

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 86 OF 2020

FEREJI SAID FEREJI PLAINTIFF

VERSUS

1. JALUMA GENERAL SUPPLIES LIMITED
2. INTERNATIONAL COMMERCIAL
BANK (T) LIMITED } **DEFENDANTS**

RULING

S.M KALUNDE, J:-

On 16th November, 2020 when this matter came, I brought to the attention of the counsel for the parties on the defects in the plaint filed the plaintiff. The defects related to non-compliance with the mandatory provisions of **Order VII Rule 1 and Rule 3 of the Civil Procedure Code, Cap. 33 of R.E. 2019 ("the CPC")**. I did so upon noticing that it was apparent on the face of record that the plaint did not contain:

- (i) a statement of value of the subject matter; and
- (ii) the description of the suit property sufficient to identify it in terms of o. VII Rule 3 of the CPC.

On the respective date **Ms. Blandina Gawile**, learned advocate for the 1st defendant was holding brief for **Mr. Baltazar Geoffrey**, learned advocate and the 2nd defendants were being represented by **Mr. Richard Madibi**, learned advocate who as being assisted by **Ms. Genoveva Kalolo Bundala**, learned advocate. In light of the issue raised by the Court *suo moto* I ordered parties to appear before me on 20th November, 2020 at 1400hrs to address the Court on the said issues.

Subsequently, on 20th November, 2020, Ms. Blandina learned advocate appeared for the 1st defendant and Mr. Richard and Ms. Genoveva, learned advocates appeared for the 2nd defendant. However, Mr. Baltazar did not appear, instead **Mr. Thomas Chuba**, learned advocate appeared and informed the Court he was instructed by his colleague Nehemia Gabo to appear and request to file a rejoinder to the Written Statement of Defence. He alluded that he had no instructions to proceed to submit on the issues raised.

On her part Ms. Blandina informed the Court that, after appearing in Court on 16th November, 2020, he informed Mr. Baltazar on what transpired in Court and that he had to appear before the Court on 20th November, 2020 to address the Court. She alluded that Mr. Baltazar took note and agreed to appear. She also said that, earlier in the morning of 20th November, 2020 she called Mr. Baltazar, who responded that he had instructed someone to appear in Court for the said purpose.

Mr. Chubwa insisted that he had no instruction to address the Court on the issues raised and added that proceeding to present on the issues would mislead the Court. Both Ms. Blandina and Mr. Madibi were ready to proceed. In light of what transpired I proceeded to allow parties in attendance and ready to proceed to make their submissions on an understanding that Mr. Baltazar, who was dully informed of a need to appear and address the Court, had waived his right to be heard.

Ms. Blandina was concise in her submissions, she said that the suit was not maintainable for failure to comply with the mandatory requirements of o. VII Rule 1 of the CPC.

On his part, Mr. Madibi contended that o. VII Rule 1 (f) and (i) of the CPC read together with **section 37 of the Land Disputes Courts Act, Cap. 216 of R.E. 2019** requires that the value of the subject matter be specified for purposes of determining the jurisdiction of the Court even when the orders sought were merely declaratory. He added that the failure to specify the value of the subject matter rendered the plaint incurably defective. To bolster his argument he cited the case of this Court in **Esther Alphonse Mahende & Another vs Maendeleo Bank PLC & Another** (Land Case No.95 of 2014) [2018] TZHCLandD 52; (14 March 2018). On the basis of the argument, he invited the Court to reject the plaint.

As for description of property, Mr. Madibi argued that, the plaintiff failed to provide description of the suit property sufficient

for identification. He added that there is nowhere in the plaint where there was a clear description of the size and location of the suit property sufficient to vest territorial jurisdiction on the Court. On account of that he prayed that the plaint be rejected.

The issue raised by the Court *suo motu* is based on the provisions of o. VII r. 1 (f) and (i) and o. VII r. 3 of the CPC. In essence o. VII r. 1 (i) provide for a requirement that, a plaint must contain a statement of the value of the subject matter involved in the suit for the purposes of determining the pecuniary jurisdiction of the court. The provisions reads:

- "1. The plaint shall contain the following particulars:
- (a)
 - (b)
 - (c)
 - (d)
 - (e) **N/A**
 - (f)
 - (g)
 - (h)
 - (i) **a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.** [Emphasis mine]

In accordance with o. VII Rule 1 (i) of the CPC read together with section 37 of Cap. 216, a plaint must contain a statement of the value of the subject matter involved in the suit. The requirement to state the value of the subject matter is not a cosmetic one because it is useful in determining the jurisdiction of

the Court as well as ascertaining the requisite court fees. As pointed out earlier, the plaint in the present suit does not contain a statement of value of the subject matter. That, in my view, is an incurable irregularity which affects the competence of the suit. The failure to state the value of the subject matter leaves the court uncertain of its pecuniary jurisdiction, rendering it illegal and unsafe for it to proceed to entertain the suit.

I am aware that the requirement to state the value of the subject matter is not applicable in certain suits where the orders sought were merely declaratory. However, that requirement is only applicable where there are no consequential prayers. In the present case, the alleged that the plaintiff property was pledged as security for a loan advanced to the 1st defendant by the 2nd defendant, upon default the plaintiff instituted the present suit seeking for *inter alia* declaratory orders that ownership documents be expunged from the hands of the 2nd defendant as the plaintiff never consented to the loan; and a declaration that the move by the defendant to sell the mortgaged properties registered in favour of the plaintiff is void and premature.

On careful perusal of the contents of the plaint and reliefs sought it is clear that the said reliefs are not merely declaratory, regard being on the circumstances as enumerated in the pleadings. Whatever the meaning or the intention of the plaintiff were in saying that "**... ownership documents be expunged from the hands of the 2nd defendant**" the result of it would

be constructively declaring them to be lawful owners of the suit property as against the 1st defendant. As such the exception to state the value of the subject matter does not apply to the present case. failure to state the value, therefore, renders the suit incompetent.

As regards to the question of description of the property the law is very clear. Order VII rule 3 of the CPC provides that where subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. The essence of this provision need not be over emphasized, this helps the court in establishing the territorial jurisdiction and most importantly, assists in issuing executable orders as well. The relevant 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 mine]*

The highlighted phrase above makes it mandatory that a Where the subject matter of the suit is immovable property, the plaint must include a description sufficient to identify the said property. Such description may include the location, title number for surveyed plots, neighbors or boundaries for unsurveyed plots

or any form of description that would sufficiently identify and distinguish the suit property from other properties.

In his, eight (8) paragraph plaint and its annexures, there is no paragraph in which the plaintiff provided a description of the suit property involved. The plaintiff wants this Court to allegedly **"expunge"** ownership documents from the hands of the 2nd defendant as the plaintiff never consented to the loan. In addition to that, the applicant is seeking for a declaration that the move by the defendant to sell the mortgaged property registered in the name of the plaintiff is void and premature. However, the plaintiff does not provide a clear description of the property to which the orders of the Court I meant to applied to. In absence of such a description the Court risks a possibility of issuing inexecutable orders or else the order issued would be chaotic or almost impossible to execute; that is not the purpose of Court orders.

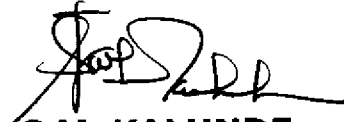
The law is very clear under o. VII r. 1 (i) of the CPC that a plaint must contain a statement of the value of the subject matter of the suit. In addition to that, o. VII r. 3 of the CPC is categorical that, where the subject matter involved in a suit is an immovable property, the plaint must contain a description of the property that would be sufficient to identify it. In the present case, the plaint does not disclose the value of the subject matter. Further to that, the plaintiff did not provide any form of description of the suit property either in his plaint. The failure to state the value of the subject matter; and the description of the suit property

renders the suit incompetent. The only available remedy for an incompetent suit is to be struck out.

Having said so, this Court finds that the present suit is incompetent for want of proper description and sufficient identification of the suit property, consequently, the suit is struck out with costs.

It is so ordered.

DATED at DAR ES SALAAM this 23rd day of APRIL, 2021.



S.M. KALUNDE

JUDGE