

TANZANIA / JUDGMENT

Juma Said Ndikanye

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1 January 2025

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA MOROGORO SUB-REGISTRY I
AT MOROGORO Land Case No 17203 of 2024 BETWEEN 3UMA SAID NDIKANYE PLAINTIFF
VERSUS MATERNUS PETER MDENYA DEFENDANT

RULING

MRUMA,J. The Plaintiff Juma Said Ndikanye filed a suit against the Defendant Maternus Peter Mdenya for a declaration that a piece of land measuring 20 acres belongs to him and for payment of Shillings 80,000,000/=being specific damages. Upon being served with a copy the plaint, the Defendant filed his written statement of defence disputing the Plaintiff's claims. Together with his dispute the Defendant raised a notice of preliminary objection to the effect that:-

1. The suit is unmaintainable for failure to describe the disputed land which is one of the requirements of the law. The preliminary objection was ordered to be argued by way of written submissions. The record shows that this case traces its originality in Land Application No 55 and No 131 both of 2016 between the present Respondent Maternus Peter Mdenya who was the Applicant and one Asha A. Kitumbo who was the Respondent. In that case, judgment was entered in favour of the Maternus Peter Mdenya. In the course of executing its decree in the said Land Application No 55 and 131 of 2016 (between Maternus and the said Asha Kitumbo, the District Land and Housing Tribunal issued an execution order and appointed a court broker to carry it out. The present Plaintiff Juma Said Ndikanye unsuccessfully filed an objection proceedings against the order for handing over the said 20 acres of land to the present Defendant Maternus Peter Mdenya on the ground that the land belonged to him. After the dismissal of his objection proceedings the Plaintiff instituted this suit. Rule 3 of Order VII of the Civil Procedure Code which is in para materia with the provision of Regulation 3 (2)(b) of the Land Disputes Courts (The District Land and Housing Tribunal) Regulations which are applicable in District Land and Housing Tribunal is to the effect that where the subject matter of the suit is immovable property the Plaintiff should contain a description of the property sufficient to identify it. It has been submitted that the plaint at hand does not describe the disputed land contrary to the requirement of the law. I agree with the Defendant's counsel on this point. Looking at the plaint nowhere did the Plaintiff give description of the property the subject matter of the case. Throughout the entire pleadings of the Plaintiff, he is complaining the way the

Chairman of the District Land and Housing tribunal handled his objection proceedings and that the 20 acres of land which he is claiming to be his land has no connection whatsoever with decisions given by the District tribunal on 4th March 2022 and on 5th March 2019 by honourable Chairman Kamugisha and honourable Chairman Mzava respectively. The location of the said 20 acres of the land in relation to the present suit is not described. Mere mention of the size of the land (i.e. acres) is not sufficient description of the same to enable a stranger to identify it. I therefore agree with the counsel for the Defendant that the suit is unmaintainable for failure to give sufficient description of the disputed land and just to add salt in a fresh wound it is my observation that the plaint is badly drafted as it looks as an appeal against the ruling of the District Tribunal rather than a plaint. For instance, it is difficult to see any cause of action against the defendant as all the complaint in the purported plaint is against the decision of the District tribunal. That decision was not rendered by the Defendant but by the tribunal. That said the preliminary objection is sustained. Suit against the Defendant is struck out with costs. 0th c? -z a.r: mruma -t- Uj X > H- JUDGE :y-.

7. 2. 2025

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