

TANZANIA / JUDGMENT

khamis ramadhani mggalu vs attorney general 6 others 2022 tzhclandd 12607 25 november 2022

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25 November 2022

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE NO. 164 OF 2021 KHAMIS RAMADHANI MGGALU PLAINTIFF VERSUS ATTORNEY GENERAL 1st DEFENDANT CHALINZE DISTRICT COUNCIL 2nd DEFENDANT CHAMKWEZA VILLAGE COUNCIL 3rd DEFENDANT KISANGASI SALAIYO 4th DEFENDANT MBAMBILE KISANGASI 5th DEFENDANT SIKUZANI HALFANI JEURI (Administratrix of the Estate of the late SELEMANI JEURI) 6th DEFENDANT SAIDI MOHAMED CHABWENI {Administrator of the Estate of the late ULAUI MOHAMED CHABWENI MALOMALO) 7th DEFENDANT Date of Last Order: 17.11.2022 Date of RLIng: 25.11.2022

RULING

V.L. MAKANI. J. In the course of the proceedings the court ordered the parties to address it on the issue whether the plaint complied with Order VII Rule 3 of the Civil Procedure Code CAP 33 RE 2019 (the CPC) which provision deals with the description of immovable property in the plaint. Counsel for the parties addressed the court orally on this issue. Mr. Kumwenda, Advocate appeared for the plaintiff. Ms. Ruhumbika, State Attorney represented the P', 2nd and 3rd defendants while Mr. Michael Mnyambo appeared for the 4th and 5th defendants. The 6th and 7th defendants appeared In person. Mr. Kumwenda for the plaintiff argued that in paragraph 6(viii) of the piaint explains where the suit iand is located and so is paragraph 7 of the piaint. He said the paragraphs state that the iocation of the suit land is Msufini Pingo, Chainze in Pwani (Coast) Region. He said even In the reliefs at item (c) the piaint has expiained that the suit land is at Msufini. He said the leadership of Msufini state that the suit land is in Msufini Kingo whiie the defendants state that the suit land is in Chamakwezl. He said the plaint is in compliance with the iaw. Ms. Ruhumbika, learned State Attorney for the 1st, 2nd and 3rd defendants stated that according to Order VII Rule 3 of the CPC if the suit iand is a moveable property then the description of that property has to be proper. He said the description of the suit iand by the piaintiff is not proper as it is general. There are no landmarks and/or neighbours stated. She said there are many farms in Msufini Pingo so there is no proper descriptioOn of the suit land, she said with this general description of the land the plaint is defective and it ought to be struck out.

She cited the case of Fatuma Shabani Said Dololo (Legal Representative of the late Shabani Said Doiolo & Another vs. Abdalialh Said Mgaza, Land Case No. 138 of 2020 (HC-Land Division) (unreported). Mr. Michael Mnyambo for the 4th and 5th defendants supported the submissions by the learned State Attorney that the plaint is defective and contrary to Order VII Rule 3 of the CPC. He said the descriptions in paragraphs 6(viii) and 7 of the plaint are not comprehensive because they do not explain specifically the said area of dispute. He said the description provided is general as Msufini Mpingo is a big area. He pointed out that the meaning of Order VII Rule 3 of the CPC is to differentiate the area of dispute with other pieces of land. He said description of an un-surveyed area was well explained in the case of Romuaid Andrea @ Andrea Romuaid @ Romuaid A. Materu vs. Mbeya City Council & Others, Land Case No. 13 of 2019 (HC-Mbeya) (unreported). He thus pointed out that the plaint is defective as the suit land is not properly described so the suit ought to be struck out. In rejoinder, Mr. Kumwenda reiterated his submissions in chief and further emphasized that there is no other way to describe a place than village, ward, district and region and once those areas are mentioned it is not difficult to identify the suit land. He said the acreage, neighbours, boundaries cannot enter into a plaint as these features are not necessary. He, however said, the acreage is mentioned in paragraph 6(viii) of the plaint as 9 acres from the 6th defendant and 11 acres from the 7th defendant. He said demarcation and boundaries are issues of evidence. He submitted that the cited cases are irrelevant and he prayed for this issue raised by the court to be dismissed and the matter to proceed to hearing of the matter accordingly. The 6th and 7th defendants being layperson did not have anything useful to address the court. Order VII Rule 3 of the CPC states: "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." In the case of Daniel Dagala Kanuda (As an administrator of the estate of the late Mbalo Lusha Mbulida) vs. Masaka Ibeho & 4 Others, Land Appeal No. 26 of 2015 (HC-Tabora) (unreported) it was stated: "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 rationale behind the provision above as pointed by the cited case of Daniel Dagala Kanuda (supra), is to ensure that the person claiming knows well the property he is claiming so as to distinguish it from any other properties to avoid chaos and controversies in the long run especially at the time of execution. Romuaid Andrea @ Andrea Romuaid @ Romuaid A. Materu (supra), the court said: "The legal requirement highlighted above [Order VII Rule 3 of the CPC] is intended for the purposes of an authentic identification of the land in dispute so as to afford courts make certain and executable orders. It is the law that, court orders must be certain and executable. It follows thus that, 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." Mr. Kumwenda insisted that the suit land was properly described under paragraphs 6(vii), (viii) and 7 of the plaint. The said paragraphs state as follows: "6(vii), That

the plaintiff acquired the land in dispute by buying on 23/09/2011 from the family of SELEMANI JEURI defendant (9 acres) and also from the family of MOHAMED CHABWENI (7th defendant) (11 acres). The sales were made before chairman of Msufmi sub-viii aae Pinao Chaiinze (leave is craved so that Letter of Administration marked as SYTJ 8 and STJ 9 be part of this plaint). 6(viii). That when buying them the said pieces of farms were both situated within Msufmi Moinao whereas the defendants are alleging that the farm in issue is within the Chamakweza viii age of which even if were true but it has been in such situation since before operation vijiji and people in our country are allowed to own land or any property in any place within our country even if are not residents therein.

7. That the honourable court enjoys jurisdiction and power to hear and determine this suit as the location and address of the suit premises land is at Msufmi Pinao. Chaiinze within the Coast Region and the value of the farm is estimated at Tshs. 310,000,000/- and the compulsory involvement of the Attorney General necessitates the suit to be filed in this Registry. It is settled law that one is bound by his pleadings, and it is apparent from the quoted paragraphs of the plaint that the description of the land is so general and does not comply with the mandatory provisions of Order VII Rule 3 of the CPC. Indeed, the suit property is unsurveyed land, and the size (11 acres) and the location (Msufini Pingo Chalinze) are mentioned in the plaint. However, there are no landmark boundaries to differentiate the suit land from any other piece of land in Msufini Pingo in Chalinze. Certainly, the plaint shows that the plaintiff bought 11 acres in Msufini Pingo in Chalinze from two different people, but it must be noted that Msufini Pingo is not a small area and without proper identification and/or description, such as landmark features or boundaries, then execution of any court order may be a problem or lead to confusion and chaos considering that there is also a prayer for declaration that the suit land is not in Chamakweza village (see item (c) of the reliefs in the plaint). So, in my view the description of the suit land ought to have been specific and current to assist the court in the administration of justice. Mr. Kumwenda said the mention of the boundaries or neighbours is an issue of evidence and need not be in a plaint. But with due respect, the mention of the landmark facts of the suit land in the plaint is not evidence but a description which identifies the suit land from the rest of the properties adjacent to it (see Daniel Dagala Kanuda (supra). 4th ¶ And Order VII Rule 3 of the CPC states mandatorily that where the subject matter of the suit is Immovable property, the plaint shall contain a description of the property sufficient to identify it. The law made it clear that description of the property has to be in the plaint and should not wait until presentation of the evidence. A blanket description as provided in the plaint may mislead the court and in my considered view creates doubt as to whether the plaintiff knows specifically where the suit land is located. In view thereof, the description of the suit land in the plaint is not sufficient for purposes of resolving the controversy between the parties. The plaint is thus defective contrary to the mandatory provisions of Order VII Rule 3 of the CPC. In the result, the suit is struck out for being incompetent. There shall be no order as to costs as the matter was raised by the court suo mottu. It is so ordered. (OURT (h t- V.L. MAKANI >Sr.- * < * JUDGE rf / 25/11/2022 to

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