

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 138 OF 2020**

**FATUMA SHABANI SAID DOLOLO (Legal representative of the late Shabani Said Dololo) .....1<sup>ST</sup> PLAINTIFF**

**FATUMA SALUMU SAID DOLOLO (Legal representative of the late Shabani Said Dololo) .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ABDALLAH SAID MGAZA.....1<sup>ST</sup> DEFENDANT**

**MOHAMED SALEH ABRI.....2<sup>ND</sup> DEFENDANT**

**RULING**

**OPIYO, J.**

The defendants here in above have raised three preliminary objections on point of law that; (1) the plaint is bad in law for failure to comply with Order VII Rule 1 (i) of the Civil Procedure Code, Cap 33, R.E 2019, (2) the plaint does not fully describe the suit property contrary to Order VIII Rule 3 of the Civil Procedure Code and (3) the plaint does not disclose the source of information contrary to order VI Rule 15 of the Civil Procedure Code Cap 33 R.E 2019.

The preliminary objections were argued by way of written submissions. Mrs. Cypriana Emanuel William appeared for the plaintiffs, while the

defendants were represented by the learned counsel Mathew Bènard Kabunga.

Submitting for the 1<sup>st</sup> objection, Mr. Kabuga maintained that, the plaint is fatally defective for failure to fulfil mandatory provisions of Order VII Rule 1 (i) of the Civil Procedure Code supra, for failure to state the value of a subject matter in question as required. He argued that, the impugned plaint failed to comply with the above provision of law which requires the plaint to contain a statement of the value of the subject matter of the suit for the purpose of jurisdiction and for court fees. This makes the plaint fatally defective as the above provision is mandatory to be complied with.

On the 2<sup>nd</sup> objection, Mr. submitted that, the plaint failed to give description of the subject matter sufficient to identify it, contrary to Order VIII Rule 3 of the Civil Procedure Code. That the plaint just stated that, the claim is 75 acres of land at vijibweni ward, Kisiwani street, no descriptions of things like demarcations, boundaries and neighbours surrounding the disputed property. he quoted the provision he claimed to have been violated for ease reference. It 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 tittle number under the Land Registration Act, the plaint shall specify such tittle number”*

He then argued that, failure to comply with the above requirement renders the plaint incompetent and bad in law. He therefore, urged for striking out of the suit for having bad plaint.

Replying against the first preliminary objection, the plaintiffs' counsel submitted that, the value of the subject matter has been stated at paragraph 6 of the plaint hence Order VII Rule 1 (i) of the Civil Procedure Code, Cap 33, R.E 2019, has been complied with accordingly.

Replying to on the second objection, plaintiffs' counsels stated that, the plaint stated clearly under paragraph 6 of the plaint that, the plaintiffs are claiming 75 acres of land, providing location of the suit land which is Vijibweni Ward at Kigamboni District in Dar Es Salaam Region, therefore the second objection is also baseless. To her, the suit property has been well described. Therefore, the second objection lacks merits.

I have gone through the rival submissions of parties through their respective counsels regarding these objections. Looking at the above 1<sup>st</sup> objection, that the plaint does not disclose the value of a suit land, I find it devoid of merits as the value of the subject matter of the suit land has been stated at paragraph 6 of the plaint that, is 700,000,000/=(say seven hundred million Tanzania shillings). Therefore, without much further ado, I proceed to overrule the 1<sup>st</sup> preliminary objection.

On the second objection, I am out rightly in agreement with the defendant's counsel that, the description of the disputed property is confusing and is not sufficient enough to identify it. The facts insinuate 75 acres in Kisiwani street that was sold to and wall fenced by the second

defendant. At the same time, it referred to the other remaining 75 acres in the hands of their uncle, 1<sup>st</sup> defendant herein. This connotes having 150 acres in that particular street belonging to their late grandfather. Given the size of the property, which is far from being certain in the first place, be it 75 acres or 150 acres sounds too big for any normal street and for it to be all wall fenced. I called the parties for clarity to address the court on these doubts. It came out that, the plaintiffs were not at all certain on the estimated size of the disputed property, but in all it seems much smaller than their exaggerated estimate. They said that, the area is fully occupied with ten houses already constructed. The area that can accommodate ten houses only and the estimated 3 acres sold to the second defendant is far from being close to 75 acres. It also came out as per the joint WSD that 2<sup>nd</sup> defendant had only bought a piece of land estimated to be 3 acres and not 75 claimed by the plaintiff. And even the location of the disputed property is still disputed among the parties. According to the above Order VIII Rule 3 of the Civil Procedure Code (supra), where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. The instant plaint falls short of compliance with the above provision of law.

Second objection is therefore sustained and consequently the suit is struck out for lack of sufficient description of the disputed property. No order as to costs.



**M. P. OPIYO,**

**JUDGE**

**25/3/2021**