

IN THE HIGH COURT OF TANZANIA

IN THE SUB-REGISTRY OF DODOMA

AT DODOMA

LAND CASE NO. 42 OF 2023

BETWEEN

MANENO SAID MPANDA.....1st PLAINTIFF

NOTI TANGASI2nd PLAINTIFF

AMIRI ATHUMANI SONGITO3rd PLAINTIFF

EDWARD EMMANUEL MALIGANA4th PLAINTIFF

ANDASONI NGURUMO5th PLAINTIFF

KEDIMOND EZEKIA6th PLAINTIFF

AND 72 OTHERS

VERSUS

THE DISTRICT COUNCIL OF KONGWA1ST DEFENDANT

THE ATTORNEY GENERAL2ND DEFENDANT

RULING

13th February, & 1st March, 2024.

MUSOKWA, J.

The plaintiffs herein have filed a suit against the defendants claiming ownership over the suit land, located within Kongwa District in the region of Dodoma. This ruling is in respect of the preliminary objections taken at the instance of the learned state attorney,

representing the 1st and 2nd defendants. The following facts provide the background to the matter: -

The plaintiffs are 78 farmers who are claiming ownership to approximately more than 1,129 acres of land located in the villages of Mtanana, Ndurugumia and Kibaigwa within Kongwa District, in Dodoma region. The plaintiffs allege customary ownership to the suit land through various means of acquisition. Among the plaintiffs, some claim ownership through inheritance, whereas the claims of others, is on the basis of either purchase, bush clearance, or relocation through operation vijiji. The defendants, allegedly, began claiming ownership to 600 acres out of the aforementioned 1129 acres of land. It is further alleged by the plaintiffs that the defendants did not disclose particulars or demarcation of the 600 acres of land which they claim to own, apart from stating that the said 600 acres, form part of the 1129 acres of land. In this regard, the identity of the suit land is unknown to the plaintiffs. Thereafter, the defendants required the plaintiffs to either vacate the suit land, or alternatively, to enter into a lease agreement with the 1st defendant.

The preliminary objection raised by the 1st and 2nd defendants in their joint Written Statement of Defence contains two (2) points of law as reproduced hereinunder:

- (i) *That the Complaint is bad in law for contravening Order VII Rule 3 of the Civil Procedure Code, Cap. 33, R.E. 2019.*
- (ii) *That the suit is bad in law for contravening section 6 (2) of the Government Proceedings Act, Cap. 5, R.E. 2019.*

In the hearing of the preliminary objection learned senior state attorney Ms. Jennifer Kaaya represented the 1st and 2nd defendants while the plaintiffs enjoyed the services of advocate Elias Machibya, learned counsel.

Contending on the first limb of the preliminary objection, Ms. Kaaya submitted that the complaint is bad in law for contravening O.VII R.3 of the Civil Procedure Code, Cap. 33, R.E. 2019 (CPC). For ease of reference, the provision states as follows: -

*"Where the subject matter of the suit is immovable property, the complaint 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 complaint shall specify such title number". [emphasis added]*

In her concise submission, the learned state attorney referred to the 4th paragraph of the complaint, which will also be reproduced herein for convenience. The paragraph stipulates that: -

*" That the Plaintiffs claim against the Defendants jointly and severally an order that the Plaintiffs are the lawful owners of the land of **more than 1,129 acres at the land** of Kibaigwa,*

Mtanana and Ndurugumi villages within Kongwa District and Dodoma region; an order that, the 1st Defendant is not the owner of any 600 acres in the said land and the permanent injunction against the 1st Defendant from evicting the Plaintiffs from the suit land and that, an order that the 1st Defendant survey the suit land and issue to the Plaintiffs granted right of occupancies to their respective pieces of land and the payment of general damages." [emphasis added]

In addition, Ms. Kaaya pleaded the court to refer to the first part of the 5th paragraph of the plaint which contains a description of the suit land as follows: -

*"That the Plaintiffs are 78 persons who are farmers owning the **land of more than 1129 acres** in the valley land of the villages of Mtanana, Ndurugumi and Kibaigwa areas in Kongwa District and Dodoma region." [emphasis added]*

Proceeding with her submission, the learned state attorney averred that such description does not suffice to identify the land in dispute, neither does it suffice to describe the respective pieces of land claimed by each of the 78 plaintiffs. Ms. Kaaya asserted that the law required the plaintiffs, in their claim, to clearly provide for the size, but to also provide particulars of the specific location, of the respective land for each of the plaintiffs, including their respective boundaries. The purported description of the suit land as provided under paragraphs 4 to 5 of the plaint, according to Ms. Kaaya, remains wanting of the mandatory requirements of the law. Furthermore, she added, that in the event any of the plaintiffs succeed in

their claim, such lack of clarity as regards the identity of the land in dispute will not only complicate, but might even prevent the proper execution process. Senior state attorney, Ms. Kaaya, added further that, there appears to be discrepancies between paragraphs 4 to 5 of the plaint as pertains to the description of the suit land.

In concluding her arguments with regard to the first limb of the preliminary objection, and in support of her submission, Ms. Kaaya cited the decision of this court in the case of **Tulito Alaraha and Others Vs The Assistant Commissioner for Lands Manyara Region**, Land Case No. 1 of 2022.

The learned state attorney continued to submit on the second point of the preliminary objection whereby she emphasized that the suit is bad in law for contravening section 6 (2) of the Government Proceedings Act, Cap. 5, R.E 2019. Ms. Kaaya averred that the aforementioned section falls under part III of Cap. 5, entitled "Jurisdiction and Procedure." The section provides that:-

*No suit against the Government shall be instituted, and heard unless the claimant previously submits to the **Government Minister, Department or officer concerned a notice of not less than ninety days of his intention to sue the Government**, specifying the basis of his claim against the*

Government, and he shall send a copy of his claim to the Attorney-General and the Solicitor General. [emphasis added]

It was the submission of the state attorney for the defendants that the requirement under this provision, is directly linked with the jurisdiction of the court as it relates to the powers of the court to entertain a matter in which the government is a party thereto. Ms. Kaaya requested the court to refer to paragraph 12 of the plaint whereby the plaintiffs assert compliance to the mandatory requirement to issue the statutory 90 days' notice to the defendants. The paragraph further refers to **Annexure MPA – 2** which appears to be the purported government notice. The learned state attorney in describing the annexure, stated that it is entitled "*Yah: Taarifa ya Madai na Kusudio la Kushtaki Halmashauri.*" Ms. Kaaya proceeded to cite the annexure, submitting that the addressees include:-

(1) Mkurugenzi Mtendaji, Halmashauri ya Wilaya ya Kongwa

(2) Mtendaji Mkuu, Mamlaka ya Mji Mdogo Kibaigwa.

Ms. Kaaya submitted further that this second point of the preliminary objection is premised on the fact that the 1st defendant, therefore the District Council of Kongwa, was not duly served with the 90 days' statutory notice, contrary to section 6 (2) of Cap. 5 (*supra*). In substantiating her arguments, Ms. Kaaya contended that the said Annexure bears no signature or stamp as proof of service to Kongwa District Council. The

importance of the 90 days' notice, added the learned state attorney, is to inform the defendants therein of a prospective suit, and possibly, resort to amicable methods of dispute settlement, subsequently deterring the matter from reaching the court. Ms. Kaaya further contended that the statutory requirement was not adhered to, as a result, the matter is before this honourable court prematurely.

The state attorney for the defendants further averred, that the mere placing of the address on the notice, does not amount to proof of service to the first defendant. In support of her position, the learned state attorney preferred the case of the Court of Appeal of Tanzania (CAT), **Arusha Municipal Council Vs Lyamuya Construction Company Ltd** [1998] TLR, and the decision of this Court in the case of **Martinair Holland N.V & Another Vs Tanzania Civil Aviation Authority**, Civil Case No. 89 of 2022 (unreported). In winding up her submission, Ms. Kaaya prayed that the court should strike out the case and further prayed for costs.

In rebuttal, Mr. Machibya submitted that the plaint is well founded, whereas all the points of the preliminary objection have greatly been misconceived. The learned counsel for the plaintiffs proceeded to state that neither of the points of the preliminary objection are pure points of

law. The points, he added, are founded upon issues that are before this court for determination on merits. Citing the landmark case of **Mukisa Biscuit Manufacturing Company Limited Vs West End Distributors Limited [1969] E.A**, the learned counsel for the plaintiffs emphatically stated that the position of the law is to the effect that preliminary objections must be solely on points of law and not on matters that need to be proven by evidence. Mr. Machibya cited another CAT case, of **Cotwo (T) Ottu Union and another Vs Hon. Iddi Simba, Minister of Industry and Trade [2002] TLR**.

The advocate for the plaintiffs drew the attention of the court to paragraph 7 of the plaint, explaining that the paragraph contains one of the issues that have been pleaded and require determination by the court. In the paragraph, the plaintiffs aver that in January 2022, the 1st defendant went to the land of the plaintiffs and began claiming ownership of about 600 acres of land which they did not identify. Mr. Machibya asserted that this is among the issues that form the basis of the dispute.

The learned counsel then referred to paragraph 5 of the Written Statement of Defense (WSD) whereby the defendants respond to paragraph 7 of the plaint. The defendants allege that the 600 acres of land belong to them, being part of 3,494 acres of land which they own.

Furthermore, they have attached annexures in an attempt to substantiate their claim. Mr. Machibya submitted that the explanations provided by the defendants therein are indicative of the fact that they are well acquainted with the suit land. In consideration thereof, the learned advocate asserted that in the particular case before this court, the issue of the identity of the suit land, is a matter that must be proven by evidence and thereafter must be determined by the court. In this regard, therefore, it fails to qualify as a preliminary objection. According to Mr. Machibya, addressing the issue in any different manner would be similar to adjudicating on a matter before its hearing. The learned advocate summarily rejected **Tulito's case** (*supra*), cited by the defendants, as distinguishable.

On the 2nd point of the preliminary objection, Mr. Machibya submitted that it is baseless due to the fact that paragraph 12 of the plaint clearly provides that 90 days' notice was served. The learned advocate further added that the rebuttal of this issue by the defendants under paragraph 9 of the WSD, renders it an issue that is in dispute, and therefore disqualifies it as a preliminary point of objection, as proof of the same is necessary. Citing the **Mukisa Biscuits case** (*supra*) he argues that in that case, the court held that a preliminary objection is argued on the assumption that all the facts pleaded by the other party are correct. In

application of that principle to the matter before this court, Mr. Machibya argued that since the facts are in dispute, hence therefore the purported point of law fails to meet the required legal threshold. Furthermore he added, that by the learned state attorney asserting that there is no evidence on proof of service, it is clear that this is not a pure point of law. To that effect, all cases cited including the **Arusha Municipal Council** (*supra*) and **Martinair's case** (*supra*) are distinguishable. Reiterating that all the points of preliminary objections have been grossly misconceived, he concluded his submission by praying that this honorable court be pleased to dismiss the preliminary objection with costs.

In rejoining, Ms. Kaaya, learned state attorney prayed that she adopts her submission in chief. Furthermore, Ms. Kaaya explained that the allegation by counsel for the plaintiffs that the preliminary points of objection are not pure points of law is unfounded. The learned state attorney argued further that each point of the preliminary objection has been supported by the specific provision of law that has been contravened, and the respective remedy as provided by the law has also been explained. Also citing the principle in **Mukisa Biscuits** (*supra*) to support her own argument, Ms. Kaaya averred that it was the position of the court that the

preliminary objection must be based on the pleadings. However, she added that pleadings are read together with their respective Annexures.

Ms. Kaaya reiterated her stance that the issue of the jurisdiction of the court can be raised as a point of law. Furthermore, she stressed her position that the points of preliminary objection raised are based on the pleadings before this court. She further asserted that a matter that is in dispute, can in fact be raised as a point of law. The learned state attorney stated further that the issue of identification of the subject matter, to wit, the suit land, is the duty of the plaintiff and not the defendant, as provided under O.VII R.3, Cap. 33, R.E. 2019. Concluding her rejoinder submission, Ms. Kaaya reiterated her prayer that the court be pleased to sustain the preliminary objection and strike out the suit with costs.

The court *suo mottu*, upon entertaining the submissions by all parties, sought further clarification from the counsel for the plaintiffs on two issues: -

- i) The rationale behind the repetitive use of the phrase; “*the plaintiffs claim ownership to **more than 1,129** acres of land*”. A phrase which lacks preciseness and clarity. (*Emphasis added*)
- ii) The means employed to identify the 78 plaintiffs, given the assertion by the plaintiffs that the defendants withheld details of the identity of the 600 acres of the suit land.

In an attempt to address the query raised by the court, the counsel for the plaintiffs opted to address both issues jointly. Mr. Machibya explained that the “1,129 acres or more”, is the total area of land claimed by all the plaintiffs jointly. Mr. Machibya further explained that the 1st defendant, in January 2022, approached the plaintiffs’ claiming ownership to 600 acres, which is a portion of land out of the 1,129 acres owned by the plaintiffs. In addressing the issue on the identification of the 78 plaintiffs, the learned advocate submitted that all the 78 plaintiffs were summoned by the Executive Director of Kongwa District Council and ordered to vacate the suit land, resulting in the institution of this suit. This submission marked the end of the submissions by all parties.

The court shall now address the issue as to whether the preliminary points of objection raised by the defendants have merits. I shall commence with the first point of the preliminary objection. In a suit such as the one before this court, where the subject matter is immovable property, O.VII R. 3, Cap. 33 (*supra*) requires that the plaint should contain a description of the property that suffices to identify it. The learned attorney for the defendants advanced the argument that the purported description of the property as provided under paragraph 4 of the plaint, cannot be deemed to be a valid description of the suit land in accordance with the purposes

of the law. The availed description of the suit land within the plaint is reproduced herein below:

*"That the plaintiffs claim against the defendants jointly and severally is (sic) an order that the plaintiffs are the lawful owners of **the land of more than 1,129 acres at the land of Kibaigwa, Mtanana and Ndurugum villages within Kongwa District and Dodoma region;**..." (Emphasis added)*

Ms. Kaaya submitted further that, not only does the description of the property that has been offered by the plaintiffs fail to describe the suit land; but also, the plaintiffs have further failed to provide distinct particulars of the respective pieces of land claimed by each of the 78 plaintiffs. In rebuttal, Mr. Machibya asserted that the issue of the identity of the suit land is in fact, a matter that must be determined by this court on merits. Further adding that, the preliminary point of objection with regard to identification of the suit land is not a pure point of law as it would require to be proven through the production of evidence.

In perusal of the pleadings, I further took cognizance of the fact that the plaintiffs, in referring to the suit land, repetitively used the phrase "more than 1,129 acres" as the land they claim ownership to. Apart from paragraph 4 cited above, the phrase has also been used under paragraphs

5, 10 and 14 of the plaint. In addition, the defendants do not claim ownership of the approximated 1,129 acres claimed by the plaintiffs. The area of land claimed by the defendants is about 600 acres only as described under paragraph 7 of the plaint as follows: -

*"That in January 2022 however, the 1st Defendant went to the land of the plaintiffs and **started to claim ownership of about 600 acres** which were not identified..." (Emphasis added).*

In view of the foregoing, it is apparent that the plaintiff's description of the suit land is wanting and confusing. Certainly, it is unpractical for this court to entertain the Plaintiffs' dispute involving more than 1,129 acres while on the other hand, the 1st Defendant claims about 600 acres only. It follows therefore that, there is gross lack of clarity as to the location, demarcations and size of the suit land. In addition to the aforementioned, the plaintiffs have failed to provide a proper description of the respective pieces of land they individually claim ownership to. In connection with this, I refer to **Annexure MPA-1**, copy of the minutes of the meeting, held on 5th February 2022, whereby the 78 farmers convened to deliberate on this matter. While the names of the 78 plaintiffs are enlisted and their signatures appended, no description of their respective pieces of land claimed is provided therein.

Ms. Kaaya, learned state attorney advanced a valid observation before this court. In addressing the failure by the plaintiffs to describe the respective pieces of land claimed by each of the plaintiffs, she questioned how execution would be effected in the event, all or any of the plaintiffs succeed in their claim. I entirely agree with this observation, and wish to add that this missing piece of valid information may not only hinder execution but may further result in hindering the interests of justice.

In the case of **Alkando Hamis Jafari Vs National Microfinance Bank Twins Auction Mart Co. Ltd and another**, HC Land Appeal No. 68 of 2021 (unreported), this court sitting at Mbeya, exercised its revisional powers to annul the decision of the District Land and Housing Tribunal due to non-disclosure of the location of the suit property in the application. The court, partly held as follows at page 6:-

".....The legal requirement for disclosure of the location or address was not put in place for decoration purposes. It was intended to inform the tribunal of a sufficient description so as to specify the land in dispute for purposes of identifying it from other areas/land where the house stands....in respect of un-surveyed land, specification of boundaries and or permanent features surrounding the land where the suit house is, are important particulars for the purpose of identification...." (Emphasis added)

This court, Karayemaha J., proceeding with the adjudication of the matter further stated the following as provided under pages 7 to 8;

*"....The importance of making detailed description of suit house in resolving disputes can be emphasized. The law, through all amendments, has been constantly underscoring this significance. **The provisions of Order VII Rule 3 of the CPC, for instance give lucid wording of the requirement.....the intention of the law is to ensure that, the Court determines the controversy between the two sides of a suit related to landed property effectively by dealing with a specific and definite house. The law intends further that, when the court passes a decree, the same becomes certain and executable...**" (Emphasis added)*

In emphasizing on the significance of the description of the suit land in facilitating the execution of court orders, Karayemaha J., cited the case of **Ramadhan Omary Humbi and 58 others Vs. Aneth Paulina Nkinda and another**, HC Land Case No. 99 of 2013 at DSM, (unreported). In the light of the cited authorities, a proper description of the suit land is of paramount importance, failure of which the court will be hindered from effectively adjudicating the controversy between the parties. Subsequently, the execution process will also be frustrated, as correctly argued by Ms. Kaaya, learned state attorney. The suit land in the matter before this court, is unsurveyed land. This notwithstanding, further considering that the land in dispute spans over three different

villages, the plaintiffs were required to provide sufficient description of boundaries, to identify the suit land.

Mr. Machibya in his rebuttal submissions averred that the issue of the description of the suit land is not a pure point of law. The learned counsel for the plaintiffs further asserted that a preliminary objection must be solely on points of law and not on matters that need to be proven by evidence. Mr. Machibya firmly argued that the issue of the suit land is a matter which must be proven by evidence citing the case of **Mukisa Biscuits** (*supra*) in support of his stance.

With due respect to the learned counsel for the plaintiffs, the question of sufficient description of immovable property for the purpose of identification is mandatory in terms of O.VII R.3 of the CPC. Indeed, the statutory requirements for pleadings serve specific purposes, including but not limited to, determining the jurisdiction of the court, and facilitating the execution process, among others. The information contained in the pleadings is necessary for the smooth, efficient and expeditious determination of disputes as well as proper execution of court orders or decrees. Failure of the provision of such key information renders the adjudication process either difficult, impossible, futile or a nullity. In essence, contrary to the arguments advanced by Mr. Machibya, facts

relating to the identification and location of the subject matter of the suit are not facts that need to be ascertained by the court. To the contrary, these are basic facts that must be properly pleaded by the plaintiff who wishes the court to adjudicate the matter before it.

In the case of ***Godfrey Nzowa Vs Selemani Kova and Tanzania Building Agency***, Civil Appeal No. 183 of 2019, (unreported) the CAT sitting in Arusha, partly held on page 10 as follows:

*"...the objection raises a **point of law based on ascertained facts** and not on evidence and if the objection was to be sustained it will dispose of the matter and thus falls within the ambit of the factors to consider in determination of a pure point of law outlined in **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Limited [1969] E.A 696...**" [Emphasis added]*

Likewise, in the case of **Martin Fredrick Rajabu Vs Ilemela Municipal Council and another**, Civil Appeal No. 197 of 2019 (unreported), the CAT faced a similar issue relating to non-compliance of O.VII R.3 of the CPC. Thus, the CAT held on page 13 as follows: -

*"From what was pleaded by the appellant, it is glaring that the **description of the suit property was not given because neither the size nor neighboring owners of piece of land among others, were stated in the plaint. This was not proper** and we agree with learned trial Judge and Mr. Mrisha that, it was incumbent on the appellant to state in the plain the description of the suit*

*property which is in terms of the dictates of Order 7 rule 3 of the Civil Procedure Code [Cap. 33 R.E 2019]...nothing is stated on the **location, size and neighbors** of the said suit property” [emphasis added]*

Guided by the principles cited above, I subscribe to the arguments advanced by Ms. Kaaya that it is not the duty of the defendants to identify the subject matter of the suit. In the same spirit, I further wish to add, that it is also not the duty of the court to determine the description of the subject matter of the suit. This duty is borne upon the plaintiff as provided under O.VII R.3 of the CPC. In that regard, I hereby sustain the first point of the preliminary objection and struck out the suit with costs for being incompetent. After upholding the first point of the preliminary objection with the corresponding consequences thereof, I find no pressing need to address the second point of the preliminary objection.

It is so ordered.

Right of appeal fully explained.

DATED at DODOMA this 1st day of March, 2024.



A handwritten signature in black ink, appearing to read "I.D. Musokwa". The signature is fluid and cursive.

I.D. MUSOKWA
JUDGE

Ruling delivered in the presence of 1st, 2nd, 3rd, 5th and 6th plaintiffs, and in the presence of Advocate Magreth Mbasha, holding brief for Mr. Elias Machibya, advocate for the plaintiffs; and in the presence of State Attorney Omary Ngatanda, holding brief for Senior State Attorney Jennifer Kaaya, for the 1st and 2nd defendants.



A handwritten signature in black ink, appearing to read 'I.D. Musokwa'.

I.D. MUSOKWA
JUDGE