

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(MWANZA SUB-REGISTRY)**

**AT MWANZA**

**LAND APPEAL NO. 19 OF 2021**

*(Arising from District land & Housing Tribunal for Mwanza at Mwanza in Appl. No. 150 of 2019)*

**FAUSTIN THEOBALD.....COMPLAINANT**

**VERSUS**

**1. CHRISTINA MREMA.....1<sup>ST</sup> RESPONDENT**

**2. ILEMELA MUNICIPAL COUNCIL.....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

**8<sup>th</sup> June & 14<sup>th</sup> July, 2022**

**DYANSOBERA, J.:**

This is an appeal against the ruling and order of the District Land and Housing Tribunal in Application No. 150 of 2019 delivered on 20<sup>th</sup> day of November, 2020 wherein the appellant's application was dismissed for lack of jurisdiction and for it being filed prematurely without the 90 days' notice to the Attorney General and Ilemela Municipal Council.

The appellant had, before the trial Tribunal, claimed against the 1<sup>st</sup> respondent, the following reliefs, namely: a declaratory order, a permanent injunction order, general damages, interests and other orders the Tribunal deemed fit to grant.

After the 1<sup>st</sup> respondent was duly served, she, on 18<sup>th</sup> day of December, 2019, successfully applied for leave to present a Third-Party Notice against Ilemela Municipal Council, the 2<sup>nd</sup> respondent.

Subsequent to the grant of the application by the Tribunal, the 2<sup>nd</sup> respondent prefaced her Written Statement of Defence with a preliminary objection on the ground that the application was premature.

In his written submission in support of the preliminary objection, Mr. Ludovick J. Ringia for the 2<sup>nd</sup> respondent argued that there was no notice of intention to sue served as required under Section 106 (1) (a) of the Local Government (Urban Authorities) Act [Cap. 288 R.E.2019] as amended by Written Laws (Miscellaneous Amendments) Act, No. 1 of 2020 which is to the effect that no suit shall be commenced against an Urban Authority unless a ninety days' notice of intention to sue is served upon the local government.

In resisting the preliminary objection, the Counsel for the 1<sup>st</sup> respondent Hidaya Haruna of Tanzania Women Lawyers Association, told the Tribunal that on 3<sup>rd</sup> March, 2020, the Third Party was served with the ninety days' notice of intention to join him as a third party for wrongful grant of a certificate of right of occupancy in respect of Plot No. 68 Block

"M", Kiseke and that a copy was served to the Attorney General as well as to the Solicitor General.

After hearing the arguments of the parties' Counsel, the Hon. Chairman upheld the 2<sup>nd</sup> respondent's preliminary objection holding that the notice was not properly served on the Attorney General and Ilemela Municipal Council due to lack of stamp and therefore, the case was prematurely filed. Further that the Attorney was not joined to this case in terms of section 6 (4) of the Government Proceedings Act. He observed that the Tribunal lacked jurisdiction and the application was prematurely filed. He thus dismissed the appellant's application.

In his petition of appeal filed on 30<sup>th</sup> April, 2021, the appellant has fronted the following grounds: -

1. That the Tribunal grossly erred in fact and in law by holding that the Tribunal had no jurisdiction to entertain the matter.
2. That, the Trial Tribunal erred grossly erred in law and in fact for dismissing Application No. 150 of 2019 on the ground that the Attorney General was not joined as the party while the appellant has no cause of action against the Attorney General.

3. That, the trial Tribunal grossly erred in fact and in law by dismissing application No. 150 of 2019 instead of 150B of 2019 which the second respondent was joined as the part.
4. That, the trial Tribunal erred in law and in fact by punishing the appellant on the negligence in her application

During the hearing of the appeal, the appellant was represented by Mr. Joseph Kinango, learned Counsel whereas the Ms Hidaya Haruna, learned Advocate, represented the 1<sup>st</sup> respondent and held brief for Mr. Ringia for the 2<sup>nd</sup> respondent. Parties' Counsel agreed the appeal to be heard by way of written submissions and the court gave leave and set a time frame which was duly complied with.

In arguing in support of the appeal, learned Counsel for the appellant opted submit on the first ground of appeal only. Admitting that if the suit against the Government or any of its agencies is instituted without giving the mandatory statutory notice of 90 days to the Attorney General and Solicitor General, the District Land and Housing Tribunal would have no jurisdiction, Mr. Joseph Kinango contended that there was no need of issuing such notice when the impugned application was being filed because the suing a fellow individual does not require issuance of notice and if such

requirement arose, it was upon the 1<sup>st</sup> respondent to issue the notice and not the appellant as the appellant had not sued the third party. Counsel for the appellant stressed that the appellant had no cause of action against the 2<sup>nd</sup> respondent; only the 1<sup>st</sup> respondent. He explained that the 1<sup>st</sup> respondent, through her Counsel had informed the Tribunal that she had issued statutory notice to the third party and the purported notice dated 2<sup>nd</sup> March, 2020 was attached to the appellant's submission and marked GEM 1 to form part of his submission. Counsel for the appellant wondered why the Tribunal did not take cognizance of that fact. The appellant's Counsel was of the view that the ruling dismissing the appellant's Application No. 150 of 2019 was misplaced.

It was the further argument of Counsel for the appellant that if at all the Tribunal found that the said statutory notice was not properly served as per the law, then the application which ought to have been dismissed was that which had been made by the 1<sup>st</sup> respondent requesting presentation of a third-party notice and not the appellant's application in which the appellant had no cause of action with the third party but the 1<sup>st</sup> respondent.

With respect to the service or otherwise of the statutory notice to the Attorney General and Solicitor General, Counsel for the 1<sup>st</sup> respondent

submitted that on 3<sup>rd</sup> March, 2021 the 1<sup>st</sup> respondent served the 2<sup>nd</sup> respondent with a 90 days' statutory notice of intention to sue and copies were served to the Solicitor General and Attorney General. Ms. Hidaya Haruna agreed with the appellant's Counsel that the Chairman misdirected himself as the notice was served as per the law requires.

On the argument that the Tribunal lacked jurisdiction, Counsel for the third 1<sup>st</sup> respondent argued that in so far as the appellant did not object to the third party being joined as a party to the case and now is a party to the case, then by virtue of section 16 (4) and section 6 (5) of the Government Proceedings Act as amended by the Written Laws (Miscellaneous Authorities (sic)) Act No. 10 of 2022 (sic), the District Land and Housing Tribunal had no jurisdiction to determine the matter because the case is to be tried by the High Court. Reliance was placed on the case of **Lala Wino v. Karatu District Council**, Civil Application No. 132/02 of 2018 (CAT-unreported).

Mr. Ludovick Joseph Ringia, the Solicitor for the 2<sup>nd</sup> respondent, in his reply submission, contended that the real question for determination is whether or not the Tribunal had jurisdiction to determine a matter against a Local Government Authority after filing of Written Statement of Defence in August, 2020. He submitted that by the enactment of the Written Laws

(Miscellaneous Amendments) Act No. 1 of 2020, the Local Government Urban Authorities Act [Cap. 288 R. E. 2002] and the Government Proceedings Act [Cap. 5 R. E. 2019] were amended to include the Local Government Authorities as part of the government in terms of Civil proceedings meaning that before suing a local government authority a notice of at least ninety days must be issued to such Authority with a copy served to the Attorney General and Solicitor General.

Further that, upon maturity, a suit must be filed in the High Court with the Attorney General being joined as a necessary party. Mr. Ringia argued that the proceedings before the Tribunal do not show any notice issued by either party before joining of the 2<sup>nd</sup> respondent and the Attorney General was not joined. Citing section 6 (4) of the Government Proceedings Act, Mr. Ringia submitted that the non-joinder of the Attorney General as prescribed under sub-section 3 vitiates the proceedings of any suit brought in terms of sub-section 3.

It was concluded on part of the 2<sup>nd</sup> respondent that the Tribunal was correct to struck out the application that was before it for lack of jurisdiction and that the appellant, instead of appealing, he had to file a fresh suit in the High Court against the respondents.

I have perused the record before me and have taken into account the rival submissions of parties' representatives.

It is provided under Section 6 (2) of the Government Proceedings Act [Cap 5.R.E.2019] that:-

'(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'.

As rightly submitted by Mr. Joseph Kinango, learned Counsel for the appellant, the suit that had been filed by the appellant was not against the Government but against Christina Mrema, an individual person. That suit was not, therefore, covered under section 6 (2) of the Government Proceedings Act (supra). By dismissing the appellant's suit on the ground that it was prematurely filed, the Hon. Chairman grossly erred as Christina Mrema was neither a government nor a government institution.



When the 1<sup>st</sup> respondent intended to join the 2<sup>nd</sup> respondent as a third party, the Chairman ought to have borne in mind that Ilemela Municipal Council was a local government authority and hence by virtue of Written Laws (Miscellaneous Amendments) Act, No. 1 of 2020 whose amendments included all suits against, inter alia, Local Government Authorities in the list of government suits, the 1<sup>st</sup> respondent was duty bound to serve such legal entity with a 90 days'. By joining the 2<sup>nd</sup> respondent to the suit, the whole suit was treated as a government and the procedure for institution of such proceedings had to conform to the provisions of the Government Proceedings Act regardless of the nature of the claim. This outrightly ousted the jurisdiction of the District Land and Housing Tribunal.

In other words, the lower Tribunal had no mandate to entertain any matter in which Ilemela Municipal Council entity was a party to the suit because according to section 6 (5) of the Act, any government suit should be instituted in the High Court.

For that matter, the District Land and Housing Tribunal erred in law and in fact in entertaining the matter in which the 2<sup>nd</sup> respondent was a party and for that reason, it had no mandate to dismiss the appellant's suit.

For the reasons stated, I am satisfied and find that the trial Tribunal grossly erred in fact and in law by dismissing application No. 150 of 2019.

The appeal succeeds and is allowed. The decision of the District Land and Housing Tribunal dismissing the appellant's suit is declared a nullity. The same is quashed and set aside. Land Application No. 150 of 2019 between **Faustin Theobald, then applicant v. Christina Mrema, then respondent**, is restored and should be heard to its finality.

In case the 1<sup>st</sup> respondent feels necessity of suing the 2<sup>nd</sup> respondent, she should abide by the current law and taken appropriate laid down procedures.

Each part to bear its own costs.

  
**W.P. Dyansobera**  
**Judge**  
**14.07.2022**

This judgment is delivered at Mwanza under my hand and the seal of this Court on this 14<sup>th</sup> day of July, 2022 in the presence of the appellant and 1<sup>st</sup> respondent. The 2<sup>nd</sup> respondent is absent.



  
**W.P. Dyansobera**  
**Judge**