

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

MISC. LAND APPLICATION NO. 59 OF 2022

PRAYGOD ALIMBINGI MATEMA.....	1ST APPLICANT
JOSEPH STIVIN MAKWAMBA.....	2ND APPLICANT
LUNELY PICKSEN SANGA.....	3RD APPLICANT
PETER PHILIP MBOYA.....	4TH APPLICANT
EMMY ANANIA GALAMWENDA.....	5TH APPLICANT
JANKEN ASUPILE MWALWEGA.....	6TH APPLICANT
HAPPY WILLIAM BANDA.....	7TH APPLICANT
HAMIS JAPHE WALE.....	8TH APPLICANT
SHOJI JIMU MBWILE.....	9TH APPLICANT
JOHN AUGUSTINO WISSA.....	10TH APPLICANT
SUBIRA ALLY MWANSASU.....	11TH APPLICANT
ELLA MWAWIPA.....	12TH APPLICANT
BARTON AUGUSTINO MWALYABI.....	13TH APPLICANT
JEREMIA KENAN MWAKALEBELA.....	14TH APPLICANT
OMARY HASSAN MWAKANYAMALE.....	15TH APPLICANT
CHRISTOPHER MGENI.....	16TH APPLICANT
JOSHUA MGENI.....	17TH APPLICANT
MASHAKA ADAM MWAMBUGU.....	18TH APPLICANT
MONICA BAKARI MWENDA.....	19TH APPLICANT
LEONARD ANDREA FUNGO.....	20TH APPLICANT
JEMA ENOCK CHAULA.....	21ST APPLICANT
AGREY RUBEN SANGA.....	22ND APPLICANT
SEFANIA RUBEN SANGA.....	23RD APPLICANT
SUBIRAGA FRANK MWIFU.....	24TH APPLICANT
SARAH EDWARD MWAIKENDA.....	25TH APPLICANT
LUGANO KENETH MWAILAFU.....	26TH APPLICANT
FRANSIS KENETH MWAILAFU.....	27TH APPLICANT
JACOB MKANDAWILE FUNGA.....	28TH APPLICANT
BRAUN NTAILEN MGENI.....	29TH APPLICANT
ZUBERI ADEN MWALWEGO.....	30TH APPLICANT

FREDY ABRAHAM SANGA.....	31 ST APPLICANT
ELISHA SAULO MWALINGO.....	32 ND APPLICANT
KAIN NIKODEM MWAKIPOSYA.....	33 RD APPLICANT
BULUNGA HEPA MWALINGO.....	34 TH APPLICANT
SHUKRAN BARAZAN MWAIKUS.....	35 TH APPLICANT
ANDEKISYE OSWARD MWAIPUNGU.....	36 TH APPLICANT
KISOLI KOMANDAZI PABARI.....	37 TH APPLICANT
EXAVERY CHRISOMS MSIGWA.....	38 TH APPLICANT
LUCIA GASPER KWEKA.....	39 TH APPLICANT
JOSHUA MAJAGALA WASAOBE.....	40 TH APPLICANT
VUMILIA MLANGA KWILAGA.....	41 ST APPLICANT
GEORGE ANDREA MWAKAJINGA.....	42 ND APPLICANT
LOY OLE DANIELI.....	43 RD APPLICANT

VERSUS

MBEYA CITY COUNCIL.....	1 ST RESPONDENT
ATTORNEY GENERAL.....	2 ND RESPONDENT

RULING

DATED: 4th & 25th October, 2022

KARAYEMAHA, J

This is a ruling on a preliminary objection (the "PO"), taken at the instance of the 1st respondent, on the following points:

1. *That applicants have no locus standi to bring Misc. Land Application 59 of 2022 before the Court*
2. *That the application is unmaintainable in law for want of description of the land in dispute.*

3. That Miscellaneous Application is unmaintainable in law for contravening Proviso to Order XXXVII Rule 1 of the Civil Procedure Code [Cap. 33 R.E. 2019] (the "CPC").

The objection has been raised against the application in which the applicants are seeking an order to maintain the status quo to restrain temporarily the 1st respondent to demolish the rooms (Vibanda) around the City Garden within Mbeya City pending the expiry of 90 days' notice of intention to sue the respondents and the intended suit to be filed against them. The application is supported by the affidavit sworn by all applicants. It is this affidavit that has elicited the objection in respect of which this ruling is all about.

The preliminary objections were argued by way of written submissions. Mr. Daud Ramsay Mwamakamba, learned counsel fended for the applicants while Mr. Davis Mbembela, learned advocate, represented the 1st respondent. Mr. Mbembela commenced his submission by abandoning the 3rd point of preliminary objection and retained the 1st and 2nd points. Mr. Mbembela commenced his journey by first arguing the 2nd point and then the 1st po.

Arguing in respect of the 2nd po, Mr. Mbembela contended that the 43 applicants failed to provide description of the property since each claims

a piece of land individually. He held the view that in order to avoid confusion each applicant to enable the court to provide certain and executable orders. The learned Counsel argued that such failure contravened Order VII rule 3 of the CPC. Mr. Mbembele cited the case of **Daniel Kanuda Vs Masaka Ibeho**, Land Appeal No. 26 of 2015 (unreported) to underscore his view that description of the property is crucial for the purpose of identifying it from other pieces of land and for the purpose of authentication of land in dispute so as to afford courts of law to make certain and executable orders. He also relied on the decisions in the cases of **Martin Fredrick Rajab Vs Ilemela Municipal Council and Synergy Company Limited**, Civil Appeal No. 197 of 2019, **Romuald Andrea @Andrea Romuald @ Romuald A. Materu Vs. Mbeya City Council & 17 others**, Land Case No. 13 of 2019 and **Agast Green Mwamanda (as administrator of the estate of the late Abel Mwamanda) Vs Jena Martin**, Misc. Land Appeal No. 40 of 2019 (all unreported).

Submitting with regard to the 1st po, Mr. Mbembela argued that the 16th and 19th applicants have no locus standi because they are dead unless by duly appointed executors/executrixes or administrators/administratrixes of their estate. He cemented his position by citing the case of

Saskatchewan Ltd Vs Sask. Liguor and Gaming Authority (604598) and the case of **Lujuna Shubi Ballonzi vs Registered Trustees of Chama cha Mapinduzi** [1996] TLR 203.

In his rebuttal address, Mr. Mwamakamba submitted that the location of the land in dispute was properly described under paragraph 2 of the joint affidavit which City Garden at Sokoine Mbeya City. The learned counsel further argued aided by the decision in **Daniel Dagala Kanuda** (supra) that the land in dispute was sufficiently described and can be identified from other pieces of land around it. He argued adding that it was not necessary for each applicant to describe the land in dispute because they all stated that the rooms (Vibanda) are around City Garden at Sokoine within Mbeya City the area which is well understood by each party. He said that the purpose of the law is to make sure that the land in dispute is described. This according to him was accordingly done by the applicants. Mr. Mwamakamba seems to argue that if this an irregularity, it is a minor one which is cured by the overriding objectives which encourages determination of disputes substantially and avoid being tied up by technicalities. On this point he cited section 3A and 3B of the CPC and the case of **Yakobo Magoiga Gichere Vs Penina Yusuph**, Civil Appeal No. 55 of 2017.

Arguing in respect of the 1st po, Mr. Mwamakamba contended that the issue of *locus standi* of the 16th and 19th applicants attracts evidence to prove that they are dead. In his view this is not a po. He relied on the decision in **Mukisa Biscuit Manufacturing Company Ltd vs west End Distributors Ltd** [1969] E.A. 696 which was quoted in the case of **Sykes Travel Agent Ltd Vs National Identification Authority (NIDA) and another**, Civil Case No. 27 of 2019. He argued further that the two died after the application was lodged in Court. Having submitted as such he prayed the pos to be overruled with costs.

From these rival contentions, two pertinent questions for determination are in relation to one, whether the land in dispute was properly described and two whether the 1st po is in legal perspective a po.

As unanimously submitted by the counsel, the law makes it mandatory for a party who institutes in the court of law any land in dispute to describe properly the location of it. The rationale behind is easy to grasp. It is well stated in the case of **Daniel Dagala Kanuda** (supra):

"... it was intended for informing the tribunal of a sufficient description so as to specify the land in dispute from other pieces of land around it."

Therefore, failure to properly describe the location of the land in dispute stripes off the jurisdiction of the Courts of law and tribunals because the matter before them is incomplete. The importance of describing the location of the land in dispute is to identify it from other pieces of land for the purpose of authentic identification of it so as to afford the Courts of law to make certain and executable orders. This importance was underscored in an array of cases including **Martin Fredrick Rajab** (supra), **Romuald Andrea @Andrea Romuald @Romuald A. Materu** (supra) and **Agast Green Mwamanda** (supra) (all unreported).

In the instant matter the applicants filed a joint affidavit which states under paragraph 2 that:

*"That the applicants are owners of rooms (vibanda)
around City Garden at Sokoine within Mbeya City."*

In my considered view, the description is sufficient. I say so because **one**, there is no any other place in Mbeya City called City Garden which would raise confusion. Therefore, it is easy to identify it from other pieces of land. **Two**, all applicants are having rooms around that place and by the fact that they are suing jointly I see no necessity each to describe the small area covered by the room separately. **Three**, the shape taken by them in

describing the location of the land in dispute cannot hamper the court to issue an order for execution and eventually fail to effectively execute that order. In a nut shell, I find no substance in the 2nd po and it is hereby overruled.

Regarding the 1st po, I hasten to agree with Mr. Mwamakamba that it is not a po in legal perspective. As to what amounts to a po, assistance is sought in the case of **Mukisa Biscuit Manufacturing Company Ltd** (supra) which defined a po as follows:

*"A preliminary objection is in the nature of what used to be a demurrer. **It raises a pure point of law which is argued on assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained** or if what is sought is the exercise of judicial discretion. "*

In the light of the bolded expression, the emphasis is that a preliminary objection may only be raised on a pure question of law which can be discerned if the Court is satisfied that the pleaded facts are not contentious or if any of the facts has to be ascertained in a proper trial.

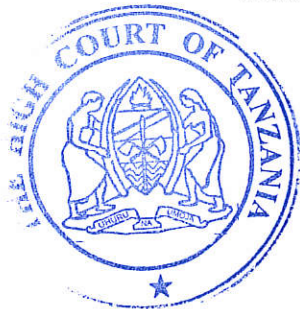
In this case, Mr. Mbembele argued that the 16th and 19 applicants have no locus standi because they are deceased. Be it as it may be, this

contention needs proof. It is not a matter of stating that the two are dead. There must be concrete and tangible evidence proving their deaths. As correctly submitted by Mr. Mwamakamba, the path taken by Mr. Mebmbele was a total disregard of what a preliminary objection should be.

Owing to the discussion above, I can hardly see the way through of these preliminary objections. Therefore, this application stands. Consequently, I hold that the objections are unmeritorious and I overrule them with costs.

It is so ordered.

Dated at **MBEYA** this 25th day of **October, 2022**



A handwritten signature in blue ink, appearing to read "J. M. Karayemaha".

J. M. Karayemaha
JUDGE