

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO.321 OF 2022**

**MWANZANI RAMADHANI DUMA(Adminstrator of the Estate of  
the late Hamisa Abdallah).....PLAINTIFF**

**VERSUS**

**PETER KIULA.....1<sup>ST</sup> DEFENDANT**

**FREEMAN SHIRIMA.....2<sup>ND</sup> DEFENDANT**

**UBUNGO MUNICIPAL COUNCIL.....3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT**

**RULING**

*Date of Last Order: 13.03.2023*

*Date of Ruling: 31.03.2023*

**T.N. MWENEGOHA -J**

This Court has been confronted with preliminary objection on points of law which requires my attention for their deliberation. The same derives from the 3<sup>rd</sup> and 4<sup>th</sup> defendants, to the effect that; -

- 1. The suit is time barred.*
- 2. The suit is incompetent for insufficient description of the suit property.*

The preliminary objections were heard by written submissions and preceded *ex parte* against the plaintiff. Lucy Kimaryo, learned State Attorney, appeared for the 3<sup>rd</sup> and 4<sup>th</sup> defendants. In her written submissions she abandoned the 1<sup>st</sup> objection on the ground that, the same requires proof by evidence. In support of the second limb of objection, she argued that, the plaint does not describe the subject matter of the suit sufficiently to identify the same. That contravenes with the provisions of **Order VII Rule 3 of the Civil Procedure Code, Cap 33 R.E 2019.**

She added that, the way the subject matter has been described in the said plaint is very vague. For ease of reference, she quoted it as pleaded under paragraph 3 of the said plaint as hereunder: -

*"The Plaintiff claim against the defendants jointly and severally to give vacant possession of the piece of land located at Goba Centre, Ubungo Municipality in Dar Es Salaam, the lawful property of the late Hamisa Abdallah Chenja, of which the plaintiff is entitled to administer"*

That, there are many pieces of land at Goba Centre. It is difficult for one to be certain of which land the plaintiff is referring to. That, the plaint ought to have included the size of the Plot, Title number, street on which it is located, the surrounding neighbors and so forth. To bolster her

arguments, she referred this Court to the decision of **Fereji Said Fereji versus Jaluma General Supplies Limited and Another**, Land Case No. 86 of 2020, High Court of Tanzania, Land Division (unreported). It was her conclusion therefore, that the suit should be struck out.

I have considered the arguments by the learned State Attorney for the 3<sup>rd</sup> and 4<sup>th</sup> defendants plus the pleadings thereof. The crucial issue for determination is whether the second limb of the said preliminary objection on the point of law has merit or otherwise.

Certainly, the objection raised by the attorney for the 3<sup>rd</sup> and 4<sup>th</sup> defendants is based on paragraph 5 of the plaint. That, without flicker of doubt, the same contains insufficient description to describe the landed property. To resolve the issue, I will dwell on the provisions of **Order VII Rule 3 of the Civil Procedure Code, Cap 33 R.E 2019**, which provides for a requirement that, in case of suit of immovable property, the plaint shall contain a description sufficient to identify it. It reads 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"*

I deem it pertinent to borrow a leaf from the case of **Daniel Ndagala Kanuda (As an Administrator of the Estate of the late Mbalu Kushaha Baluda) vs. Masaka Ibeho & 4 Others**, Land Appeal No. 26 of 2015, (HCT-Tabora), (Unreported) it was stated at page 4-5 that;

*"The legal requirement for disclosure of the address or location was not cosmetic. It was intended for informing the Tribunal of sufficient description so as to specify the land in dispute for purposes of identifying it from other pieces of land around it. In case of a surveyed land, mentioning the plot and block numbers or other specifications would thus suffice for the purpose. This is because such particulars are capable of identifying the suit land specifically so as to effectively distinguish it from any other land adjacent to it".*

Emphasis supplied.


More so, the construction of the above provisions reveals that it is a mandatory requirement for a plaint to describe the suit property as in land disputes. The purpose of such requisite description is to enable the Court to identify the disputed property in exclusion of the other properties in the locality, especially during execution of its Decree. In absence of sufficient description of the suit property as needed in the above quoted provision, the Court may render an inexecutable Decree. This has been the position

in a number of authorities including the case **Fereji Said Fereji versus Jaluma General Supplies Limited and Another, (*supra*)**.

In the upshot, I am at one with the learned State Attorney for the 3<sup>rd</sup> and 4<sup>th</sup> defendants that, the suit property in the case at hand was insufficiently described as required by the law, hence I find the second limb of objection to have merits and the same is sustained accordingly.

That said, the suit is hereby struck out without costs. It is so ordered.



  
**T.N MWENEGOHA**  
**JUDGE**  
**31/03/2023**