

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MUSOMA - SUB REGISTRY**

**AT MUSOMA**

**LAND CASE NO 05 OF 2021**

**GEORGE RICHARD RYOBA (Administrator of the  
Estates of the late Juma Ryoba) ..... PLAINTIFF**

***VERSUS***

**BARRICK NORTH MARA GOLD MINE LIMITED ..... 1<sup>ST</sup> DEFENDANT**  
**NYAMAGANYA MARWA ..... 2<sup>ND</sup> DEFENDANT**  
**NG'WEINA PROTUS ..... 3<sup>RD</sup> DEFENDANT**  
**RYOBA WAMBURA ..... 4<sup>TH</sup> DEFENDANT**  
**GICHOGO CHACHA ..... 5<sup>TH</sup> DEFENDANT**  
**CHACHA GICHOGO ..... 6<sup>TH</sup> DEFENDANT**  
**HITLER KEMANO ..... 7<sup>TH</sup> DEFENDANT**  
**AMOS HITLER ..... 8<sup>TH</sup> DEFENDANT**  
**MWITA CHACHA KEBAGO ..... 9<sup>TH</sup> DEFENDANT**  
**GHATI MATAIGA ..... 10<sup>TH</sup> DEFENDANT**  
**CHACHA MWASI ..... 11<sup>TH</sup> DEFENDANT**  
**MAGUBO MWASI ..... 12<sup>TH</sup> DEFENDANT**  
**MESERO SENSERA ..... 13<sup>TH</sup> DEFENDANT**  
**CHACHA MAGIGE KEGOYE ..... 14<sup>TH</sup> DEFENDANT**  
**RYOBA MARAITA ..... 15<sup>TH</sup> DEFENDANT**

<b>SAMWELI KEGOYE .....</b>	<b>16<sup>TH</sup> DEFENDANT•</b>
<b>MOKONO MUHIRI .....</b>	<b>17<sup>TH</sup> DEFENDANT</b>
<b>RYOBA KISIRI KISIRI .....</b>	<b>18<sup>TH</sup> DEFENDANT</b>
<b>NYAGONCHERA MWITA .....</b>	<b>19<sup>TH</sup> DEFENDANT</b>
<b>CHACHA GISIRI .....</b>	<b>20<sup>TH</sup> DEFENDANT</b>
<b>KISIR KISIRI .....</b>	<b>21<sup>ST</sup> DEFENDANT</b>
<b>MWITA CHACHA CHIWALE .....</b>	<b>22<sup>ND</sup> DEFENDANT</b>
<b>NYAHIRI CHACHA CHIWALE .....</b>	<b>23<sup>RD</sup> DFENDANT</b>
<b>BHOKE MANYUNYI .....</b>	<b>24<sup>TH</sup> DEFENDANT</b>
<b>MANGA TONGO .....</b>	<b>25<sup>TH</sup> DEFENDANT</b>

## **RULING**

24<sup>th</sup> March, 2022

**F. H. MAHIMBALI, J.:**

This ruling is in respect of the preliminary objection raised by the 1<sup>st</sup> defendant that this plaint does not disclose cause of action contrary to order VII, Rule 1 (e) of the Civil Procedure Code [Cap 33, R.E 2019] which requires that a plaint must contain facts of the case constituting the cause of action and when it arose.

As to why this plaint does not disclose cause of action, counsel for the first defendant raised two issues: the status of the plaintiff whether

he is legally/dully appointed administrator of the estate of the late Juma Ryoba. Secondly whether the suit land as per annexure EL-1 which situates at Genkuru Village, Gorongá Ward in Tarime District is the same being referred in the rest of the paragraphs of the plaint (say 7-10) which is Komarera – village in Nyamwaga Ward within Tarime District.

The hearing of the preliminary objection by the consent of both learned counsel was set by way of written submissions. Whereas Mr. Waziri Mchome learned advocate represented the first defendant, Mr. Daudi Mahemba, learned advocate represented the plaintiff. The 2<sup>nd</sup> to 25<sup>th</sup> defendants had nothing to submit as they did not raise the similar or any objection.

The material facts behind this ruling can be stated as follows. The plaintiff claims to be the lawful owner of the suit premise titled as Farm no.18 with Certificate of Occupancy No. 4140. That in the said farm, the 2<sup>nd</sup> to 25<sup>th</sup> defendants seem to have settlements within that farm. The first defendant Barrick North Mara Gold Mine Limited which is a mineral company within Nyamongo area in Tarime District within Mara Region intends to expand its mineral activities to the areas the 2<sup>nd</sup> – 25<sup>th</sup> defendants are residing. Thus, intends to effect compensation before they are alienated from it. The discussion is underway. Here then comes

the plaintiff claiming title over it and is aggrieved why the 1<sup>st</sup> defendant is making discussion with those invaders instead of the owner. It is from this background; the current case has been instituted by the plaintiff against all the defendants. Therefore, the possible main issue or one of the issues at trial as per the facts and pleadings of the case might be where is the suit land: Genkuru – Gorongá Ward or Komarera in Nyamwaga Ward, secondly who is the rightful owner.

The first defendant in his reply to the plaint dully filed, argues now whether the suit land the plaintiff is claiming in paragraphs 4-10 of the plaint is the same being referred in paragraph 3 of the plaint as per annexure EL-1. It is the view of the 1<sup>st</sup> defendant's counsel that the suit's land certainty is in question. Whereas the annexure EL-1 describes the suit land being in Genkuru village within Gorongá Ward, but the same plaint in subsequent paragraphs 7-10, describes the same suit land as situating in Komarera Village in Nyamwaga but both within Tarime District. So, the pertinent question by Mr. Waziri Mchome is whether the suit land being referred in exhibit EL-1 which is described being in Gorongá Ward is the same plot/land referred being in Nyamwaga Ward? Is that possible?

On this quest, it is Mr. Mchome's submission that the plaint does not disclose the cause of action. This being a land suit on ownership, the suit land must be clearly described. As per description given, it is not clear then where the suit land situates in the circumstances of this case.

The plaintiff's counsel on the other hand, has submitted that basing on what is deposed in paragraphs 4-10, the plaint has disclosed the cause of action as per law.

As what is the cause of action, both counsel are at agreement in their submissions that are statement of material facts which are essential for one to establish in order to support his right to the sought judgment of the Court. They cited the case of **John Byombalirwa V. A.M.I** [1983] T.L.R 1 being a good authority on that. The important issue then is whether given the facts of the present case, the cause of action by the plaintiff has been clearly stated for the defendant not to get a right of an immediate judgment against the plaintiff. This is equivalent to saying that if everything which if not established would give the defendant a right to an immediate judgment. That means, for the plaintiff to succeed, he is entitled to establish in his case every piece of evidence which is necessary to be proved to entitle him to get the desired decree. In this case, what the plaintiff is expected to prove

amongst others is whether the suit land he is claiming to be his, is within Komarera village in Nyamwaga Ward or Genkuru Village within Gorongá Ward. He is also expected to establish whether he owns or still owns it to date.

On this fact, the situation of the suit land is very essential to establish as one can own a similar described land in another village/ward. Should it be left as a triable issue in the trial?

On the issue of the status of the plaintiff as administrator of the said suit land for want of date of his appointment, Mr. Mahemba is of the view that the plaintiff was dully appointed as per annexure EL-2 despite the fact that it lacks the date of his appointment.

On the legality of annexure EL-2, Mr. Mchome learned advocate is of the view that pursuant to Rule 53(2) (b) and (d) the decision of the trial magistrate must be signed and dated. As the purported document granting letters of administration to the plaintiff is not dully dated, then he was not dully appointed.

The controversy with EL-2 annexure appears to be on Form no. IV of the GN 49 of 1971 of the Primary Courts (Administration of Estates) Rules which imposes a mandatory legal requirement of filling

forms no. III and IV in strict compliance. The said annexure EL-2 appears to be incomplete in not showing the date of appointment of the said plaintiff as administrator of the said estate. However, the missing dates in the said form are when was the said administrator appointed? The said Form No. IV on that part is blank, and it is worded as follows:

*"Mnamo tarehe .....Mwezi..... Mwaka..... Bw. George Richard Ryoba ameteuliwa kuwa Msimamizi wa Mirathi ya Marehemu Juma Ryoba."* However, the rest of the part of the said Form no. IV is dully filled, dated and signed by the trial/appointing magistrate. According to the wording under Rule **7(1) and (2) of the GN 49 of 1971**, the filling of that form is mandatorily provided. Non-compliance to it, in my opinion is fatal and the document becomes invalid.

As to whether the preliminary objection is meritorious on cause of action regarding description of the suit land, it is the central question of this ruling. The law is, parties are bound by their pleadings. Annextures are part of the pleadings. There is no way one can separate pleadings from annextures. The two are inseparable. In my close reading of the plaintiff's case, the triable issues amongst others in this case will be the description of the suit land. Where is it? At Genkuru Village in Gorongá Ward or Komarera Village in Nyamwaga Ward. The facts as they are,

make confusion for the defendants to defend well their suit. Otherwise, if the two situations are related or connected in one time, there ought to have been explicitly stated so.

In my considered view, paragraph 3 of the plaint is not connected with other corresponding paragraphs of the plaint, namely 7-10. This in my candid view makes the defendants not being in a proper position when making their defense as which land is really in controversy. Is it in Genkuru Village within Gorongá Ward or in Komarera Village within Nyamwaga Ward? There being no any explanations in the plaint explaining as to the connectivity of the two places of the suit land and the suit land makes the plaint not describing the suit land properly to make the cause of action known.

The fact that a Cause of Action is essential to a suit is well stated in Order II Rule 1 and 2 and Order VII, Rule 11 of the of the Civil Procedure Code, Cap 33 R.E 2019 wherein it is stated that a plaint must mention the cause of action if it is to be instituted as a suit.. Under rule 1 provides that:

*"Every suit shall, as far as practicable, be framed so as to afford **ground for final decision** upon the subjects in dispute and to prevent further litigation concerning them".  
[emphasis added].*



Under rule 2, it is provided that:

*"Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the **cause of action**; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court".*

The legal effects of a plaintiff failing to establish cause of action are provided Under **Order VII, Rule 11**, which is rejection of the plaintiff. Other remedies available are ordering amendments or striking out of the plaintiff.

Thus, it can be seen from the beginning that not only is a cause of action an important part of the Civil Suit but in essence is the reason that the civil suit exists in the first place. Any claim that is made in the suit flows from the cause of action, and as is stated by the above mentioned part of the code, the claims made must be with respect to the cause of action from whence they arise.

To pursue a cause of action, a plaintiff pleads or alleges facts in a plaintiff, the pleading that initiates a lawsuit. A cause of action thus consists of two parts, legal theory (the legal wrong the plaintiff claims to have suffered) and the remedy (the relief a court is asked to grant).

To win a case, the Plaintiff must prove the major legal points of the case lie in his favour; these are called the "elements" of that cause of action. If a plaintiff does not allege facts sufficient to support every element of a claim, the court, upon motion by the opposing party, may dismiss the plaintiff for failure to state a claim for which relief can be granted.

The defendant to the cause of action must file a Written Statement to the plaintiff in which, he may admit or deny the claims made by the plaintiff and give his proof for the same and his written arguments to show how the law supports him. Almost all defences must be raised at the first possible opportunity either in the Written Statement or by motion, else they are deemed waived by the Court.

Having discussed at length what is cause of action and whether this plaintiff discloses cause of action, it is not the duty of the Court to look for extra evidence and ascertain the facts surrounding the claim by the plaintiff if it discloses cause of action. In the case of **Colgate Palmolive Vs. Zakaria Provision Stores and Others**, Civil case No.1 of 1997 (unreported), Mapigano J; (a.h.w) held that:

*"I direct myself that in principle the prima facie case rule does not require that the court should examine the material before it, close it and come to a conclusion that the plaintiff has a case to which he is likely to succeed, for to do so*

*would amount to prejudicing the case on its merits, **all that the court has to be satisfied of, is that on the face of it the plaintiff has a case which needs consideration and that there is likelihood of the suit succeeding.***"

[Emphasis added].

What I gather from the submissions by the counsel from both parties, it is not clear the said farm No. 18 with CT 4140 which is in dispute is located in which area. In anyway, in a legal perspective it is not impossible for a farm with registration number No. 18 with CT 4140 to be at both areas **Komarera village, Nyamwaga Ward** and **Genkuru village, Gorongá Ward**, and they will mean two different plots in law and in their existence. In my considered view, it was the plaintiff's duty to clearly state in his pleading establishing the real location of the said Farm No. 18 he is interested with is in what area for this court to consider. Leaving it vague as it is, raises a pertinent legal issue of doubt for the defendants side to give a probable defense.

That said, the preliminary objection on the plaint failing to disclose cause of action is upheld. As what are the legal consequences, the law provides that it is a rejection of plaint or order an amendment. In the circumstances of this case, I reject the plaint and thus strike it out with

costs. The plaintiff is at liberty to refile the suit upon clearing all the pointed out legal deficiencies contained in his plaint.

DATED at MUSOMA this 24<sup>th</sup> day of March, 2022.



F. H. Mahimbali

Judge

**Court:** Ruling delivered this 24<sup>th</sup> day of March, 2022 in the presence of Mr. Daudi Mahemba, advocate for plaintiff, Joseph Rhobi Mantinus, advocate for the Defendants and Mr. Gidion Mugo – RMA

F. H. Mahimbali

Judge

24.03.2022