

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM
LAND CASE NO. 26 OF 2021

LONGI BISWADI MSUYA1ST PLAINTIFF
OMARI BISWADI MSUYA2ND PLAINTIFF
SHABANI SELENDI MSUYA3RD PLAINTIFF
SAMIA WILLIAM BIHENDO4TH PLAINTIFF
(Administrators of the Estate of Late BISWADI SELENDI MSUYA)

VERSUS

KESSY MUSA MMARI 1ST DEFENDANT
SELEMANI M. PILLI 2ND DEFENDANT
DOMICIAN R. MMASY..... 3RD DEFENDANT
ROGATI TISA WAISO 4TH DEFENDANT
RAPHAEL NYABU MUNOHI 5TH DEFENDANT
NASRA TWAHA SHIO 6TH DEFENDANT
FELIX CHANGWE BRUDER 7TH DEFENDANT

RULING

20/3/2023 & 22/3/2023

A. MSAFIRI, J.

The plaintiffs have instituted a suit jointly and severally against the defendants seeking for orders of eviction and permanent injunction against the latter, for trespassing and building on part of the plaintiffs' 15 acres landed property situated at Mivumoni, Wazo Hill area, Wazo Ward,

Alls.

Kinondoni, Dar es Salaam. After completion of pleadings the suit was set for hearing. On the date of hearing, Ms. Rita Chihoma, learned advocate appeared for the plaintiffs, the 1st, and 7th defendants were represented by Mr. Daimu Halfani, learned advocate, the 2nd, 5th and 6th defendants were represented by Mr. Sindilo Lyimo, learned advocate and Mr. Living Rafael, learned advocate represented the 3rd defendant.

For the reasons known to himself, the 4th defendant never entered appearance nor filed his defence despite being summoned hence the matter was ex-parte against him.

Mr. Rafael for the 3rd defendant prayed to address the Court on point of law, and was granted the leave. He submitted that he was recently engaged to represent the 3rd defendant, and while he was going through the pleadings, he has discovered that the Complaint is defective as it does not contain or reflect a description of the subject matter which is immovable property. He submitted further that the Complaint contravenes Order VII Rule 3 of the Civil Procedure Code, Cap 33 R.E. 2019 (the CPC) which makes it mandatory for the Complaint to contain description of the subject matter if it immovable property.

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On response, Ms. Chihoma readily conceded with the point of law raised and addressed by the counsel for the 3rd defendant. She then prayed to withdraw the suit with leave to file a fresh suit with no order for costs. The prayer was made under Order XXII Rule 1 (1) (2) (a) (b) of the CPC. She argued that the raised objection was just an observation from the counsel for 3rd defendant.

Mr. Rafael rejoined that, since the counsel for the applicant has conceded to the raised point of law, then she cannot pray for withdrawal of the suit. The only remedy available for this Court is to strike out the matter.

On the prayer for costs, Mr. Rafael submitted that, this suit has been filed in the Court since 2021, and that his client has incurred expenses, hence, he prayed for the costs.

Having heard the submissions from the rival parties, the issue is whether the prayer for withdrawal of this suit is tenable.

A point of law has been raised by the counsel for the 3rd defendant. It concerns the defectiveness of the Plaint and that the same contravenes Order VII Rule 3 of the CPC. The cited provision 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.”

The above provision is couched in mandatory terms. The counsel for the plaintiff has admitted that the Plaint has contravened the mandatory provisions. This makes the Plaint to be defective hence the whole suit to be incompetent before this Court. The remedy of the incompetent suit is not withdrawal, particularly where the incompetency has been raised either by the adverse party or by the Court *suo motu*. In the said circumstances, the remedy is to strike out the matter.

At paragraph 12 of the Plaint, plaintiffs states that, being administratrix/administrators of the late Biswadi Selenda Msuya, they claim for eviction and permanent injunction against the defendants from trespassing, building on and occupying the plaintiff's landed property at Mivumoni Tegeta, Dar es Salaam, being parts of 15 acres legally occupied by the plaintiffs. Looking at the cited paragraph 12 and the relief section of the Plaint, it is crystal clear that there is no proper description of the suit property.

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The importance of the description of the suit property in the Plaint was elucidated in the Court of Appeal case of **Martin Fredrick Rajab vs. Ilemela Municipal Council & Another**, Civil Appeal No. 197 of 2019, CAT at MZA (unreported). The Court of Appeal held thus;

"From what was pleaded by the appellant; it is glaring that the description of the suit property was not given because neither the size nor neighbouring owners of pieces of land among others, were stated in the plaint. This was not proper and we agree with the learned trial Judge and Mr. Mrisha that, it was incumbent on the appellant to state in the plaint the description of the suit property which is in terms of dictates of Order 7 Rule 3 of the Civil Procedure Code (Cap 33 R.E 2019)."

The circumstances of the referred case are similar to the present suit and I am therefore bound by the said decision and the provisions of Order VII Rule 3 of the CPC.

For the foregoing reasons, I hereby struck out this suit with costs.

