

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND APPEAL NO. 34 OF 2022

(Arising from Land Application No. 120 of 2020 from the District

Land and Housing Tribunal for Temeke at Temeke)

MBWANA M. CHUMA 1ST APPELLANT

IBRAHIM M. CHUMA 2ND APPELLANT

HUSSEIN A. KAU 3RD APPELLANT

VERSUS

DAR ES SALAAM PARK LAND HOLDING LIMITED RESPONDENT

JUDGMENT

Date of last Order: 08.04.2022

Date of Judgment: 13.04.2022

A.Z.MGEYEKWA, J

This is the first appeal. At the centre of controversy between the parties to this appeal is a parcel of land. The decision from which this appeal stems is the judgment of the District Land and Housing Tribunal for Temeke at Temeke in Application No. 120 of 2020.

The material background facts to the dispute are not difficult to comprehend. I find it fitting to narrate as follows: the appellant lodged a suit at the District Land and Housing Tribunal for Temeke complaining among other things that they are lawful owners of the suit land which they acquired from their grandparents who owned the said plot for a long time. Before hearing the matter on merit, the respondent raised preliminary objections that the tribunal had no jurisdiction to determine the matter since the suit land is not sufficiently described and that the application is grossly misconceived and bad in law since the applicants were not parties to the suit alleged to be filed by the respondent thus they were supposed to file objection proceeding and not a normal land suit.

The District Land and Housing Tribunal determined the objections and ended up upholding the first objection that the appellant did not describe the address, place, and size of the disputed land.

Believing the decision of the District Land and Housing Tribunal for Temeke was not correct, the appellant lodged this appeal on four grounds of complaint seeking to assail the decision of this court. The grounds are as follows:-

- 1. That the trial Chairman erred in law and fact by holding that the application did not properly describe the suit land.*
- 2. That, the Chairman failed to consider the entire application before concluding that the suit land was not properly described.*
- 3. That the trial Chairman misconceived the law as regards the description of the suit land in an application.*
- 4. That the order of costs was erroneous.*

When the appeal was placed before me for hearing on 11th March, 2022, Mr. Mhingo learned counsel represented the appellant and the respondent was absent. Hearing of the appeal took the form of written submissions, preferred consistent with the schedule drawn by the Court whereas, the appellant filed his submission in chief on 22nd March, 2022, and the respondent filed his reply on 29th March, 2022. The appellant waived his right to file a rejoinder.

Mr. Benitho Mandele was the first one to start to kick the ball rolling. Submitting on the first ground, Mr. Mandele argued that the trial tribunal erred in law and fact by holding that the application did not properly describe the suit land. To buttress his contention he referred this court to page 15 of the typed judgment where the Chairman held that the

applicants failed to properly describe the suit land. It was his humble submission that the holding was erroneous as the trial Chairman was supposed to consider the entire application in order to determine whether or not the applicants did or did not describe the suit land as required. He added that the requirement for describing the location of the suit land is there to enable the trial court to identify or specify the suit land to distinguish it from other pieces of land around it, effectively resolve the controversy between the parties and make a definite order and execute it. To fortify his submission he cited the case of **Daniel Kanuda v Masaka Ibeho & 4 others**, Land Appeal No. 26 of 2015 (unreported). He added that for unsurveyed land as it is in the case at hand, permanent features surrounding the land at issue are very important particulars for purposes of identifying the land from other pieces of land neighbouring to it.

It was his submission that the appellants sufficiently describe the suit land as an unsurveyed piece of land located at Kiziza Street, Kibada in Dar es Salaam, and in the suit land there is a graveyard. To bolster his submission he referred this court to paragraphs 6 (a) (vii) (b) (i) and (iv) to the application.

For the aforesaid, he moved this court to set aside the trial tribunal's findings and allow the appeal with costs.

On the second ground, the trial Chairman failed to consider the entire application. He submitted that should the Chairman consider the entire application properly, the findings could be that the application properly sufficiently described the suit land capable of distinguishing the same from other pieces of land.

As to the third ground, the appellant's Advocate complained that the Chairman misconceived the law in regard to the description of the suit land. He stressed that the Chairman misconceived the findings/judgments on the following cases **Daniel Dagala Kanuda** (supra), **the Board of Trustees of F.P.T.C Church v the Board of Trustees of Pentecostal Church**, Misc. Land Appeal No.3 of 2016 (unreported). He also cited Regulation 3 (1) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003 GN No. 176 of 2003. Mr. Mandele went on to submit that the mentioned precedents and provisions of the law require the application as a whole to describe the location of the suit land in the application.

On the strength of the above submission, the appellant's Advocate beckoned upon this court to allow the appeal and set aside the Ruling and orders including the order of costs of the tribunal as the same lacked a legal basis.

Responding, Mr. Revocatus Mathew submitted that the Chairman strike out the application because it was bad in law for the applicants' failure to sufficiently describe the suit land being a legal requirement as per Regulation 3 (2) (b) of the GN. No. 174 of 2003. He submitted that the application at the tribunal the suit land is described as ' Unsurveyed piece of land, located at Kiziza Street Kibada Dar es Salaam'. He went on to submit that the issue in this argument of the appellants is whether such description is sufficient to identify the suit property. He contended that it is not in dispute that the suit land is at Kibada Street and it is unsurveyed. To strengthen his submission he referred this court to the case of **Daniel** (supra) at page 5 of the judgment the court held that:-

" for unsurveyed land, as it is the case here, permanent features surrounding the land at issue are very important particulars for the purpose identifying the land from other pieces of land."

Mr. Revocatus insisted that the above particulars must be properly articulated in the application itself he claimed that the attached photograph was not sufficient enough to identify the suit land of the appellants. He added that the tribunal in determining the issue of the description of the suit premise was guided by the contents of the application itself. He went on to submit that the statement that the suit land is located at Kiziza Street Kibada in Dar es Salaam cannot be specifically located without giving specific determination and features which may be sufficient enough to distinguish the land in dispute.

The learned counsel for the respondent threw his last jab by contending that pursuant to Order VII Rule 3 of the Civil Procedure Code, Cap.33 the description of a suit land in immovable property is described in the plaint for purpose of identifying and effectively distinguishing it from any other land adjacent to it. He insisted that in absence of the sufficient description, the suit land causes uncertainty of the subject matter to the extent of unclenching the court with jurisdiction to entertain it. Fortifying his submission he cited the case of **Abdallah Omari Ndongogo v Soap and Allied Industry and 2 others**, Land Case No. 78 of 2020.

The learned counsel for the respondent continued to argue that in considering the location of the suit land, the exhibits of the graveyard bring more confusion and uncertainty because there are numerous exhibits attached to the Application such as houses and graves. He added that the obvious question is what exactly was the land in dispute? He went on to submit that it is not known what the appellants are exactly disputing it is a graveyard what its proper description and location if it is house what are their proper descriptions and their locations. He added that considering the fact that the appellant on paragraph 6 (a) (iii) of the Application.

It was his further submission that the Chairman was proper to dismiss the Application since it had no jurisdiction to determine an incompetent matter. He concluded by stating that the legal requirement highlighted above is indeed intended for an authentic identification of the land in dispute so as to afford a court of law to make certain and executable order and decree. He added that it follows thus that since the description of the land in dispute is uncertain, it will not be possible for the court to make any definite order and execute it. He urged this court to dismiss the appeal with costs.

After a careful perusal of the record of the case and the final submissions submitted by both learned counsels for the appellants and the respondent, I should state at the outset that, the appeal is meritorious. In determining the appeal, the central issue is whether the appellant had sufficient advanced reasons to warrant this court to overrule the findings of the District Land and Housing Tribunal for Temeke at Temeke.

In my determination, I will consolidate all grounds because they are intertwined. The midpoint of the appellants' Advocate complaints is based on the description of the suit land. The learned counsels for the appellant and the respondent have locked horns on the issue *whether the suit land was properly described or not*.

In determining these grounds of appeal, I had to go through the application and tribunal proceedings to find out what transpired.

In the course of perusing the record of the Tribunal specifically Application No. 120 of 2020, there is no dispute that the description of the suit land is stated. The applicants in paragraph 3 mentioned the location of the suit land, it is located at Kiziza Streets Kibada at Dar es Salaam.

Now the main issue for determination is whether the description is too vague to specifically describe the disputed property to the required comprehension. When it comes to the issue of location on a subject matter of the suit involving immovable property, the plaint shall contain a sufficient description of the property in question. Order VII Rule 3 of the Civil Procedure Code, Cap. 33 [R.E. 2019] provides that:-

"Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify.

The duty of the party is to give a description sufficient to identify. In my view, as long as the appellants have stated the location in the pleadings, I find it is sufficient to locate the unsurveyed suit land, it is located at Kiziza Street, Kibada in Dar es Salaam and the description of the suit land is stated under Paragraph 6 (a) (iii) of the application, that there are graves. In my view, for unsurveyed land, this is a clear discretion. I have considered the fact that the appellants' will have an opportunity to tender their documentary evidence to support their allegations during the hearing of the case.

The duty of the party is to give a description sufficient to identify the property in dispute. In the case at hand, the suit land is unsurveyed as

rightly pointed out by Mr. Mandele that for unsurveyed land as it is the case at hand, permanent features surrounding the land at issue are important particulars for purpose of identifying the suit land from other pieces of land. After all, the appellants annexed photos of the grave yard located in the suit land (Annexure A). It is settled that annexures are part of the Plaint or Application. They help to elaborate on what is stated in the Plaint or Application. It was stated in the case of **Oilcom Tanzania Ltd versus Christopher Letson Mgalla**, (supra) that:-

"In my thinking however, in construing pleadings, courts should also consider annexures attached to them (if any) so as to properly understand the actual disputes between the parties for the purpose of resolving it effectively. The view is based on the fact that, annexures form part of pleadings since they assist in elaborating the material facts pleaded in the pleadings. The broader meaning of pleadings for the purpose of promoting the right of a fair trial to parties, therefore, should be that, annexures are part and parcel of pleadings."

Based on the above-cited authority, I have to say that the Chairman was supposed to consider the entire application and I am not in accord

with the learned counsel for the respondent that the exhibits of the graveyard bring more confusion because they are part of the pleadings and the relevance of the same cannot be discussed at this juncture as long as the appellants have mentioned the description of the graves yard in his application and appended pictures, the same suffice to describe the location of disputes land. The issue of graveyards whether they are vague images or not requires evidence to prove the same and the same will be determined during the hearing of the case.

Both learned counsels have referred this court to the case of **Daniel Dagala Kanuda** (supra). I have gone through the said case and noted that the applicant made a blanket description of the suit land by calling it the disputed land in Kidalimanda village thus the same was found to be not sufficient description of the disputed land.



For the sake of clarity, I have read the case of **Abdallah Omari Ndondogo** (supra). In **Abdallah's** case, this court noted that the Plaintiff stated that the Land is 750 acres located at Lugwadu and Magodani village. In the coted case, there was no specific description taking to account that he mentioned two villages. I find the description contained in the pleadings in the instant case to be sufficient enough to identify the

suit land. The appellant complied with the rules contained in the case of **Daniel Ndagala Kanuda** (supra) therefore, the tribunal is in a position to issue an order which will be certain and executable.

In view thereof, I find fault in the trial Tribunal's decision and I subscribe to Mr. Mandele's contention that the Tribunal's position was seriously flawed. Therefore, I proceed to quash and set aside the District Land and Housing Tribunal for Temeke at Temeke and allow the appeal with costs.

Order accordingly.

Dated at Dar es Salaam this date 13th April, 2022.

 
A.Z.MGEYEKWA
JUDGE
13.04.2022

Judgment delivered on 13th April, 2022 in the presence of Ms. Rose Sanga, learned counsel for the appellants in the absence of the respondent.

 
A.Z.MGEYEKWA
JUDGE
13.04.2022

Right of Appeal fully explained.