

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

SONGEA DISTRICT REGISTRY

AT SONGEA

LAND CASE NO 04 OF 2022

RAMADHANI OMARY MTIULA (*Administrator of the Estate*

of the late Omary Petro Mtiula, deceased) **PLAINTIFF**

VERSUS

ATTORNEY GENERAL **1ST DEFENDANT**

SONGEA MINICIPAL COUNCIL **2ND DEFENDANT**

SLIMU MOHAMED **3RD DEFENDANT**

MOSES DOMINIC NOMBO **4TH DEFENDANT**

RULING

Date of last Order: 30/08/2022

Date of Ruling: 04/10/2022

MLYAMBINA, J.

Ramadhani Omary Mtiula, the Administrator of the Estate of the late Omary Petro Mtiula, filed the case before this Court against the Defendant jointly and severally praying for the following orders:

- (i) That the suit land be declared solely belongs to Omary Petro Mtiula, the Defendants jointly and severally are trespassers.
- (ii) Declaration that the conduct of the 2nd Defendant Officials of re allocating the land in

dispute to 3rd and 4th Defendant is unlawful and amount trespass to land.

- (iii) Declaration order that the purported sell of land in dispute between 4th and 3rd Defendant is unlawful and be nullified.
- (iv) Order for the Defendant to vacate from the land in dispute permanently and restraining them from further re-allocation.
- (v) Order of payment of TZs 20, 000,000/= (Twenty Million Tanzanian Shillings) being specific damage.
- (vi) Order of payment of TZs 50,000,000/= (Fifty Million Tanzania Shillings) being general damages resulting from inconvenience, psychological and economic hardships suffered by the Plaintiff as a result of a trespass committed by the Defendants.
- (vii) Cost of the suit be provided by the Defendants.
- (viii) Any other relief(s) as the Court may deem fit to grant.

The Counsel for the Defendants separately in a different occasion filed their Written Statement of Defence which was accompanied with the point of preliminary objection thus: *The suit is bad in law as the Plaintiff failed to issue a competent statutory notice of intention to sue.* By consent of the parties the case was argued by way of written submission. Both parties were represented respectively. The Plaintiff was represented by Mr. Lazaro learned Advocate while the 1st and 2nd Defendant were represented by Mr. Egidy S. Mkolwe learned State Attorney and the 3rd and 4th Defendants were enjoying the service of Mr. Eliseus Ndunguru learned Advocate.

The background of the case as grasped from the pleadings are as follows; the Plaintiff is the heir and the administrator of the estate of the late Omary Petro Mtiula, his father. He was appointed since 2020. His father was a legal owner of the land in dispute. He passed away in 1976. Among the deceased properties is the land in dispute which is situated at Central area within Songea Municipality. It is Plot No. 12 Block "E". On 2013, the Plaintiff discovered that part of the land in dispute was invaded by the 3rd Defendant who occupied party of the building therein.

Upon approaching the 3rd Defendant, he told him that; he is the legal owner of the disputed land as he purchased it from the 4th

Defendant. In a course of renewing the right of Occupancy of the disputed land, the Officials of the 2nd Defendant supplied him with a letter in which they informed him that the disputed land is owned by two people namely Omary Mtiula and Slimu Mohamed. Thus, the process of renewal will be delayed. Upon applying for official search in which he discovered that the owner of the land in dispute is solely his late father, one Omary Petro Mtiula.

He served a notice to sue so that the matter can be resolved amicably but all was in vain. The act of the 2nd Defendant officials to re-allocate the disputed land to the 3rd and 4th Defendants while knowledgeable of the facts that, the legal owner of the disputed land is the late Omari Petro Mtiula was unlawful and amount to trespass to land. The same to the act of the 4th Defendant to transfer the dispute land to the 3rd Defendant.

The acts of Defendants have caused severe hardships to the Plaintiff which resulted to the loss of TZs 20,000,000/= (Twenty Million Tanzania shillings) as mesne profit considering that partly of the said premises situated in land dispute was used for commercial purpose.

After careful consideration of the parties submissions, the issue to be determined is; *whether the point of preliminary objection raised by the Defendants is maintainable under the law.* Preliminary objection

refers to the legal issues raised by a party or parties in a case which requires Court determination before proceeding to the main case. Anything that contravene the law in cases can be a good ground for preliminary objection. See the case of **Hezron M. Nyachiya v. Tanzania Union of Industrials and Commercial Workers and Another**, Civil Appeal No. 79 of 2001, Court of Appeal of Tanzania at Dar es Salaam and the case of **Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Limited** (1969) EA 696 in which the Court observed that; preliminary objection consist of a point of law which has been pleaded or which arises by clear implication out of the pleadings which if argued as a preliminary objection may dispose of the suit.

In the case at hand the Defendants point of preliminary objection is pure point of law based on *section 6 (2) of the Government Proceedings Act (supra)*. Contrary to the Plaintiff allegation, the point raised by the Defendant does not require any ascertainment of the facts to prove the same because it is a pure point of law as it was decided in the case of **Crdb Bank Plc v. Heri Microfinance Limited, Cassiano Lucas Kaegele**, Civil Appeal No. 20 of 2020, Court of Appeal of Tanzania at Mbeya (unreported).

The Defendant's objection is that, the Plaintiff 90 days' notice to sue is incompetent for failure to comply with the provision of *section 6 (2) of the Government Proceedings Act [Cap 5 Revised Edition 2019]*. The Plaintiff notice does not have any correspondence with the Plaint. The amount claimed differs from the amount specified in the notice. It was the Defendants view that the matter cannot be entertained because it originates from incompetent notice. It is a requirement of the law that no suit shall be instituted against the Government institution prior to the service of the 90 days' notice to sue being served as per *section 6 (2) of the Government Proceedings Act (supra)*. No any party is allowed to circumvent the mandatory requirement of the *section 6 (2) of the Government Proceedings Act (supra)*, this was also the position in the case of **SGS Societe Generale de Surveillance SA and Another v. VIP Engineering & Marketing Limited and Another**, Civil Appeal No. 124 of 2017, Court of Appeal of Tanzania at Dar es Salaam.

The Counsel for the 1st and 2nd Defendant averred further that, *section 6 (2)* amplifies four requirements that must exist before one sues the Government, which are: *First*, a notice of not less than ninety days should have been submitted to the Government Minister, Department or Officer concerned; *second*, expressing intention to sue

the Government; *third*, Specifying the basis of the claims against the Government and *forth*, serving a copy of the notice to the Attorney General. The Defendant founds that the notice and the plaint did not tally. The notice specified a claim to be TZs 50,000,000/= (Fifty Million Tanzania Shillings Only) while the amount specified in a plaint is TZs 20,000,000/= (Twenty Million Shillings Only). The Defendants are of the view that the notice issued by the Plaintiff under *section 6 (2) of the Government Proceedings Act (supra)* does not relate with the Plaint.

This Court is of the firm view that, as rightly as submitted by the Counsel for the Defendants, statutory notice of 90 days of intention to sue is a mandatory once a person wants to sue the Government as per *section 6(2) of The Government Proceedings Act (supra)*. *Section 6 (2) of the Government Proceedings Act*, provides:

(2) No suit against 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 and the Solicitor General. [Emphasis added]

It is evident that, the Plaintiff served the Defendants with the notice of intention to sue which was regarded as a demand notice. I went through the said notice to sue which was attached and form party to the plaint and noted as follows: *First*, the Plaintiff elaborated his complain in detail and how the Defendants involved in one way or another into the matter. *Second*, the Plaintiff analysed his claim which is; Defendant to be removed from the land in dispute and the 2nd Defendant has to compensate the Plaintiff with a tune of 50,000,000/= (Fifty Million Tanzania Shillings Only) for being prohibited to access his land for 9 years.

Apart from that, at page three of the Plaint the Plaintiff stated his claim in which he prayed for the Court to order the Defendants to pay him a compensation at the tune of TZs 20,000,000/= (Twenty Million Tanzania Shillings Only) being a specific damage.

At this juncture this Court is of the view, as rightly as submitted by the 1st and 2nd Defendants' Counsel: *First*, the Plaintiff did file a 90 days' notice of intention to sue. *Second*, the Plaintiff expressed his intention to sue the Government. *Third*, the Plaintiff served a copy of the notice to

the Attorney General but he failed to specify the basis of his claims from the beginning against the Government. From the record it is not clear if the basis for his claim is either trespass or claim of TZs 50,000,000/= (Fifty Million Tanzania shillings only) as specific damages or 20,000,000/= (Twenty Million Tanzania Shillings Only) as specific damages. In order to avoid technicalities at advanced stage of the trial, it is important for the Plaintiff to specify his claim.

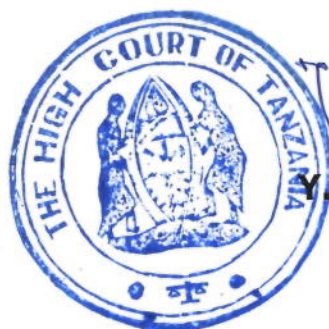
It is the further view of the Court that a claim on trespass and specific damages which are not contradictory would serve the purposes of notice. Otherwise, the Defendants should be reminded that the object of notice is not to delay substantive justice. Possibly, this might be among of cases which should be reconsidered for settlement upon the Defendants been served with a proper notice.

More so, the aim of issuing the notice as per *section 6 (2) of the Government Act (supra)* is to advance justice and securing public good by settling disputes out of Court amicably, to avoid unnecessary litigation against the Government and to alert the Government and afford the opportunity to reconsider the matter and take appropriate decision in accordance with the law. That was the position in *inter alia* the case of **Aloyce Chacha Kengaya v. Mwita Chacha Wambura and Others**, Civil Case No. 07 of 2019 High Court of Tanzania at

Musoma (unreported) and of **Thomas Ngawaiya v. The Attorney General and Others**, Civil Appeal No. 177 of 2013, High Court of Tanzania at Dar es Salaam (unreported). Therefore, the Plaintiff failed to comply with the mandatory requirement provided in provision of *section 6 (2) of the Government Proceedings Act (supra)*, which has to be strictly complied with. This was the position in the case of **Thomas Ngawaiya (supra)**. The consequence of failure to comply with the mandatory requirements of the provision of *section 6 (2) of the Government Proceedings Act (supra)* is to struck out the case in its entirety.

In the end result, the preliminary point of objection raised by the Counsel for the Defendants is hereby sustained. Consequently, the suit is hereby struck out for failure to comply with the provision of *section 6 (2) of the Government Proceedings Act [Cap 5 Revised Edition 2019]*. Each party bear his/her own costs.

It is so ordered.



Y. J. MLYAMBINA

JUDGE

04/10/2022

Ruling delivered and dated 4th day of October, 2022 in the presence of learned Advocate Lazaro Simba for the Plaintiff, learned State Attorney Emmanuel Bakari for the 1st and 2nd Defendants and learned Advocate Zuberi Maulidi holding brief of Eliseus Ndunguru for the 3rd and 4th Defendants.



Y. J. MLYAMBINA
JUDGE
04/10/2022