

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**MISC. LAND APPLICATION NO. 67 OF 2020**

*(Arising from Land Case No. 9 of 2020)*

**ROBI ISAAC NGA'RIBA ..... APPLICANT**

***VERSUS***

**TIB CORPORATE BANK LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**MCHINGA AUCTION MART & REAL**

**AGENCY CO. LTD ..... 2<sup>ND</sup> RESPONDENT**

**GATI DEBORAL ISAAC ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

*22<sup>nd</sup> and 22<sup>nd</sup> October, 2020*

**KISANYA, J.:**

This application for temporary injunction has been filed under section 37(a) (b) (c) and (d) of the Land Disputes Courts Act [Cap. 216, R.E. 2019] and Order XXVII, Rule (1) and (2) and section 95 of the Civil Procedure Code, [Cap. 33 R.E 2019] (the CPC). It is supported by an affidavit of the applicant, Robi Isaac Nga'riba sworn on 15<sup>th</sup> October, 2020. The appellant prayed for ex-parte and inter-parte interim order restraining the respondents, their agents or any other persons from conducting an auction of a property located at Plot No. 2, Nyabisare area within Musoma Township, Certificate of Title 6334 pending hearing and final disposal of the main suit (Land Case No. 9 of 2020) filed before this Court.

This application was assigned to me on 16<sup>th</sup> October, 2020. Upon reading the documents attached to the affidavit in support of the application, I noted that the suit premises was scheduled for auction on the same day. Therefore, I found it pertinent to hear the application *ex parte*. The Court issued a temporary interim order pending hearing of this matter. The respondents were summoned to appear for hearing on 22<sup>nd</sup> October, 2020 at 2.30 pm.

When this matter was called on for hearing inter parte today, the applicant was represented by Mr. Edson Philipo, learned advocate. On the other hand, the respondents failed to appear. It appears that, they were not served by the applicant.

From the outset, the Court probed Mr. Philipo to address on the competence of this application. This issue was raised after noting that, no prior notice had been served to the first respondent, a company owned by the Government and that, the Attorney General was not joined as a party to this application as required by the Government proceedings Act, Cap. 5, R.E. 2019 as amended (the GPA).

In his submission, Mr. Philipo conceded that the application was incompetent for want of ninety days' notice previously served to the first respondent and for non-joinder of the Attorney General thereby contravening section 6(2) and (3) of the GPA. The learned counsel prayed to withdraw the application under O.XXIII, Rule (1) and (2) of the CPC.

It is common ground that, the first respondent is a company owned by the Government. Matters related to procedure in civil proceedings by or against the Government are regulated by the GPA. Reading from

section 6 of the GPA, I have noted two issues which go to the root of matter.

First, the Court is barred from hearing a suit instituted against the Government if a ninety days' notice was not previously served to the Government Minister, Department or officer concerned and copy thereof sent to the Attorney General. Such notice is required to specify the basis of claim against the Government as provided for under section 6(2) of the GPA which reads:

*"No suit against the Government shall be instituted, and heard unless the claimant previously submits to the Government Minister, Department or officer concerned a notice of not less than ninety days of his intention to sue the Government, specifying the basis of his claim against the Government, and he shall send a copy of his claim to the Attorney-General."*

Second, the Attorney General is required to be joined as a necessary party to any suit instituted by or against the Government, Ministry, public corporation, parastatal organisation or public company and the like institutions. This requirement is provided for under section 6(3) of the GPA which states:

*"All suits against the Government shall, upon the expiry of the notice period, be brought against the Government, Ministry, government department, local government authority, executive agency, public corporation, parastatal organisation or public company that is alleged to have committed the civil wrong on which the suit is based, and the Attorney General shall be joined as a necessary party."*


In view of the provisions of section 6(2) and (3) of the GPA, it is clear that, failure to issue the ninety days' notice to sue the Government and/or non-joinder of the Attorney General vitiate(s) the proceedings of any suit instituted in the Court.

Since the first respondent is a company owned by the Government, the applicant was required to comply with the above cited provisions before instituting this application and Land Case No. 9 of 2020. Mr. Philipo has conceded that, the required notice was not served to the first respondent. Further, it is apparent on record that, the Attorney General was not joined. In the event, this Court has no mandate to determine the present application which has been filed in contravention of the mandatory provisions of section 6(2) and (3) of the GPA.

For the reasons I have endeavoured to state, I find the present application incompetent before the Court. The law is settled that an incompetent application cannot be withdrawn as prayed by Mr. Philipo or adjourned to wait the respondent to enter appearance. The right recourse in such a case is to strike out the same. I accordingly strike out this application with no order as to costs because the respondents did not enter appearance. Consequently, the temporary interim order issued *ex-parte* by this Court on 16<sup>th</sup> October, 2020 is hereby vacated. Order accordingly.

DATED at MUSOMA this 22<sup>nd</sup> day October, 2020.



  
E. S. Kisanya  
JUDGE