

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

LAND CASE NO. 178 OF 2023

RAMADHANI ATHUMANI CHANDE.....1ST PLAINTIFF

YAHAYA MLOOGO NDYEMA.....2ND PLAINTIFF

VERSUS

KAMAL ALLOYS LTD DEFENDANT

01/11/ 2023 & 21/11/ 2023

RULING

A. MSAFIRI J,

This is a ruling on preliminary objection raised by the defendant in this suit. In the suit, the plaintiffs' claims against the defendant is for a declaration order that the plaintiffs are the lawful owners of pieces of land wholly measuring 68 acres situated at Keregekwa Kiwete within Bagamoyo District, and that the defendant is a trespasser into the said land. The plaintiffs also seek for general damages arising out of the defendant's illegal acts of denying the plaintiffs an opportunity to peaceful enjoyment of ownership and continual to develop their pieces of land.

On lodging her respective written statement of defence, on 22nd August 2023, the defendant raised preliminary objection to the effect that:- *Alls*

1. The plaint instituting a claim is incurable defective for having not contained the descriptions of the property at issue capable to identify the same; furthermore, the suit land is surveyed but the plaintiff has not stated the title deed in the Plaint contrary to the provisions of Order VII rule 3 of the Civil Procedure Code [Cap 33 RE 2019].

On 11th October 2023, this Court ordered the said preliminary objection to be disposed of by written submissions, the order was duly complied with the learned advocates for both parties. Mr. Augustino Edwin Ndomba, learned advocate appeared for the defendant, and Mr Joseph Mandela Mapunda, learned advocate acted on behalf of the plaintiffs.

Submitting on the preliminary objection, Mr. Ndomba counsel for the defendant said that Order VII Rule 3 of the Civil Procedure Code [Cap 33 R.E 2019] (herein the CPC), requires the plaint to include the title deed number when the suit land is a surveyed land. He argued that it is not in dispute that the land in dispute is surveyed as contended by the defendant in his defence and as contended by the plaintiffs under paragraph 7 of the Plaint.

That, since the suit property is a surveyed land as stated in the written statement of defence, and the plaintiffs have failed to state in the Plaint the title deed number of the land in dispute, then this suit is liable to be struck out.

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In response, Mr. Mapunda the counsel for the plaintiff submitted that the raised preliminary objection does not qualify to be the preliminary objection since it requires to be ascertained by the facts and evidence. He submitted in addition that paragraphs 3 and 4 of the plaint disclosed the description of property. He argued that the defendant compels the plaintiff to rely on her defence documents where the plaintiffs have their own claims on the disputed land. That the issue whether the disputed land is surveyed on unsurveyed has to be argued and determined during the hearing of the suit.

There was no rejoinder.

Having gone through the submissions of the parties, the issue for determination is whether the raised preliminary objection has merit.

I have read the contents of the plaint particularly paragraphs 4 and 5 which read as follows;

"That each plaintiff owns his own piece of land including the 1st plaintiff's piece of land measuring 28 acres where in the east bordering Hidayah Mshindo Magimba, in the west bordering Hamis Rajabu, in the north bordering Njalale Mshamu and in the South bordering Hamis Ubaya".

"That the 2nd plaintiff owns piece of land measuring 40 acres in the East bordering Ramadhan Athuman Chande, in the West bordering

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Mto Mkuza, and in the North bordering bomba la maji and in the South bordering Jaza Pazi”.

In the plaint, the plaintiffs have not claimed that the suit property is surveyed. As per the quoted paragraphs 4 and 5, the suit property is described. The defendant contest such description made by the plaintiffs arguing that the suit property which belong to her is registered land hence, the need to be described by way of showing title number as per Order VII Rule 3 of the CPC which provides that;

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

Order VII Rule 3 of the CPC makes it mandatory when the immovable property is registered, the Plaintiff to specify the Title number of the property. The situation is different where the land is unregistered, whereby the description is made by making description which is sufficient to identify the property. This is usually done by indicating the neighbours or borders surrounding the suit property as the plaintiffs in this suit have done.

It is my finding that the plaintiff have properly described the claimed suit property as per the requirement VII Rule 3 of the CPC. On

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the issue on whether the suit property is registered or not, I agree with the submissions of the counsel for the plaintiff that this has to be ascertained by evidence during the hearing of the matter and outright it is disqualified to be a pure point of law. (See the case of **Mukisa Biscuits Manufacturing Co. L.T.D versus West End Distributors L.T.D (1969) EA 696**)

See also in the case of **Shahida Abdul Hassanali Kasam V. Mahed Mohamed Gulamali Kanji**-Civil Application No. 42 of 1999 (unreported) where it was held that;

"The aim of a preliminary objection is to save the time of the court and of the parties by not going into the merits of an application because there is a point of law that will dispose of the matter summarily"

In the upshot, I find that the raised preliminary objection does not qualify to be an objection on pure point of law as it needs evidence to ascertain it. Resultantly, I find the preliminary objection to have no merit and I overrule it with costs.

It is so ordered.



A. MSAFIRI

JUDGE

21/11/2023

