

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

**LAND CASE NO. 261 OF 2023**

**BETWEEN**

**STANSLAUS PETER SHAYO.....PLAINTIFF**

**VERSUS**

- 1. KUYELA MUSSA MSHANA**
- 2. KINONDONI MUNICIPAL COUNCIL**
- 3. THE ATTORNEY GENERAL.....DEFENDANT'S**

**RULING**

*Date of last Order:29/09/2023*

*Date of Judgment:06/10/2023*

**K. D. MHINA, J.**

This is the ruling in respect of the preliminary objection raised by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants against the plaintiff's suit over the land ownership.

The facts of this matter, briefly as can be discerned from the pleadings is that, the plaintiff alleges that he was allocated a suit property on 15 February 1989, by then Kamati ya Kilimo ya Serikali ya Tegeta.

On 2011 the plaintiff noted that the 1<sup>st</sup> defendant had, illegal procured a letter of offer of a suit land following the fraudulent survey

conducted by the Dar es salaam city Council without his knowledge and being compensated.

The above scenario moved the plaintiff to seek relief at the DLHT for Kinondoni vide Land Application No. 228 of 2012.

Following the requirement of the law that the Attorney General should be made a party he withdraw the matter from DLHT and filed to this Court seeking;

- i. A declaration that the plaintiff is a lawful owner of the suit properly.
- ii. General damages to be assessed by the court.
- iii. Costs.
- iv. Any relief this court deem fit to grant.

When served with the plaint, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants confronted it with a notice of preliminary objection that;

*"1. The plaintiff suit is incurable defective for failure to describe the land in dispute."*

When the matter was called on for hearing of the preliminary objection, Mr. Paul Mtui Advocate for the plaintiff conceded the application.

He admitted that the plaint does not describe the suit land.

On the remedy he prayed for the suit be withdrawn without costs with leave to refile.

On her side, Ms. Pauline Mdendemi SA, for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants had no problem with Mr. Mtui to concede the preliminary objection but her concern was on the remedy.

She submitted that since the plaintiff conceded the Preliminary objection, the property remedy is to struck out the suit.

This Court heaving gone through the plaint from paragraph 1-17, it is quite clear that the same does not contain the description of the land in dispute.

And on this, the entry point is Order VII Rule 3 of the CPC, which read that;

*"Where the subject matter of a suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and in case of such a property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number".*

According to the cited provision of law it is mandatory for the plaintiff to describe the subject matter in the plaint.

The rationale behind to describe a property are;

**One**, to distinguish it from other properties. **See Fereji Said Fereji vs Jaluna General Supplies** and others, land Case No. 86 of 2020 High Court (Tanzlii).

**Two**, to assist the Court to issuing executable decree. See **Joel Kondela Maduhu Vs. Siya Ndeja**, Land Appeal No. 3 of 2021 High Court (Tanzlii).

Further, the Land can be described by a title deed (which include location and title number) if registered. In the event it is not registered it can be described by its location, size, boundaries and neighbors to the suit land. See **Fereji Said Fereji** (Supra) and the decision of the Court of Appeal in **Martin Fredrick Rajab vs Ilemela Municipal Council and another**, (Civil Appeal No. 197 of 2019) (Tanzlii).

Therefore, though Mr. Mtui conceded the preliminary objection but also this court satisfied itself that the plaint did not describe the suit land.

In such circumstances, the plaint contravene Order VII Rule 3 of the CPC and therefore it renders the suit incompetent.

On the way forward, flatly, the law is clear that once a party concedes the preliminary objection he/she cannot go behind and pray to withdraw that incompetent suit or application. The proper remedy after a party concedes the preliminary objection is to strike out or dismiss the matter depending on the nature of preliminary objection.

In the circumstance of this suit, the remedy for the nature of the preliminary objection, is the order of striking out.

In the upshot the suit is struck out without costs.

It is so ordered.



  
**K.D. MHINA**  
**JUDGE**  
**6/10/2023**