

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

LAND CASE NO. 210 OF 2021

MICHAEL B. MASINDE.....PLAINTIFF

VERSUS

D.S IZINA@ DHAHIRI SAID IZINA.....1ST DEFENDANT

FRANCIS ENDEMI MSANGI.....2ND DEFENDANT

**MINISTRY OF LANDS, HOUSING AND HUMAN
SETTLEMENTS.....3RD DEFENDANT**

HONOURABLE ATTORNEY GENERAL.....4TH DEFENDANT

R U L I N G

Date of Last Order: 09.05.2022

Date of Ruling: 25.05.2022

T. N. MWENEGOHA, J.

Four preliminary objections on point of law are in need of determination, the same being raised by the 1st and 2nd defendants as follows; -

1. The plaint offends the mandatory requirements of Order VII Rule 3 of the Civil Procedure Code cap 33 R.E 2002, for failure to give a proper description of the suit property by its number.
2. The causes of action as pleaded in this case are all time barred.
3. The abuse is an abuse of court process.
4. The matter is res judicata.

Hearing of the objection was by way of written submissions. Juliana J. Mumburi appeared for the 1st and 2nd defendants while Advocate Cleophas Manyangu represented the plaintiff.

In her submissions on the 1st objection, Advocate Juliana maintained that, the plaint is bad in law as it offends Order VII of the Civil Procedure Code. The plaintiff has not described the suit land by its number as required under the land Registration Act.

She went on to argue on the 2nd objection that, the cause of actions raised by the plaintiff is time barred based on the Law of Limitations Act, Cap 89, R.E 2002. That, this suit was supposed to be instituted within six years.

As for the 3rd objection it was argued that, the suit is an abuse of court process. Lastly on the 4th objection it was argued that this case is res judicata based on the former case between Michael B. Masinde versus Dhahiri Said Izna, Land Case No. 85 of 2013 (annexure F3) and Land Case No. 433 of 2017. Therefore, instant case is just an abuse of court process.

In reply, the counsel for the plaintiff was of the view that, the plaint has sufficiently provided a description of the suit property as required by the law under Order VII rule 3 of the Civil Procedure Code, Cap 33 R. E. 2019. He went on to submit on the 2nd objection that, the 1st and 2nd defendants have misconceived the cause of action which is a recovery of land, hence the time limit is 12 years and not 6 years as claimed by the counsel for the 1st and 2nd defendant. This has been provided for under the schedule, Part 1, Item 22, of the Law of Limitations Act, Cap 89 R. E. 2019. On the 3rd objection, it was argued that, the same lacks any arguments in support of it, hence it is obvious that, it lacks merits.

Lastly on the 4th objection, it was the submissions of the counsel for the plaintiff that, this case is not res judicata as it is different from the former cases, vide Land Case No. 85 of 2013 and Land Case No. 433 of 2017.

Having gone through the arguments from the counsels for the parties in the suit at hand, the question for determination is whether the four objections by the 1st and 2nd defendants have merits.

The defendants through their learned counsels in their objection claimed that, the plaint is defective for want of proper description of the subject matter of the suit land. They claim that, the suit land should have been described by using its title number. To them, the omission of the title number of the suit land in the plaint offends Order VII Rule 3 of the Civil Procedure Code, Cap 33 R. E. 2019. For easy reference, I will reproduce the said provision as follows; -

3. "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 my view, the above quoted provision, I find merit in the 1st objection. The law has used the word "*shall*" when it comes to properties that can be identified by a title number, that it is a must to state the same specifically in the plaint. Looking at paragraph 5 of the plaint in this case, the plaint has described the property in question as follows;

".....the plaintiff is a lawful owner of the disputed Plot No.651, Block F Tegeta Area..."

What I see, on the face of it is that the plaint in the description of the property in dispute, has omitted a very vital information that is mandatory to be included in the eyes of law. Hence, the said description as it is in the plaint at hand is not sufficient enough to identify the property in question. Therefore, as contended by the counsel for the 1st and 2nd defendants, the omission to include the tittle number of the suit land in fatal hence the whole plaint is incurably defective.

It is clear that, paragraph 5 of the plaint offends the mandatory provisions of Order VII, Rule 3 (supra). The defect is fatal as it goes to the root of the case itself, see **Njake Enterprises Limited vs. Blue Rock Limited and Rock Venture Company Limited, Civil Appeal No. 69 of 2017, Court of Appeal of Tanzania at Arusha, (Unreported)** and **Mondorosi Village counsel & 2 Others vs. Tanzania Breweries Limited & 4 others, Civil Appeal No. 66 of 2017, Court of Appeal of Tanzania (unreported)**.

On the basis of these findings, I see no reasons to proceed with discussion of the remaining preliminary objections; the 2nd, 3rd and 4th objections. This follows the obvious fact that, the findings in the 1st objection above, are capable of determining the entire suit to its finality.

Eventually, the case is struck out with costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
25/05/2022