

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 239 OF 2021**

**VALERIA T. NGUMA AND 53 OTHERS.....APPELLANTS**

**Versus**

**ATTORNEY GENERAL.....1<sup>st</sup> RESPONDENT**

**MINISTRY OF WORKS  
AND TRANSPORTATION.....2<sup>nd</sup> RESPONDENT**

**RULING**

*18/08/2022 & 22/09/2022*

**Masoud J.**

I have to determine a preliminary issue as to whether the 54 plaintiffs, herein, described in their plaint the suit land, consisting of various parcels of land, belonging to the said plaintiffs, in a manner that is sufficient to identify the suit land and the respective parcels of land constituting the said suit land as is required by Order VII, rule 3 of the Civil Procedure Code, cap. 33 R.E 2019. The issue arose from the preliminary point of objection raised by the defendant to the effect that

the suit is incompetent for failure to properly describe and sufficiently identify the suit land contrary to the provision of Order VII, rule 3 of the Civil Procedure Code, cap. 33 R.E 2019.

The relevant provision of Order VIII, rule 3 of the Civil Procedure Code which formed the basis of the preliminary objection and hence the aforementioned issue reads and I quote:

*"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."*

In relation to the above provision, there were authorities which were referred to me by counsel for both parties. They were, **Fereji Said Fereji vs Jaluna General Supplies Ltd and Others**, Land Case No. 86 of 2020; and **Mbwana M Mchuma and Others vs Dar es Salaam Park Land Housing Ltd**, Land Appeal No. 34 of 2022.

In **Fereji Said Fereji** (supra), my Brother Kalunde J., addressing on the rationale of the above provision, said and I quote: *"the essence of this provision needs not be over emphasised, this helps the court in establishing the territorial jurisdiction and most importantly, assists in issuing executable orders as well."*

His Lordship (Kalunde J.) went further saying that “the provision makes it mandatory that where the subject matter of the suit is immovable property,” as is in the instant case, “the plaint must include a description sufficient to identify the said property.” In particular, his Lordship said that: “*such description may include the location, title number for surveyed plots, neighbours or boundaries for unsurveyed plots, or any form of description that would sufficiently identify and distinguish the suit property from other properties.*” In the end, Kalunde J. struck out the suit having found that it was incompetent for want of proper description and sufficient identification of the suit property.

In **Mbwana M Mchuma and Others vs Dar es Salaam Park Land Housing Ltd**, Land Appeal No. 34 of 2022 in which insistence was also made on the importance of the description of a suit land to mention permanent features identifying the suit land if the suit land is not surveyed. And further that failure to sufficiently describe the suit land renders the suit incompetent.

In that case, namely, **Mbwana M. Mchuma** (supra), the description of the suit land included the location which was Kiziza Street, Kibada Dar es salaam, and in addition, the description had it that there are graves in the described suit land of which there were also annexure

of photos of the said graves. This court was satisfied that the description which included the said photos of the graves was sufficient to identify the unsurveyed suit land.

In so doing the court in **Mbwana M. Mchuma** (supra) also relied on the case of **Oilcom Tanzania Ltd vs Christopher Letson Mgalla**, to the effect that annexures are part of the pleadings. Her Ladyship (Mgeyekwa J.) distinguished the case before her from the case of **Daniel Dagala Kanuda v Masaka Ibeho and 4 Others**, Land Appeal No. 26 of 2015, where there was a blanket description of the suit land as one in Kidalimanda village, and hence insufficient to identify the said suit land.

With the above principles on the issue at stake in mind, the disputed description of the suit land in the instant case is mainly found in paragraphs 4 and 6 of the plaint. The said paragraphs, however, do not identify respective parcels of land belonging to each plaintiff.

In para.6, it is stated that: "...plaintiffs are owners of various parcels of land, and all developments thereon, which are located at an area between Kimara Bucha and Kimara Resort, within Dar es Salaam Region along Morogoro Road.", and in para. 6 that "....some of the plaintiffs have surveyed their parcels of land, and obtained letters of offer/or Title Deeds. Others plaintiffs own their parcels of land

**by Residence license (Leseni za Makazi) and others still own the same under customary titles. (sic.)"**

If I may add the development effected on the alleged suit land is described also in generality, and not specifically, as thus: *"...apart from using ...the premises and lands as dwelling homes, have established a variety of commercial/business activities thereat for their daily earnings and living. Thus, **the plaintiffs are running different commercial activities on the suit land** including, but not limited to, shops, farming, industries, accommodation, entertainments, hotels, restaurants, and many other activities including religious and educational activities."*

If I may further add to such description, it has also been stated in para.17 that: *"The intended demolitions.....will occasion massive losses/damages to the plaintiffs in terms of loss of land they occupy and use, loss of developments effected on their lands, loss of benefits from their land properties, and other losses incidental to **their ownership and use of landed properties.**"*

Consequently, the plaintiffs had it in paragraph 18 that they are likely to be subjected to losses arising from the value of their respective landed properties and went further to state the respective amount of loss that will be suffered by each and every plaintiff. There was however not

description and sufficient identity of each and every plaintiff's landed properties comprising of the suit land.

It is instructive that the pleaded description of the suit land consists of various parcels of land, individually owned, occupied and developed by the plaintiffs which together constitute the suit land. While some of such parcels of land are surveyed, and held by the respective plaintiffs under letters of offer/title deeds, other parcels of land are unsurveyed and held by other plaintiffs under residence license( i.e "*leseni za makazi*") or under customary tenure. Such parcels of land were allegedly acquired by their respective owners at different times and in various ways although they were not described and identified in the said plaint.

With the above understanding of the pleading and the principles governing description and identification of the suit land, the plaintiffs are among other things claiming for an order declaring the plaintiffs as the rightful owners of the respective parcels of land they own and occupy, and/or in the alternative the defendants be ordered to compensate each and every plaintiff in the sum of Tshs 4,899,000,000/- as per paragraph 18 herein above.

I considered the rival submissions by Ms Jenifer Msanga, learned State Attorney for the defendants, and Mr Benitho Mandele, the learned

Advocate for the plaintiffs. My consideration of the rival submissions was mindful of salient features of the pleadings as herein above shown as they relate to the reliefs sought, and in particular the declaration of ownership of the respective parcels of land by each of the plaintiffs.

In a nutshell, Ms Msanga, learned State Attorney for the defendants, had it that the suit land is not described as required by Order VIII, rule 3 of the Civil Procedure Code. The description, according to her, does not sufficiently identify the suit land. In so doing, the learned State Attorney submitted that that the description is generalistic. It only described the suit land located in the area between Kimara Bucha and Kimara Resort.

Ms Msanga relied on **Fereji Said Fereji** (supra); and **Mbwana M Mchuma and Others** (supra) to support her arguments and submissions. The same insist on the importance of the description of a suit land to mention permanent features identifying the suit land. And further that failure to sufficiently describe the suit land renders the suit incompetent.

In reply, Mr Mandele had it that while it is true that the description of the suit land should sufficiently identify the suit land, he denied that the description in the plaint does not sufficiently identify the suit land. He called upon the court to not only consider the plaint, but also the

annexures in ascertaining whether or not there is a sufficient description of the suit land.

As far as Mr Mandele was concerned, the plaint in its totality and its annexures described and sufficiently identified the suit land. He then took the court through the description given, underlining that it is along Morogoro Road, which is only one in Dar es Salaam, it is on the either side of the said road, and it is located in the area between Kimara Bucha and Kimara Resort within Dar es salaam region.

In Mr Mandele's view, the court can make an effective and executable decree with such description as it sufficiently identify the suit land. Mr Mandele relied on **Mbwana M Mchuma and Others** (supra), saying that it is very much in the favour of the plaintiffs.

The learned State Attorney in her rejoinder reiterated her submission in chief and added that the description is insufficient in so far as it falls short of specific description sufficient to identify parcels of land respectively belonging to each and every plaintiff and which together comprise the suit land between Kimara Bucha and Kimara Resort, along Morogoro Road.

On this point, it was Mr Mandele's argument that the description of a parcel of land belonging to each of the 54 plaintiffs' parcel of land is a



matter which would be proved by evidence at the trial. Accordingly, he insisted that the particulars of the description will be given in the course of the trial.

All considered, it is not in dispute that there was no pleading specifically describing and identifying every parcel of land belonging to each of 54 plaintiffs which is part of the suit land described as falling within Kimara Bucha and Kimara Resort along Morogoro Road.

Understandably, it is in respect of this description which falls short of describing and sufficiently identifying individual plots belonging to each of the 54 plaintiffs that the declaration of rightful ownership of respective parcels of land by each of the plaintiffs is sought.

Consistent with the above observation, it is the submission by Mr Mandele that particulars as to parcels of land separately owned by the plaintiffs and which comprise the suit land are matters of evidence. They do not, according to him, fall within the requirement of the provision of Order VIII, rule 3 of the Civil Procedure Code.

With all due respect, since there are no pleadings describing and identifying the parcels of land belonging to each of the plaintiffs, there would be no basis for such evidence on the pleading. There are no pleadings as to boundaries, neighbours, permanent features, or title or

plot numbers for the respective plots or parcels of land individually belonging to the plaintiffs and which comprise the suit land. The argument by Mr Mandela would accordingly not hold. In this respect, I am fortified by the case of **Peter Ng'homango vs the Attorney General**, Civil Appeal No. 114 of 2011 in which it was held that parties are bound by their own pleading and it was not open for the court to disregard the pleadings.

I say so because the plaint as it is at the moment only described the suit land between Kimara Bucha and Kimara Resort, partly consisting of plots belonging to some plaintiffs which is surveyed, and partly, consisting of parcels of land held under customary tenure and held under residence license. The averments does not contain pleading in respect of individual plots belonging to each of the plaintiffs. The said averments are notwithstanding that there is no pleading in the plaint that the suit land is collectively owned by the 54 plaintiffs.

As was held in **Daniel Dagala Kanuda** (supra), there is in the instant suit therefore a blanket description of the suit land as one between Kimara Bucha and Kimara Resort along Morogoro Road and on the either side of the road, which is insufficient to identify a parcel of land belonging to each of the plaintiff.

There were no titled deed numbers shown or plot numbers indicated, there were likewise no permanent features described in a manner that sufficiently identify the individual parcels of land belonging to the plaintiffs. There were likewise no boundaries described or neighbours named in the plaint to identify the unsurveyed parcels of land within the vast area described in the plaint.

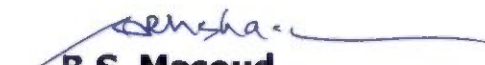
The alleged annexures could not also identify the parcels of land of all the plaintiffs respectively. There were none save for a few, in particular copies of title deeds and letter of offer of right of occupancy which bear names of individuals who are not amongst the plaintiffs. There were also none in relation to those claimed to be owned under customary tenure and residential license.

I do not think that with the description given, the parcels of land belonging to each and every plaintiff were not at all described, neither was there a clue in the pleading as to where in particular such parcels of land are situated within the vast land on the either side of the Morogoro Road falling between Kimara Bucha and Kimara Resort. Again, there is no clue in the pleading as to identifying a particular parcel of land with a particular individuals among the plaintiffs.

I agree with Ms Msanga, learned State Attorney, that the description is insufficient to identify the respective parcels of land allegedly owned by the plaintiffs, and cannot enable the court to make an effective and executable decree in the favour of the plaintiffs or in the favour of any of the plaintiff.

In the upshot of the foregoing, I find merit in the preliminary objection raised. The suit is thus incompetent for want of proper description and sufficient identification of the suit land consisting of parcels of land alleged to belong to each of the 54 plaintiffs. It is accordingly struck out with costs. It is so ordered.

Dated and Delivered at Dar es Salaam this 22<sup>th</sup> day of September 2022.

  
**B.S. Masoud**  
**Judge**

