserting that Order IV, Rule 4 of the CPC clarified that commercial cases need not exclusively be instituted in the Commercial Division of the High Court. He respectfully submitted that the Plaintiff's reliance on Order IV, Rule 4 was fundamentally flawed because such a provision did not exist in the current Civil Procedure Code. He emphasized that the operative procedural law in Tanzania, codified in the CPC (R.E. 2019), lacked any provision amending Order IV to include Rule 4. He argued that reliance on a Page 6 of 11 non-existent provision was not a trivial misstep but rather an erroneous basis that undermined the Plaintiffs argument. Citing the maxim *suppressio vert, suggestio falsi* (suppression of truth is equivalent to falsehood), he urged the Court to discount arguments premised on this non-existent provision. Mr. Msando further noted that the High Court of Tanzania operated as a single judicial entity vested with broad jurisdiction under Article 108 of the Constitution of the United Republic of Tanzania (1977, as amended). He acknowledged that jurisdictional limitations within the High Court were prescribed by statutes and rules establishing specialized Divisions, such as the Commercial and Land Divisions. He reiterated his earlier arguments that this Court derived jurisdiction over land-related disputes specifically from Section 167 of the Land Act [Cap. 113 R.E. 2019], Section 3 of the Land Disputes Courts Act [Cap. 216 R.E. 2016], and Rule 5E of GN No. 96 of 2005. He contended that these provisions vested authority strictly for land-related disputes and not cases of any other nature. Page 7 of 11 To clarify the definition of a "land-related dispute," he referred to the case of *Edna Asheri Nyika v. Tanzania Buildings Agency & Others* (Land Case No. 156000 of 2024), where the Court had observed that disputes qualifying as land disputes typically involved rights or interests in land, such as ownership, usage, or occupation. He argued that the current case involved the enforcement of a commercial loan secured by real estate collateral and did not concern ownership, possession, or use of land. Regarding the Plaintiff's reliance on *National Bank of Commerce Ltd. v. National Chicks Corporation Ltd and Others* (Supra), Mr. Msando contended that this case underscored that disputes arising from commercial loans secured by mortgages fell within the Commercial Division's jurisdiction. He submitted that the current matter, involving a loan recovery, was a commercial transaction and should be adjudicated in the Commercial Division. On the Plaintiff's alternative plea for leave to withdraw the suit and refile it in the proper division, he argued that this act contradicted the Plaintiff's earlier arguments asserting this Court's jurisdiction. He contended that such a request implied the Plaintiff's doubt about the jurisdiction of this Division. Page 8 of 11 Addressing the 2nd Preliminary Objection, Mr. Msando maintained that the clause was defective for failing to verify each paragraph individually, as required by Order VI, Rule 15(2). He asserted that this defect was substantive and merited the Court's intervention to

strike out the plaint. In conclusion, he urged the Court to uphold both Preliminary Objections and strike out the Plaintiff's suit. I have dispassionately considered the rival submissions in the light of the preliminary objections. Going straight to the first limb, the jurisdictional challenge primarily revolves around whether the present matter constitutes a land dispute or a commercial dispute. The Plaintiff argued that the High Court is a singular entity vested with broad jurisdiction, and commercial matters may be filed in divisions other than the Commercial Division. The Plaintiff further cited Article 107A(2)(e) of the Constitution, emphasizing substantive justice over procedural technicalities. On the other hand, the Defendants contended that the dispute arises from the enforcement of a commercial loan secured by real estate collateral, making it a commercial transaction rather than a land dispute. They relied on statutory provisions, including Rule 5E of GN No. 96 of 2005, and precedents such as National Bank of Commerce Ltd. v. National Page 9 of 11 Chicks Corporation Ltd. (Supra) and Britania Biscuits Limited v. National Bank of Commerce Limited and Others (Supra), to argue that matters of this nature fall within the jurisdiction of the Commercial Division. The second objection concerns the verification clause in the Plaintiff's plaint. Order VI, Rule 15 of the Civil Procedure Code requires that every paragraph of the plaint be verified individually. The Defendants argued that the verification clause in the present case is fatally defective, while the Plaintiff maintained that it was compliant with procedural requirements. I have examined the plaint and finds that the verification clause does not meet the mandatory requirements under Order VI, Rule 15(2) of the Civil Procedure Code. The defect is substantive and cannot be cured by invoking the overriding objective principle inspired by Article 107A(2)(e) of the Constitution, as it pertains to a fundamental procedural requirement that ensures the authenticity of pleadings. Based on the foregoing analysis, the preliminary objection is upheld on both grounds. Consequently, this suit is hereby struck out for lack of jurisdiction and for the defectiveness of the verification clause. Page 10 of 11 The Plaintiff is at liberty to file the suit afresh in the appropriate forum, provided they comply with the procedural requirements of the law. Costs of this suit are awarded the 1st and 2nd Defendants. It is so ordered .1. LALTAIKA JUDGE 18/11/2024 COURT: Ruling delivered in Chambers this 18th day of October 2024 in the presence of Mrssrs. Abdul Saidi Naumanga and Robert KipingiH, learned Advocates for the Plaintiff and 1st and 2nd Respondents respectively. Page 11 of 11

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