

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

LAND CASE NO. 114 OF 2019

**THE REGISTERED TRUSTEES OF MASJID
JUMUIYATIL ISLAMIA UBUNGO KINONDONI.....PLAINTIFF**

VERSUS

**HALIMA A. KEBE.....1ST DEFENDANT
OMARI SULEIMAN MAGINGO.....2ND DEFENDANT**

Date of last Order: 18.02.2020
Date of Ruling: 27.04.2020

RULING

V.L.MAKANI, J

This is a ruling in respect of preliminary objections that were raised jointly by the 1st and 2nd defendants. The said preliminary objections raised were as follows that:

- 1. The plaint filed by the plaintiff is in violation of ORDER VII, RULE 3 of The Civil Procedure Code, Cap 33 R.E 2002 which requires sufficient description of the subject matter of the suit.*
- 2. The Plaint does not clearly disclose CAUSE OF ACTION.*
- 3. The plaintiff has no LOCUS STANDI to sue the defendants.*

The preliminary objections were argued by the way of written submissions and the submissions by the respondents were drawn and filed by Mr. Benson P. Ngowi whereas the principal officer of the plaintiff was the one who signed the submissions on behalf of the plaintiff.

In the course of the submissions, Mr. Ngowi withdrew the third point of preliminary objection and proceeded to argue the remaining two objections.

Submitting on the first ground of preliminary objection, Mr. Ngowi stated that the plaint does not sufficiently describe the subject matter of the suit. He said the plaint does not state whether the suit land is the whole landed property described as Plot No.152, Block A, located at Ubungo Kibangu in Ubungo Municipality or the piece of land that the defendants have built structures protruding on the said plot. He added that Order VII Rule 3 of the CPC provides that when a suit property is about registered land under Land Registration Act, the description of the title number is sufficient. He said that though there is a mention of title number in the plaint, it is not what is claimed by the plaintiff. He added that even the reliefs claimed is for an order compelling the defendants to demolish the structure which has protruded in the suit and remove the debris at their costs. That from the paragraph it is obvious that there is a dispute concerning boundaries close to the registered title. He said from paragraph 6 it is obvious that the defendants are owners of the house adjacent to the structures protruding into the suit land and that paragraph 9 of

the plaint reveals that the defendants do not observe beacons making boundaries and that defendants maintain that they are within boundaries. He added that from the above it shows that the subject matter is boundaries between the parties and not ownership. That since the plaintiff alleges that defendants have trespassed into their plot, then the description of all boundaries surrounding the area, description of the size of the trespassed area, number of kind of structures built is paramount. He cited the case of **Daniel Dagala Kanuda** (administrator of the estate of the late Mbalu Kashaha Bulada) **vs. Masaka Ibeho And 4 Others, Land Appeal No. 26 of 2015, (HC-Tabora)** (unreported).

On the second point of preliminary objection Mr. Ngowi said that the plaint does not clearly disclose a cause of action. That paragraph 4 of the plaint shows the plaintiff to have been awarded the plot by one Suleiman Magingo to conduct Islamic rites but there is no any wakf or deed of gift. That is very necessary as it is the centre of dispute as it could prove the boundaries which were awarded and even the size of the land awarded. That it is important to show exactly when the cause of action arose. He added that under paragraph 5, the plaintiff reveals that they enjoyed free use of the area until 2017 when the mosque was completed. In paragraph 8 the plaintiff alleges that there was a dispute which was settled on 27/12/2004. That it is hard to say that the plaint discloses cause of action while the facts as to when the defendants trespassed to the suit land is uncertain. He prayed for the objections raised to be sustained with costs.

In reply, the plaintiff said that he is the owner of the landed property described as Plot No.152, Block A, comprised in Certificate of Title No.53802 with Land office No.205930 located at Ubungo Kibangu area in Ubungo Municipality. He added that the defendants' own houses at Ubungo Kibangu Squatter area in Ubungo Municipality.

With regard to the second ground, he submitted that the plaint clearly discloses cause of action, he said that the construction of the mosque was completed peaceful in 2017 without any claim from the deceased family one Suleiman Magingo or any other person. He said that the plaintiff has a disclosed cause of action. He further added that the defendants failed to read paragraph 2 of page 1 of the letter by Kinondoni Municipal Council that the boundaries at landed property described as Plot No.152, Block A, comprised in Certificate of Title No. 53802 with Land Office No. 205930 located at Ubungo Kibangu area in Ubungo Municipal to ascertain the beacons demarcation the survey showed that the defendants had entered into the suit land by 0.312m compatible beacons marked DZD 379 and DZD 378. He cited the case of **Mukisa Biscuits Manufacturing Co. Ltd vs. West End Distributors Ltd (1969) EA 696** which defines what a preliminary objection is. He prayed for the raised preliminary objection be dismissed with costs.

In rejoinder Mr. Ngowi reiterated what was submitted in his submissions in chief.

Having gone through the submission from both sides, the point for determination is whether the preliminary objections raised by the defendants have merit.

It is common knowledge that a preliminary objection should raise a pure point of law based on ascertained facts from the pleadings or by necessary implication, not on facts, which have not been ascertained; and even if ascertained if argued, a preliminary objection should be capable of disposing of the case. A preliminary objection cannot also be raised if what is sought is the exercise of judicial discretion. (see: **Mukisa Biscuits Co. Limited** (supra) which was followed in **COTWU (T) OTTU Union and Another vs. Hon. Iddi Simba Minister of Industries and Trade and Others [2002] TLR 88**). Also see the case of **Attorney General vs. The Board of Trustees of Cashewnut Industry Development Trust Fund & Another, Civil Application No. 72 of 2015 (CAT-DSM)** (unreported)

The first objections by the defendants is that the plaint does not sufficiently describe the subject matter of the suit. On the other hand, the Plaintiff replied that he is the owner of the landed property described as Plot No.152 Block A comprised in Certificate of Title No.53802 with Land office No.205930 located at Ubungo Kibangu area in Ubungo Municipality.

Paragraph 3 of the plaint reads:

"That, the Registered Trustees of Masjid Jumuiyatil Islamia Ubungo Kinondoni, were registered and incorporated on 27th December 1986 for liability at Muslim's religious society under the laws of Tanzania, is

the owners of landed property described as Plot No.152 Block A comprised in Certificate of title No.53802 with land office No.205930 at Ubungo Kibangu area in Ubungo Municipality within the City of Dar es Salaam, hereinafter the suit land"

From the above paragraph the subject matter of the suit is duly described as *Plot No.152, Block A, comprised in Certificate of Title No.53802 with Land Office No.205930 at Ubungo Kibangu area in Ubungo Municipality within the City of Dar es Salaam*. In my view this is sufficient description to mark the demarcation of the land alleged to have been trespassed. The aim of giving a description of the land in dispute is to inform the court of the identity of the suit land as against all the other pieces of land surrounding it. In the case at hand the plaintiff indicated that the land claimed to have been trespassed is Plot No.152, Block A, under Certificate of Title No.53802. There cannot be another piece of land in that plot or block under the said Certificate of Title. So, the description that is given above by the plaintiff is sufficient. In the case of **Daniel Dagala Kanuda (administrator of the estate of the late Mbalu Kashaha Bulada) vs. Masaka Ibeho & 4 Others, Land Appeal No. 26 of 2015,(HC-Tabora)** it was stated at page 4 -5 that:

"....The legal requirement for disclosure of the address or location was not cosmetic. It was intended for informing the Tribunal of sufficient description so as to specify the land in dispute for purposes of identifying it from other pieces of land around it. In case of a surveyed land, mentioning the plot and block numbers or other specifications would thus suffice for the purpose. This is because such particulars are capable of identifying the suit

land specifically so as to effectively distinguish it from any other land adjacent to it."

The above authority favours the plaintiff, and the first point of objection is therefore devoid of merit.

The second point of preliminary objection by the defendants is that the plaint does not clearly disclose the cause of action. That, paragraph 4 of the plaint shows the plaintiff to have been awarded the plot by one Suleiman Magingo for conduct of Islamic rites but there is no any wakf or deed of gift. It is my considered view that the point of objection raised is not purely a matter of law. The issue of ownership of the suit land is a matter of fact, which requires ascertainment by way of evidence. The court has to hear evidence from both the parties, so that it correctly determines who is the lawful owner of the suit land; and the parties in the case cannot do this in any other way except through the evidence to be presented orally and by exhibits. Mr. Ngowi was of the view that the issue was not purely on ownership of the suit land but on the boundaries. But be it ownership or boundaries, the parties herein have to give evidence to ascertain the boundaries of the suit land. Further, the issue whether or not the suit land was given as a gift or wakf is also a matter of evidence. In that respect the objection raised cannot be termed as a purely preliminary objection of law and therefore does not fall within the precincts of the principle of preliminary objections as set out in the case of **Mukisa Biscuits Co. Limited** (supra).

In the end result, the objections raised have no merit and are hereby dismissed. Costs shall be in the cause.


V.L. MAKANI
JUDGE
27/04/2020