

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**IN THE DISTRICT REGISTRY OF ARUSHA**

**AT ARUSHA**

**LAND CASE NO. 2 OF 2020**

**GLADYS ROGATHE METILI**

**(Suing as the administratrix of**

**the estate of the late REBEKAMETILI) ..... PLAINTIFF**

**Vs**

**TPB BANK PLC.....1<sup>ST</sup> DEFENDANT**

**VIOVENA AND COMPANY LIMITED.....2<sup>ND</sup> DEFENDANT**

**GOD ALEN NYANGE.....3<sup>RD</sup> DEFENDANT**

**MANGWEMBE 2011 LIMTIED.....4<sup>TH</sup> DEFENDANT**

**RULING**

*Date of last order:19-11-2021*

*Date of ruling:28-2-2021.*

**B.K.PHILLIP,J**

The plaintiff claims against the defendants jointly and severally a residential building situated on unsurveyed piece of land measuring approximately thirteen ( 13) Meters in length and forty four (44) Meters in Width located at Osunyai, Hamlet Olturoto Ward , Osunyai Village , Arumeru District in Arusha Region , ( herein after to be referred to as

"the suit Property"), payment of Tshs 15, 564,000/= being specific damages and general damages suffered as a result of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants' illegal and forceful alienation, and possession of the suit property.

The plaintiff is represented by the learned advocate Andrew Moses Maganga. The learned Advocate Marydensia Katemana represents the 1<sup>st</sup> and 2<sup>nd</sup> defendants whereas the learned Advocate Erick Kanga represents the 3<sup>rd</sup> defendant. The matter proceeds ex-parte against the 4<sup>th</sup> defendant.

Upon being served with the plaint, the defendants disputed the plaintiff's claims and raised points preliminary objections, to wit; MsKatemana raised two points of preliminary objections couched as follows;

- i) That suit is incompetent for contravening the provisions of Government proceedings Act.
- ii) That the suit is incompetent for non-joinder of a necessary party.

Mr. Eric Kanga raised three points of preliminary objections couched as follows;

- i) That, the Honourable Court has no jurisdiction to entertain the matter in hand.
- ii) That the suit is bad in law for contravention of Order XXIII Rule 1 (3) of the Civil Procedure Code, Cap 33, R.E 2019.
- iii) That the suit is bad in law for contravention of Order XXII Rule 3 (1) of the Civil Procedure Code, Cap 33, R.E 2019.

I ordered the points of preliminary objections to be disposed of by way of written submissions. The Advocates for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants were supposed to file their submissions in support of the points of preliminary objection on or before the 3<sup>rd</sup> of December 2021. The plaintiff's advocate was supposed to file his submission in response to submissions filed by the advocates for the defendants on or before 20<sup>th</sup> December 2021. Rejoinder by the defendants' advocates if any was supposed to be filed on or before 11<sup>th</sup> of January 2022.

Upon perusing the Court's records I noted that the advocates for the plaintiff have not filed any submission. Thus, I am constrained to compose this ruling basing on the submissions filed by the advocates for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants only. It has to be noted that failure to file submission (s) as ordered by the Court is tantamount to failure to prosecute one's case. [ see the case of **National Insurance**

**Corporation of (T) Ltd and another Vs Shengena Ltd, Civil Application No.20 of 2007 [(unreported)]**

Back to the submissions filed by the defendants' advocates, I will start dealing with the submissions in respect of the points of preliminary objections raised by Ms.Katemana.With regard to the 1<sup>st</sup> point of preliminary objection, Ms. Katemana's submission is to the effect that , the 1<sup>st</sup> defendant is a Public Company owned by Government of Tanzania as the majority shareholderhaving 83.44% of all shares in the Company (TPB Bank). The provisions of section 6(2) of the Government proceedings Act , Cap. 5 R.E 2019 (Henceforth "Cap. 5") provides that before instituting a case against the Government a party intending to sue the Government or Government institution has to give the Government a ninety days' notice before lodging his/her case.To cement her argument she cited the case of **ALoyce Chaha Kenganya Vs Mwita Chacha Wambura and two others, Civil case No. 7 of 2019** ( unreported).

Furthermore, Ms. Katemana submitted that, the word "Government" as defined in section 16 of Cap.5 as amended by section 26 of the Written Laws ( Miscellaneous Amendment ) Act, 2020 includes Public Companies in which the Government is the majority shareholder.

With regard to the 2<sup>nd</sup> point of preliminary objection, Ms. Katemana submitted that section 6(3) of Cap. 5 as amended by section 25 (a) of the Written Laws ( Miscellaneous Amendment) Act, 2020 , provides that upon the expiry of the ninety days' notice to sue the Government , its department or Public Company alleged to have committed a civil wrong upon which the suit is based, the Attorney General shall be joined as a necessary party to that suit. She contended that in the instant case the plaintiff has not joined the Attorney General in the case. Relying on the provisions of section 6(4) of Cap. 5 Ms. Katemana argued that the omission to join the Attorney General is fatal. It vitiates the proceedings in the case. She invited this Court to dismiss this case with costs.

It is a common knowledge that the Government of Tanzania is the majority shareholder in TPB Bank PLC (1<sup>st</sup> defendant.) The provisions of section 6 of Cap.5 provides as follows;

*"6. (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"*

And the provisions of section 6 (3) (4) of Cap.5 as amended by the Written Laws ( Miscellaneous Amendment) Act, 2020, provide as follows;

*"(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 organization or public company that is alleged to have committed the civil wrong on which the civil suit is based, and the Attorney General shall be joined as a necessary party.*

*(4) Non-joinder of the Attorney General as prescribed under subsection (3) shall vitiate the proceedings of any suit brought in terms of subsection (3)."*

Also, the provisions of section 16 (4) of Cap. 5 as amended by the Written Laws (Miscellaneous Amendment) Act, 2020, provides as follows;

*"(4) For the purposes of subsection (3), the word "Government" shall include a Government ministry, local government authority, independent department, executive agency, **public corporation, parastatal organization or a public company established under any written law to which the Government is a majority shareholder.**"*

*(Emphasis is added)*

Reading the above quoted provisions of the law, it is clear that the instant suit is incompetent since the Attorney General has not been joined in this case.

From the foregoing the points of preliminary objections raised by Ms. Katemana suffices to dispose of this matter. However, I wish to point out that the 2<sup>nd</sup> point of preliminary objection raised by Mr. Kanga also suffices to dispose of this matter. As correctly submitted by Mr. Kanga in respect of the 2<sup>nd</sup> point of preliminary objection, the pleadings reveal that the plaintiff filed similar claims to the one in hand against the defendants herein at the Land and Housing Tribunal of Arusha at Arusha vide Land Application No.16 of 2018 which she decided to withdraw them on 11<sup>th</sup> December 2019. The pleadings are silent on whether the plaintiff was granted leave to re-file the suit and no order from the Land and Housing Tribunal was attached to the plaint at least to give a light on what moved the plaintiff to withdraw that case. To say the least I am in agreement with Mr. Kanga that pursuant to the provisions of Order XXIII Rule 1 (3) of the Civil Procedure Code, Cap 33, R.E 2019, the plaintiff is barred from instituting this case in Court. [ See the case of **East African Development Bank Vs Blue Line**

**Enterprises Limited , Misc. Civil Cause No. 177 of 2007 and  
CRDB Bank PLC and Two others Vs Aziz Mohamed Aboud and  
Morogoro Canvas Mills ( 1998) Ltd, ( both unreported)]**

In the upshot this case is struck out for being incompetent. The plaintiff shall bear the costs of this case.

Dated this 28<sup>th</sup> day of February 2022



A handwritten signature in blue ink, appearing to read "B.K. Phillip", is written over a faint circular stamp.

**B.K.PHILLIP**

**JUDGE**