

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO.130 OF 2018

MWANAHAMISI HABIBU.....1ST PLAINTIFF

WILHELM S. URIO.....2ND PLAINTIFF

OMARY SHABANI.....3RD PLAINTIFF

MOHAMED MBONDE.....4TH PLAINTIFF

CHARLES JOSEPH.....5TH PLAINTIFF

MAMUNA MAGOTI.....6TH PLAINTIFF

GREYSON KAJUNA.....7TH PLAINTIFF

ATHUMAN MNUBI.....8TH PLAINTIFF

VERSUS

**JUSTIN NDUNGE JUSTINE LYATUU (As Administratrix of the
Estate of the late Justine Aitalia Lyatuu & 173**

Others.....DEFENDANTS

RULING

OPIYO, J.

The ruling is in respect of a preliminary objections from the counsel for 167th and 168th defendants as against the amended plaint to the effect that:-

1. That, the amended plaint does not properly describe the disputed property, contrary to Order VII rule 3 of the Civil Procedure Code Cap 33 R.E 2019.
2. That, the suit is defective for non-joinder of a necessary party.
3. The suit is bad in law for suing a non-existing party.

In her oral submissions, Advocate Kilonzo, counsel for the 167th and 168th defendants, maintained that in description of disputed property, if the property is registered the registration number should have been mentioned. He insisted that para 6 and 7 of the plaint do not make the court identify the property in dispute. That paragraph 6 was supposed to describe the exact location of the suit land, where it is situated within Mapinga area. He cited several cases including **Daniel Dagala Kanuda versus Masaka Ibeho and Others, Land Appeal No. 26 of 2015** where it was observed that, when the land is unsurveyed the plaint should specify the boundaries and or the permanent features surrounding the land.

Another case cited is the case of **Fatuma Shabani Dololo and Another versus Abdallah Said Dolodolo, Land Case No. 138 of 2020** for the same authority.

On the 2nd object, Advocate Kilonzo argued based on the Written Laws Amendment Act, No. 1 of 2020, which amended Cap 287 R.E 2002, under section 29-30 where it is provided that, when the village is sued, the District Executive Director to which that Village is situated should be joined. Therefore, in this case, the Bagamoyo District Executive Director

is a necessary party since Mapinga Village council is sued. Non joinder of the Bagamoyo District Executive Director is fatal, hence the suit should be struck out, he argued.

Thirdly, the counsel argued that, suing a non-existing party is bad in law and the suit has no leg to stand on, no hand to execute and no eyes to see, no mouth to speak on her own on or on behalf of any person before any court of law as stated in a **Commercial Review No.17 of 2017**, between **Singida Sisal Products and General Supply versus Rofal General Trading Limited and Others** and also the case of **Mrs. Jane Dewas versus Erderman Company (T) Ltd and Another, Land Case No. 44 of 2015**. She insisted that, the 167th defendant, Mapinga Village Council is a non-existing person as she ceased to exist by virtue of G.N 300/2014.

In reply, Mr. Aziz on the 1st preliminary objection admitted that paragraph 7 did not describe the suit property well, but the mistake is curable under the overriding objective rule. On the 2nd preliminary objection, he insisted that it is true that the District Executive Director of Bagamoyo was not joined as it was not the wish of the plaintiff to sue him/her. That, when the case was filed in 2008, the Mapinga Village Council and the Attorney General were not parties, they were added as per the orders of this court on the 12th of August 2021.

In rejoinder, Advocate Kilonzo reiterated her submissions in chief and added that, the overriding objective principle cannot cure the situation at hand because the same was introduced in order to facilitate the just,

expeditious and affordable resolutions of disputes. The same is not used when the requirement of the law is in question.

I have gone through the submissions of both parties. The 1st objection is centered on the description of the suit land. According to Advocate Kilonzo, the 6th and 7th paragraphs of the plaint which contain the description of the property contain insufficient information and has not well described the suit land. I made a perusal of the plaint on the noted two paragraphs. I totally agree with learned counsel Kilonzo that, the suit land was not well described. The two paragraphs are too general. They are not specific enough to describe property in terms of size, location, and boundaries of the land in question. Reading the plaint particularly paragraph 6, it seems like the plaintiffs' claim is on the whole land surrounding Mapinga Village and not part of it within the said area. This kind of description of the suit land offends the provisions of Order VII Rule 3 of the Civil Procedure Code Cap 33, R.E 2019 which reads as follows:-

"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."

Apart from the said provision, there are number of authorities that were made to provide a settled position as far as the description of the suit property in land disputes are concerned. It was stated in **Daniel Dagala Kanuda versus Masaka Ibeho and Others supra** that the purpose of

authentic identification of the land in dispute is nothing other than to afford courts with a chance to make certain and executable orders.

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 plaintiffs' counsel in my settled opinion is inapplicable. The defect is fatal as it goes to the root of the case itself see **Njake Enterprises Limited versus Blue Rock Limited and Rock Venture Company Limited, Civil Appeal No. 69 of 2017, Court of Appeal of Tanzania at Arusha, (Unreported)** and **Mondorosi Village counsel & 2 Others versus Tanzania Breweries Limited & 4 others, Civil Appeal No. 66 of 2017, Court of Appeal of Tanzania (unreported)**. On the basis of these findings, I see no reasons to go on with the discussions of the remaining two remaining points of preliminary objections. This follows the obvious fact that, the findings in the 1st objection above is capable of determining the entire suit to its finality.

In the end, this suit is struck out. No order as to costs.



M.P. OPIYO,

JUDGE

13/12/2021