

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT MOROGORO

LAND CASE NO. 07OF 2023

HAMISI MWINSHEHE PEMBE (As an administrator of the estate of the Late Juma Hamisi Matua)**PLAINTIFF**

VERSUS

MOROGORO MUNICIPAL COUNCIL.....**1ST DEFENDANT**

ATTORNEY GENERAL.....**2ND DEFENDANT**

RULING

21st Aug, & 31st Oct, 2023

M.J. CHABA, J.

This ruling is in respect of preliminary objections raised by the defendants against the suit filed by the plaintiff. In this case the plaintiff one, Hamisi Mwinshehe Pembe is claiming from the defendants, Morogoro Municipal Counsel and The Attorney General for the following reliefs:

- (a) Declaration that the disputed land is one of the assets making part to the estates of the late JUMA HAMISI MATUTA and the defendants are just trespassers;
- (b) Permanent orders restraining all defendants, their agents, servants, and any other person acting under their authority from entering, using and or making any activities in the disputed land;
- (c) Damages to the tune of TZS. 10,000,000/=;

- (d) Costs of the suit, and
- (e) Any other or further reliefs as this Honourable Court may deem fit and just to grant.

According to the plaint, the dispute is over a piece of land measuring approximately two and half (2 ½) acres situated at Mbuyuni area at Kilimahewa street Mafisa ward (squatter) in Morogoro Municipality making part of the estates left behind by the late Juma Hamisi Matua, the deceased. That the estimated value of the disputed land is Tanzanian shillings fifty million (TZS. 50,000,000/=) only. The plaintiff further claims against the defendants jointly and severally for the immediate restoration of the disputed land unlawfully invaded by the defendants. The cause of action arose at Morogoro Municipality and the value of the subject matter as alluded above is, Tanzanian shillings fifty million (TZS. 50,000,000/=) only, thus this Honourable Court enjoys both territorial and pecuniary jurisdiction to try the case.

When the plaint was served to the defendants, on 31st day of July, 2023 through the office of Solicitor General, the defendants filed the joint written statement of defence countering the plaint, coupled with the notice of preliminary objection (PO) raising two points of law to the effect that:

1. The suit is bad in law as the plaintiff has no locus stand.
2. The suit is untenable and bad in law as the plaint does not describe sufficiently the land in dispute contrary to Order VII, Rule 3 of the Civil Procedure Code [CAP. 33 R.E, 2019].

Hearing of the points of preliminary objection was set to take place on the 21st August, 2023. However, when the matter was placed before me for hearing of the PO., the plaintiff who appeared in person, unrepresented and without legal representation, prayed the raised PO be disposed of by way of written submissions. On his part, Mr. Nzunde E. Machunda, Learned State Attorney did not object the plaintiff's suggestion. Thus, by consensus, it was agreed that, the respondents had to file her submission in support of the PO on or before 29/9/2023, plaintiff had to file his reply to the respondent's submission in chief on or before 5/09/2023 and rejoinder (if any) had to be filed by the respondents on or before 12/09/2023. In addition, the matter was scheduled for ruling on 29/09/2023. Both parties complied with the Court's order.

The defendants' joint written submission was prepared and filed by Mr. Nzumbe Eliackim Machunda, Learned State Attorney from the Office of the Solicitor General, Morogoro while the plaintiff's reply to the point of objection was prepared and drawn by Ms. Joyce Z. Richard, also Learned Advocate and filed by the plaintiff himself.

Arguing in support of the raised PO, Mr. Machunda commenced his submission by dropping the first ground of PO and proceeded to submit on the second limb/ point of objection.

Submitting on the second ground, Mr. Machunda referred this Court at paragraph 5 of the plaintiff's plaint which expressly states:

"That, the dispute is over a piece of land measuring approximately 2¹/₂ acres situated at Mbuyuni area at Kilimahewa street Mafisa Ward (squatter) in Morogoro Municipality marking part to the estate left behind by the late JUMA HAMIS MATUA [Deceased]".

He went on highlighting that, the above paragraph extracted from the plaintiff's plaint does not sufficiently describe the land in dispute contrary to the law under Order VII, Rule 3 of the Civil Procedure Code, [CAP. 33 R.E. 2019] (the CPC) which mandatorily requires that, once the subject matter of the suit is immovable property, description of the property must be sufficiently adduced to identify the said property. And in case such property, can be identified by the title number under the Land Registration Act, the plaint shall specify such title number. The learned State Attorney submitted further that, the plaint in this case ought to show clearly the boundaries of the disputed land and descriptions of neighbours or neighboring properties in order to distinguish it from other land if the land was un-surveyed, and if it was surveyed, it was sufficient or enough to state its plot number and block number as indicated in the title deed.

He accentuated that, merely stating the dispute is over a piece of land measuring approximately 2 1/2 acres situated at Mbuyuni area at Kilimahewa street, Mafisa Ward (squatter) does sufficiently identify which land is in dispute at the said Mafisa Ward, hence contrary to Order VII, Rule 3 of the CPC (supra).

The State Attorney underlined that, the logic and rationale for sufficiently identification of the property helps in executing a decree of the Court and avoid future litigation on the same area. To bolster his argument, he cited the cases of **Valeria T. Nguma and 53 Others Vs. Attorney General and Ministry of Works and Transportation**, Land Case No. 239 of 2021, (HCT) - Land Division, Dar Es Salaam; **Martin Richard Massi and 11 Others Vs. Dodoma City Council and the Attorney General**, Land Case No. 23 of 2023 (HCT) - Dodoma; **Laurent Mbwila and 6 Others Vs. Kinondoni Municipal Council and the Attorney General**, Land Case No. 111 of 2021, (HCT) – Land Division, Dar Es Salaam. (All unreported).

Giving an example, Mr. Machunda averred that in the case of **Valeria T. Nguma and 53 Others Vs. Attorney General and Ministry of Works and Transportation**, (supra), the Court (Hon. B.S. Masoud, J., As he then was) avowed that:

"..... The description is insufficient to identify the respective parcels of land allegedly owned by the plaintiff, and cannot enable the court to make an effective and executable order decree.....".

As to the way forward, Mr. Machunda submitted that, once the suit is proved to have contravened the law, its fate is to be struck out from the registry of this Court with costs. On this facet, he invited the Court to sustain the raised

point of PO., as it was expounded by this Court in the case of **Martin Richard Massi and 11 Others Vs. Dodoma City Council and the Attorney General**, (supra) on the ground that the plaintiff has failed to demonstrate sufficiently the disputed parcel of land.

On the above submission, Mr. Machunda prayed the Court to strike out the entire suit with costs.

In reply, the plaintiff briefly submitted that, the plaint clearly shows that the disputed area is un-surveyed and the size of the disputed land, address and location are clearly shown at paragraph 5. He submitted that, the above paragraph has disclosed that, the disputed land is situated at Mbuyuni area at Kilimahewa street within Mafisa Ward in Morogoro Municipality. In his view, such descriptions are sufficient to identify the disputed area because in Morogoro Municipality there is no any other ward called Mafisa Ward that may raise confusion. He stated that, the descriptions are so plain and easy to identify it from other parcel of land.

It was the plaintiff's contention that, it is not mandatory that all features of identifications of the suit land in dispute must be stated in the plaint. To cement his argument, the plaintiff cited a number of authorities including the cases of **Hamisi Salum Kizenga Vs. Moses Malaki Sewendo and 18 Others, Land Appeal No. 51 of 2019** (HCT) – Land Division, at Dar Es Salaam (Unreported), where this had the following to state at page 11 of the typed copy of judgment:

..... In my view, the description in the suit suffices to identify the land in question as it contains the size of the land, and location. It suffices to identify the suit land by either stating its size, location, address and boundaries if any. It is not mandatory that all features of identification of the suit land should be stated in the plaint.....”.

He further referred this Court to the case of **Praygod Alimbingi Matema and 42 Others Vs. Mbeya City Council and the Attorney General**, Misc. Application No. 59 of 2022 (HCT), at Mbeya (unreported), the Court at page 7 echoed similar position to the effect that: -

“The importance of describing the location of the land in dispute is to identify it from other pieces of land for purpose of authentic identification of it so as to afford the courts of law to make certain and executable orders. In my considered view, the description is sufficient. To say so because one, there is no other place in Mbeya City called City Garden which would raise confusion”.

Based on the above submission and authorities, the plaintiff concluded that, since it is clear that the land in disputes was clearly identified and described in line with the mandatory requirement of law under Order VII, Rule

3 of the CPC, he invited this Court to overrule the PO raised by the defendants with costs and order the case to proceed on merits.

As his right, the State Attorney did not seek to file rejoinder, may be, for a reason that his submission in chief suffices to meet the end of the preliminary objection raised by his clients, the defendants herein.

Having summarized the rivalry submissions from both parties in support for and against the point of preliminary objection raised by the defendants, and upon carefully perused the plaint and other relevant documents attached thereto, the issue calling for my consideration, determination and decision thereon is, whether or not the instant suit is competent before this Court. At this juncture, it is incumbent for this Court to revisit the relevant law as guiding principle before landing to the final verdict. Order VII, Rule 3 of the CPC (supra) provides that:

"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".

Emphasize mine. [Emphasis is mine].

From the wording of the above provision of the law, it is clear that, a claim involving immovable property, in particular landed property, requires a satisfactory description of the suit land for proper identification that would

differentiate a suit land from other parcels of the land in the same area. As correctly submitted by the learned State Attorney for the defendants, to have a complete and proper identification of the land, the plaintiff, is required to show the size of the land, location, and boundaries. Whereas the location will give direction to the locality where the land is situated, the size and the boundaries makes the identification more accurate by isolating the disputed suit land from other land found in the said location.

In this regard, the claimant must state sufficiently the description of the property in question for ease of identification. The provision makes it a mandatory requirement by using the word "shall" which infers that, it must be complied with. Mr. Machunda rightly highlighted that, the logic and rationale behind having sufficient identification of land property in dispute, is to easily facilitate and make a smooth environment in case the matter will end up to the execution of a decree of the Court. The precedents cited by the learned State Attorney, clearly demonstrates that, the need to narrate down the description of the property for identification so as to differentiate with other parcels of land is inevitable.

Now coming to the matter under consideration, paragraph 5 of the plaintiff's plaint portrays that, the plaintiff attempted to describe the suit land or property by stating the size as measuring approximately 2½ acres, located Mbuyuni area at Kilimahewa street Mafisa Ward (squatter) within Morogoro Municipality. In my considered view, the size of the suit land is not clearly stated

and / or even known by the claimant, herein the plaintiff. The question that arises in mind is this, why is he guessing its size by asserting or using the word "approximately", which simply means, fairly acute but not totally precise. This means that, the size of the land in dispute is not certain. As the plaintiff is claiming that, it is un-surveyed land, therefore, it was imperative for the plaintiff to describe precisely the width and length of the suit land in dispute.

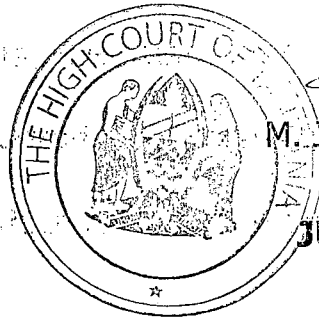
Similarly, it was vital important to mention the neighbours surrounding the said suit land. As the plaintiff averred that, the said suit land is situated or found in township within Morogoro Municipality, then, I think in my view that, the plaintiff was duty bound to show the boundaries clearly or any marks that distinguish or differentiate his land from other neighboring lands. As the land in dispute is only measured in approximated size of two and half (2 ½) acres, no doubt that even its real values as exhibited at paragraph 6 of the plaintiff's plaint, i.e., TZS. 50,000,000/= is also questionable for lacking certainty and precise as well.

From what I have endeavored to deliberate herein above, I am satisfied that, the present suit is untenable and bad in law as the plaint does not describe sufficiently the land in dispute contrary to Order VII, Rule 3 of the Civil Procedure Code [CAP. 33 R.E, 2019]. Indeed, I entirely agree with the submission advanced by the State Attorney for the defendants that the plaintiff has failed to describe with clarity the land in dispute, hence renders the entire suit incompetent.

In the event, the point of preliminary objection raised by the 1st and 2nd defendants is meritorious. Accordingly, it is hereby sustained. The plaint filed by the plaintiff which is clothed in by anomaly, is hereby struck out with costs.

I so order.

DATED at MOROGORO this 31st day of October, 2023.



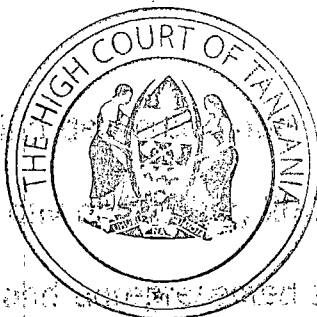
M. J. Chaba
M. J. Chaba

JUDGE

31/10/2023

Court:

Ruling delivered under my hand and the Seal of the Court in Chamber's this 31st day of October, 2023 in the presence of the Plaintiff who appeared in person, and unrepresented and Mr. Nzunde Eliakim Machunda, Learned State Attorney for the 1st and 2nd Defendants.



M. J. Chaba
M. J. Chaba

JUDGE

31/10/2023

Court:

Right of the parties to appeal to the Court of Appeal of Tanzania fully explained.



J. Chaba

J. Chaba

JUDGE

31/10/2023

JUDGE

31/10/2023

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