

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY**

IN THE HIGH COURT OF TANZANIA

(DISTRICT REGISTRY OF MBEYA)

AT MBEYA

LAND CASE NO. 5 OF 2013

RICHARD MATHIAS NGONEHU & 62 OTHERS.....PLAINTIFFS

VERSUS

MBEYA CITY COUNCIL.....DEFENDANT

JUDGMENT

Date of Last Order: 16/05/2019

Date of Judgment: 31/07/2019

MONGELLA, J.

The plaintiffs in this suit under the representation of Richard Mathias Ngonehu are suing the defendant, Mbeya City Council for compensation over the land in dispute acquired by the defendant between 2006 and 2007. The plaintiffs are claiming a total of T.shs. 638,571,038.40/- being compensation for a total of 95 acres located at Isyesye Ward within Mbeya City. Other claims are costs of the suit and any other reliefs that this Court may deem fit to grant.

In their plaint and during the hearing, it was claimed that each of the plaintiffs owned plots in the land in dispute and the defendant forcibly and arbitrarily ordered them to vacate from their settlement without and before compensation. That the whole process of compensation was done in contravention of the law, thus null and void. On the other hand, the defendant disputed the plaintiffs' claims and contended that the plaintiffs were ordered to vacate from the disputed land after all necessary requirements including valuation and compensation were duly effected.

The plaintiffs enjoyed the legal services of Mr. Robert Mwaigomole, and later Mr. Anthony Mbogo, learned advocates, while the defendant was represented first by Ms. Mary Gatuna and later Mr. Modest Siwavula, Mr. Jerry January and Ms. Emma Aloyce, City Solicitors.

I find it pertinent to point out from the outset that I took over presiding over this matter after the prosecution had closed its case and the defendant was half way with the testimony of its second witness. The matter was previously presided over by Levira, J. (as she then was), before being elevated to the Court of Appeal. After discussion with both parties, we all agreed to proceed with the matter from where it was as it was seen there was no necessity of re-summoning the witnesses who had already testified.

Five issues were framed for determination of the matter as follows:

1. *Whether all plaintiffs were the lawful occupiers of the disputed plot.*
2. *What was the value and size of the land in dispute?*

3. *Whether the defendant compensated the plaintiffs who lawfully occupied the land.*
4. *Whether the test for valuation and calculation for compensation were proper.*
5. *To what reliefs are the parties entitled.*

In determining the first issue, first and foremost, one important legal requirement has to be fulfilled. That is, there has to be a proper description of the land in dispute to determine whether the plaintiffs are the lawful owners. In fact, this aspect shall also determine on whether the suit was properly framed.

Order VII Rule 3 of the Civil Procedure Code, Cap 33, R.E. 2002 (CPC) categorically directs that the plaint must give a sufficient description of the property to enable it to be properly identified where the subject matter of the suit concerns an immovable property. The provision specifically provides:

*"Where the subject matter of the suit is immovable property, **the plaint shall contain a description of the property sufficient to identify it** and, in case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number." (emphasis added)*

At this juncture, let me scrutinize on whether the suit property was sufficiently identified by the plaintiffs as required under the law. Paragraph 3 of the amended plaint which is the only paragraph explaining about the suit property states:

"That in 2006 to 2007 the defendant forcibly and arbitrary ordered the plaintiffs to vacate from their respective settlement covering 95 acres that comprised artificial vegetation that valued a total amount of T.shs. 638,571,038.40."

Looking at the above paragraph, it can be clearly seen that the suit land was not described. The plaintiffs only gave the total coverage area and the value. There is no other paragraph which gives the description of the suit land in the plaintiffs' plaint. In fact it was through the witnesses' testimonies that I got to know that the land in dispute is located at Isyesye Ward and not from the plaint.

The description of the property as provided under **Order VII Rule 3** of the CPC is mandatory. Reading through the plaint and the testimonies of the witnesses, it is obvious that the land in dispute was not surveyed. Therefore, unlike in surveyed land where the registered title number suffices to describe the property, in un-surveyed land the boundaries and or permanent features surrounding the land have to be sufficiently described. The plaint was thus required to show what were the boundaries of the land in dispute on the East, West, North and South parts. In addition or in alternative the plaint could describe the permanent features surrounding the land in dispute. The witnesses revealed that the land in dispute is located at Isyesye Ward. This also is not enough in describing the land. The witnesses were also supposed to prove ownership by, among other things, giving a proper description of the boundaries and or permanent features surrounding the land.

The plaint also has indicated that the plaintiffs are not joint owners of the suit land. Each and every one of them owns his or her own plot(s) within the claimed 95 acres. This fact was also testified by the plaintiffs' witnesses and as well pointed out by Mr. Mbogo in his submissions. Under such circumstances therefore, the plaint was supposed to give a description of each of the plaintiff's land in the same manner as I have pointed out above. Failure to do that renders the plaintiffs failed to have proved ownership of their land and the plaint failed to have properly disclosed the cause of action against the defendant.

The requirement to sufficiently describe the land in a plaint has been stressed by this Court in a number of cases. See for example, ***Hamisi Ndabhalembeye and 159 v. Kigoma/Ujiji Municipal Council and Tanzania Ports Authority***, High Court, Land Case No. 9 of 2016, at Tabora; ***Asumwike Kamwela v. Semu Mwazyunga***, High Court, Civil Appeal No. 13 of 1997, at Mbeya; ***Ramadhan Omary Humbi and 58 Others v. Aneth Paulina Nkinda and Another***, High Court, Land Case No. 99 of 2013, at Dar es Salaam (all unreported), just to mention a few. In all these cases the High Court judges were of the view that the land in dispute has to be sufficiently described in the plaint as per the requirement under **Order VII Rule 3 of the Civil Procedure Code**, and where a land dispute involves more than one plaintiff who are not common owners, the plaint must describe each and every piece of land owned by each of the plaintiffs joined in that suit. Just as I remarked from the beginning, I share the same view with my learned brothers in the above cited cases. The essence of this legal requirement is first to prove ownership or connection of the plaintiff(s) to the land in dispute, second is to disclose and link the cause of action over

the land in dispute with the defendant, third is to put the court in a position of knowing the exact piece of land it is called upon to determine.

In the same line, by not being common or joint owners of the land in dispute, each of the plaintiffs was required to testify before the Court to prove his/her ownership of the piece of land within the whole land in dispute. Regarding this requirement, the Court of Appeal of Tanzania (CAT) in **Haruna Mpangaos and 932 Others v. Tanzania Portland Cement Co. Ltd**, Civil Appeal No. 129 of 2008 guided that, in a land dispute involving more than one plaintiff and the disputed land is not commonly owned by them, each of the plaintiffs must appear before the court and testify in proving ownership. In the case at hand, out of the 63 plaintiffs, it is only three of them who testified. The plaint and the testimonies of these three witnesses indicated that some of the plaintiffs were not compensated at all and some were insufficiently compensated. It was thus necessary for each of them to be called to testify as to his/her ownership of the land and the status of compensation. What the three witnesses testified as to the ownership and status of compensation of the rest of the plaintiffs was hearsay and cannot be accorded weight by this Court.

Following the observations I have made hereinabove, it is my finding that for failure to describe the land in dispute, the plaintiffs have failed to prove ownership over the land in dispute. Consequently, my findings in this issue have caused the whole suit to crumble down and thus I shall not make findings on the rest of the issues.

This suit is therefore dismissed in its entirety with costs.

Dated at Mbeya this 31st of July 2019


L. M. MONGELLA
JUDGE
31/07/2019

Court: Judgment delivered in Mbeya in Chambers this 31st day of July 2019 in the presence of the Mr. Richard Mathias Ngonehu, the representative of the plaintiff, some of the plaintiffs and Mr. Hija Chande, City Solicitor representing the Defendant.


L. M. MONGELLA
JUDGE
31/07/2019

Right of Appeal to the Court of Appeal has been duly explained




L. M. MONGELLA
JUDGE
31/07/2019