

TANZANIA / JUDGMENT

EDNA NYIKA two

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30 September 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES
SALAAM LAND CASE NO. 15600 OF 2024 EDNA ASHERI
NYIKA..... PLAINTIFF VERSUS TANZANIA BUILDINGS
AGENCY1st DEFENDANT TWINS AUCTION MART COMPANY LIMITED..... 2nd
DEFENDANT THE ATTORNEY GENERAL..... 3rd DEFENDANT

RULING

5th & 30th September, 2024 L, HEMED, J. On 4th May 2024, EDNA ASHERI NYIKA, the plaintiff herein, filed the instant suit against the defendants herein, seeking for the following orders:- " i. Declaration the Agreement for Sale dated 1(Jh July, 2019 signed between the plaintiff and the 1st defendant is onerous (sic) unconscionable and contrary to offer and acceptance as bargained between the parties. ii. >4/7 order compelling the 1st and 3rd defendant to review and revise the terms of the Agreement for Sale to be in Une with the offer and acceptance as bargained between the parties and in Une with the law on precision of affordable housing to public servant. iii. The declaration that the purported default on the part of the plaintiff is 1st defendant's own making due to the erroneous premise in a above. i iv. >4/7 order of injunction restraining the defendants, the workmen and agents from the evicting the plaintiff from the suit premises house on Plot No 58 Block 24 Bunju 'B'bnerous (sic) and unconscionable terms of the Agreement for Sale.

- v. Payment of general damages as assessed by the court IN THE AL TERNA TIVE ONL Y vi. Order for valuation of the suit property to determine the value of the improvement made by the plaintiff of the suit house. vii. An order for compensation of the value of the improvement made in finishing. viii. An order for refund of the advances made by the 1st (sic) defendant up to date of judgement. ix. Interest at commercial rate of 22% on (vi) and (viii) herein above from 2017 to date of judgement and thereafter of 12% court rate to full and payment." TANZANIA BUILDING AGENCY, TWINS AUCTION MART COMPANY LIMITED and the ATTORNEY GENERAL are the defendants in the matter at hand. They filed their written statement of defence resisting all the Plaintiff's claims save for the 2nd Defendant who never been appearing despite being duly served. Having gone through the pleadings, the court found the matter appearing to emanate from the contract. This being the case, the court directed parties to address it on the following point: - 2 'Whether this court has jurisdiction to determine it.' Parties addressed the court by way of written submissions. The Plaintiff

was represented by Mr. Emmanuel Joachim Msengezi while the 1st and 3rd defendants enjoyed the legal service of Ms. Selina Kapange, learned Senior State Attorney. Parties complied with the filing schedule as was fixed by the court. I have thoroughly gone through the submissions made by the learned counsel for the parties in addressing the point. The question for determination is whether this court has jurisdiction to determine the matter. As aforesaid, I raised the point after having found that the cause of action is founded on contract. The jurisdiction of this court is founded under section 167 of the Land Act [Cap.113 R.E 2019], section 60 of the Village Land Act, [Cap.114 RE 2019], section 3 of the Land Disputes Courts Act [Cap.216 R.E 2016] and Rule 5E of the High Court Registries Rules, GN. No.96 of 2005. The Land Act, the Village Land Act and the Land Disputes Courts Act empower the High Court generally including district registries to entertain land disputes. However, for Land Division of the High Court, jurisdiction is of it is as provided under Rule 5E of the High Court Registries Rules (supra) that:- 3 "There shall be a land division of the High Court within the Registry at Dar es Salaam and at any other registry or sub-registry as may be determined by the Chief Justice in which, subject to the provision of the any relevant law. Appeal proceedings or original proceedings concerning land may be instituted. [Emphasis added] The above provision implies that High Court (Land Division) is only mandated to entertain only matters concerning land. The question is what constitutes a land matter or dispute. There is no statutory definition as to what a land dispute means. The Black's Law Dictionary 8th Edition, by Bryan A. Garner, at page 505 defines the word 'dispute' as ".../I conflict or controversy, especially that has given rise to a particular law suit." Land dispute is a conflict or controversy in respect of 'interest in land'. Section 2 of the Land Act (supra) defines the word interests in respect to land thus: - "interest" means a right in or over a right of occupancy.. "[Emphasis added]. The Law. Cornell. Edu <https://www.law.cornell.edu> defines the term 'Interest in land' to mean "...any ownership or possessory right with respect to real property, including ownership in fee, an 4 easement, a leasehold, and any subsurface or mineral rights." The above definitions of the words "dispute" "interest" and "interest in land" we can construe the definition of land dispute to mean any conflict or controversy in regard to interest in land which includes ownership, possession or usage of land. Therefore, any dispute that does not concern ownership, possession or usage of land, cannot be said to be a land dispute. In her submissions, the learned State Attorney supported the view of the court that so long as the matter before the court is founded on contract, the suit is not a land dispute and thus the court has no jurisdiction. She cemented her arguments by the provision of section 167 (1) of the Land Act {supra} and the decisions of this court in Ali Shaibu Khams vs Sher- Mohamed Bahdour, Land Case 117 of 2021 and Baddi Twaha Ally vs Crdb Bank and Another, Land Case No. 175 of 2023. The learned counsel for the Plaintiff was of the different opinion that the court has jurisdiction to entertain the matter as it is on "disposition" of land by sale. He cited the definition of disposition as defined under section 2 of the Land Act (supra) which include sale. According to him the court is vested with exclusive jurisdiction to deal with land matters as provided 5 under sections 64 and 167(l)(b) of the Land Act (supra) contracts of disposition being one of them. I must state at the outset that I am on the same page with the

learned counsel for the Plaintiff, that sale is one of the mode of disposition of right of occupancy, others being lease and mortgage. It is also true that disputes on disposition of the right of occupancy fall in the category of land disputes. Moreover, the instrument used in creating all the three modes of disposition is Agreement/contract. Nevertheless, the agreement used to create any form of disposition is not a disposition by itself rather an evidence of that type of disposition so created. In other words, if a dispute on disposition of granted right of occupancy by either mortgage, lease or sale arises, one of evidence to proof will be either Mortgage facility in case of mortgage, Lease Agreement if it was by lease and by Sale Agreement if it was a sale. From the foregoing, for disposition of land by sale to constitute a land dispute, parties must be rocking horns regarding the sale/disposition of rights or interest on land. In order to understand as to whether the matter at hand is a land matter, I had to revisit the cause of action as stated in paragraph five(5) of the plaint. I find it reading as follows:- 6 "The Plaintiff's Claim against the Defendants jointly and severally is for declaration that the Agreement for Sale of a Semi-finished house on Plot No. 58 Block 24 Bunju "B" Kinondoni -District, Dar es Salaam region dated 10h July 2019 between the Plaintiff and the 1st Defendant is onerous, unconscionable as it was issued and prepared contrary to Plaintiff's offer for repayment of the same for Seven years (84 months) and 1st Defendant's Acceptance letter dated 18fh May 2017; and further declaration that it is contrary to Order M.2(l) and M.5(l) of the Standing Orders for the Public Service (Government Notice No.493 of 2009); for declaration that Eviction Notice issued by the 2nd defendant is illegal and in breach of the terms of the sale agreement itself; an order compelling the 1st defendant to review and re issue the Agreement for Sale in Une with the offer and acceptance letters exchanged at the time and Standing Orders for Public Service; and an order of injunction restraining the Defendants and their appointed agents or servants from evicting the Plaintiff from the suit premises pending review and re issue of the revised Agreement for Sale, payment of general damages for mental anguish and disturbance and for costs of the suit. "[Emphasis added] 7 The above quoted paragraph shows clearly that the Plaintiff's cause of action is on the manner the contract/agreement of sale of property was created. My firm view is that the cause of action does not constitute a land dispute, as parties are not disputing on ownership, possession or use of land. In other words, parties to the instant matter are not quarrelling on interest in land rather on the manner the agreement was formed. The dispute on contract that has no connection with land dispute does not fall in the type of disputes to be admitted and determined by this court. In the final analysis, I find the matter at hand not a land dispute and this court lacks the requisite jurisdiction to determine it. The matter is thus improper before this court and hereby struck out with no order as to costs. It is so ordered. DATED at DAR ES SALAAM on 30th September, 2024. JUDGE 8

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Prepared on 14 October 2026 · Esheria