

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

DISTRICT REGISTRY

AT TABORA

LAND CASE NO. 3 OF 2021

1. JOHA ISMAIL }  
2. SADA ALLY } .....PLAINTIFFS

VERSUS

1. JUMA KILONGOZI }  
2. MGAWILA FLEKA }  
3. HAMISI FLEKA }  
4. THABIT NTIJE } .....DEFENDANTS  
5. EMMANUEL MWAMI }  
6. WILLIMA M. HUDUMA }  
7. TABORA MUNICIPAL COUNCIL }  
8. THE ATTORNEY GENERAL }

RULING

*Date: 15/6/2022& 5/8/2022*

**BAHATI SALEMA, J.:**

In this matter, the plaintiffs Joha Ismail and Sada Ally jointly filed Land case No.3/2021 against the defendants claiming the ownership of the disputed land which they acquired customarily. This area is located at Mawiti Malolo Ward within Tabora Municipality whereby the plaintiff owns 5 acres while the second is 15 acres.

Before the matter could be determined defendants the 1,2,3,4 and 5 defendants raised preliminary objections that ;

- i. *The plaint does not identify and describe properly the suit land and*
- ii. *It does not state and disclose the estimated value of the suit land( subject matter) which gives the power of the court to determine the suit.*
  - a. *Whereas the 7<sup>th</sup> and 8<sup>th</sup> defendants raised two limbs of preliminary objections that;*
- iii. *The plaint is bad in law for contravening the statutory provisions of Order VII, Rules 1 (b), (c), (e), (i), and 3 of the Civil Procedure Code, Cap 33 [R. E 2019].*
- iv. *The plaintiffs have no cause of action against the 7<sup>th</sup> defendant.*

When the matter was called for hearing, the plaintiffs were represented by Mr.Hassan Kilingo, learned counsel whereas the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants were represented by Mr. Samwel Ndanga, learned counsel and the 7<sup>th</sup> and 8<sup>th</sup> defendants were represented by Mr. Lameck Merumba, Senior State Attorney.

The objections were disposed by way of written submission by the defendants, replying objections by the plaintiffs, and rejoinder by the defendants as per the order of this court providing for the filing schedule, which was dully complied with by the parties. The submissions elaborated on matters that were averred in the respective written submission of preliminary objections of the parties. I undertake

not to reproduce the submission since they are on record in full, save to the extent necessary for the determination of the objection.

To start with the first limb of objection raised by the 1,2,3,4,5,6 defendants that the plaint does not describe properly the land in the suit land,

It is a trite law that a party in a land dispute should give a sufficient description of the suit land. The aim is to inform the court of the identity of the suit land as against all the other pieces of land surrounding it. In the case of **Daniel Dagala Kanuda (administrator of the estate of the late Mbalu Kashaha Bulada)** it was stated that:

*"The legal requirement for disclosure of the address or location was not cosmetic. It was intended for informing the Tribunal of sufficient description to specify the land in dispute for purposes of identifying it from other pieces of land around it. In the case of surveyed land. Mentioning the plot and block numbers or other specifications would thus suffice for the purpose.*

This is because such particulars are capable of identifying the Suit land specifically to effectively distinguish it from any other land adjacent to it.

Also, Order XX Rule 9 and Order VII Rule 3 of the Civil Procedure Code, provide for. I take the liberty to reproduce it hereunder:-

*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.*

This court having perused through the plaint, noted that what is pleaded in paragraphs 8 and 9 of the plaint is not a sufficient description of the disputed land because Malolo Ward comprised also a piece of land of other people which may be different from the plaintiffs. The plaint is not clear from the plaintiffs whether 5 acres and 15 acres are referring to the same land with regard to the location and size despite boundaries and demarcations were not identified.

I also subscribe with the defendants' counsel that where the suit property is unsurveyed there must be sufficient description of that land by giving its boundaries, demarcation, and locations identifying it from other lands within the vicinity. Since the plaint does not describe the suit premises properly it is my considered view that it is incompetent.

Guided by the above principle and also in the case of **Daniel Dagala Kanuda V Masaka Ibeho and 14 others**, Land Appeal No.26/2016(Unreported) I am of the settled view that the omission to give detailed descriptions of the suit land that non- giving of the proper description is fatal, I find the objection has merit.

As to the second limb of preliminary objection, the plaint does not state and disclose the estimated value of the suit which gives the power of this court to determine the suit.

According to Order VII Rule (i) of the Civil Procedure Code, Cap. 33 provides that;

*The plaint shall contain the following particulars-*

- (i) A statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.*

The counsel for the plaintiffs submitted that since this suit at hand has a different pecuniary feature as the value of the subject matter has no of any help since the determination of the jurisdiction of the court rather the joining of the Attorney General is automatically giving jurisdiction, to the High Court regardless of the subject matter in accordance with section 6 of the Government Proceeding Act, Cap 5 [R.E 2019]

In this, I differ with the plaintiffs' submission and subscribe my view with the defendant's counsel that since the basis of the pecuniary jurisdiction of the court in land matters is based on the estimated value of the suit. The plaint does not disclose and state the estimated suit properties. I would have expected the plaintiffs to disclose the estimated value of the suit properties. This is the land case to assure

the court has jurisdiction the estimated value of the disputed properties shall be disclosed in the plaint. However, the plaintiffs in the plaint do not state and disclose the value of the disputed properties and hence offending the provisions of Rule 3 (2) (d) of the GN. No. 174/2003 and Order VII Rule 1 (i) of the Civil Procedure Code, Cap 33.

I also find this objection to have merit.

As to the first limb of Preliminary Objections raised by the counsel for the 7<sup>th</sup> and 8<sup>th</sup> defendants that the plaint is bad in law for contravening the statutory provisions of Order VII;

Order VII Rules 1 (b), (c), (e), (i), and 3 of the Civil Procedure Code, Cap 33 [R. E 2019]. provides that ;

*The plaint shall contain the following particulars:-*

- a. The name of the court in which the suit is brought;*
- b. The name, description and place of residence of the plaintiff;*
- c. The name, description and place of residence of the defendant, so far as they can be ascertain;*
- d. Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;*
- e. The facts constituting the cause of action and when it arose;*
- f. The facts showing that the court has jurisdiction;*
- g. The relief which the plaintiff claims.*

- h. Where the plaintiff has allowed a set-off or relinquished a portion of his claim , the amount so allowed or relinquished; and*
- i. A statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.*

In his submission the learned Senior State Attorney submitted that the provision of law is couched in mandatory terms by the word *Shall*, therefore all requirements enumerated should be complied with since the plaintiff's plaint does not show the name, description, and place of residence of the plaintiffs. Neither the first plaintiff nor the second plaintiff was given and failure to indicate in plaint contravenes the provisions of Order VII Rule 1 (b) of the Civil procedure and also cited the case of **Antony Leonard Msanze and another Vs. Juliana Elias Msanze and 2 others**, Civil Appeal No. 76 of 2012 support his stance.

Though Mr. Kilingo opposed stating that the suit is maintainable as the names of the plaintiff were mentioned as JOHA ISMAIL and SADA ALLY but he admitted that the plaintiffs' residence were not mentioned at all but that does not vitiate the suit for this suit at hand during the trial something that was well-taken care under the address of service of their advocate, one Kilingo Hassani on behalf of all plaintiffs.

Having traversed through both submissions of parties, I subscribe with Mr. Merumba on a view that neither the first nor the second plaintiff

their description and places were given, failure to do so contravenes the provision of Order VII R.1 (b) of the Civil Procedure Code, Cap. 33. I find this to have merit.

As these grounds dispose of the matter, I won't dwell much on the last limb of objection. I hereby uphold the objections raised by the defendants, in this regard, I strike out the matter.

Order accordingly.



**A. BAHATI SALEMA**

**JUDGE**

**05/08/2022**

Ruling delivered in chamber on this 05<sup>th</sup> August, 2022 in the presence of both parties.



**A. BAHATI SALEMA**

**JUDGE**

**05/08/2022**

Right of Appeal fully explained.



**A. BAHATI SALEMA**

**JUDGE**

**05/08/2022**

