

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA**

LAND CASE NO. 7 OF 2022

SAID RAJABU SALUM.....PLAINTIFF

VERSUS

1. THE CITY COUNCIL OF DODOMA

2. PAULINE BERNARD MGALAH

3. THE ATTORNEY GENERAL

.....DEFENDANTS

.....

RULING

15th September & 04th November, 2022

MDEMU, J:.

On 29th May, 2022, the Plaintiff instituted this suit praying for judgment and decree against the Defendants as follows: -

- i. *A declaration that the Plaintiff is a lawful owner of plot No. 73 Block "D" Ndachi B- Centre area within Dodoma City.*
- ii. *A declaration that the 2nd Defendant has trespassed to the plaintiff's property.*
- iii. *An order for payment of specific damages at the tune of eighty million (Tshs. 80,000,000/=).*
- iv. *An order for permanent injunction restraining the 2nd Defendant, his agents, workmen, representatives from entering into the disputed property.*

- v. *The defendants to pay general damages as shall be assessed by this Court.*
- vi. *Costs of this suit and;*
- vii. *Any other order(s) and or relief(s) this Court may deem just and equitable to grant.*

On 1st June, 2022, the first and third Defendants filed amended written statement of defence which contained a notice of preliminary objection on the following points:-

1. *That, the suit is incompetent for contravening section 6 (2) of the Government Proceedings Act, Cap. 5.*
2. *That, the suit is incompetent for nonjoinder of necessary parties.*

The two preliminary objections were argued by way of written submissions. The Plaintiff was represented by Mr. Christopher Malinga, learned Advocate whereas the 1st and 3rd Defendants were represented by Ms. Jenipher Kaaya, Senior State Attorney and the second Defendant was represented by Mr. Ahmed Abdallah Mwita, learned Advocate. Parties complied with a scheduling order.

On the first point of preliminary objection, it was her submissions that, the suit is bad in law for contravening section 6(2) of the Government Proceedings Act, Cap. 5 R.E 2019 which require all suits against the

Government before they are instituted, the plaintiff is required to give a notice of not less than ninety days of his intention to sue the Government specifying the basis of his claim. A copy of the notice has to be supplied to the Attorney General.

She alluded that, the importance of 90 days' notice is to inform the Government of the claims so as to settle where circumstances so demands or to prepare a defence to be lodged in Court, if the matter is not settled. She argued further that, under paragraph 15 of the plaint, the Plaintiff pleaded to have issued a notice to the 1st Defendant and copied the 3rd Defendant. However, if at all the notice was drafted, it was not submitted to the 1st and 3rd Defendant. In her view, the consequences of contravening section 6(2) of the Government Proceedings Act renders a suit unmaintainable thus subject of dismissal. On this, she cited the case of **Arusha Municipal Council vs. Lyamuya Construction Company Ltd. [1998] T.L.R 13** and the case of **Steven G. Malipua and Another vs. Tanzania Revenue Authority, Civil Appeal No. 50 B of 2008** (unreported) to support her submissions.

On the last point of objection, it was her submissions that, since the disputed land is registered one, nonjoinder of the Commissioner for Lands and Registrar of titles is fatal. She argued that, under paragraphs 8 and

9 of the plaint, the plaintiff pleaded on efforts made to the Registrar of Titles to search for the said plot. Thus was aware of the role of Registrar of Titles in registration of the right of occupancy.

It was Ms. Kaaya's further submissions that, the Registrar of Titles and Commissioner for Lands are necessary parties thus have to be accorded an opportunity to be heard. She cited the cases of **Mussa Chande Jape vs. Moza Mohamed Salim, Civil Appeal No. 141 of 2018** (unreported) and **Tang Gas Distributors Limited vs. Mohamed Salim Said and 2 Others, Civil Application No. 68 of 2011** (unreported) to support her assertions.

The second Defendant, repeated the contents of the 1st Defendants submissions and supplied the case of **Tang Gas Distributors Limited vs. Mohamed Salim Said & 2 Others, Civil Application No. 68 of 2011** (unreported), **Abdullatif Mohamed Hamis vs. Mehboob Yusuf Osman and Another, Civil Revision No. 6 of 2017** (unreported) and the case of **Juma B. Kadala vs. Laurent Mkande [1983] T.L.R. 42** to bolster his assertion.

In reply, the Plaintiff submitted on the first point of objection that, he served the first and third Defendants 90 days' notice and attached a copy of a dispatch book showing to have served them on 11th June, 2021

and 14th June, 2021 at Dodoma City Council Office and Attorney General's Office respectively. He added that, both offices acknowledged to have received the notice.

On the last preliminary objection, the plaintiff conceded to it and added that, he didn't join the Registrar of Titles and the Commissioner for Land as necessary parties because he became aware of the existence of such necessary parties after the filing of written statement of defense by the second Defendant. He prayed the Court to allow him to amend the plaint so that the Registrar of Titles and the Commissioner for Lands be joined as necessary parties. On this, he cited the case of **Mussa Chande Jape vs. Moza Mohamed Salim, Civil Appeal No. 141 of 2018** (unreported) in support of his position. He concluded by praying this Court to dismiss the preliminary objections raised.

I have considered the contending submissions by the learned counsels from both sides. The issue to be determined is whether the raised objections have merits. Starting with the first point of preliminary objection on contravening section 6(2) of Government Proceedings Act, the section requires a ninety days' notice to be issued. This section provides: -

"No suit against the Government shall be instituted, and heard unless the claimants previously submit to the Government Minister, Department or office concerned a notice of not less than ninety days 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."

The above provisions of the law is crystal clear that, before a party institutes a suit against the Government, such a party must have previously issued a notice of not less than ninety days to the Government and copy the Attorney General. The said notice must specify the basis of the claim. In absence of the said notice, then the suit would be incompetent before the Court.

When referring to paragraph 15 of the plaint, annexure KA-5 is a copy of the notice. However, upon my perusal in the available record, proof of service to substantiate receipt of notice to the first and third Defendants is waiting. Plaintiffs submissions that they were served as shown in the dispatch book which was not attached to the plaint, may not be evidence of the notice served to the Defendants.

As repeatedly stated, it is trite position of the law that, in determining the preliminary objection, the Court has to look the pleadings and its annexures only without requiring more evidence (See in **Ali Shabani and 48 Others vs. Tanzania National Roads Agency and the Attorney General, Civil Appeal No. 261 of 2020** (unreported)).

In the case at hand, the Attorney General was not served with. The essence of serving notice to the Attorney General, need not to be emphasized since apart from informing the instituted claim, it also helps to prepare defence or to be ready for any settlement if the circumstances of the claim so permits. This was stated in the case of **Mahaka Abdalla and Another vs. Bariadi Town Council and Two Others, Land Case No. 3 of 2020** (unreported) that:

executing government businesses, the duty is exercised in liaise with the Ministry, Government Institution or independent department of Government to whom the claims are directed."

As alluded in the foregoing, from the pleadings available in the Court file, I agree with the Counsels of Defendants that, there is no proof of service to exhibit that notice was served to the first and third Defendants and in the upshot, I upheld the 1st preliminary objection. Since this objection suffices to dispose the alleged legal consequences on the competence of the suit, I find no reasons to determine the second preliminary objection. Thus, the suit is hereby rendered incompetent and is accordingly struck out with no order as to costs.



It is so ordered.

Gerson J. Mdemu

JUDGE

04/11/2022

DATED at DODOMA this 04th day of November, 2022



Gerson J. Mdemu

JUDGE

04/11/2022