

TANZANIA / JUDGMENT

JUDGMENT CHIBUNU MULIBWA

COURT
TANZLII

DECIDED
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THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB-REGISTRY OF
MWANZA AT MWANZA LAND APPEAL NO. 12656 OF 2024 (Arising from Land Application No.
36/2022 at District Land and Housing Tribunal for Ukerewe at Nansio) CHIBUNU
MULIBWA.....APPELLANT VERSUS COSTANTINE CHIBUGA
NGALABA.....1st RESPONDENT MACHABE
NGALABA.....2nd RESPONDENT MABELE
MULIBWA.....3rd RESPONDENT KULWA
MASOBE.....4th RESPONDENT

JUDGMENT

3rd September & 18th October, 2024 ITEMBA, J. The appellant is agitated by the judgement of District Land and Housing Tribunal for Ukerewe (the trial tribunal) in Application No. 35 of 2022. Before the trial tribunal, the 1st respondent filed land application against the appellant and 2nd to 4th respondents herein, alleging to be the lawful owner of 11 plots at Nyamanga Village Ukara ward within ukerewe District (the suit land). The trial tribunal decided in favor of the 1st respondent that, he is the lawful owner of the suit land. Being dissatisfied the appellant has three grounds of appeal that; 1

1. That, trial chairman erred in both law and fact for failure to hold that the 1st Respondent being not an administrator of estate of his father, had no locus standi to sue in that behalf.
2. That, the trial chairman erred in both law and fact for failure to hold that the suit property was not properly described contrary to the law and thus making the decree therefrom problematic and incapable of being executed
3. That, the trial chairman erred in both law and fact for failure to correctly evaluate the evidence and consequently reaching into a wrong finding. When the matter was scheduled for hearing the 2nd to 4th respondents did not appear despite being duly served. I ordered the matter to proceed exparte against them. The appellant was represented by Elias Hezron and Martha Mbosoli learned advocates whereas the 1st respondent fended for himself. I will consider the submissions of parties while determining the grounds of appeal. Noting that, the 2nd ground of appeal regards court’s jurisdiction, let it be the 1st to be dealt with. Mr. Hezron submitted that, the 1st respondent did not disclose the suit plot as required by the

law and, even the evidence did not disclose the boundaries thereof. He referred the case of Osol Okol and another vs Jared Okoth Joro, Land Appeal 91/2023 (HC-unreported) 2 where it was held that a suit plot must be shown by boundaries, land size and location. That, non-description could have been cured in the 1st respondent's testimony but the respondent did not specify the suit plot in his appellant's testimony. Further reference was made to the case of Martin Fredrick Rajab v. Ilemela Municipal Council & Others Civil Appeal No. 197/2019 CAT Mwanza page 13. In reply, Mr. Mulibwa submitted that, the suit land is known being located at Nyamaga Village, Nyamaga suburb. Ukara, Ward. That, the 11 pieces of land were not surveyed therefore there cannot be Tittle. I have considered the submissions of parties with regard to this ground of appeal. The main issue in this ground is whether the application before the trial tribunal was incompetent for improper description of the suit land. Applications before the trial tribunal are governed by Regulation 3(1) and (2) of the Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2002 G.N 174/2003, (herein the Regulations). According to regulation 3(1) the application must be contained in prescribed Form provided on the first schedule to Regulations. Under paragraph 3 of the said form, the applicant is required to provide location and address of the suit 3 premises which is also a requirement under regulation 3(2) (b) of the Regulations. Further Order VII Rule 3 of the Civil Procedure Code, Cap 33 R.E 2019 states 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. (Emphasis supplied). I have taken time to study the application filed before the trial tribunal. The suit land was unsurveyed, therefore the appellant should have mentioned the size and the boundaries and neighbours of the suit plot or landmark which distinguish the suit plot from the rest of land located at Nyamaga Village, Nyamaga suburb, Ukara, Ward. Otherwise it remains unclear as to which is the suit plot and at the end of hearing, no executable court order can be issued. In the case of Omary Rajabu Ibrahim v MANA Company Limited and 3 others Land Case No. 113 of 2018, HC Land Division Dsm, my brother Hon. Maige, J., had this to say: 'Under Order VI rule 3 of the CPC, the plaintiff is bound, where the subject matter of the dispute is an immovable property, to give description of the property sufficient to identify it. The requirement 4 under the respective provision is mandatory. Offending the requirement may lead to unnecessary confusions and chaos in the society as properties of persons not privies in the decree can wrongly be attached in an attempt to define the unclear subject matter of the dispute. This Court cannot assume such a risk.' (emphasis supplied) In this matter at hand, the land was described to be 'vipande vya ardhi jumla vikiwa 11 vilivyoko ndani ya kijiji cha Nyamanga Ukara Ukerewe' in my view this specification was vague and incomplete to distinguish the 1st defendant's land from the rest. In his evidence the appellant said; "Mimi ndiye mmiliki halali wa mashamba 11 yaliyoko kijiji cha Nyamanga-Ukara...mashamba ni vipande vipande vyenye hekari moja vingine nusu hekari jumla kuu hekari 16" In my view this description as was not well. As I have said, the applicant in his application was supposed to state the size and the boundaries

and neighbours of the suit plot or landmarks which distinguish the suit plot from the rest of land. It was held by Hon. Utamwa, J in Ramadhani Omari Umbwi and 58 others v Aneth Paulina Nkinda and another, H.C Land Case no 99 of 2013, DSM, that; 'It is the law that court's orders must be certain and executable. It follows thus where the description of the land in dispute is uncertain, it will not be possible for the court to make any definite order and execute it' In the finality, I am in agreement with the counsel for the appellant that, the suit land was improperly described. It means therefore, the whole proceedings before the trial tribunal was incompetent from being conducted basing on a defective application. Consequently, I proceed to quash the proceedings of the trial tribunal and set aside the judgement and orders therefrom. The applicant is at liberty to initiate proper proceedings before trial tribunal subject to laws of limitation. Therefore, I allow the appeal on the 2nd ground of appeal only and I will not discuss the remaining grounds. Considering the outcome of this appeal, I order no costs. It is so ordered and right of appeal is fully explained to the parties. Dated at Mwanza this 18th day of October, 2024. L.K.J. ITEMBA JUDGE 6 Judgment delivered in the presence of the appellant, 1st respondent, Adv. Elias Hezron for the appellant Ms. G. Mnjari, RMA and in the absence of the 2nd to 4th respondents. 7

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