

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

LAND CASE NO. 306 OF 2022

SAID ABDALLAH KIGOHA (Suing as a Personal

Legal Representative of **ABDALLAH MBEGU KIGOHA**.....**PLAINTIFF**

VERSUS

MOUNT MERU PETROLIUM LIMITED.....**DEFENDANT**

RULING

4-14 July, 2023

E.B. LUVANDA, J

On 09/03/2023 the court *proprio motu* raised a concern as to whether the suit property has been described and sufficiently identified pursuant to the provision of Order VII rule 3 of the Civil Procedure Code, Cap 33 R.E. 2019.

On 03/05/2023, the court sanctioned the above concern to be argued along with two preliminary objections raised by the Defendant, thus; One, the plaintiff lacks a cause of action; Two, the plaintiff has no locus standi to institute this matter.

Mr. Ramadhani H. Mjili learned Counsel for the Defendant argued that the law clearly states that the plaintiff shall contain the facts constituting the cause of action and when it arose. He submitted that the plaintiff herein there is no specification and description of the property which the Plaintiff alleges being trespassed, such as the title of the land, boundaries and measurements

alleged to be trespassed and further any relation to the property that the Defendant legally owns. He cited Order VII rule 1(e) and 3 of the Civil Procedure Code, a case of **Michael Shoki vs. Kindi village Council**, Civil Appeal No. 20/1994, High Court of Tanzania.

In reply, Mr. Andrew Job Kannonyele learned Counsel for the Plaintiff conceded to the concern raised by the court in that the plaint lacks the proper description of the property in dispute that can easily be identified. However, he argued that the omission under the advent of oxygen principle can be rectified by amendment of the plaint by giving proper description of the property instead of striking out the plaint. He cited the case of **Yakobo Magoiga Gichere vs. Peninah Yusuph**, Civil Appeal No. 55/2017 CAT, Written Laws (Miscellaneous Amendments) (No. 3) Act, 2018 [Act No. 8 of 2018], **Johari Ibrahim Chata vs. Mpanda Municipal Council**, Land Case No. 4/2021 HC at Sumbawanga (unreported), to support his proposition that anomalies in description of the suit land noted by the court, can be remedied by amendment of the plaint.

On rejoinder the learned Counsel for Defendant submitted that a prayer by the Plaintiff for amendment of a plaint is intended to pre-empt the preliminary objections filed by the Defendant's Counsel, which is not permissible in law. He cited the case of **Standard Chartered Bank & Another vs. VIP Engineering & Marketing Limited**, Civil Application No. 222/2016 CAT. The learned Counsel submitted that the overriding principle does not implore or require the court to disregard mandatory provision of the law, as the omission by the Defendant (sic, plaintiff) to specifically describe the disputed property as the law requires is fatal and it

is never a mere technicality. He cited the case of **Martin D. Kumanija & 117 Others vs. Iron and Steel Ltd**, Civil Application No. 78/18 of 2018.

Literally, the provision of the law which has been offended, to wit Order VII rule 3, Cap 33 (supra), its letter is coached on mandatory terms, I quotes,

*"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 a title number under the Land Registration Act, the **plaint shall specify such little number**"*

The plaintiff has suggested for amendment under overriding objective. To my view, the argument of the learned Counsel for Defendant, that overriding objective does not mean that the court should disregard all rules of procedural rules which are handmaid of justice. In **Martin Kumalija** (supra), the apex Court when deliberating on the applicability of overriding objective vis-à-vis mandatory procedural rules, ruled, I quote

"We are aware that the Court is enjoined by the provision of section 3A and 3B of the Appellate Jurisdiction Act, Cap 141 R.E 2018 introduced recently vide the written Laws (Miscellaneous Amendments) (No. 3) Act, No. 8 of 2018 to give effect to the overriding objective of facilitating the just, expeditious, proportionate and affordable resolution of disputes. While this principle is a vehicle for attainment of substantive justice, it will not help a party to circumvent the mandatory rules of the Court"

In the case of **Mwanahamisi Habibu & 7 Others vs Justini Nduge Justine Lyatuu**, Land Case No.130 of 2018 (HC-Land Division). Hon. Judge Opiyo J at page 7 of the ruling had this to say:

"In other words, non-description of the suit property renders the case incompetent before the court. In that case, the overriding objective rule as suggested by the plaintiff's counsel in my settled opinion is inapplicable"

Apart from the concern addressed above, the plaint is also suffering from other minor anomalies and defects, which of course are not fatal but have a devastating effect on its combination. For instance the title, the name of the Defendant [...Petroleum...] there is a typo error; The alleged Abdallah Mbegu Kigoha was not stated to be deceased/late; Paragraph three the Plaintiff pleaded that the deceased was the original owner of a disputed piece of land covering 750 square meters at Buza Street/Area Makangarawe, however at paragraph five pleaded that the deceased was the original owner of an area measuring 5 acres at the same location Buza area now Makangarawe Ward, but made no reference to the impugned 750 square meter. Therefore, making a claim confusing; Paragraph six, is confusing, it is unknown as to whether the period between 2019 and 2020 is in reference of the so called other invaders or the Defendant; Paragraph eight make reference to several defendants while herein there is one Defendant; Relief on item (a) a portion pertaining for right to administer, is not under the domain of this court; Relief on item (e) at this stage, an order for vacant possession could sound more appropriate.

Therefore, to my respective view, at this stage it is desirable to strike out the plaint. I will not discuss on the rest grounds, in view of this verdict.

A plaint is strike out. No order for costs, because the point was taken by the court of its own accord.



E.B. LUVANDA
JUDGE
14/07/2023