

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND CASE NO. 147 OF 2019

**MARTHA MASANJA (ADMINISTRATIX OF THE ESTATE OF THE
DECEASED MASAJA MILANGA PLAINTIFF**

VERSUS

**BENI MARECHELA 1ST DEFENDANT
MAMA OBAKO 2ND DEFENDANT
ABDUL MGUMBA 3RD DEFENDANT
KULWA TIMOTHEO @ KULWA KUKU 4TH DEFENDANT
MAMA OMARI 5TH DEFENDANT
JOSEPH KIMBWINA 6TH DEFENDANT
PATRICK MWASALINGE 7TH DEFENDANT
ELINASTO EDWARD 7TH DEFENDANT**

RULING

OPIYO, J.

Parties were asked to address court on competency of the suit before it in terms of order VII rule 1 (c) and 3 of the Civil Procedure Code, Cap. 33 RE 2019.

Mr. Shadrack, Learned Counsel for the plaintiff, submitted that, in the suit the plaintiffs sued the defendants not with their real names because they could not get their real names. He however reported that, he has so far

been able to get the name of Mama Obako only. They have not gotten the name of mama Omari appearing on the plaint.

On the issue of compliance with order VII rule 3, he submitted that the description of disputed property has been made in the paragraphs describing the physical address of parties. He consequently made application to be allowed to amend the plaint indicating the correct names of defendants and also giving additional description of the subject matter of the dispute. The defendants who were in attendance (4th, 5th and 8th defendants) could not have any plausible submission to make in relation to the above legal issues raised by the court.

The parties' submissions have been duly considered. Under Order VII rule 3 it is mandatorily provided that:-

'Where the subject matter 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 title number under the Land Registration Act, the plaint shall specify such title number'

Going through the plaint, no description whatsoever has been given concerning the disputed property capable of identifying it. The paragraphs referred to have such explanation by Mr. Shadrack are those in compliance with order VII rule 1 (c) describing the names and place of residence of the defendants. In law stating that the defendants are residing at a certain place does not in any way provide facts sufficient to describe the suit property. That is a requirement of its own under order VII rule 1 (c) of the CPC. Where

the defendant resides is not necessarily the place where disputed property is situated. After all, the description of defendant's physical addresses are too general description of the area to be able to point out the disputed property with any certainty capable of identifying it contemplated by rule 3 above. For example, stating generally that, the property is situated at Kichangani, Somangalia ward, Kigamboni in this case alone is still not specific enough to make the suit property identifiable. Such description, can mean any piece of land in the area not necessarily the disputed property. No wonder the Defendants claim being on a different piece of land all together.

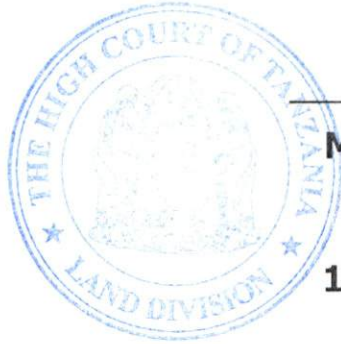
The plaint also is not in compliance with order order VII rule 1 (c)

*"1. The plaint shall contain the following particulars-
(c)the name, description and place of residence of the defendant including email address, fax number, telephone number and post code if available, so far as they can be ascertained;"*

The current plaint referring to some defendant as Mama Omari and Mama Obako is not at all in compliance with the above provision. There is no certainty in referring to a person with one name and worse still a confusing one lika mama so and so which may mean a mother or a wife to that someone referred by single name.

The above provisions are couched in mandatory terms, therefore compliance with them is a must. No compliance with mandatory provisions is incurable (see **Mondorosi Village counsel & 2 Others versus Tanzania Breweries Limited & 4 others, Civil Appeal No. 66 of 2017, Court of**

Appeal of Tanzania, unreported). For the reasons, the suit is therefore struck out with no order as to costs as the matter that disposed the suit was raised by the court *suo motu*.



A handwritten signature in blue ink, appearing to be "M.P. OPIYO", written over a horizontal line.

M.P. OPIYO,

JUDGE

15/06/2021