

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO. 221 OF 2021**

**CHARLES KIARUZI.....1<sup>ST</sup> PLAINTIFF**  
**ATHUMANI MNUBI.....2<sup>ND</sup> PLAINTIFF**  
**ALLY S MAYUBI.....3<sup>RD</sup> PLAINTIFF**  
**MOHAMED MBONDE.....4<sup>TH</sup> PLAINTIFF**  
**MUSSA MKWAYA.....5<sup>TH</sup> PLAINTIFF**  
**HAWA IBRAHIM.....6<sup>TH</sup> PLAINTIFF**  
**FATUMA RAMADHANI.....7<sup>TH</sup> PLAINTIFF**  
**HEMED SAID.....8<sup>TH</sup> PLAINTIFF**

**VERSUS**

**JOSEPH NESTORY ISACK.....1<sup>ST</sup> DEFENDANT**  
**IMMACULATE SWARE SEMESI.....2<sup>ND</sup> DEFENDANT**  
**MARRY MASUA.....3<sup>RD</sup> DEFENDANT**

*Date of last order: 17/5/2022*

*Date of ruling: 02/6/2022*

**RULING**

**A. MSAFIRI, J.**

On 22<sup>nd</sup> day of November 2021, the above named plaintiffs instituted the present suit against the defendants jointly and severally for reliefs *inter*

*Alles*

*alia* that the plaintiffs are the rightful and lawful owners of pieces of land located at Pangani within Kibaha District measuring about 300 acres.

On lodging their respective written statements of defence, the 1<sup>st</sup> and 2<sup>nd</sup> defendants raised a total of five points of preliminary objection to the effect that;

- i. That the plaint is incurably defective for it contains an incurably defective verification clause hence it contravenes the provision of Order VI Rule 15 (1) and (2) of the Civil Procedure Code CAP 33 R.E 2019.*
- ii. The plaint is incurably defective as it does not disclose the proper description of the plaintiffs hence it contravenes the provision of Order VIII rule 1 (b) and (c) of the Civil Procedure Code CAP 33 R.E 2019.*
- iii. The plaint is incurably defective as it failed to disclose the description of the subject matter contrary to the provisions of Order VII Rule 3 of the Civil Procedure Code CAP 33 R.E 2019.*
- iv. The plaint is defective as it contravenes the provision of Order 1 Rule 8 and VII Rule 4 of the Civil Procedure Code CAP 33 R.E 2019.*

*Adle*

v. *The plaint is bad in law since the plaintiffs have no any cause of action against the 2<sup>nd</sup> defendant therefore incompetent before this Honourable court.*

On 21<sup>st</sup> December 2021, the 3<sup>rd</sup> defendant lodged her written statement of defence in which she raised two preliminary objections on points of law to the effect that;

- i. *That this Honourable court has no jurisdiction to entertain this matter.*
- ii. *That the plaint is bad in law for misjoinder of parties.*

This Court ordered the said preliminary objections to be disposed of by written submissions, the order was duly complied with by learned advocates for both parties, hence this ruling.

In determining the points of preliminary objection I propose to begin with the 1<sup>st</sup> and 2<sup>nd</sup> defendants' preliminary objections then I will wind up with the 3<sup>rd</sup> defendant's objections.

In arguing the preliminary objections, the learned advocate for the 1<sup>st</sup> and 2<sup>nd</sup> defendant abandoned the 5<sup>th</sup> preliminary objection. *Alls.*

Submitting on the 1<sup>st</sup> and 4<sup>th</sup> objections, the learned advocate for the 1<sup>st</sup> and 2<sup>nd</sup> defendants contended that the verification clause as it appears on the plaint is defective because it contravenes the provisions of Order VI Rule 15 (1) and (2) of the Civil Procedure Code CAP 33 R.E 2019 (the CPC). According to the submission by the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants, the verification clause in the plaint is defective because it lacks the names of the verifiers who signed on the verification clause hence the suit is liable to be struck out.

On further submission the learned advocate for the 1<sup>st</sup> and 2<sup>nd</sup> defendants contended that the present suit was not filed as a representative one hence it is improper for only one plaintiff to verify on behalf of other plaintiffs. To fortify his point, the learned counsel cited the decision of this Court in **Senyael Amos and 4 others v The Trustees of the National Parks**, Land Case No. 1 of 2018 (unreported) in which a suit was filed before the representation order was granted hence it was held to be incompetent for lack of necessary leave to file the same.

Replying on the submission in respect of the 1<sup>st</sup> and 4<sup>th</sup> preliminary objections, the plaintiff maintained that the verification clause by the

*Ally*

plaintiffs in the present suit has been properly verified by each plaintiff hence the law has been complied with.

The learned counsel for the plaintiffs submitted further that the preliminary objections do not go to the root of the matter rather they are technicalities which have been discouraged under Article 107 A (2) (e) of the Constitution of United Republic of Tanzania of 1977 which requires Courts in delivering decisions in matters of civil and criminal nature to dispense justice without being tied up with technicalities.

The plaintiffs contended further that with the inception of the overriding objective which has been introduced to the CPC under section 3A, this Court should ignore the objections and proceed to determine the matter on merits because the defects claimed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants do not go to the root of the matter.

The 1<sup>st</sup> and 2<sup>nd</sup> defendant did not file any rejoinder submission.

Having gone through the respective submissions by the learned counsel for the plaintiffs and 1<sup>st</sup> & 2<sup>nd</sup> defendants rival and in support of the 1<sup>st</sup> and 4<sup>th</sup> preliminary objections, I have gone through the respective verification clause and it is reproduced below;

*Adils*

*We, **CHARLES KIARUZI** and 7 others being the plaintiffs herein, **DO HEREBY** verify that all what is stated above in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 are true to the best of our own knowledge save for paragraph 12 is true to the best of information supplied to us by our advocate.*

Now, the 1<sup>st</sup> and 2<sup>nd</sup> defendants' stance is that the said verification clause contravenes the provisions of Order VI Rule 15 (1) and (2) of the CPC because the names of the other plaintiffs have not been stated as it shows that only one plaintiff has verified on the behalf of the other plaintiffs.

It is my settled view that, although the names of the other 7 plaintiffs ought to have been disclosed on the verification clause, such omission is not fatal. The reason is that all the plaintiffs have signed below the verification clause which indicates that they are both verifying and not one plaintiff on behalf of the other plaintiffs as contended by the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants. It has been indicated at the beginning of the plaint that there are eight plaintiffs hence by stating on the verification clause "the seven others" connotes the names of the other seven plaintiffs.

*Adls.*

Moreover, I do not see how the 1<sup>st</sup> and 2<sup>nd</sup> defendants have been prejudiced by such omission to disclose the names of the other plaintiffs on the verification clause taking into consideration the same have been disclosed earlier. Equally the arguments of the representative suit raised by the learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants have been misplaced because in the present suit nothing suggests one plaintiff is representing the others. Hence the 1<sup>st</sup> and 4<sup>th</sup> objections are without merits and therefore overruled.

On the second preliminary objection raised by the 1<sup>st</sup> and 2<sup>nd</sup> defendants, it is contended that the plaintiffs have not been described with such particulars as telephone numbers, email addresses and fax. The learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants submitted that such omission contravenes the provisions of Order VII Rule 1 (b) and (c) which requires the name, description and place of residence of the plaintiff including email address, fax number telephone number and post code if available.

The plaintiffs' reply on the 2<sup>nd</sup> point of preliminary objection is that, the plaintiffs have complied with the requirement of Order VII Rule 1 (b) *Alls.*

and (c) of the CPC by disclosing their addresses, emails and telephone numbers hence the preliminary objection is baseless.

The 2<sup>nd</sup> preliminary objection need not detain me, as rightly submitted by the learned counsel for the plaintiffs, the description and addresses in which the plaintiffs can be contacted has been disclosed as clearly seen on paragraphs 1 and 2 of the plaint. Hence the plaintiffs have substantially complied with the requirements of Order VII Rule 1 (b) and (c) of the CPC because as they are being represented it is sufficient for their advocate to provide his addresses, email as well as phone numbers. Consequently the 2<sup>nd</sup> preliminary objection is overruled for lack of merits.

On the 3<sup>rd</sup> preliminary objection, the 1<sup>st</sup> and 2<sup>nd</sup> defendants submitted that the subject matter has not been described contrary to Order VII Rule 3 of the CPC. Failure to describe the disputed property will be difficult in determining the matter even the decree will not be executed easily.

The learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> defendants submitted further that the plaint is defective as the plaintiffs did not specify specifically on every plaintiff's claim on which piece of land with how many acres as well as location of the subject matter. To buttress the point, the learned

*Adls.*



counsel has referred the decision of this Court in **Romuald Andrea @ Andrea Romuald @ Romuald A. Materu v Mbeya City Council and 17 others**, Land Case No. 13 of 2019 (unreported).

On reply, the plaintiffs submitted that the description of the suit property has been done and its size, details and location has been disclosed hence the preliminary objection raised lacks merits.

Much as I agree with the learned counsel for 1<sup>st</sup> and 2<sup>nd</sup> defendants that the description of the subject is necessary as it will enable the court to ascertain whether it has jurisdiction over the matter, however in the present matter the plaint substantially describes the suit land. Paragraphs 3 and 12 of the plaint indicates the suit land to be 300 acres, valued at estimated price of Tsh 900 million and it is situated at Pangani Ward, Kibaha District. These are the minimum details which describe the suit land. Moreover on how the plaintiffs acquired the suit land has been stated on paragraphs 7, 8 and 9 of the plaint.

It is for that reason, the 3<sup>rd</sup> preliminary objection lacks merits and it is hereby overruled. *Alle*

Coming to the objections raised by the 3<sup>rd</sup> defendant, submitting on the first objection, the learned counsel for the 3<sup>rd</sup> defendant contended that this Court does not have jurisdiction to entertain this matter because there is no any document to show the value of the property in this matter.

On reply, the plaintiffs submitted that this court has jurisdiction to entertain the matter. The plaintiffs contended that this is according to section 37(1) (a) of the Land Disputes Courts Act [CAP 216 R.E 2019], which provides for jurisdiction of this court to entertain disputes where the value of the immovable property exceeds three hundred million shillings while the subject in the present suit is estimated to be 900,000,000/= as stated under paragraph 12 of the plaint. The plaintiffs therefore pray for the objection to be overruled with costs.

On rejoinder submission, the 3<sup>rd</sup> defendant submitted that the plaintiffs ought to have attached a valuation report to establish the value of the disputed land.

Much as I understand the 1<sup>st</sup> preliminary objection raised by the 3<sup>rd</sup> defendant, the jurisdiction of the court to entertain the present matter is being questioned for not being supported by the valuation report. On *Alles*

paragraph 12 of the plaint, the land in dispute is stated to have a value of Tshs 900 million. It is apparent that as the 3<sup>rd</sup> defendant demands valuation report to be produced then evidence is needed to ascertain whether this court has jurisdiction or not. Giving an estimated value of the suit property like in the present matter in which it has been stated that suit property is valued at Tsh 900 million, it is sufficient to cloth the Court with jurisdiction. In addition, Order VII Rule 1 of the CPC provides that the plaint shall contain a statement of the value of the subject matter which has been done in this case and not the valuation report. Hence the 1<sup>st</sup> preliminary objection raised by the 3<sup>rd</sup> defendant is hereby overruled.

Submitting on the second preliminary objection, the 3<sup>rd</sup> defendant contended that the plaint is bad for misjoinder of parties because the 3<sup>rd</sup> defendant is the widow of the late John Reginald Masuha who is the individual the plaintiffs wish to bring the action. Much as I could understand the 3<sup>rd</sup> defendant's submission, the administrator of the estate of the late John Reginald Masuha namely Nkonze Eliud Masuha ought to have been sued instead of the 3<sup>rd</sup> defendant.

On reply, the plaintiffs' advocate contended that the 3<sup>rd</sup> defendant is the proper party because she is the trespasser on the suit land and the

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plaintiffs' relief against the 3<sup>rd</sup> defendant is to be declared a trespasser and should vacate from the suit land.

The 2<sup>nd</sup> point of preliminary is equally misconceived because redress is being sought against the 3<sup>rd</sup> defendant personally as contended by the plaintiffs, the 3<sup>rd</sup> defendant is alleged to have trespassed on the suit land. Nowhere on the plaint filed in the present suit, had the plaintiffs mentioned the 3<sup>rd</sup> defendant's late husband or the administrator of the estate. Consequently the 2<sup>nd</sup> preliminary objection raised by the 3<sup>rd</sup> defendant is hereby overruled.

In upshot and for the foregoing, all the preliminary objections raised by the defendants are hereby overruled with costs.



  
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**A. MSAFIRI,**  
**JUDGE**  
**02/6/2022**