

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB- REGISTRY OF MANYARA

AT BABATI

LAND CASE NO. 1 OF 2022

TULITO ALARAH.....**1ST PLAINTIFF**
MEPUKORI LEIYAN.....**2ND PLAINTIFF**
RAEL JOSEPH alias RAHEL JOSEPH POROKWA (as an administratrix of the estates of the late **JOSEPH THOMAS**).....**3RD PLAINTIFF**
ZAKARIA MOLLEL.....**4TH PLAINTIFF**
ALAIS KUTITI.....**5TH PLAINTIFF**
PAULO MULEBO.....**6TH PLAINTIFF**
KUNYAE MELANGIMURE.....**7TH PLAINTIFF**
TERENGO KUNDEKI.....**8TH PLAINTIFF**
LESEESE LONGEJEK.....**9TH PLAINTIFF**
SAIKOON LEMUKOKO.....**10TH PLAINTIFF**
ALAIS JOHN KULUO (as an administratrix of the estates of the late **JOHN OLE KULUO**)**11TH PLAINTIFF**
MARIAS LEMWAANDE.....**12TH PLAINTIFF**
LUKAS ZAKARIA.....**13TH PLAINTIFF**
LEMALALI LEMKOKO.....**14TH PLAINTIFF**

VERSUS

**THE ASSISTANT COMMISSIONER FOR LANDS,
MANYARA REGION**..... **1ST DEFENDANT**
THE DIRECTOR SIMANJIRO DISTRICT COUNCIL.....**2ND DEFENDANT**
EMBOREET VILLAGE COUNCIL.....**3RD DEFENDANT**
THE HON. ATTORNEY GENERAL.....**4TH DEFENDANT**



RULING

Date: 9/3/2023 & 13/4/2023

BARTHY, J.

This ruling follows the preliminary objection raised by the defendants to the effect that;

This suit is incompetent and bad in law for failure to describe the suit land property which is contrary to Order VII Rule 3 of the Civil Procedure Code [CAP 33 R.E 2019].

The defendants therefore prayed for the preliminary objection be upheld and the suit be struck out with costs.

When the matter was called on for hearing of the preliminary objection, Mr. Francis Stollah learned advocate appeared for all plaintiffs whereas Ms. Zamaradi Johanes learned state attorney represented all the defendants.

The preliminary objection was disposed of orally. During the hearing Ms. Zamaradi abandoned the first preliminary objection and addressed the court on the remaining one.

It was her argument that, the suit is incompetent and bad in law for failure to describe the suit land property, contrary to Order VII Rule 3 of the Civil



Procedure Code [CAP 33 R.E 2019, Ms. Zamaradi submitted that, the said provision of the law requires proper description of the property in dispute.

She further stated, the plaint filed by the plaintiffs does not describe the property, therefore violates the law. To buttress her arguments, she cited the case of **Lwanganile Village Council & 21 others v. Joseph Rwakasheni**, Land Appeal No. 74 of 2018 (unreported).

On further submission she stated that, on paragraph six of the plaint it provides for the details of the parties, but there is nowhere else it gives details of the suit land such as boundaries or details of the title.

Reinforcing her arguments, she cited the case of **Martin Fredrick Rajabu v. Ilemela Municipal Council & others**, Civil Appeal No. 197 of 2018 Court of Appeal of Tanzania at Mwanza (unreported), where on page 13 the Court held that, the description of the title was not stated in the plaint, thus the omission had violated the requirement of the law and made the plaint incompetent. She argued that, the only remedy is to strike out the plaint.

On further submission Ms. Zamaradi contended that, the overriding objective cannot apply to this matter as the requirement to describe the suit land is mandatory and the same must be complied with.

To this point she referred to the case of **Mwanahamisi Habib & others v. Justin Ndunge Lyatuu (as the administrator of the estate of late Justin A. Lyatuu and 173 others**, Land Case No. 130 of 2018 (unreported) in which this court held, non- description of the suit property renders the suit incompetent. She therefore invited the court to strike out the suit with costs.

On reply submission Mr. Stollah argued that, the preliminary objection has been raised prematurely. The defendants ought to have waited after the parties had given their evidence for description of the property.

With respect to the cited case law of **Martin Fredrick Rajabu v. Ilemela Municipal Council & others** [supra], the court held that, parties are bound by their pleadings which are proved in their evidence.

He was of the firm view that, the party will be said to have failed to prove the claim over the land if the plaint, its annexures and evidence produced after hearing of the case have not sufficiently described the suit land.

He further countered that, apart from paragraph 6, there were annexures which were part and parcel of the plaint but at this stage were not yet produced.



Mr. Stollah submitted that the preliminary objection raised is not on pure point of law. Because it calls for the court to examine the annexures to the plaint and requires the proof of evidence which are matters of fact. He referred to the case of **Mukisa Biscuits Manufacturing Ltd. v. West End Distributors Ltd**, [1969] 1 EA 69 where it was held, there is no point of law raised if it calls for examination of evidence and annexures.

He further stated, looking on paragraph 6 of the plaint it identifies the suit land to be located at Emboret village, while paragraph 8 of the plaint read together with annexure B shows the suit land is at Emboret village council and therefore describing the suit land.

He added, page 2 and 10 with annexure D all give the description of the suit land. He went on stating, Paragraph 11 of the plaint has annexures E and F, whereby on annexure E there is a judgment of the District Land and Housing Tribunal for Simanjoro which also describes the suit land.

To argument his position Mr. Stollah maintained that, annexures are party of the plaint as the parties are bound by their pleadings, he was firm there was the compliance of Order VII Rule 3 of the CPC. He reiterated his stand that, the preliminary objection raised is not on pure point of law, rather it is



based on examination of facts. On that point, he referred to the case of **Bikubwa Issa Ally v. Sultan Mohamed Zaharan** [1997] TLR 295.

Rejoining, Ms. Zamaradi firm argued that the preliminary objection was not pre-maturely raised, as Order VII Rule 3 of the CPC requires the description of the suit land to be made on the plaint. The same was not described, which is violation of the mandatory requirements of the law regarding description of the suit land.

Addressing on annexures on the plaint she pointed out that they do not sufficiently identify the suit land as they go to the root of the evidence. She thus maintained her submission in chief and prayers.

The court having heard parties' rival submission and the examination of the pleadings in this matter, this court is therefore called to determine as to whether the plaint did not describe the suit land properly.

Gathering from the arguments of the counsels for each side, the preliminary objection hinges on interpretation of Order VII Rule 3 of the CPC. The said provision reads;

*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].

It is the requirement of Order VII Rule 3 of the CPC that the plaint has to contain the description of the suit property sufficient to identify it. It has been said in a number of times by this court including the case of **Fereji Said Fereji v. Jaluna General Supplies Ltd and Others**, Land Case No. 86 of 2020 (unreported) where it was held that;

"The essence of this provision needs not be over emphasized, this helps the court in establishing the territorial jurisdiction and most importantly, assists in issuing executable orders as well"

In determining the compliance of Order VII Rule 3 of CPC, the court considered the arguments by Ms. Zamaradi that the plaint did not give proper description of the suit land to have sufficiently identify it: Whereas, Mr. Stollah contended the suit land has been sufficiently described on the plaint with its annexures.

I have keenly gone through the plaint to see whether the suit land has been sufficiently described. Paragraph 6 of the plaint shows the plaintiffs

are stating the land is located at Ilaimutiak area in Emboreet village in Simanjiro District.

The location of the suit land is also mentioned on paragraphs 10 and 23 of the plaint, which referred the suit land to be located at Ilaimutiak area in Emboreet village in Simanjiro District. The issue is whether such description has sufficiently identified the suit land.

It is not in dispute that Ilaimutiak area in Emboreet village has many pieces of land, not only the suit land. It was therefore necessary for the plaint to describe the boundaries of the suit land. In the cited case of **Fereji Said Fereji v Jaluna General Supplies Ltd and Others** [supra] this court has held further that;

"such description may include the location, title number for surveyed plots, neighbours or boundaries for unsurveyed plots, or any form of description that would sufficiently identify and distinguish the suit property from other properties "

From the above referred decision, it clearly shows it is necessary for the plaint to indicate the boundaries of the suit land or any form of description that would sufficiently identify and distinguish the suit land.

I have considered the argument by Mr. Stollah that there are annexures on paragraphs 8 and 11 of the plaint, which give the description and location of the suit land. With respect, I do not agree with the counsel on his assertion, as the description needs to be on plaint and annexure will supplement what has been stated in the paragraph.

Further to that, annexures to the plaint only accord weight once they are admitted as exhibits, whereby on preliminary stages, the same cannot be relied to give further description of the matter not in the plaint.

It is now a settled principle that, annexures attached to the plaint or written statement of defence are not evidence unless they are properly admitted. As stated in the case of **Total Tanzania Ltd v. Samwel Mgonja**, Civil Appeal No. 70 of 2018, Court of Appeal of Tanzania at Dar es salaam (unreported) citing with approval the case of **Godbless Jonathan Lema v. Mussa Hamisi Mkanga and 2 Others**, Civil Appeal No. 47 of 2012 (unreported).

In the upshot, I find that the preliminary objection raised by the defendants' counsel to have the merit. Consequently, the suit is hereby struck out with costs.

It is so ordered.



DATED at **Babati** this 13th day of April, 2023.



G. N. BARTHY,

JUDGE

13/4/2023

COURT: Ruling delivered this 13th of April, 2023 at Babati in the presence of 1st and 3rd plaintiffs, Mr. Francis Stolla Advocate for all plaintiff and Mr. Oleterere Lemtunde Chairman of the 3rd Defendant.

B.A.MPEPO,

DEPUTY REGISTRAR

13/4/2023.