

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB- REGISTRY OF MANYARA  
AT BABATI**

**LAND CASE NO. 6 OF 2022**

**JULIUS PHILIPO QAMARA..... PLAINTIFF**

**VERSUS**

**NEEMA GWANDAA MAO.....1<sup>ST</sup> DEFENDANT**

**MBULU DISTRICT COUNCIL.....2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

Date: 9/3/2023 & 27/3/2023

**BARTHY, J.**

**RULING**

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

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

The second and third 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. Simon Shirima learned advocate appeared for the plaintiff whereas Ms. Zamaradi Johanes assisted by Mr. Green Mwambagi learned state attorneys represented the second and third defendants. The first defendant did not enter appearance despite being duly served.

The preliminary objection was disposed of orally by the counsels appeared for the parties.

Ms. Zamaradi in her submission in chief she argued that the suit is incompetent before this court for the failure to describe properly the suit land, contrary to requirements of Order VII Rule 3 of the Civil Procedure Code [CAP 33 R.E 2019], (the CPC). She was firm that the said provision of the law requires the property to be sufficiently described.

Ms. Zamaradi further submitted that; the description of the suit property is necessary for the court to allow the execution of the matter. To buttress her argument, she cited the case of **Lwanganile Village Council & 21 others v. Joseph Rwakasheni**, Land Appeal No. 74 of 2018 (unreported) which quoted with approval the case of **Daniel Dagala Kanuda v. Masaka Ibeho & 4 others**, Land Appeal No. 26 of 2015

(unreported) where the court extensively analyzed on the importance of giving description of the land in dispute and the requirement to describe it sufficiently.

She further stated that paragraph 5 of the plaint gives only a description of the suit land in terms of size and its value. However, the said paragraph does not give sufficient description. She added that, since the suit land is located on un-surveyed area, it was proper to describe its boundaries.

To reinforcement her arguments she made reference to 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) on page 13 the Court held that, the description of the property was not stated in the plaint and it violated the provision of Order VII Rule 3 of the CPC.

It was also stated, the omission to give proper description of the of the suit land renders the plaint incompetent and it ought to be struck out.

On further submission, Ms. Zamaradi contended that, the overriding objective cannot cure the anomaly. Since it is the mandatory requirement of the law to describe properly the suit land which needs to be fulfilled.

On this argument she pointed out 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 that, non- description of the suit property renders the suit incompetent and the overriding principle is inapplicable.

On reply submission by the counsel for the appellant, Mr. Shirima counter argued that, the plaint has given the description of the suit land as seen on paragraph 5 of the plaint which describes the size and its estimate value.

Mr. Shirima further contended that; on paragraph 6 of the plaint, it describes the location of the land in dispute to be at Dongobesh area of Mbulu District.

On further submission Mr. Shirima stated that Order VII Rule 3 of the CPC, does not require boundaries of the suit land to be indicated. He was of the firm view that the description of the suit land on the plaint filed has complied with the law.

Mr. Shirima also contended that; on the said plaint there is the annexure of the customary title which shows the title number of the suit land, as evidenced on paragraph 8 of the plaint.

Mr. Shirima respondent to the cited case of **Martin Fredrick Rajabu v. Ilemela Municipal Council & others** [supra]; referred by the defendants' counsel that it was distinguishable to this matter. As the matter in that case dealt with surveyed land, whereas in the instant matter the land is un-surveyed.

He further contended that, in the present matter it involves revocation of the title by the government, therefore the question of execution will not arise. He therefore urged the court to overrule the preliminary objection, as Order VII Rule 3 of the CPC does not require the plaint to indicate the boundaries of the suit land.

On a brief rejoinder, Ms. Zamaradi reiterated what she stated in her submission in chief earlier on. She however added that, as the plaint does not give proper description of the suit land. It therefore seems that the plaintiff is claiming the whole land over Dongobesh. She added that as the land is un-surveyed the plaint ought to have described the boundaries.

On the argument that, the case of **Martin Fredrick Rajabu v. Ilemela Municipal Council & others** [supra] is distinguishable to the circumstance of the case at hand, Ms. Zamaradi contended that; the case is relevant as it emphasizes on the requirement of giving description of the suit land as required by Order VII Rule 3 of the CPC.

To conclude, she maintained her prayers as submitted in chief.

Having gone through the parties' rival submission, the sole issue for the determination is whether the preliminary objection has merits.

From the parties' submission, the preliminary objection revolves on interpretation of Order VII Rule 3 of the CPC, which 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 law the plaint should give description of the suit property sufficient to identify it, as provided in the provision of the law

above. Also, in the case of **Fereji Said Fereji v. Jaluna General Supplies Ltd and Others**, Land Case No. 86 of 2020 (unreported) this court pointed out the need to give description of the land in dispute, 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"*

The court therefore has to determine as to whether the plaint filed in the present suit has complied with the requirement of Order VII Rule 3 of the CPC.

For the defendant's side, Ms. Zamaradi argued the plaint has not given proper description of the suit land sufficient to identify it as required by the law, whereas Mr. Shirima contended that the suit land has been sufficiently described.

I have considered the argument by Mr. Shirima that on paragraph 8 of the plaint, the customary title to the suit land has been attached and therefore the description of the suit land has been properly and sufficiently made.

Going through the pleading, paragraph 8 of the plaint did not give the description on the boundaries or even the details over the customary title attached as the annexure.

In that respect, I do not agree with the Mr. Shirima that the description was sufficiently made to identify the suit land properly as the law requires. Annexures to the plaint will only be of value once it has admitted as exhibits of the case.

The argument that the matter aims at challenging the revocation made by the defendants, therefore it won't affect the matter. The argument is clearly baseless as the law had couched in a mandatory requirement to give the proper description of the boundaries. As the provision of Order VII, Rule 3 of the CPC requires for immovable property, the plaint '**shall**' contain a description of the property sufficient to identify it

I have keenly gone through the plaint, where on paragraph 5 the it describes the suit land in terms of size to be 3.3 acres and the estimated value to be Tsh. 6 million respectively. Again, on paragraph 6 it gives the description of the suit land in terms of its location to be situated at Tumati in Dongobesh Mbulu Distrit Manyara Region.





According to the pleading, the description of the suit land in terms of location it did not specify on which exactly area of Tumati. It is clear that, there is vast land in Tumati and not only the suit land. Therefore, I am in agreement with Ms. Zamaradi that it was necessary for the plaint to give proper description of the boundaries of the suit land.

In the case of **Fereji Said Fereji v. Jaluna General Supplies Ltd and Others** [supra] this court held further that;

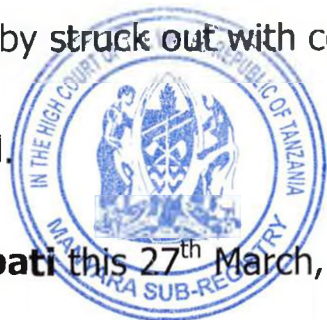
*"...such description may include the location, title number for surveyed plots, neighbours or boundaries for unsurveyed plots, or any form of description that would sufficiently identify and distinguish the suit property from other properties "*

From the above referred decision, it was 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.

The plaintiff has failed to comply with the requirement of Order VII, rule 3 of the CPC, therefore makes this matter incompetent before this court.

In the upshot I find the preliminary objection raised by the second and third defendants is meritorious and the same is sustained. Consequently, the suit is hereby ~~struck out~~ with costs.

It is so ordered.



**DATED** at **Babati** this 27<sup>th</sup> March, 2023.

**G.N. BARTHY**  
**JUDGE**  
**27/3/2023**