

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO.111 OF 2021**

LAURENT MBWILA 1ST PLAINTIFF
ERNEST LWEHABURA 2ND PLAINTIFF
MARTHA NDOMONDO 3RD PLAINTIFF
ALI HASHIM 4TH PLAINTIFF
PAULINA ZEBEDAYO 5TH PLAINTIFF
PATRICK MAKOMOLO 6TH PLAINTIFF
YAMUNGU MUSA 7TH PLAINTIFF

VERSUS

KINONDNONI MUNICIPAL COUNCIL 1ST DEFENDANT
THE ATTORNEY GENERAL 2ND DEFENDANT

RULING

Date of last order: 16.09.2021

Date of Ruling: 22.09.2021

A.Z.MGEYEKWA, J

On 23rd July, 2021 the Plaintiff herein, instituted this suit against Kinondoni Municipal Council and the Attorney General, seeking five reliefs as follows:-

- a) A total compensation of Tanzania shillings five hundred and ninety-six million (596, 000,000/=) as compensation for unexhausted development on their land. The plaintiffs to.*
- b) Reinstatement of Plaintiffs to their land bearing in mind that the land is idle and uninhabited since then and lays fallow.*
- c) A declaration that they are lawful owners of the land henceforth with full rights thereof.*
- d) Costs of this suit.*
- e) Any other relief (s) this Honourable Court may deem fit and just to grant.*

The Defendants' State Attorney filed a Written Statement of Defence disputing the claims and the learned counsel also raised a point of Preliminary Objection that:-

- 1. That the suit is incompetent and improperly before this court in view of the clear legal procedure stipulated under the provisions of Regulation 11 (2) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations, 2003 GN. No. 174 of 2003 after Plaintiff's suit was dismissed with costs under Regulation 11 (1) (b) of GN. No. 174 of 2003, way back in 2016.*

2. The suit is untenable and bad in law for contravening the provisions of section 106 of the Local Government (Urban Authorities) Act, Cap. 288 [R.E 2019] as amended by the Written Laws (Miscellaneous Amendments) Act No.1 of 2020 for failure to serve the issued notice to the 2nd Defendant and 3^d Defendant.

When the matter was placed before me for hearing on 18th August, 2021 the Plaintiffs enjoyed the legal service of Mr. LT Col SJ Nnko, learned counsel whereas the Defendants enjoyed the legal service of Ms. Leonia Maneno, learned State Attorney.

The learned State Attorney for the Defendants was brief and straight to the point. She contended that the suit is improper before this court. She submitted that the Plaintiffs claims involve immovable properties. She went on to argue that the subject matter is immovable properties, however, the Plaintiffs did not describe properties. Ms. Leonia insisted that the subject matter must be identified. Insisting, she argued that in absence of the description of the property the suit is untenable. She urged this court to dismiss the suit with costs.

On the second ground, the learned State Attorney contended that section 106 of the Local Government (Urban Authorities) Act, Cap. 288 [R.E 2019] as amended by the Written Laws (Miscellaneous Amendments) Act No.1 of 2020. Ms. Leonia submitted that the Municipal, Attorney General, and Solicitor General must be served with a notice. She added that the Plaintiffs did not serve the Attorney General nor Solicitor General with a notice to appear in court. To conclude, she argued that failure to serve them with a notice contravened section 106 of the Local Government (Urban Authorities) Act, Cap. 288 [R.E 2019] as amended by the Written Laws (Miscellaneous Amendments) Act No.1 of 2020

In reply, the learned counsel for the Plaintiffs stated that Order VII Rule 3 of the Civil Procedure Code Cap.33 [R.E 2019] is concerning immovable property. He went on to argue that in the instant proceedings as contained in the Plaint the Plaintiff is suing on unsurveyed land with no Title Deed. He went on to submit that in the proceedings, they have referred to a shamba pori. To support his submission he referred this court to annexures LM to P which was allocated to the Plaintiffs by the Street Council under the instruction of the District Council Office. Mr. Nnnko

continued to submit that the description is more on questions of evidence as opposed to the question of law.

Stressing, he contended that there is no violation of Order VII Rule 3 of the Civil Procedure Code occasioned by the Plaintiffs since the property is sufficiently described to distinguish from other properties in the said area.

Arguing for the second point of objection, the learned counsel for the Plaintiffs stated that there is prove of service to the Defendants. To bolster his position he refereed this court to Part 10 of Written Laws (Miscellaneous Amendments) Act No.1 of 2020 specifically section 33. Mr. Nnko submitted that there is a proof or service, Tanzania Posts Cooperation Libya Invoice which is marked 'KMC3' in the court proceedings. He went on to state that he is the one who sent the notice and the telephone numbers are written therein. He valiantly refuted that the Defendants were not served since the Post Cooperation is normally used as a means of transmitting documents to the Defendants. Fortifying his submission he referred this court to the case of **Nangibhai Prabhudas and Company Ltd v Standard Bank** (1968) EAC 70 CAT

683. He valiantly argued that rules of procedures should not be used to defeat justice. He cited Article 107 of the United Republic Constitution.

On the strength of the above submission, Mr. Nnko beckoned upon this court to find that the preliminary objections are untenable before this court, thus he urged this court to dismiss them.

In his brief rejoinder, the learned State Attorney for the respondents reiterated her submission in chief. She lamented that the Plaintiffs are a trespasser and have no any documents to prove their ownership. Stressing she said the address of the Solicitor General at Dodoma is not a proper address. She stated that the issue of address is fundamental and insisted that the Attorney General and Solicitor General were not served. In conclusion, she urged this court to dismiss the suit with costs.

Having digested the learned counsels submission and the pleadings therein on the sole preliminary objection raised by the Defendant's learned counsel, I am settled that the issue for consideration is *whether the case is appropriately filed before this Court.*

On the first preliminary objections that the suit is untenable and bad in law for contravening the provisions of Order VII Rule 3 of the Civil

Procedure Code Cap.33 [R.E 2019]. The subject matter is an immovable property. The learned State Attorney contended that the Plaint does not contain the description of the property. The description of unsurveyed land cannot be the same as a surveyed land. In surveyed land, the title of the number of the land is stated. While in unsurveyed land more description to identify the area is needed. As rightly pointed by the learned counsel for the Plaintiffs that the description of unsurveyed land is based on evidence.

Reading Order VII Rule 3 of the Civil Procedure Code Cap.33 [R.E 2019], the law requires where the subject matter of the suit is immovable property, the Plaintiff's Plaint to contain a description of the property sufficient to identify it. For ease of reference, I find it apposite to reproduce Order VII Rule 3 of the Civil Procedure Code Cap.33 as hereunder:-

" 3. Where the subject matter of the suit is immovable property, the plaintiff 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 plaintiff shall specify such title number."

The couch words in Order VII Rule of Civil Procedure Code Cap. 33 [R.E 2019] is 'description of the property sufficient to identify it' reading the Plaint the Plaintiffs specifically in paragraphs 5 have stated that they are have acquired land through land allocation committee of the wasteland of Kitunda 'B' of Mabwe Pande are of Bunju Ward of Kinondoni Municipality. To prove their allocation on paragraphs 5, 6, 7, 8, 9, 10, and 11 the Plaintiffs have stated that the 1st, 2nd, 3rd, 4th, 6th, and 7th Plaintiffs were allocated land by Form No. KMP/NO.23, Form No. KMP/NO.190, Form No. SK/KMPH No. 869, Form No. SK/KMPH No.781, Form No. SK/KMPH No.780 respectively and all were allocated unsurveyed land. I assume the disputed landed properties are located at the place where the Plaintiffs reside. However, the Plaintiffs were required to make sure that the Plaint contains all descriptions of the suit land. In my considered view, description is too vague to specifically describe the disputed property to the required comprehension.

The purpose of Order VII Rule 3 of Civil Procedure Code Cap.33 [R.E 2019] is for the Plaintiffs to indicate the description of the property claimed by him either by using boundaries or using title number under the land Registration Act. In the case at hand, the disputed property was

unsurveyed, therefore, the Plaintiffs were required to give sufficient description of the disputed land for instance the size of the suit land.

The the party is duty bound to give descriptions sufficient to identify the properties in dispute so that if a Decree is passed concerning it, it shall be unworkable. The court needs to pass a Decree which can be executed. So, without proper specification of the land, the Decree passed is executable.

Moreover, the other purposes for specific identification of the suit property are to know whether or not the suit land was subject to previous litigation, also to preclude future litigation in respect of the same property.

For the aforesaid reasons, I find that Plaintiff's suit is improperly filed before this court for failure to exhausted the description of the suit landed properties Therefore, there is no way this court can proceed to determine the case on merit.

Based on the above findings, I am of the settled view that, the first Preliminary Objection raised by the learned State Attorney is laudable. I shall not consider the remaining point of objection as the same shall be an academic exercise after the findings I have made herein..

The suit is incompetent before this Court. I accordingly proceed to struck it out with leave to refile. No order as to costs.

Order accordingly.

DATED at Dar es Salaam this 22nd September, 2021




A.Z.MGEYEKWA

JUDGE

22.09.2021

Ruling delivered on this 22nd September, 2021 in the presence of Mr. Thomas, learned State Attorney, the 1st, 2nd, 4th, and 6th Defendants.




A.Z.MGEYEKWA

JUDGE

22.09.2021