

TANZANIA / JUDGMENT

Land Case No

COURT
TANZLIIDECIDED
1 January 2024

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT PAR ES SALAAM LAND CASE NO. 1344
OF 2024 MECTRIDA TRAZIAS KA KA LA..... 1st PLAINTIFF EDWARD AWE
LAPYA..... 2nd PLAINTIFF VERSUS LAWRENCE AUGUSTINO
GINGO..... DEFENDANT 23/5/2024 & 27/6/2024

RULING

A. MSAFIRI, J In this suit the plaintiffs are claiming among other things for declaratory order that the defendant is in default of the sale agreement between him and the plaintiffs signed on 13/6/2023, and a declaratory order to terminate the said agreement between the plaintiffs and the defendant signed on 13/6/2023 and an order to permanently refrain the defendant and his employees, agents or any person acting under his power or authority from entering Plots number 322, 323, 324, 325, 326, 338, 339, 340, 341, and 342 Bloc No. 16 Kibada, Kigamboni, Dar es Salaam. i In the suit, the plaintiff was represented by Mr. Evodious Mtawala, learned advocate while the defendant was in person but despite of filing his WSD, he has never physically appeared in court. The defendant filed his defence and with it raised a preliminary objections that the court has no jurisdiction to entertain this suit in terms of Section 37(l)(a) of the Land Disputes Courts Act, Cap 216 R.E 2019 and that the Plaint is bad in law for failure to state the value of the subject matter of the suit in terms of Order VII Rule 1 (i) of the Civil Procedure Code, Cap 33 R.E 2019. As pointed out earlier, for reasons known to himself, the respondent has never entered appearance to prosecute/attend the preliminary objections which he has raised therefore Mr. Evodius Mtawala, advocate for the plaintiff urged the court to dismiss the raised preliminary objection. The court then expunged the raised preliminary objections. Despite that the court while going through the contents of the Plaint, raised a point of law suo motu on whether the Plaint has complied with the mandatory requirement of the provisions of Order VII Rule l(i) of the CPC. The court directed Mr Mtawala to address it on the said point of law. Addressing the court, Mr Mtawala submitted that Order VII Rule 1 (i) contains provision that the plaint shall contain a statement of the value of 2 the subject matter for the purposes of jurisdiction. He said further that on the plaint in this suit, its prayers is of declaratory nature for termination of the Sale Agreement between the plaintiffs and the defendant. That the subject matter and its value is stated under paragraphs 4 and 5 of the plaint and that the sum is also reflected under paragraph 10 of the plaint as the pecuniary jurisdiction of the court. Mr Mtawala was of the firm view that this court is vested with jurisdiction through Section 37(1) (b) of the Land Disputes Courts Act, Cap 216 R.E 2019. That the

subject matter of this suit is a contract which emanates from the sale of plot of land hence this court is vested with jurisdiction to entertain the suit. Having heard the submissions of the counsel for plaintiff, indeed, Order VII Rule 1 (i) of the CPC makes it mandatory for the plaintiff in a suit to contain a statement of the value of the subject matter of the suit for the purposes of jurisdiction. The counsel for the plaintiff has argued that this requirement has been met in the instant suit as the plaintiff contains such statement at paragraphs 4 and 5 and reflected also at paragraph 10. For the easy of reference I shall reproduce paragraphs 4 and 5 of the Plaintiff as hereunder;

4. That, the Plaintiffs entered into a sale agreement with the Defendant on 13/6/2023 for the sale of Plots number 322, 323, 324, 325, 326, 338, 339, 340, 341, and 342 Block No. 16 Kibada, Kigamboni, Dar es Salaam at a consideration of TZS 296,130,000/= (Tanzanian Shillings Two hundred ninety-six million three hundred and thirty thousand shillings only) (emphasis added).
5. That, it was an expressly agreement under the agreement that the purchase price of TZS 296,130,000/= (Tanzanian Shillings Two hundred ninety-six million three hundred and thirty thousand shillings only) was supposed to be paid immediately from the signing of the agreement through the 1st plaintiff account number 011203111000 kept with CRDB Bank and account number 24510000753 kept with NMB Bank, (emphasis added). According to the above paragraphs, the counsel addressed the court that the value of the subject matter is TZS 296,130,000/= (Tanzanian Shillings Two hundred ninety-six million three hundred and thirty thousand shillings only) and by this, this court has pecuniary jurisdiction to entertain the suit under Section 37 (1) (b) of the Land Disputes Act. However, according to the contents of the plaintiff and the WSP and the submissions by the counsel for the plaintiff, this suit touches the issues of ownership of land. The counsel has said in his submission that the suit has issues which touches the matters of land which can be ascertained by this court, example transfer of ownership of land. The fact that the plaintiff is seeking for recovery of possession of the disputed plots is seen clearly < 4 at paragraph 3 and relief (iii) of the relief part where the plaintiff seek an order for permanently restrain of the defendant from entering disputed plots. It is my finding then that this suit falls under the provisions of Section 37 (1) (a) and not Section 37(1) (b) of the Land Disputes Courts Act as the counsel of the plaintiff has submitted to the court. In the circumstances, it is clear that the value of the subject matter which the counsel for the plaintiff has led the court to believe to be reflected under paragraphs 4 and 5 of the plaintiff is below the required value under Section 37(1) (a) of the above said Act hence this court has no pecuniary jurisdiction to entertain the suit. For this reason, I hereby struck out this suit with no order as to the costs since the defendant has never bothered to enter appearance in court since he filed his WSD on 28/3/2024. 5

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