

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

LAND CASE NO. 206 OF 2021

ATHUMANI SALEHE MAGOGO & 14 OTHERS.....PLAINTIFFS

VERSUS

GABIUS EDGER MAGANGA.....1ST DEFENDANT

DIANA PHILEMON.....2ND DEFENDANT

R U L I N G

Date of Last Order: 05.05.2022
Date of Ruling: 24.05.2022

T. N. MWENEGOHA, J.

The plaintiff herein above is suing in a representative capacity for and on behalf of other 14 persons, all residents of Mbopo at Mwabwepande area, within Kinondoni District, Dar es Salaam Region. His claim is over various plots covering a total area of 25.99 acres. The said plots are said to have been allocated to the plaintiffs but were late invaded by the 1st defendant who in turn sold them to the 2nd defendant.

Upon being served with the plaint, the defendant through their Written Statements of Defense, filed separately, each raised an objection on point of law to the effect that;-

- 1. The plaint offends the mandatory requirements of Order VII Rule 3 of the Civil Procedure Code cap 33 R.**

E. 2002, for failure to give a proper description of the suit property or properties.

It is on the basis of the said objection, this ruling arose. On the hearing of the objection by way of written submissions, Albert Lema, learned counsel appeared for the 1st defendant, Advocate Rugambwa C.J Pasha was for the 2nd defendant and the plaintiff enjoyed the legal services of Advocate Michael Kasungu.

Advocate Lema submitting on the objection, maintained that, reading the plaint, the only description of the property alleged to be trespassed by the defendants is the plots, located at Mbopo-Mwabwepande area. He quoted part of paragraph six of the plaint which described the subject matter of the suit at hand as follows; -

"That, the plots in dispute are located in a low density measuring 25.99 acres at Mbopo-Mwabwepande area."

He went on to argue that, this is blanket description of the suit land. The description is not sufficient enough for identification of the subject matter by the court. Hence this court cannot effectively resolve the matter in controversy between the parties. Therefore, the matter is incompetent before it for the uncertainties associated with the identification of the subject matter of the suit. That, the plaint offends the mandatory provisions of Order VII Rule 3 of the Civil Procedure Code, Cap 33 R. E. 2019, which says that,

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."

He also cited the case of **Daniel Ndagala Kanuda (As an Administrator of the Estate of the late Mbalu Kushaha Baluda) vs. Masaka Ibeho and 4 others, Land Appeal No. 26 of 2015, High court of Tanzania, at Tabora, (unreported)**, where it was observed that

"However, regarding unsurveyed land, specifications of boundaries and or permanent features surrounding the land at issue are very important particulars for the purposes of identifying the land from other pieces of land neighboring it".

His arguments were supported by those of the counsel for the 2nd defendant who substantiated his arguments by the same authorities, Order VII Rule 3 (supra) and the case of **Daniel Ndagala Kanuda, (supra)**.

Replying firmly on the submissions by the defendants' counsels, Mr. Kasungu for the plaintiff contended that, the objection by the 1st and 2nd defendants in the instant suit is misconceived and should be dismissed with costs. The suit land has been properly described at paragraph 6 of the plaint. That, the same is located at a low-density area measuring 25.99 acres, at Mbopo-Mwabwepande area. Above all, the plaintiff has annexed a valuation report as annexure "ASM 2". Therefore, the court in identifying the subject matter it has to read the plaint together with the valuation report as it is part of the pleadings. This rule was given in the case of **Bosco Richard Philipo vs. Asilia Lodges and Campus Ltd, Labour Application No. 90 of 2021 (unreported)**. The same position

was taken in the case of **Hamis Salumu Kizenga versus Moses Malaki Sewando and Others, Land Appeal No. 51 of 2019, High Court of Tanzania at Dar Es salaam (unreported)**.

In his rejoinder, the counsel for the 2nd defendant insisted that, neither the plaint nor the valuation report (annexure ASM-2) has properly described the disputed property.

After these rivalry arguments from the counsels for the parties in the suit at hand, my task is to now consider whether the preliminary objection has merit.

The defendants through their learned counsels in their objection claim that, the plaint is defective for want of proper description of the subject matter of the suit at hand. The defendants' counsels have both argued in their submissions, paragraph 6 of the plaint which has the description of the property in dispute claimed that the same has offended Order VII Rule 3 of the Civil Procedure Code (*supra*). The plaintiff's Advocate on his part maintained that, the subject matter has well been described in the pleadings. That, for the court to identify the subject matter, it should read the plaint together with the valuation report, annexed as ASM-2.

This court will maintain the jurisprudence already in place as far as proper description of the subject matter in land disputes is concerned. It is a firm and trite legal stance of law that; a plaint should consist of a proper description of the subject matter sufficient to identify it. 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, see also **Daniel Ndagala Kanuda, (*supra*)**.

In my view, the information in paragraph 6 of the plaint in this case does not suffice to identify the suit land properly. As stated in my introduction herein above, the instant case has 15 plaintiffs, being represented by Mr. Athuman Salehe Magogo. Each of these persons (plaintiff) owns a plot, separate from the other. However, the description written under paragraph six of the plaint make it seems like the 25.99 acres in dispute are owned equally by all 15 plaintiffs in this case. But, if we go back to read the 5th paragraph, it shows that, in 2001, the said persons, each of them applied and was allocated a plot of land by Mwabwepande Village Government.

Since each person(plaintiff) claims to own his or her plot, the proper way was to identify each plot by size, boundaries, and marks if any, to make it separate from the other plot. Otherwise, the plaint as it looks contain improper description of the subject matter as claimed by the defendants' counsels.

Paragraph six of the plaint truly offends the mandatory provisions of **Order VII, Rule 3 (supra)** and also is contrary to the rules given in the case of **Daniel Ndagala Kanuda, (supra)**.

The preliminary objection therefore has merit and is hereby sustained accordingly. That being the case, I find the competence of this case to be highly questionable.

In the upshot, the case is struck out with costs.

It is so ordered.




T. N. MWENEGOHA
JUDGE
24/05/2022