

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 47 OF 2020

ALFRED KINSWAGAPLAINTIFF

VERSUS

ROSEMARY KOKUTURAGE MUSHUMBA & 21 OTHERS.....DEFENDANT

RULING

28th Dec, 2022 & 20th Jan, 2023

L. HEMED, J.

On 26th day of October 2022 the Plaintiff filed an amended Plaint against the defendants herein claiming for declaration that “the plaintiff is the lawful owner of piece of land sized one hundred (100) acres, located at Mbondole- Msongola in Ilala Municipality, Dar es Salaam. He also claims for declaration that the defendants are trespassers thereon; eviction order against the defendants from the suit land and for payment of Mesne profit approximately amount of Tanzania shillings Five Hundred Million (500,000,000.00) and general damages.

In their joint written statement of defense, the defendants disputed all the claims and in the said written statement of Defence, they raised a Preliminary objection on two points of law as follows;

"i). THAT, the Plaintiff does not have a cause of action against the Defendants.

ii. THAT, the emended plaint does not properly describe the disputed land/suit property in terms of specific boundaries of the land in question Contrary to O.VII Rule 3 of the Civil Procedure code, Cap. 33 R.E 2019" (sic)

Having gone through the written submissions made by the parties, I have opted to start determining the 2nd limb of the preliminary objection;

"that the amended plaint does not properly disclose the disputed land in terms of specific boundaries of the land in question".

The learned Counsel for the respondent submitted that paragraph 3 and 4 of the amended Plaint do not make the Court identify the property in dispute. According to him paragraph 3 was supposed to provide sufficient descriptions of the disputed land. The plaint just states the claim of 100 acres situated at Mbondole - Msongola Ward. It was the view of the learned advocate that no descriptions of demarcations, boundaries and neighborhood surrounding the disputed property which is contrary to Order VII Rule 3 of the Civil Procedure Code.

It was submitted further by the counsel for the defendants that, in the case at hand, the disputed property was unsurveyed, therefore, the plaintiffs were required to give sufficient description of the disputed land sufficient to identify the properties in dispute so that if a decree is passed concerning it, it can be easily executed. He cited the case of **Laurent Mbwila and Others vs Kinondoni Municipal Council and Attorney General**, Land case No. 111 of 2021 and the case of **Pius Kuenge Philip vs Serikali ya Mtaa Makabe & Others**, Land Case No. 392 of 2015. In the said cases it was held that, the requirement to describe the suit property in the Civil Procedure Code, is not a cosmetic one; first, is to allow the Court to establish its jurisdiction through identification of the location of the suit property. Secondly, the description is also meant to inform the defendant of the case he is to defend against so that he can offer plausible defence to the allegations. Thirdly, and most importantly, the description is meant to afford the Court with an opportunity to pass final and definite orders.

In the view of the Counsel for the defendants, improper description of the suit property renders the case incompetent before the Court and overriding objective is inapplicable. He finally submitted praying the Court to strikeout the suit with costs.

In reply submissions, the learned counsel for the plaintiff contended that in the present case the suit property is in unsurveyed land, hence it does not fall within the ambit of Order VII Rule 3 of the Civil Procedure Code. It was the assertion of the plaintiff's advocate that in unsurveyed land, it is sufficient to mention the location of the suit property and its size. In his view, referring to paragraphs 3 and 4 of the plaint, the suit property has been properly described that, it is located at Mbondole Msongole with size of 100 acres. He was of the opinion that the said description is sufficient.

He was of the further view that the case at hand requires proof by evidence that the suit property is located at Mbondole Msongola as pointed out in paragraphs 3 and 4 of the amended plaint. He cited the case of **Hezron M. Nyachiya vs Tanzania Union of Industrial workers & Another**, Civil Appeal No. 79 of 2001 where it was held that there can be no pure point of law where there are facts that require proof by evidence. He stated that, the said point does not qualify to be a preliminary objection as it is not purely on point of law. He concluded by stating that if the court finds out that there is defect in the Pleadings it should allow the party to rectify the anomaly by ordering amendment so that the rights of parties are determined conclusively.

Having gone through the submissions made by the parties, let me turn to determine as to whether the objection that the amended plaint does not properly describe the disputed land, holds water.

Order VII Rule 3 of the Civil Procedure Code, [Cap 33 RE 2019] provides thus: -

"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".

According to the Amended Plaint, the gist of the Plaintiff's claim is ownership found under Paragraphs 3 and 4 of the Plaint which read as follows: -

*"3. That the plaintiff's claims against the defendants among others are for declaration that the plaintiff is the lawful owner of piece of **land sized one hundred (100) acres, located at Mbondole – Msongola in Ilala Municipality, Dar es Salaam***

*4. That the Plaintiff is the lawful owner of the piece of land herein referred as the suit property located and **Mbondole – Msongola in Ilala Municipality, Dar es Salaam".***

The question is whether the above cited paragraphs 3 and 4 of the Plaintiff sufficiently describe the suit property. Going through the Plaintiff, it has not been described whether the suit property is surveyed or unsurveyed or whether it is registered or not for purposes of establishing whether it has the Title number as required by Order VII Rule 3 of the Civil Procedure Code (*Supra*).

According to the amended Plaintiff, the boundaries of the suit property have not been described. The importance of description of property can be found in an **Indian Case of Bandhu Das and Anr. vs Uttam Charau Pattanaik**, AIR 2007 Ori 24, 2006 II OLR 80. In the said persuasive decision, the High Court of India, while interpreting Order VII Rule 3 of the Indian Civil Procedure Code, which is in *parametria* to Order VII Rule 3 of the Civil Procedure Code, of Tanzania had this to say: -

"A bare reading of the above provision makes it crystal clear that what exactly the land or the area over which the dispute exists is a question which goes into the root of the matter relating to substance of the case. In the absence of such description in the plaint or supply of the map by annexing the same to the plaint and the evidence to the above effect, no Court would pass a decree, as such a decree would be inexecutable or

would be rendered otiose. Even if the Court finds that the Plaintiff had title and possession in respect of the suit land, in absence of proper description,...the decree cannot be executed...”

In the suit at hand the plaintiff has just described the size of the suit land to be hundred (100) acres and the location of it to be at Mbondole – Msongola, in Ilala Municipality.

From the above description one cannot even trace the exactly location of the suit landed property at Mbondole – Msongola. It was thus very important to describe the boundaries of the said land and Probably even the neighborhood surrounding the suit land.

I do subscribe to what my brother Hon. S.M. Kalunde J, stated in **Pius Kuenga Philip (suing as the Attorney of Oddy Msimbe) vs Serikali ya Mtaa wa Makabe & 5 Others**, Land case No. 392 of 2015 that sufficient description of the suit landed property affords the Court with an opportunity to pass final and definite Orders. In absence of sufficient description of the property no court would issue executable decree.

From the foregoing, it is Obvious that the Plaintiff has failed to provide a sufficient description of the property, the subject matter of the

suit at hand. The resultant effect is that, he has contravened Order VII Rule 3 of the Civil Procedure Code, [Cap 33 RE 2019]. The fact that the 2nd limb of the preliminary objection surfaces to dispose the entire suit, I cannot labor to determine the first limb. I thus proceed to strike out the entire suit with Costs. It is so ordered.

DATED at DAR ES SALAAM this 20th day of January, 2023.



L. Hemed
L. HEMED
JUDGE
20/1/2023

COURT: Ruling is delivered on 20th day of January, 2023 in the presence of Mr. Mwalali for the Defendants and also holding brief of Mr. Mkulago, for the plaintiff. Right of appeal explained.



L. Hemed
L. HEMED
JUDGE
20/1/2023