

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

AT MUSOMA

MISC. LAND APPLICATION NO. 13 OF 2021

(Arising from Land Case No. 2 of 2021)

FLORENCE CHACHA APPLICANT

VERSUS

**TPB PLC (as successor in title of the
defunct TIB CORPORATE BANK LIMITED) 1ST RESPONDENT**

MCHINGA AUCTION MART & REAL

AGENCY 2ND RESPONDENT

RAMADHAN BWANA t/a LE GRAND

VICTORIA HOTEL 3RD RESPONDENT

KITAJI INVESTMENTS LIMITED 4TH RESPONDENT

GATI DEBORAH ISACK (Administratix of the

Estate of the late CHACHA MWITA NG'ARIBA ... 5TH RESPONDENT

ZAITUNI NG'ARIBA 6TH RESPONDENT

RULING

21st and 21st April, 2021

KISANYA, J.:

The applicant is the widow of the late Isack Chacha Mwita Ng'ariba who was the lawful owner of the suit premises namely Plot No. 2, Nyabisare Area, Musoma Municipality. In 2016 the 4th Respondent took loan from the 1st Respondent. The late Isack Chacha Mwita

Ng'ariba and the 6th respondent signed a spouse consent authorizing the mortgage of the suit premise to the 1st respondent.

It appears that the 4th respondent failed to service the loan. The 1st respondent had no option than selling the suit premise. It was bought by the 3rd respondent on 25th November, 2020 at consideration of one hundred and sixty million shillings. Believing that the sale was illegal, the applicant filed a caveat with the Assistant Registrar of Title to prevent any person from disposing off the suit premises.

On 15th March 2021, the 3rd respondent as new owner of the suit premise issued a 30 days' notice to the 5th respondent to vacate the suit premise. The said notice prompted the applicant to institute Land Case No. 2 of 2021 which is pending in this Court. She also filed the present application for an order of temporary injunction restraining the respondents and their agent from entering, evicting, threatening and or interfering with or making or cause to be made anything that may interfere with the applicant's occupation of the suit premises pending determination of the main case. The application was made by way of Chamber Summons supported by an affidavit sworn by the applicant on 12th April, 2021.

The 1st, 2nd, 3rd respondents objected the application. In addition to their respective counter-affidavit, they filed a notice of preliminary objection. The points of law raised by the 1st and 2nd respondents reads:

- (a) The Miscellaneous application is bad in law for non-joinder of the necessary part contrary to section 6(3) and (4) of the Government Proceeding (sic) Act Cap 5 as amended by Act No. 1 of 2020.*
- (b) The Miscellaneous application is bad in law for failure to issue notice to the first defendant contrary to section 6(2) and (3) of the Government Proceedings Act Cap 5 RE:2020.*
- (c) The Miscellaneous application is misconceived as against the first respondent as contrary to the proviso of Order XXXVII, Rule 1(b) of the Civil Procedure Code, Cap. 33, R.E. 2019.*

On her part, the 3rd respondent raised the following points of law:

- (a) That this application is premature and incompetent for contravening section 6 (2) and (3) of the Government Proceedings Act (Cap 5 R.E 2019).*
- (b) That this applicant application is improperly filed for failure to join the Attorney General.*

When the matter was placed before me for hearing today, Mr. Paul Kipeja appeared for the applicant. On the other side, Ms. Mirembe Lameck, learned advocate appeared for the 1st and 2nd respondent. The fifth respondent appeared in person while the Ms. Ghati Deborah Isack appeared for the 4th respondent. The matter proceeded in the absence of the 3rd and 6th respondents who failed to appear without notice.

Applicant's counsel, Mr. Kipeja readily conceded to the preliminary objection. He asked the Court to strike out the application but with no order as to costs. The learned counsel for the applicant claimed that the applicant is a widow.

On her part, Ms. Lameck urged the Court to strike the application with costs. She called upon the Court to consider that the 1st and 2nd respondents had incurred costs in pursuing the matter. The 4th and 5th respondents had nothing to submit.

In view of the parties' submissions, it is common ground that the 1st respondent is a public company. Indeed, the 1st respondent was incorporated under the Companies Act as provided for by the Tanzania Postal Bank (Repeal and Transnational Provisions) Act, 2015. Therefore, I am at one with the counsel for both parties that, any suit against the 1st respondent can only be brought before the court of law upon complying with the following conditions: **One**, issuing a 90 days' notice of intention to sue the Government must have been served to the respective public company and copy thereof sent to the Attorney-General. **Two**, joining the Attorney General as necessary party in the suit filed after expiration of the ninety days' notice. The said conditions are well stated in section 6 (2) and (3) of the Government Proceeds Act (supra) as amended by the Written Laws (Miscellaneous Amendments) Act, 2020 which reads:

6. (1).- N/A

(2) 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."

(3) 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.

The word "shall" used in above cited provisions connotes that the conditions set therein must be strictly complied with. No exception is provided for by the law. This position was stated by this Court in the case of **Thomas Ngawaiya vs. Attorney General and 3 others**, Civil Case No. 177 of 2013 HCT (unreported), where it was held that-

"The provisions of section 6(2) of the Government Proceedings Act are express, explicit, mandatory, admit no implications or exceptions. They must be strictly complied with. Besides, they impose absolute and unqualified obligation on the Court."

Furthermore, the consequences of not joining the Attorney General render the respective proceedings a nullity under section 6(4) of the Government Proceedings Act.

In the case at hand, the record are explicit. The applicant did not serve the respondent and Attorney General with the required 90 days' notice before instituting this application and Land Case No. 2 of 2021 which led to the instant application. As that was not enough, the Attorney General has not be joined in this application and Land Case No. 2 of 2021. Guided by the above position of law, both irregularities render the present application incompetent.

In view thereof, the preliminary objection raised by the 1st, 2nd and 3rd respondent is meritorious. Consequently, the application is hereby struck with costs in favour of the 1st and 2nd respondents only. The 3rd and 6th respondent did not enter appearance while the 4th and 5th respondents did not ask for the costs.


DATED at MUSOMA this 21st day April, 2021.




E. S. Kisanya
JUDGE

Court: Ruling delivered this 21st day of April, 2021 in the presence of Mr. Paul Kipeja, learned advocate for the applicant, Ms. Mirembe Lameck, learned advocate for the 1st and 2nd respondents, the fifth respondent in person, Ms Ghati Deborah Isack director of the 4th respondent and in the absence of the 3rd and 6th respondents.




E. S. Kisanya
JUDGE
21/04/2021