

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

LAND CASE NO. 136 OF 2021

REHEMA HEMED KILINDO.....1ST PLAINTIFF
PILI SHIJA SOMBI.....2ND PLAINTIFF

VERSUS

ABDULKADRI HUSSEIN SCABA1ST DEFENDANT
NASSORO KAUTILA ALLY.....2ND DEFENDANT
ABDALLAH KAUTILA ALLY.....3RD DEFENDANT
HEMEDI KAUTILA ALLY.....4TH DEFENDANT

RULING

Date of last Order:15/05/2023
Date of Judgment:26/05/2023

K. D. MHINA, J.

The central issue of controversy between the parties to this suit is the ownership of a parcel of land measuring 41 acres located at Kichangani/Lingato Street, Kisarawe II Ward within Kigambani District, Dar es salaam Region, whereby the plaintiffs alleges and are claiming that they are the lawful owners of that parcel of land which the 2nd, 3rd and 4th defendants unlawfully sold to the 1st defendant.

The declaratory orders sought are;

- i. A declaration that the plaintiffs are the lawful owners of the disputed land.
- ii. An order nullifying the sale agreements between the 1st defendant and the 2nd, 3rd and 4th defendants null and void.
- iii. An order directing the 1st defendant to remove his boundary poles and paints from the suit land.
- iv. An order of permanent injunction preventing the defendants from dealing in anyhow within the suit land.
- v. General damages to be assessed by the Court
- vi. Costs of the suit
- vii. Any other relief(s) as the Court may deem fit and just to grant

The 2nd, 3rd and 4th defendants countered the allegations by filing a joint Written statement of defence ("the WSD"), alleging that they sold the suit land after were given permission by their father and the plaintiffs.

In his separate WSD the 1st defendant, countered the allegations by claiming that the plaintiffs never owned the suit land. The land was owned

by Kautila Ally Kautila who is the father of the 2nd, 3rd and 4th defendants who was also the former husband of both plaintiffs, after they divorced.

Further, the 1st defendant lodged a Counter- Claim against the plaintiffs, 2nd, 3rd and 4th defendants and Kautila Ally Kautila. For clarity the parties to the counter claim are;

"ABDULKADRI HUSSEIN SCABACLAIMANT

VERSUS

REHEMA HEMED KILINDO.....1ST DEFENDANT

PILI SHIJA SOMBI.....2ND DEFENDANT

NASSORO KAUTILA ALLY.....3RD DEFENDANT

ABDALLAH KAUTILA ALLY.....4TH DEFENDANT

HEMEDI KAUTILA ALLY.....5TH DEFENDANT

KAUTILA ALLY KAUTILA.....6TH DEFENDANT

In their joint WSD to the counter-claim the 1st and 2nd defendants disputed the allegation. On the other hand, in their joint WSD to the counter claim, the 2nd, 3rd and 4th defendants and in the separate WSD by the 6th defendant, they admitted all allegations and claims except 6th defendant denied the allegation of divorce.

Flowing from above, for the purpose of brief factual background and relevancy to this Ruling I will not go further on the issues arose after the 1st

and 2nd defendants to the counter-claim disputed the claims while the 3rd, 4th, 5th and 6th admitted the claims.

In this suit, after the failure of mediation and when the matter was set for the final pre-trial conference under Order VIII Rule 40 (1) of the CPC, the procedure purposely for framing of issues and commencing hearing of the suit, the 2nd, 3rd and 4th defendants to the main suit and the 6th defendant to the counter-claim through their counsel raised a notice of preliminary objection (P.O) that canvassed only one ground, namely;

- i. that the original suit is incompetent in law for lack of proper description of the suit land. Hence, the Court has no jurisdiction to entertain it.*

The preliminary objection was argued by way of written submissions and plaintiffs were represented by Mr. Benitho Mandele advocate. On the other hand, the 1st defendant was represented by Mr. Daimu Halfani while the 2nd, 3rd and 4th defendants to the main suit and the 6th defendant to the counter-claim were represented by Mr. Allen Albert Kaminda advocate.

In supporting the preliminary objection Mr. Kaminda submitted that the plaint filed on 24th August, 2021 by the plaintiffs and who are also the

1st and 2nd defendants to the counter claim does not state the proper description of the suit land.

He narrated that paragraph 5 of the plaint is the only paragraph which contains description of the suit land in terms of number of acres, street, ward, District and region where it located. Therefore, he submitted that was not a proper and sufficient description.

He went further by submitting that the plaintiffs did not base their claim of ownership on any document which would have given supplementary description. Even the root (source) of their ownership or their root of title has not been described or specified in the plaint.

He concluded by submitting that the two aspects above render the suit incompetent and denied the Court jurisdiction to entertain it.

To bolster his argument, he cited **Order VII Rule 3** of the CPC and stated that the Order cited put it mandatory for the plaint to contain a description of the immovable property sufficient to identify it. Therefore, he pointed out that failure to comply with that mandatory requirement renders the suit incompetent and denies the court jurisdiction to entertain it.

He further bolster, his argument by citing various decisions of this Court and the Court of Appeal which emphasized the necessity and importance of the plaint to comply with Order VII Rule 3 of the Civil Procedure Code. In **Valeria T. Nguma and 53 Others versus Attorney General and Another, Misc. Land Application No. 721 of 2021 HCT** (unreported) at **12 it was held that;**

"I agree with Ms Msanga, learned State Attorney, that the description is insufficient to identify the respective parcels of land allegedly owned by the plaintiffs, and cannot enable the court to make an effective and executable decree in the favour of the plaintiffs or in the favour of any of the plaintiff."

In **Athuman Salehe Magogo & 14 Others versus Gabius Edger Maganga & Another, Land Case 206 of 2021 HCT** (unreported) at **pages 4 and 5;** it was held that;

"The logical basis of the provision of Order VII rule 3 supra, can simply be said that, the purpose of proper description of the subject matter is to just distinguish a suit land from other pieces of the land in the same area."

He also cited **Martin Fredrick Rajab versus Ilemela Municipal Council & Another, Civil Appeal No. 197 of 2019 CAT** (unreported) at **page 13** and prayed the original suit be dismissed with costs.

In response Mr. Mandele resisted the preliminary objection by submitting that the plaint is clear on the location and size of the land. In paragraph 5, the suit was described as it measures 41 acres of land located at Kichangani area, Lingato Street, Kisarawe II area. Kigamboni District, Dar es Salaam Region.

Therefore, he submitted that Kichangani area in Lingato-Kisarawe II can be located by this description. Hence, the court is capable of issuing an effective decree which can effectively be executed because the description of the suit land is sufficient enough to identify it.

He concluded by submitting that the cases referred to by the defendants are therefore distinguishable; therefore, he prayed for this court to dismiss the objection with costs.

On his part, the 1st defendant, through the services of Mr. Daimu Halfani Advocate fully supported the preliminary objection and the written submissions to support it.

He also submitted that in paragraph 5 of the plaint the plaintiffs only mentioned the size and the administrative location of the suit land. Further,

the plaintiffs did not specify that the 41 acres of land only covering kichangani/Lingato street. Therefore, there was no proper description sufficient to identify the suit land.

He went on by submitting that proper and sufficient identification enables the court to grant order on specific piece of land and not land at large which may affect unintended person who are not parties to the suit. It also intends to avoid fictitious claims and litigations.

To substantiate his submission, he cited the decision of this Court in **Joel Kondela Maduhu versus Siya Ndeja**, Land Appeal No. 3 of 2021 (unreported) at page 8 it was held that;

"The two acres claim was determined without defining its location and boundaries. It is a settled principle of the law that, any claim of land should comprise a proper description of the suit land for definite and complete execution order".

He concluded by submitting that if the plaintiffs had annexed to the plaint annextures such as sale agreement, deed of gift, deed of assignment which described specific size, location, boundaries and previous owner of the land, it would have supplemented the insufficient description and identity of the suit land in paragraph 5 of the plaint. That was because annextures are

part of the parties' pleadings as per **Oilcom Tanzania LTD vs. Christopher Letson Mgaila**, Land Case No. 29 of 2015 (unreported) as cited in **Ramadhani Mohamed Kihango (An Administrator of the Estate of the Late Hawa Mohamed Jabiri vs Ahmed Jumbe Kihago & another** (Land Case 8 of 2022(unreported) at page 9.

He prayed that the suit be dismissed with costs to the defendant to the original suit and plaintiff in the counter claim. He also prayed that after dismissal of the suit this Court proceed to compose and pronounce the judgment on admission on the Counter Claim.

Having gone through the submission by the parties, I now turn to the determination of the preliminary objection on whether the land in dispute is sufficiently described.

The entry point is Order VII Rule 3 of the CPC which read that:

"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".

Further, in the decision of this Court in **Fereji Said Fereji vs. Jaluna General Suppliers Ltd and Others**, Land Case No. 86 of 2020 which was quoted in **Valeria T. Nguma (Supra)** , it was held that;

"Such description may include the location, title number for surveyed plots, neighbours or boundaries for unsurveyed plots, or any form of description that would sufficiently identify and distinguish the suit property from other properties".

The Court of Appeal, also in the cited case **Martin Fredrick Rajab (Supra)** at page 13, it held that;

"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.

..... Apart from what is amiss in the pleadings, at the trial none of the witness on the appellant's side managed to give any description of the suit property. This is evident in the sale agreements at pages 121 to 123 of the record of appeal which, besides showing the names of the sellers, buyer, the respective prices and those who witnessed the sale

including PW4, nothing is stated on the location, size and neighbors to the said suit land."

What can be gleaned from the above cited provision of law and cases with regard to the description of the land are as follows;

One; Title number if the land is registered.

Two, location

Three, size

Four, neighbours or boundaries

In this matter the pleadings from both parties; in the main suit and counter claim does not indicate if the land in dispute is a surveyed land. Nothing was pleaded and nor document was annexed to the complaints and Written statement of defence to indicate that the land in dispute is a surveyed one. Therefore, at this point and stage that lead this court to consider that the land in dispute is un surveyed.

According to the plaint, the description of the suit land as revealed at paragraph 5. That paragraph read as follows;

*"We, plaintiffs, are owners of 41 acres of land located at Kichangani/
Lingato Street, Kisarawe II Ward Kigambaoni District, Dar es salaam"*

Therefore, flowing from above it is clear that paragraph 5 of the plaint described the size as it measures 41 acres and location of the suit land that it is located at Kichangani/ Lingato Street, Kisarawe II Ward Kigambaoni District, Dar es salaam. Therefore, the plaint sufficiently described the size and location of the land. The raised by Mr. Daimu Halfani that the applicants did not specify if the 41 acres of land only covering kichangani/Lingato street, those are "nitty-gritties" which can be by way of evidence.

Ergo, for the purpose of Order 7 Rule 3 of the CPC, location and size of the suit land sufficiently pleaded in the plaint.

Regarding the issue of neighbours to the suit land I wish refer the cited case of **Oilcom Tanzania LTD (Supra)** that annexures are part of the parties' pleadings. In this matter, annexure A to then plaint (the sale agreement) indicated the neighbours to the suit land as follows on the south side neighbour was Abdallah Omary, East the neighbour was Mshirazi, North the neighbour was Mama Lili/ Muirani and East the neighbour was Msomari.

Therefore, from the above discussion the suit land is sufficiently describe.

Consequently, the preliminary objection lacks merit and I proceed to dismiss it with costs borne to the defendants in the main suit and the 6th defendant to the counter claim.

It is so ordered.



K. D. MHINA

JUDGE

26/05/2023