

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY OF ARUSHA)

AT ARUSHA

LAND CASE NO. 9 OF 2017

ANOLD VICTORY TESHA.....PLAINTIFF

VERSUS

TANZANIA NATIONAL ROAD AGENCY(TANROADS).....DEFENDANT

RULING

S.M. MAGHIMBI, J:

The Plaintiff instituted a suit against the defendant claiming for an unpaid amount to the tune of Tshs 121,370,154/= being additional compensation for the land acquired by the Government following road construction activities. On the 03/03/2017 while filing his written statement of defence, the defendant raised Preliminary Objections on point of law that the suit is bad in law for suing Defendant who has no sueable legal capacity of its own on compensation matters contrary to Section 3(6)(b) and (c) of the Executive Agencies Act, No. 30 of 1997 (Cap 245 R.E. 2002) and section 6(3) of the Government Proceedings Act (Cap 5 R.E. 2002). The defendant was hence praying for an order striking out the suit with costs.

By an order of this court dated 30/05/2017, the objections were disposed by way of written submissions. Both parties adhered to the schedule of

submissions. Before this court the plaintiff was represented by Mr. Haruna Msangi learned Counsel while the defendant was represented by Mr. Gurisha Mwanga, learned Counsel.

Submitting on the objection raised Mr. Mwanga contended that the law under the Executive Agencies Act, No. 30 of 1997 (Cap 245 R.E. 2002) as amended by the Finance Act No. 18 of 2002 (Collectively referred to as the Act), is clear on the matters which the Defendant can be sued in its own name. That Section 3 (6) (b) of the Act provides that;

*"(6) Notwithstanding any other law, an Executive Agency shall;
(b) be capable of suing and be sued in its own name only in contract; and in that Respect all laws applicable to legal proceedings other than Government Proceeding Act shall apply to legal proceedings to which the Agency is a party"*

Mr. Mwanga submitted that the power of the Defendant to sue or be sued is limited only on contract and that where there is no contract in existence; the Defendant lacks power to sue or be sued in its own name. Referring to the case at hand, he argued that there is no contract entered between the parties to this suit, which gave Plaintiff powers to sue the Defendant. That since there is no contract between the parties to justify the legality of suing Defendant, this suit is bound to fail as the same was filed in sheer disregard of the law.

Mr. Mwanga referred this court to **Land case No. 31 of 2006 between Total Tanzania Limited Versus Tanzania National Roads Agency**

(TANROADS) when the this court was faced with similar situation. In its ruling in respect to preliminary objection raised the court held that;

"In the face of requirements of section 3 (6) (b) it is evident that the plaintiff was wrong to sue the Plaintiff in its own name for a matter which was not based on contract. The proper party to sue should have been the Government as by law provided so I find and hold that the suit is incompetent".

He further cited **Land case No. 27 of 2006 between Judge (Rtd) Dan Mapigano & 19 Others Versus Tanzania National Roads Agency (TANROADS)** and Miscellaneous Commercial case No. 171 of 2014 between **African Banking Corporation Tanzania Limited Vs Tanzania National Roads Agency**, when the court was faced with similar situation and had the same stance.

Mr. Mwanga hence argued that from the cited provision of the law and the case law cited, it is very clear that the Defendant can only sue or be sued in contract and not otherwise. That suing the Defendant in disregard to the above provision is an irregularity, which render the suit incurably defective. He submitted further that the proper procedure to sue the defendant as a semi autonomous agency of the Government is enumerated under section 3 (6) (c) of Act and section 6 (3) of the Government Proceeding Act No. 16 of 1967 (Cap 5 R.E. 2002). That Section 3(6)(c) of the Act provide that;

"in all matters relating to contract, not be competent to sue or be sued in its own name; however, any legal proceedings which, but for

this paragraph, would have been instituted by or against executive agency, may only be instituted by or against the Government in accordance with the Government Proceedings Act."

Further that Section 6(3) of the Government Proceedings Act, provides that:

"all suits against the Government shall after expiry of the notice be brought against the Attorney General, and a copy of the plaint shall be served upon the Government Ministry, department or Officer alleged to have committed the civil wrong on which the civil wrong is based"

He concluded that since the suit is not based on contract rather it is a claim based on compensation, the proper party to be sued is the Government. Mr. Mwanga's prayer was that the objection be upheld with costs striking out the suit.

In his brief reply, Mr. Msangi submitted that the issue in the instant case is an agreement between the parties herein whereby the defendant has to pay the plaintiff for his piece of land for construction of road. The defendant registered all the persons to be paid and paid them at rates that are far below the market value and discriminatory. That the rates used were inconsistent because people in the same area were paid differently a Tshs. 6,000/= per square meter and others Tshs. 12,000/= per square meter.

On the authorities cited by Mr. Mwanga, Mr. Msangi contended that they are not similar to the case at hand. That in Land Case No. 31/2006 (Supra) and Land Case No. 27/2006 the issue arose following a notice to demolish buildings on a road reserve. That for the case at hand the issue is for the defendant to pay the difference in value on top of the amount already paid. He further contended that the issue in **Miscellaneous Commercial case No. 171 of 2014** (supra) the applicant was seeking leave to sue the Executive Agency without giving 90 days notice. He argued that in the instant case, the plaintiff is seeking to be paid the underpaid amount as per partly executed agreement and has served the defendant and the Attorney General with 90 days notice. Mr. Msangi prayed that the preliminary objection be dismissed with costs. On his part Mr. Mwanga did not make any rejoinder submissions.

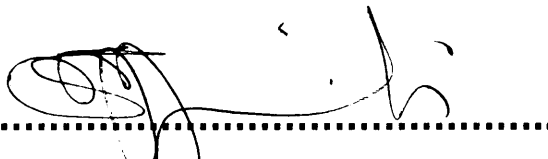
Before me there are two main issues to be determined, first is whether what the plaintiff is claiming against the defendant arises out of a contractual obligation or is an issue of compensation. This shall then determine whether or not the suit is properly before me. It is trite law that parties are bound by their pleadings hence determination of the issues of law shall strictly base on the pleadings before me. In his plaint, what the plaintiff is claiming against the defendant is an order for payment of underpaid amount arising out of compensation by the defendant of 4122 square meters of land. (Para 5 and 6 of the plaint and prayer (a) on the same plaint). The question here is; did the compensation arise out of any contractual obligation between the parties?

I must point out that compensation of the nature at hand are made under the Land Acquisition Act, Cap 118 R.E 2002 which allows the president to acquire any land for public use. As for the plaintiff, in all the pleadings, there is no place which indicate the existence of any contractual relationship between the plaintiff and the defendant. What the plaintiff is claiming is an underpayment of compensation and not remedy for any breach of contract. That being the case I am in agreement with the argument advanced by Mr. Mwanga that there is no any contractual relationship between the plaintiff and the defendant.

Having determined that there is no any contractual relationship between the defendant and the plaintiff, I am also in agreement with the cited authorities of **Land Case No. 31/2006 (Supra)** and **Land Case No. 27/2006 (Supra)**. Pursuant to Sections 3 (6) (c) of the Act and section 6 (3) of the Government Proceeding Act No. 16 of 1967 (Cap 5 R.E. 2002), the suit is incompetent before me as the plaintiff has sued the defendant who is not suable since the matter at hand does not arise out of a contractual obligation. The suit is therefore bound to crumble and is hereby struck out. The defendant shall have her costs.

Dated at Arusha this 19th day of March, 2018




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S. M. MAGHIMBI
JUDGE