

IN THE HIGH COURT OF TANZANIA  
(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO. 34 OF 2020

BAKARI SALUM MATANDIKA.....1<sup>st</sup> PLAINTIFF  
RAMADHANI SALUM ALLY.....2<sup>nd</sup> PLAINTIFF  
JOJI LUKASI HABRAHAM.....3<sup>rd</sup> PLAINTIFF  
JAILOS PETER.....4<sup>th</sup> PLAINTIFF

VERSUS

ANDREA GEORGE.....DEFENDANT

JUDGMENT

*11/05/2022 & 31/05/2022*

**Masoud, J.**

The plaintiffs claim that they are the lawful owner of the suit property situated at Madale- Mivumoni Street, in Wazo Ward, Kinondoni District.

The origin of the said suit land was a ten acres' piece of land which the first plaintiff purchased from one, Rashid Ally Mwanamila, on 25/8/1987.

The first plaintiff subsequently sold a two acres parcel of land in 1996, and one acre parcel of land in 1994, to Ramadhani Salum Ally (the second plaintiff) and to Joji Lukasi Habraham (the third plaintiff) respectively. He also gave the third plaintiff one acre parcel of land in

2006. All of the said parcels of land were allegedly apportioned from the original ten acres which the first plaintiff bought from the said Rashid Ally Mwanamila.

The allegation as to purchase of the ten acres parcel of land by the first plaintiff as well as the sale and giving of the respective parcels of land to the plaintiffs other than the first plaintiff was reinforced in the plaint by annexing respective copies of the sale agreements. Having acquired the said land, the plaintiffs alleged that they had all along been peacefully occupying their respective parcels of land for farming and residential purposes.

There were further allegations on how through the village government, a parcel of land (i.e 30 metres by 30 metres) was given to one, Anthony Dominico, by the first respondent for purposes of building a school. The school was, as a result, built and run with direct participation and involvement of the plaintiffs amongst other villagers, and the first and third plaintiffs volunteering as caretakers of the school. The school was eventually abandoned with the departure of Antony Dominico who was the only teacher at the school. The plaintiffs thereafter started to receive

threats from unknown people, including the defendant, asking them to vacate the premises.

It was alleged that the plaintiffs peaceful occupation was disrupted effective from 26/12/2020, and sometime on 10/01/2022, when unknown police officers from Madale Police Station harassed them, and demolished their residences and crops and arrested and detained them. It was alleged by the police without disclosing the complainants that the plaintiffs had trespassed into the suit property.

The plaintiffs were then charged with theft and destruction of property belonging to the defendant at Kawe Primary Court. The charge which was allegedly initiated by the defendant with malice was eventually dropped, for failure of the defendant to appear in the criminal proceedings.

With such allegations, the plaintiffs claimed for declaration that they are the lawful owners of the suit land, permanent injunction, compensation of Tshs 200,000,000/- as general damages and costs of the suit.

The main issues for determination were whether the plaintiffs are the lawful owners of the suit property, and to what reliefs are the parties entitled. The other issue, necessarily emerging from the pleading is whether the defendant was indeed a trespasser on the suit property. At the outset, it should be noted that since the suit involves four plaintiffs each and every one holding his own parcel of land having specific particulars identifying and distinguishing it from the rest, it necessary first to identify the suit property as described in the pleading before determining the issue of ownership.

The suit proceeded ex-parte against the defendant who did not file any defence within the prescribed time. The failure to file defence was notwithstanding that the plaintiff was served with summons to file defence. It was therefore only the plaintiffs who testified in support of their case. Notwithstanding the ex-parte hearing, the plaintiffs were still in law bound to prove their case. It is a cherished principle of law that in civil proceedings, the burden of proof lies on the party who alleges anything in his favour. I am in this respect fortified by sections 110 and 111 of the Evidence Act, cap. 6 R.E 2019.

In the case of **Roseieen Kombe VS. Attorney General** [2003] TLR 347, the Court insisted that even if the matter is heard *ex parte*, the said burden, is not discharged. The Court held:

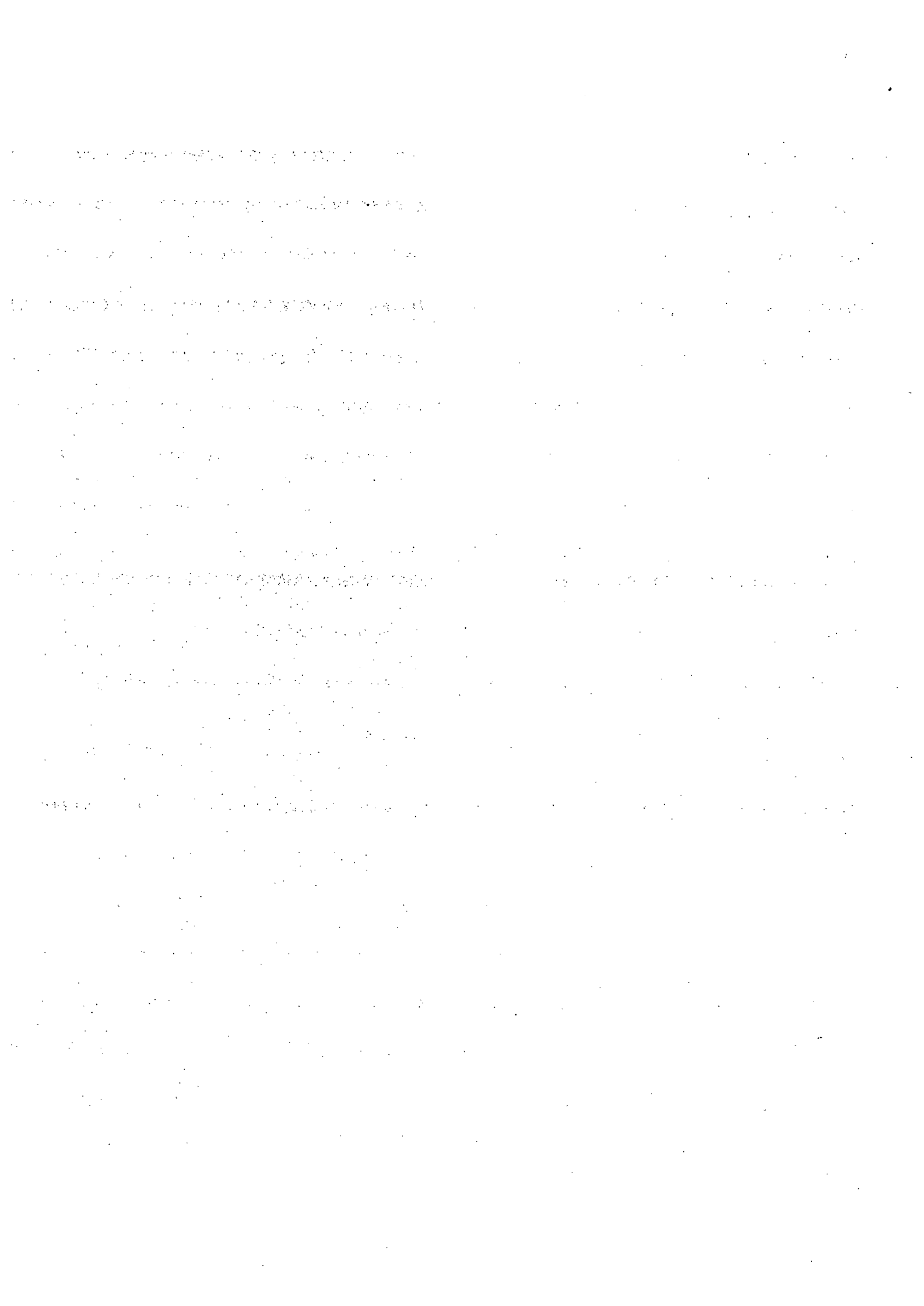
*"Even where the defendant files no Written Statement of Defence at all or does not appear, let alone where he files "an evasive or general denial", the plaintiff still has to prove his case for the relief sought even if ex-parte".*

There were total of five witnesses who testified in support of the plaintiffs' case. The witnesses were PW.1 (i.e the first plaintiff), PW.2 (Ally Rashid Mwinamila), PW.3 (Muniru Omari Makuka), PW.4 (the second plaintiff), and PW.5 (the third plaintiff). Notably, the fourth defendant did not testify for no apparent reason although it is alleged that he owns a parcel of land which was given to him by the first plaintiff.

The majority of the evidence of the said witnesses was on how and when the respective parcels of land constituting the suit property situated at Madale -Mivumoni Street, in Wazo Ward, were acquired by sale, and the sale agreements respectively admitted in evidence as Exhibits P.2, P.3 and P.4 were concluded; the village meeting leading to

demarcating a piece of land by the first plaintiff for erecting the school as requested by the said Dominico; the plaintiffs' involvement and participation in erecting the school and as caretakers; criminal charge that was levelled against some of the plaintiffs at the instance of the defendant; and the resulting arrests, and damages suffered as a result of intended demolition.

As I was considering the issue whether the plaintiffs are the lawful owners of their respective parcels of land constituting the suit property, I toyed on the descriptions of the suit property in the plaint, the evidence on the record and exhibits. I found that the plaint only described the suit property constituting the plaintiffs' distinct and separate parcels of land as one situated at "*Madale- Mivumoni Street in Wazo ward of Kinondoni District, within the United Republic of Tanzania.*" There were no distinct features and boundaries disclosed identifying the parcels of land belonging to the plaintiffs as from the rest. There were only descriptions of the size of the parcels of land belonging to the second, third, and fourth.



The evidence of all witnesses did not disclose specific features identifying the parcels of land belonging to the plaintiffs. And to make it worse, the evidence of PW.1 as to the size of the parcel of land allegedly owned by the third defendant contradicted the pleading. While the PW.1 said that the size was one and a half acres, the plaintiff stated that it was one acre.

The testimony of the witnesses was also silent as to boundaries of the respective parcels of land, save for the sale agreements admitted as exhibits which identified the same boundaries for all pieces of land. The reference to the same boundaries was notwithstanding the allegation that the parcels of land belonging to the first, second and third plaintiffs were acquired from the original ten acres initially belonging to the first plaintiff.

It did not occur to me that the said parcels of land would have the same boundaries as the original ten acres' parcel of land. As if such finding was not enough, there were no boundaries and size shown for the remaining parcel of land belonging to the first plaintiff after selling and giving the respective parcels of land to the second, third and fourth plaintiffs.



To be clear on the finding that all parcels of land have the same and common boundaries, it is crucial to note that all sale agreements which were annexed to the plaint and eventually tendered as exhibits read as thus with regard to boundaries and without exceptions:

***"b. Mipaka***

*Upande wa Mashariki nimepakana na Barabara.*

*Upande wa Magharibi nimepakana na Mzee Mbawala*

*Upande wa Kaskazini nimepakana na Mzee Ngege*

*Upande wa Kusini nimepakana na Mzee Mbawala."*

Although annexures are part of the plaint, they did not in the present instance save to elaborate on the description purporting to identify the suit land other than complicating the shortfall even further. I have had regard in this finding to the same and common boundaries that the plaintiffs attributed to all parcels of land without distinctions.

Neither the owners of the neighbouring pieces of land nor the witnesses specified in the sale agreements were during the hearing of the case ex-parte brought to testify in favour of the plaintiffs' case. The only exception which was however insufficient was the testimony of PW.2

who is the son of one who allegedly sold the ten acres to the first plaintiff; the testimony of PW.3 who allegedly witnessed the sale of, the parcel of land by the first plaintiff to the second plaintiff and the third plaintiff, and the parcel of land by one Rashid Ally Mwinamila to the first plaintiff. The evidence of these witnesses did not specifically describe and identify of the suit land constituting the specific parcels of land allegedly owned by all plaintiffs.

As such, the parcels of land constituting the suit property were all without distinction whatsoever lumped together in the description of the ten acres' parcel of land situated at Madale-Mivumoni Street, in Wazo Ward originally sold by Rashid Ally Mwanamila to the first plaintiff. The description is insufficient since it was neither shown that the street in the said Ward only consisted of the original ten acres' parcel of land, nor were distinctive identification features of each parcels of the land in the said street given.

Even if the street would be said to truly consist of the original ten acres' parcel of land, the description would still be insufficient for lack of specific description of the specific parcel of land sold and given to the

second, third and fourth defendants respectively. The provision of the size of the distinctive parcels of land belonging to the second, third and fourth plaintiffs is in itself insufficient for lack of specific description describing the location of each parcel of land as already stated.

Obviously, the foregoing shortfalls meant that the plain was not consistent with the requirements of Order VII, rule 3 of the Civil Procedure Code, Cap. 33 R.E 2019 which insist on giving sufficient description of the immovable property involved for its sufficient identification.

The position of the law on the description of suit property is in this court settled. It is among other things settled that authentic identification of a disputed parcel of land is meant to afford the courts chance to make certain and executable orders. And that, failure to give sufficient description of the subject matter in dispute in land disputes renders the suit incompetent. See for instance, **Daniel Dagala Kanuda v Masaka Ibeho**, Land Appeal No. 26 of 2015 HC Tabora, where it was held that when the land in dispute is unsurveyed the plaintiff should specify the boundaries and or the permanent features surrounding the land;

**Ramadhani Omary Himbi and 58 Others v Aneth Paulina Nkinda and another**, HC Land Case No. 99 of 2013 at Dar es Salaam; and **Fatuma Shabani Dololo and another v Abdallah Said Dolodolo**, Land Case No. 138 of 2020.

There were yet other pitfalls which in view of the above findings I need not labour much on them in any great detail. There was not much in the pleading and evidence establishing the cause of action that the plaintiffs had against the defendant. Not only because of the failure to sufficiently identify the disputed suit land, but also because there was neither pleading nor evidence as to the specific parcel of land trespassed by the defendant, save for the piece of land on which the school was built, and which was allegedly acquired from the first plaintiff following the meeting arranged by the village government to deliberate on the request from Father Dominico. The village government official or rather local government officials of the relevant street were however not called despite the instance shown that they were involved in the process. Had they been called, they could in my view have given a different position contrary to what is herein alleged by the plaintiffs.

With the above findings relating to insufficient description of the suit land, I am satisfied that the court cannot in the circumstances make certain and executable orders. Since the finding suffices to dispose of the suit on the basis of its incompetence, there is nothing to look at any further.

In the results, the suit is wanting in competence. It is accordingly struck out. Since the suit was heard ex parte against the defendant, I will not make any order as to costs.

It is so ordered.

Dated at Dar es Salaam this 31<sup>st</sup> day of May 2022.

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

**31/05/2022**

