

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE SUB REGISTRY OF MANYARA
AT BABATI**

LAND CASE NO. 04 OF 2023

- 1. JEREMIA SAMWEL**
- 2. ISSA FAJA**
- 3. HASSAN JUMANNE**
- 4. JUMA QWARAY**
- 5. ELIA LUCAS**
- 6. RAHELI DANIEL**
- 7. GABRIEL LUCAS**
- 8. GABRIEL DAFFI**
- 9. PHILIPO ANDREA**
- 10. BARANI TLATLAA**
- 11. RAYMOND BARANI**
- 12. DANIEL BURA**
- 13. ONESMO JUMBE**
- 14. JOHN JUMBE**
- 15. AMOSI JUME**
- 16. JOSEPH NADA**
- 17. JOSHUA RAYMONDI**
- 18. ELIAMANI DAUDI**
- 19. MARIA DAUDI**
- 20. ISAKA LUCAS**
- 21. MICHAEL PAULO**
- 22. KEFANS FEDRICK**
- 23. EMANUEL BARAN**
- 24. RAMADHAN JUMA**
- 25. JAFARI JUMA**

PLAINTIFFS

26. YONA GARA
27. LAZARO BUU
28. ELIZARA NADA
29. PASKALI BURA
30. PAULO ISAYA
31. AMOSI SAMWELI
32. SAMSONI GWAATEMA
33. NOEL JACOB
34. JACSON JACOB
35. JOSEPH DAFI
36. EMANUEL MAYO
37. JOHN MAYO
38. FREDRICK TLUWAY
39. STEPHANO MAYO
40. MICHAEL LABAY
41. WILBROD GABRIEL
42. MATHAYO MASSAY
43. ZAKAYO BUU
44. PETRO SAMWEL
45. PAULO BURA
46. PAULO BURA AWE
47. MARIA AE
48. PAULO YAHHI
49. NANGAY H. NANGAY
50. JOHN SEBASTIAN
51. JOSOPHINA YOHANA
52. FADHILI ISSA
53. SELINA SEHHA
54. AMINA IDDI
55. PAULINA DAFFI
56. ANNA ISAKI

PLAINTIFFS

57. LINA JUMBE
58. PHILIPO DURU
59. MARIAM ISAKI
60. FELISTA DOSLA
61. MARIA NJUKI
62. CHOLASTICA SAFARI
63. SCOLASTIKA SAFARI
64. MARIA ARUSHA
65. CATARINA GIDALO
66. ZAINABU NANGAY
67. MARIA HILLU
68. CHRISTINA GIDAWA
69. DEBORA KARKARI
70. ZULFA SLIMU
71. BRUDAY MASANG'
72. MARIA PETRO
73. SAFARI GITU
74. ANNA WILLIANO
75. PATRIS SAFARI
76. JUMA SHAMBA
77. EMANUEL BAGAS
78. AMOS KASSI
79. ZAINABU KASSI
80. EMMANUEL SAMWELI
81. FAUSTIN BAKARI
82. WILLIAM MARTIN
83. ADAM NANGAY
84. PASKALINA BARAN
85. PAULO TUI
86. JOHN EMANUEL
87. EMANUEL ISRAEL

PLAINTIFFS

88. RASULI EMANUEL
89. FEDRICK SAFARI
90. JOHN HHAWU
91. MICHAEL EZEKIEL
92. MARTA MARA
93. JOHN EZEKEIEL
94. NADE DAQARO
95. DIDI DAQARO
96. NADA AMSI
97. ANDREA YOHANA
98. STEPHANO EZEKIEL
99. MICHAEL HHIPU
100. MARSELINA NJUKI
101. ISAYA PETRO
102. BALABALA GWELL
103. REJINA MUNGAD
104. ESTA D. SULLE
105. TERESIA SHABANI
106. SUZAN BARAN
107. GRESIANA REGINALDI
108. ELINESTI EMANUEL
109. GODFREY JOHN
110. ANNA LUUMI
111. CRISTINA JUMBE
112. MARIA JOHN
113. MATHAYO HUMAY
114. REHEMA JUMBE
115. SELINA MABAY
116. PATRISIA SAMWEL
117. JOHN BANA
118. ELIA IZRAEL

PLAINTIFFS

119. AMOS PAULO
120. JOICE JACOB
121. JULIANA GWAATEMA
122. ABDI ALLY
123. JACSON CHARLES
124. ISACK PANGA
125. DANIEL ZAKAYO
126. PETRO SAMWEL
127. JOJI SAMWEL
128. SADIKIELI FEDRICK
129. KRISTOFA KALISTI
130. JOHN TAHHANI
131. ESTER SAMWEL
132. INOSENT EDWARD
133. PETRO JOHN
134. FELISTA SAMWEL
135. AGRIPINA JOHN
136. JACSON HILONGA
137. YUSTINA NADE
138. ELIZABETH IRAFA
139. BERNADETA SAMWEL
140. PAULO BOAY
141. NEEMA SAMWEL
142. ONESMO EDWARD
143. PENDO DANIEL
144. SAMSON ISAYA
145. FRENK JOSEPH
146. PAULINA BYIEDA
147. NAGAYO HHAALI
148. PAULO BURA
149. ONESMO ABDREA

PLAINTIFFS

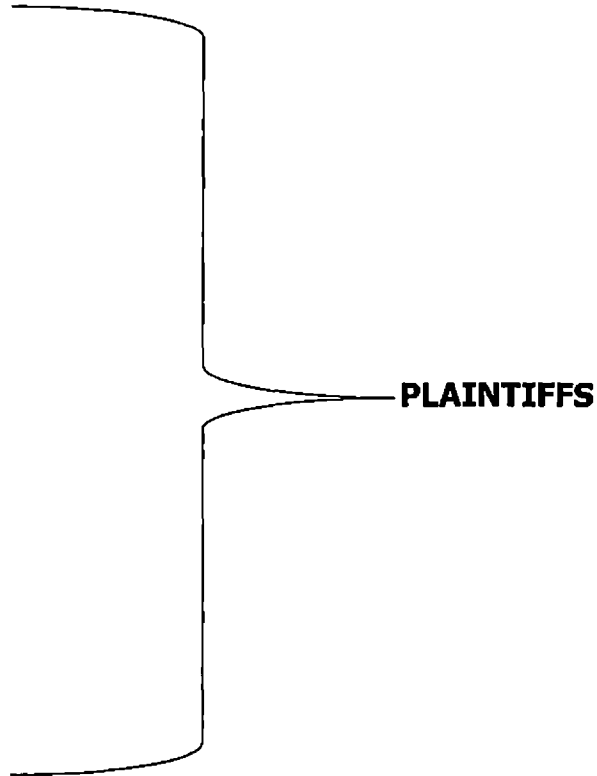
150. JANETH WELWEL
151. NURU RAFAEL
152. NASMA HAMISI
153. AMOS PAULO
154. ELIFURAHA KEREM
155. SAMWEL JOSEPH
156. HABIBU HAMIS
157. HAMIS HUSEN
158. OTINGO BENAJMIN
159. FATUMA MPANDA
160. RAJABU HAMISI
161. NAZIRI HAMISI
162. SALVASTORI NADA
163. CHAUSIKU HAMISI
164. KIPISI KEREEMU
165. ELINEEMA AGUSTINO
166. INNOSENTI KIBOLA
167. MBARAKA HASAN
168. HUSEIN HAMISI
169. MWANAHARUSI HASAN
170. EMANUE ISAK
171. FAZIL HASAN
172. SAMWEL GARA
173. YAHAYA HAMIS
174. HABIBA YAHAYA
175. DICSON BENJAMIN
176. BOKASA BENJAMIN
177. VAILET BENJAMINI
178. TUMAINI YONA
179. CLEMENSI JOSEPH
180. NAOMI SAMWE

PLAINTIFFS

181. NEHEMIA SIMON
182. EMANUEL GEOGRAS
183. LIDYA BENJAMIN
184. JOHN CHARLES
185. LEOKADIA NANGAY
186. ENEZAEEL JOSEPH
187. ZAKAYO HONORI
188. GERSON JACOB
189. TERESIA MARGWE
190. EMANUEL JONAS
191. YONA ISRAEL
192. HAMIS ALLY
193. JULIUS DANIEL
194. EMANUEL BENJAMIN
195. LUCY RAFAEL
196. MARTINA BARNABAS
197. DONATH ELIA
198. NEEMA FAUSTIN
199. ELISHA DANIEL
200. SELINA ESAU
201. NATHANAEL HONORI
202. JOHN HONORI
203. NEEMA ANDREA
204. LUCIA DOMINICK
205. DAUDI HONORI
206. SELEMANI HAMISI
207. NAEL DAUDI
208. HALIMA SANDA
209. MSAFIRI ABDALA
210. ELIZABETH MWENDO
211. SELINA SLAGAWE

PLAINTIFFS

- 212. GABRIEL WATHI
- 213. JASTINI AMONI
- 214. SELINA SLAGWE
- 215. EMANUEL JOSEPH
- 216. ESTA ELISHA
- 217. FILIMINA SLAA
- 218. JOHN DANIEL
- 219. RAHELI SEBASTIAN
- 220. HELENA KWASLEMA
- 221. KAGERA GIYE
- 222. CHRISTINA LOHAY
- 223. KASTULI GABRIELI
- 224. JULIETH MICHAEL
- 225. TUMAINII GABRIEL
- 226. PASKALINA PHILIPO
- 227. ANNA HASSANI
- 228. GEORGE BENJAMINI
- 229. MUSSA JOSEPH



VERSUS

- HAMIRI ESTATE LIMITED.....1ST DEFENDANT
- SURENDRA NATAN ODETRA.....2ND DEFENDANT
- BABATI DISTRICT COUNCIL.....3RD DEFENDANT
- DISTRICT COMMISSIONER FOR BABATI
.....4TH DEFENDANT
- REGIONAL COMMISSIONER FOR MANYARA.....5TH DEFENDANT
- COMMISSIONER FOR LANDS.....6TH DEFENDANT
- HON ATTORNEY GENERAL.....7TH DEFENDANT

RULING

7th June & 18th July 2023

Kahyoza, J.:

This ruling is in respect of the preliminary objection raised by the third to seventh defendants, to the effect that the suit is incompetent and bad in law for contravening section 6(2) of the **Government Proceedings Act**, [Cap. 5 R.E. 2019].

The plaintiffs sued Hamiri Estate Limited, Surendra Natan Odertra, Batati District Council, Babati District Commissioner, Manyara Regional Commissioner, Commissioner for Lands, and the Attorney general, among other things, for a declaration that the plaintiffs collectively owned the suit land. The first and second defendants filed a joint written statement of defence where they raised two points of preliminary objection. The third to seventh defendants filed a joint written statement of defence and raised a preliminary objection to the effect that, suit is incompetent and bad in law for contravening section 6(2) of the Government Proceedings Act, [Cap. 5 R.E. 2019].

The first and second defendants' points of preliminary objection were that-

1. the plaintiffs suit is incompetent for lack of statutory notice of 90 days to the third, fifth and sixth defendants, contrary to section 6(2) of the Government Proceedings Act [Cap 5 R.E 2019], section 190 Local Government (District Authorities) Act, [Cap 287 R.E 2002]; and

2. the plaint is defective for contravening mandatory provision of Order VI Rule 15(1) and (2) of the **Civil Procedure Code**, [Cap 33 R.E 2019] (the **CPC**).

Is the suit incompetent for contravening section 6(2) of the Government Proceedings Act?

The defendants' preliminary objections raised two issues; **one**, whether the suit is bad in law or incompetent for contravening section 6(2) of the **Government Proceedings Act**; and **two**, whether the suit is incompetent for contravening Order VII rule of the **CPC**. I will commence with the first issues.

Hearing of the preliminary objection was by way of written submissions. Mr. Mkama Musalaba, State Attorney, represented the third to seventh defendants, Mr. Abdallah issa Alli appeared for the first and second defendants, and Mr. Joseph Moses Oleshangay, Advocate was for all the respondents.

Submitting in support of the preliminary objection, Mr. Mukama Musalaba, State Attorney, the provision of section 6 (2) a of **the Government Proceeding Act**, Cap 5 R.E 2019 (**the GPA**), is imperative. It requires a person intending to sue the government to issue a 90 days'

notice and the same to be served upon Attorney General through the Office of Solicitor General. Further, that the notice annexed to the plaint is in respect of only 201 plaintiffs as opposed to the total of 229 plaintiffs. Thus, the suit is incompetent. To buttress his argument, he referred this court to pages 11, 12, 13 and 14 in the case of **Gwabo Mwansasu & 10 Others vs. Tanzania National Roads Agency & the Attorney General**, Land Case No. 8 of 2020, High Court of Tanzania at Mbeya (unreported) and the case of **Peter Joseph Chacha vs. the Attorney General & Another**, Civil Case No. 01 of 2021 HCT at Arusha (unreported).

Mr. Abdalla Issa Alli submitted further that, failure to issue 90 days' notice is contrary to express requirement of section 6(2) of the **GPA** and section 190 of **the Local Government (District Authorities) Act**. Citing a litany of cases, including **Peter Joseph Chacha vs. The Attorney General & Another**, Civil Case no. 1 of 2021 HCT at Arusha (Unreported) and **Abuu Sadiki Lema vs. Ilala Municipal Director and Others**, Land Case No. 114 of 2022, he argued that since the plaintiffs never issued the said notice, the suit is incompetent and deserves to be struck out with costs.

On plaintiffs' side, Mr. Joseph, learned advocate, submitted that the plaintiffs issued the said statutory notice to the third to seventh defendants

and the proof to the same was annexed to the plaint. It is therefore, contradictory when it is said that the plaintiffs never issued a notice, at the same time admitting that 201 plaintiffs issued a notice. That failure on some of the plaintiffs in issuing the notice amounts to mis-joinder, which is not fatal at all as per Order I Rule 9 and 10(2) of **the Civil Procedure Code**, Cap 33 R.E 2019. Citing the case of **Tanganyika Land Agency Limited & Others vs. Manohar Lal Aggarwal**, Civil Appeal No. 26 of 2003, CAT and **Car Truck Distributors Limited vs. MKB Security Company Limited and Another**, Land case No. 169 of 2021, HCT at Dar-es-salaam.

Having considered the pleadings and the rival arguments, I find that, It is true that the plaintiffs never issued and served a statutory notice of 90 days as per the law. The purported notice, attached to the plaint, cannot be said to have reached to the Attorney General for the following reasons; **one**, there is nowhere in the said notice where there is anything showing that a copy the said notice was received either by the office of the Solicitor General or the office of the Attorney General; **two**, there is no proof of service or an affidavit establishing that the said notice was communicated to the Attorney General through the Solicitor General; and **three**, the plaintiffs did not plead facts in their plaint as to when and how the served the Attorney General.

Also, I had an opportunity to peruse the plaintiffs' written submission, where the plaintiffs did not make an attempt to explain when and how they served the same to the Solicitor General.

In the circumstances, I accept the State Attorney's submission that the plaintiffs did not issue and serve the notice section 6(2) of the GPA, to the Solicitor General for and on behalf of the Attorney General. I wish to reproduce section 6(2) of the **GPA**, for the sake of clarity as follows-

"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 and the Solicitor General."

I share my brother Judge's view in **Peter Joseph Chacha vs. The Attorney General & Another** (supra) where he held that-

*"On the strength of the authority and the arguments herein above, and as held by my senior brother Hon, Utamwa, J, in the case of **Ngwabo Mwasasu & 10 others vs. TANROADS and Attorney General** (supra) the requirement to serve the Solicitor General with the copy of the notice or claim is mandatory, and its contravention cannot be served or cured by even the principle of overriding objective as*

provided under section 3A and 3B of the Civil Procedure Code [Cap 33 R.E 2019].

To sum-up the point, find that the Solicitor General was not served with the copy of the notice as required by law something which vitiates the suit. Therefore, the suit is struck out for violation of the provision of section 6(2) of the Government Proceedings Act as amended."

I also share the holding of this Court in **Mashaka Abdallah and Another vs Bariadi Town Council and 2 Others**, (Land Case No. 3 of 2020) [2021] TZHC 6534 (10 September 2021) that, the plaintiff must prove not only that he prepared a 90 days' notice but also that he served the same to the Attorney General via the Solicitor General or both as the law requires. In **Mashaka Abdallah and Another vs Bariadi Town Council and 2 Others**, this Court observed that-

*"It is also being noted that **mere composition of the address or the title the Attorney General and Solicitor General in the notice without evidence that they were served in itself cannot be proof of service**. There must be evidence that the said notice reached the Attorney General and Solicitor General respectively." (Emphasis added)*

The State Attorney for third to seventh defendants argued further that, even if, the plaintiffs issued a notice, it was in respect of 201 plaintiffs only and not for 299 plaintiffs who are suing the defendants. The plaintiffs'

advocate conceded that, the notice was issued in respect of 201 plaintiffs but he quickly submitted that amounted to misjoinder of parties. Citing several decisions, he argued that misjoinder of parties was not fatal. I truly agree that misjoinder of parties is not fatal. Order I, rule 9 of the Civil Procedure Code states that-

*9. A suit shall not be defeated by reason of the misjoinder or non-joinder of parties, and **the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it.***

Undeniably, the plaintiffs claim that they exclusively and collectively own the suit land. I construe that the plaintiffs' claim to imply that they have their cause of action is inseparable. Should that be the case, the plaintiffs can only jointly sue the defendants. There is not dispute that a person who has not issued a notice under section 6(2) of the GPA cannot competently sue the government. For that reason, if the plaintiffs can only jointly sue the defendants, failure for some of the plaintiffs to issue a notice of intention to sue vitiates the whole claim.

In the end, I sustain the first point of the preliminary objection that the plaintiffs **contravene section 6(2) of the Government Proceedings Act**. Consequently, the suit is incompetent. Since the first point of

preliminary objection is capable disposing the matter, I see no impetus to determine the second limb of the preliminary of objection. I strike out the suit for violating section 6(2) of the Government Proceedings Act. Given the nature of the proceedings, I make no order as to costs.

It is ordered accordingly.

Dated at Babati this **18th** day of **July**, 2023.



John R. Kahyoza,
Judge

Court: Ruling delivered in the virtual presence of Mr. Joseph Oleshangay for the Plaintiffs, Mr. Abdallah Issa Ally for the first and second defendants, Mukama Msalam, State Attorney for the third to seventh defendants. B/C Ms. Fatina Haymale (RMA) present.

John R. Kahyoza,
Judge

18.07.2023