

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

MISC. CIVIL APPLICATION NO. 17 OF 2023

MARTINE DANIEL AMPELI.....APPLICANT

VERSUS

SMALL INDUSTRIES DEVELOPMENT

ORGANIZATION (SIDO).....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

6/9/2023 & 13/9/2023

BARTHY, J.

This ruling emanated from the preliminary objection raised by the above-named respondents to the effect that;

That Miscellaneous Application is incompetent before this honourable court for contravening section 6(2) of the government proceedings Act [CAP 5 RE 2019].

The respondents urged the court to sustain the preliminary objection and strike out the application.

The genesis of this matter is; the applicant sought and obtained a loan facility of Tsh. 4,000,000/- with interest to the first respondent. After the loan was



issued the applicant only managed to make three installment payment to the sum of Tsh. 850,000/- and claimed to have failed to continued with payment due to theft occurred on his business.

The first respondent was said to have issued notice intending to sale the house which is the collateral to the loan facility. Hence this application before this court.

The applicant intended to sue the respondents, but owing the requirement of issuing 90 days' notice to sue the government, he sought for interim order to restrain the first respondent from selling his house pending determination of intended main suit after expiry of 90 days statutory notice.

At the hearing of the preliminary objection raised, the applicant was represented by Mr. Pascal Peter learned advocate while Mr. Anthony Rweimamu learned state attorney appeared for the respondents.


Mr. Rweimamu on his submission he argued that, the applicant claimed to have served 90 days' notice to the respondent, but it has not been stated anywhere in the affidavit supporting the application that, the applicant has served the second respondent with that notice. Also, the said notice has not been attached to the purported affidavit as the proof.



He further submitted that; the second respondent has not been served with the 90 days' notice which is a mandatory requirement under section 6 (2) of the Government Proceedings Act, Cap 5 R.E. 2019 (hereinafter referred to the Act). He cited the case of **Aloyce Chacha Kanganya v. Mwita Chacha Wambura & others**, Civil Case No. 7 of 2017, where it was held that, the requirements under section 6(2) of the Act is mandatory and must be strictly complied with.

Mr. Rweimamu was firm that, even though the instant application is on mareva injunction, it does not wait on expiration of 90 days. As it can be filed pending 90 days' notice. However, he maintained that the need to serve the said notice is mandatory.

To prop his arguments he referred to the case of **Trustees of Anglican Church Diocese of Western Tanganyika v. Bulimanyi Village Council and others**, Misc. Civil Application No. 1 of 2022.

He added that, even on the assumption that 90 days' notice has been served; counting from the date the instant application was filed on 29/5/2023, until the day of hearing of this application on 6/9/2023, the period of 90 days was said to have lapsed. Therefore, the statutory impediment of 90 days is no longer against the applicant. 

He was firm that the application at hand is overtaken by events. He therefore made reference to the case of **Magreth Nuhu Halimeshi v. Kigoma Ujiji Municipal Council & others**, Misc. Land Application No. 17 of 2021 where it was held that, legal impediment is on 90 days' notice, upon its expiry the application is then overtaken by events.

In the cited case above, the court was faced with an akin situation, where 90 days' notice had expired before the application for mareva was determined. Hence, the application was dismissed as there was no more impediment.

On reply submission Mr. Peter contended that, he is aware of the requirement of section 6(2) of the Act. He added that, the said section is solely based on the case that is filed before the court by way of the plaint. He added that, the present matter is mareva injunction which requires dispensation with 90 days' notice.

He was also firm that there was no need to attach copy of 90 days' notice to this application, since there is no law which specifically set that requirement. Thus, he claimed there was no law which has been violated.



He then claimed that the authorities cited by the respondents were not relevant to the instant matter.

Responding the argument that the application has been overtaken by events; Mr. Peter stated that the preliminary objection was raised without proper notice to the applicant. He was of the view that the preliminary objection raised lacks merits and should be overruled.

On rejoinder submission Mr. Rweimamu essentially reiterated his submission in chief.

Having gone through the parties' rival submission, the sole issue for my determination is whether the preliminary objection raised has merits.

Generally, mareva application emanates from the common law remedies as it was decided the famous case of **Mareva Compania Naviera SA v. International Bulkcarriers SA** [1980]1All ER 213, where the court cautiously considered the order of freezing an asset subject to the anticipatory case.

Its inception in Tanzania was through section 2(3) of Judicature and application of laws Act Cap 358 R.E2019



In the present matter, due to the preliminary objection raised Mr. Rweimamu was of the view that the application is incompetent not only for failure to serve the second respondent with 90 days' notice, but also the application was said to have been overtaken by events, for 90 days have already expired.

The application for mareva injunction is preferred to maintain assets where there is legal impediment.

Generally, there must be no pending case, but when cause of action arise, with the urgency to resolve matter before instituting a civil suit, the applicant has to seek for the interim order.

The practice has been underscored by several decisions such as **Magreth Nuhu Halimeshi v. Kigoma Ujiji Municipal Council & others** (supra) **Tanzania Sugar Producers Association v. The Ministry of Finance of the United Republic of Tanzania and Another**, Miscellaneous Civil Case No. 25 of 2003 (unreported), **Issa Selemani Nalikila and 23 Others v. Tanzania National Roads Agency and Another**, Miscellaneous Land Application No. 12 of 2016 (unreported), **Abdallah M. Maliki and 545 Others vs. Attorney General**, Miscellaneous Land Application No. 119 of 2017 (unreported) to mention but few. Again, in the case of **Daud Makwava Mwita v. Butiama District**

Commissioner and another, Misc. Land Application No. 69 of 2020, High Court at Musoma held that;

Mareva Injunction may be applied where an applicant cannot institute a law suit because of an existing legal impediment for instance where the law requires that a statutory notice be issued before a potential plaintiff can institute a suit.

In the instant matter Mr. Rweimamu claimed that the applicant has not served the second respondent with a 90 days' notice. However, Mr. Peter maintained that it was not the requirement of the law to serve the respondent with the notice on mareva application.

Before this court the applicant has prayed for the restraint order to order the first respondent to sale the house of the applicant, pending expiry of 90 days' notice which it was claimed to have been served the second respondent.

Clearly going through the affidavit in support of the application, it neither states that the applicant has served the second respondent with the said notice nor he has attached the said notice to prove its existence.

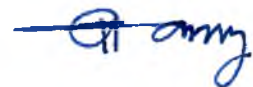


Mr. Peter on his submission he was firm that there is no law which requires the notice to be attached to the application or being served pending application of this nature.

It is the requirement of the law under section 6(2) of the Act that, before instituting any suit against the government, there must be 90 days' notice issued. Failure of which renders the suit incompetent.

Indeed, mareva application is not among the matters covered with the requirement of section 6(2) of the Government Proceedings Act, rather it intends to grant an interim order pending filing of the suit after the lapse of 90 days impediment to the applicant. See the case of **Daniel Zakayo Sule and 2362 others v. Hon. Attorney General and 3 others**, Land Application No. 71 Of 2022, High Court at Tanga.

With respect, I do not agree with Mr. Peter that the notice is not crucial to be attached in the application, in order to avoid abuse of the court's process there ought to be evidence that indeed the applicant had already issued 90 days' notice and proof ought to be attached to the affidavit in support of the application.



Failure to issue the notice or serve the government and attach the said notice to the application, it will clearly imply that there is no legal impediment which would have justified the applicant to prefer for mareva application.

In the absence of the same or proof of its existence it will indicate that the applicant has no intention to sue the government after the expiry of 90 days. Therefore, should the court grant the sought interim order, it is likely to be perpetual without the possibility of the applicant instituting any suit.

The importance of granting interim order in mareva application is to place parties in the same position pending filing of the main suit. As decided in the case of **Trustees of Anglican Church Diocese of Western Tanganyika v. Bulimanyi Village Council and others** (supra) where the court held that;

The principles in temporary injunction applications are applicable to Mareva Injunctions because both have the same purpose of holding the parties to the same position before the suit is filed.

A handwritten signature in blue ink, appearing to read "G. Amny", is written over a horizontal line.

I therefore find that notice to the government was crucial to be issued to the second respondent and to be attached in the affidavit in support of mareva application.

Being mindful of the argument of Mr. Rweimamu that, considering that the period of 90 days has lapsed, then the impediment against the applicant do not exist anymore. In a way I agree with Mr. Peter that this ground of preliminary objection was not properly raised before this court as it required to notify the other party by having it properly filed before the court.

For the foregoing reasons, with respect to preliminary objection raised by the respondents, I find it to be meritorious. I therefore proceed to strike out this application with costs.

It is so ordered.

Dated at Babati this 13th September 2023.



G. N. BARTHY

JUDGE

Delivered in the presence of the applicant in person, Mr. Pascal Peter the advocate for the applicant and Mr. Anthony Rweimamu learned state attorney for the respondent.