

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

LAND CASE NO. 220 OF 2021

ASHA RASHID.....1ST PLAINTIFF
ATHUMANI MNUBI.....2ND PLAINTIFF
MZEE ZIAKA.....3RD PLAINTIFF
ABDALLAH RAMADHAN.....4TH PLAINTIFF
WAMOJA PUGA.....5TH PLAINTIFF
EDGA SOSPITA.....6TH PLAINTIFF
FATUMA MANENO.....7TH PLAINTIFF
HAWA IBRAHIM.....8TH PLAINTIFF
BEATUS MPEMU.....9TH PLAINTIFF
ABDALLAH SHABANI.....10TH PLAINTIFF
ANNAMWEMA MINTANGA.....11TH PLAINTIFF
SHABAN MGENI.....12TH PLAINTIFF
JUSTINE FRANK.....13TH PLAINTIFF

VERSUS

KHADIJA BARAKA NGOLOLO.....DEFENDANT

R U L I N G

Date of Last Order: 13.06.2022
Date of Ruling: 28.06.2022

T. N. MWENEGOHA, J.

Khadija Baraka Ngololo has been sued by the above named 13 plaintiffs for trespass and illegal occupation of the pieces of land, situated at Vikawe, within Kibaha District, measuring 33 acres. She is against the suit and has raised a preliminary objection on point of law that, the plaint

offends the provision of Order VII Rule 3 of the Civil Procedure Code, Cap 33, R. E. 2019. That, the said plaint does not provide a proper description of the subject matter.

Mr. Rajabu Mrindoko, Advocate for the defendant, has argued in his written submissions that, Order VII Rule 3 of the Civil Procedure Code, Cap 33, R. E. 2019 requires the plaint to contain a description of the property in dispute sufficient to identify it. That, the plaintiffs have not complied with this provision and their case is incompetent before this court. That, the same should be struck out. Mr. Mrindoko referred the court to a number of authorities among them being the case of **Mwanahamis Habibu and 7 Others vs. Justine Nduge Justine Lyatuu and 173 Others, Land Case No. 130 of 2018, High Court of Tanzania, Land Division at Dar Es Salaam, (unreported).**

Joseph Mandela Mapunda, learned counsel for the plaintiffs replying in his reply submissions relied on Article 108(2) of the Constitution of the United Republic of Tanzania of 1977 and Section 37(1)(a) of the Land Courts Disputes Act, Cap 216, R. E. 2019. He insisted that based on these provisions, this court has powers to entertain the case at hand. He also cited the case of **East Africa Development Bank vs. Naura Springs Hotel Limited and 2 Others, Commercial Case No. 70 of 2021, High Court Commercial Division, at Dar Es Salaam, (unreported)** and maintained that, this court has unlimited jurisdiction as the details and particulars given in respect of the suit land as stated in the plaint are sufficient to entertain the dispute at hand.

In his rejoinder, Mr. Mrindoko was of the view that, the plaintiffs' counsel failed to challenge his submissions in chief and adopted to rely on the

exclusivity of the jurisdiction of this Court and wrong principles of law. He insisted for the Court to strike out the case.

Having gone through the arguments from the counsels for both parties in the suit at hand, the question for determination is whether the objection by defendant has merits.

The defendant through her learned counsel has claimed that, the plaint is defective for want of proper description of the subject matter of the suit at hand as it 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."

Guided by the above quoted provision, I find merit in the objection. The law has plainly stated the proper description of the subject matter is mandatory for the purpose of identification of the same. In the instant case, the description of the suit land is very vague and is not sufficient at all to identify the disputed land. Under paragraph 3 of the plaint, the property in question has been described as follows;

"The plaintiffs jointly and severally claim against the defendant for declaration that, the plaintiffs are the rightful and lawful owners of pieces of land, situated at Vikawe within Kibaha District, measuring 33 acres".

In my opinion, this description even if allowed to stand, will make the decree of the court if passed in favour of the plaintiff, to be difficult to execute. The proper way to describe the subject matter in a case like this, is to give details of each piece of land involved in the dispute in terms of the owner, size, location, boundaries and every mark available which distinguishes it with other pieces of land owned by other persons in the locality, see **Mwanahamis Habibu and 7 Others**, (supra). Consequently, I agree with the defendant's counsel that, the suit is incompetent.

The objection has merits and it is hereby sustained.

Eventually, the case is struck out with costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
28/06/2022