

TANZANIA / JUDGMENT

Ruling on PO Land Case No

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1 January 2024

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THE JUDICIARY OF TANZANIA IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA AT MOSHI LAND CASE NO. 22567 OF 2024 GALGANO STEPHANO TARIMO @ GALGANO MTAFAANI TARIMO.....PLAINTIFF VERSUS ALPHONCE STEPHANO TARIMO @ ALPHONCE MTAFAANI TARIMO.....DEFENDANT

RULING

25th February to 27th March, 2025 MONGELLA, J. As depicted from the Complaint, the dispute between the parties pertains to a house (the suit property) allegedly jointly owned by them. The suit property is described as Plot 27, Block EEE Section IV located at Majengo Street within Moshi Municipality with Certificate of Title No. 4222. The estimated value of the property is TZS. 210,000,000/-. When the defendant filed his written statement of defence, he raised one point of preliminary objection, to wit: Page 1 of 7 This suit contravenes the mandatory provision of Section 13 of the Civil Procedure Code [Cap 33 R.E 2019] The preliminary objection was resolved orally whereby the defendant was represented by Mr. Denis Maro and the plaintiff by Mr. Omary Gyunda, both learned advocates. Submitting in chief, Mr. Maro contended that the suit contravenes the mandatory provisions of Section 13 of the Civil Procedure Code, specifically on the issue of pecuniary jurisdiction. He averred that while the High Court enjoys unlimited jurisdiction, in this matter, paragraph 4 of the Complaint shows the approximate value of the disputed land being TZS. 210,000,000/-. The learned counsel was of the view that based on that value, it is the District Land and Housing Tribunal that is mandated to try the matter in terms of Section 33 (2) (a) of the Land Disputes Courts Act, Cap 216 R.E 2019. That, the said provision gives the Tribunal the mandate to hear cases for recovery of immovable property, the value of which does not exceed TZS. 300,000,000/-. Mr. Maro reasoned that the essence behind the provision is to give a party more chances to appeal in case he or she is aggrieved with decision of the respective lower court. He further argued that there was no fact that showed that the dispute touches the Registrar of Titles necessitating the matter being Page 2 of 7 filed in the High Court. In the premises, he finalized his submissions by praying that the suit be dismissed so that it is filed in a proper forum. The preliminary point was vehemently challenged. In his reply submissions, Mr. Gyunda began by stating that this is a land matter and this Court has jurisdiction to try the same. In support of his stance, he referred to Article 108 (2) of the Constitution of the United Republic of Tanzania of 1977, as amended pointing out that the said provision provides for the general jurisdiction of the High Court. While acknowledging that the provisions of Section 13 of the Civil

Procedure Code, relied on by Mr. Maro originates from the Amendment of Act No. 04 of 2016; he challenged Mr. Maro on the ground that he had not cited any provision that would oust the jurisdiction of this Court to try the matter at hand. In addition, he faulted Mr. Maro for failure to show how filing of this matter in this Court would occasion miscarriage of justice to his client. In the same vein, he found unimportant Mr. Maro's concerns on limited chances in accessing appeals by the parties. Showing that the kind of objection has already been dealt with by the courts of this land and to his client's favour, Mr. Gyunda referred this Court to the decisions in *General Manager, African Barrick Gold Mine Ltd. vs. Chacha Kiguha & 5 Others* (Civil Appeal No. 99/2019)

[2024] TZCA 469 in which the case of *Benitho Thadei Chengula vs. Abdulahi Mohamed Ismail* (Civil Appeal No.183 of 2020) [2023] TZCA TANZLII was cited with approval. He said that in the said case, the objection was found to lack merit. Page 3 of 7 Reacting to the provisions of Section 33 (a) of the Land Disputes Courts Act, cited by Mr. Maro, Mr. Gyunda had the stance that the same do not oust the jurisdiction of this Court. He finalized his submissions by praying that the objection be dismissed with costs. Rejoining, Mr. Maro maintained his arguments pertaining the import of Section 13 of the Civil Procedure Code admitting that the provision gives this Court unlimited jurisdiction. As to how his client stands to be prejudiced, he alleged that he would have limited chances of appeal. Mr. Maro further distinguished the decisions cited by Mr. Gyunda contending that the scenarios therein were different from the present case. With respect to the provisions of Article 108 of the Constitution, he argued that the same provides for jurisdiction to the HC on matters not specifically prescribed in other written laws. I have keenly considered the rival submissions of both parties' counsels on the point of preliminary objection. As the contention pertains the requirement enshrined under Section 13 of the Civil Procedure Code and whether this suit contravenes the same, I find it apposite to commence by reproducing the relevant provision hereunder: "Every suit shall be instituted in the court of the lowest grade competent to try it and, for the purposes of this section, a court of a resident magistrate and a district court shall be deemed to be courts of the same grade: Page 4 of 7 Provided that, the provisions of this section shall not be construed to oust the general jurisdiction of the High Court." There is no dispute as to the fact that the plaintiff noted in his Complaint, specifically at paragraph 4, that the suit property is estimated to be TZS. 210,000,000/=. It is also not disputed that being a landed property, Section 33 (2) (a) of the Land Disputes Courts Act has set the pecuniary limit for the District Land and Housing Tribunal in proceedings for recovery of possession for immovable properties to properties valued not more than TZS. 300,000,000/=. The dispute thus lies on whether this suit being concerned with a landed property valued at an estimate of TZS., 300,000,000/=. is properly before this Court in terms of Section 13 of the Civil Procedure Code. As seen, the proviso to Section 13 states that the provision will not be construed as ousting the jurisdiction of this Court. In fact, the jurisdiction of this Court which is rather general as per Article 108 of the Constitution and Section 7 of the Civil Procedure Code, cannot merely be ousted by another Court holding jurisdiction over a certain matter. The

jurisdiction, in my view, is only ousted in matters where it is expressly provided. This was well elaborated in Benitho Thadei Chengula (supra) whereby the Court of Appeal addressed a scenario where the district court was found to hold pecuniary jurisdiction of the matter. The Court reasoned: “In our view, Mr. Ngole's argument that there is no express ouster of jurisdiction of the High Court is worth considering in the circumstances of this case. Page 5 of 7 Article 108 of the Constitution and Section 7 of the CPC confer the High Court with general jurisdiction except on matters for which the jurisdiction of the court is expressly ousted.” In the mentioned case, apex Court further reasoned that the act of instituting the suit at the high Court instead of the District Court did not occasion injustice to the parties. Even though Mr. Maro alleged that the omission to file the matter at the District Land and Housing Tribunal would occasion injustice to the defendant for lack more chances for appeal, I find this reason lacking. I do not think that the intention of the law setting pecuniary limitations was to afford other parties more opportunities to appeal than others. This reason is unjustified. The proviso under Section 13 of the Civil Procedure Code was introduced vide Written Laws (Miscellaneous Amendments) (No. 2) Act, 2016. The intention was clearly to rescue circumstances such as these. In General Manager, African Barrick Gold Mine Ltd (supra) the Court of Appeal in addressing a similar circumstance stated: “We wish to state also that, following the amendment of s. 13 of the CPC by Act No. 4 of 2016, even where a suit which would ordinarily be instituted in a Resident Magistrate's Court or District Court is erroneously entertained by the High Court, the error would not vitiate the proceedings.” In the foregoing observations, the jurisdiction of this Court is not ousted by mere fact that the District Land and Housing Tribunal has jurisdiction over this matter. However, while in Benitho Thadei Page 6 of 7 Chengula (supra) and General Manager, African Barrick Gold Mine Ltd (supra) the Court viewed the proceedings entertained by the High Court as valid, the omission to institute the proceedings at the District Court was viewed as an error though not capable of vitiating the proceedings of the High Court. In both cases, these issues were raised in an appeal and not at an earlier position such as in this matter. The reasoning in both cases clearly indicates that such act is an error and when such error is made, the proceedings will not be vitiated as the High Court's jurisdiction is not ousted. However, in my settled view, the proviso to Section 13 of the Civil Procedure Code was not meant to give the High Court concurrent jurisdiction with the lower courts. Considering that the error has been detected at the earliest stage, I find it prudent that this matter is removed so that it is filed before an appropriate forum. In foregoing reasoning, I sustain the objection. The suit is hereby struck out. Considering that the parties are siblings, I make no orders as to costs. Dated and delivered at Moshi on this 27th day of March 2025. X L. M. MONGELLA JUDGE Signed by: L. M. MONGELLA Page 7 of 7

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Prepared on 14 October 2026 · Esheria