

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF ARUSHA)
AT ARUSHA**

LAND CASE NO. 20 OF 2017

ABUTWALIB A. SHOKO PLAINTIFF

VERSUS

1. JOHN LONGDEFENDANTS

2. ALBIN TARIMODEFENDANTS

RULING

DR.M.OPIYO, J

The above named plaintiff filed a claim praying among other things that plaintiff is the lawful owner of the trespassed land, permanent injunction to the defendants from trespassing into plaintiff's land, special damages in the sum of Tshs. 205,440,000/=, general damages for mental anguish.

Defendants through the service of Mr. Alute Mughwai and Company Advocates, filed a Joint Written Statement of Defence disputing the plaintiff's claim and therein inserted the points of preliminary objection to the effect that: -

- a) That, the suit for trespass upon a piece of land measuring 12 acres was instituted hopelessly out of time and is thus time barred by section 3(1)

and item no. 22 of part 1 to the Law of Limitation Act (CAP 89 R.E. 2002).

- b) That, the plaint does not contain a statement of facts as to when the cause of action (if any) arose, contrary to Order VII rule 1(e) of the Civil Procedure Code CAP 33 R.E. 2002.(CPC)
- c) That, the Plaint does not contain a description of the suit land sufficient to identify it, contrary to Order VII R. 3 of the Civil Procedure Code (CAP. 33 R.E. 2002).

IN THE ALTERNATIVE,

- d) That, the Honourable Court should not proceed to try the suit as it is barred by "**Res Sub judice**" under section 8 of the Civil Procedure Code (CAP. 33 R.E. 2002), on the facts that:-

The Judgment and decree in High Court of Tanzania in Land Appeal No. 41 of 2015 pleaded in paragraph 6 of the plaint between the same parties and the subject matter therein is a subject of an intended appeal to the Court of Appeal of Tanzania as pleaded in paragraph 6 of the Written Statement of Defence.

On 02/05/2018 it was agreed that the Preliminary Points of Objection be disposed of by way of written submission. I have considered parties submission for and against the preliminary objections, I will start dealing with third preliminary objections which reads that, the Plaint does not

contain a description of the suit land sufficient to identify it, contrary to Order VII R. 3 of the Civil Procedure Code (CAP. 33 R.E. 2002).

On this preliminary objection it was the learned counsel submission that, Order VII rule 3 of the Civil Procedure Code (CAP) 33 R.E. 2002 provides that:

*"Where the subject matter of the suit is immovable property, the plaintiff **shall** contain a description of the property sufficient to identify it..."*(Emphasis supplied)

It was his submission that, throughout his plaint, the plaintiff failed to describe the Suitland with the material particulars sufficient to identify it. These include whether or not the property is registered, the demarcations of the suit land, the description of the neighboring properties and so forth. It was his submission, these particulars are necessary for purposes of determining, for example, whether or not the suit land was a subject of a previous litigation. The other purpose of identification is to preclude future litigation in respect of the same property. He contended that since the plaint contravened the provisions of the above law, accordingly, the suit is legally incompetent.

Responding to the third ground of the defendants preliminary objection, Mr. Shedrack Mofulu submitted very briefly that, the plaintiff's plaint at paragraph 4 stated the description of the suit land being a piece of land measuring twelve acres located at Sangarini area Kilimamoja Village Within Karatu District, it was his submission that the description was sufficient to identify the land in dispute.

The main issues are whether the plaint violates provision of Order VII Rule 3 of the Civil Procedure Code and whether in the absence of requirements of Order VII Rule 3 of the Civil Procedure Code whereby full particulars and identity of disputed land is not mentioned in the plaint, the suit is incompetent?

Rule 3 of Order VII of the Civil Procedure Code, Cap 33 R.E 2002, provides that where subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. From the plaintiff's plaint specifically paragraph 4, it is apparent that the suit property could not be identified as specific description and boundaries of the suit property are not given in the plaint as argued by Mr. Mughwai.

Paragraph 4 of the plaintiff's plaint is reproduced below:-

4. That the plaintiff's claim against the defendants is for trespass to his piece of land measuring twelve acres located at Sangarian Area, Kilimamoja Village within Karatu District'

In my considered view, that description is too vague to specifically describe the disputed property to the required comprehension. The purpose of Order VII Rule 3 of CPC is that, unless the plaintiff indicates the description of the property claimed by him either by means of boundaries or by means of title number under the land Registration Act, it would be difficult for the court to find whether the plaintiff has title to the property claimed and whether any encroachment or dispossession has been made by defendant. Thus, the duty of the party is to give description sufficient to identify the

property in dispute so that if a decree is passed in relation to it, it shall be unworkable. The court needs to pass a decree which can be executed. So, without proper specification of the land, the decree passed is executable.

Furthermore, as clearly stated by the defendant's counsel the other purposes for specific identification of the suit property is to know whether or not the suit land was subject to a previous litigation, also to preclude the future litigation in respect of the same property. Therefore in the present case since the plaintiff did not comply with the provision of Order VII Rule 3 of CPC the plaint is rejected.

In the upshot I uphold the third preliminary objection, the suit is incompetent the same is struck out with costs. Since the third preliminary objection suffices to dispose of the suit, I will not entertain the rest of the preliminary objections. No order as to costs.

(SGD)

DR. M. OPIYO

JUDGE

13/07/2018

I hereby certify this to be a true copy of the original.



A handwritten signature in black ink, appearing to be "HL", is written above the official title.

DEPUTY REGISTRAR

ARUSHA

19/7/2018