

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB – REGISTRY OF MANYARA

AT BABATI

LAND CASE NO. 26608 OF 2023

1. **ALLY GIDOBAT** }
2. **ENOCK GIRGIS** } **PLAINTIFFS**

VERSUS

1. **HANANG’ DISTRICT COUNCIL** }
2. **DISTRICT EXECUTIVE DIRECTOR OF HANANG’**..... }
3. **DISTRICT COUNCIL** } **DEFENDANTS**
4. **THE ATTORNEY GENERAL** }

RULING

29th May and 20th June 2024

MIRINDO, J.:

Ally Gidobat and Enock Girgis have sued the defendants for compensation from the second defendant, Hanang’ District Council in relation to a disputed land measuring twenty acres situated at Hombap in Katesh Township in Manyara Region. In their seventh and eighth paragraphs, they pleaded that a ninety-days

statutory notice to sue the Government had been duly issued to the defendants. On 28 February 2024, they obtained leave of this Court to amend their plaint, duly filed it in court and annexed the ninety-days statutory notice. Thereafter, the defendant's filed a joint written statement of defence in which they raised two objections on points of law. The first objection is on the plea of limitation of time and the second on the absence of the statutory notice of intention to sue the Government. The objections were argued by way of written submission.

Before dealing with the plea of limitation, this Court must satisfy itself on the presence of the Defendants in this suit. For this reason, I will first deal with the second point of objection.

The defendants argued that the suit is defective for want of a statutory notice of intention to sue the government. It is the defendants' argument that no statutory notice was ever served to the defendants; an omission which contravenes the provisions of section 6(2) of the Government Proceedings Act [Cap 5 RE 2019] read together with the provisions of section 190 (1) of the Local Government (District Authorities) Act as amended by section 31 of the Written Laws (Miscellaneous Amendments) Act, 1 of 2020. As this suit is defective, the defendants asked the Court to strike it with costs. For unknown reasons, there is no response from the Plaintiffs on this point of objection.

I am left to determine this objection from the defendants' view. On the face of the statutory notice attached to the amended plaint, there is no proof of service to the Attorney General. Section 190 (1) (a) of the Local Government (District Authorities) Act as amended in 2020 directs that a-ninety days' notice be served must before the institution of the suit be issued and served upon the local government authority and its copy be served to the Attorney General and Solicitor General. I understand that service of notice may or may not be a pure point of law but in the circumstances where there is no purported service of the notice on the face of the notice, the question of service becomes a point that can be determined at any stage of the proceedings. As this was a condition precedent for suing the defendants, I uphold the second point of preliminary objection. I hold that the suit was prematurely filed without substantial compliance with the requirements of service of statutory notice to sue the defendants.

At this stage it is unnecessary to consider the plea of limitation. There are no proper defendants before me. Besides, the plea of limitation may or may not be a pure point of law as emphasized by the Court of Appeal in **Zubedabai Nurdin Khanbai v Ethiopian Airlines**, Civil Appeal 133 of 2016 and **Safia Ahmed Okash v Ms Sikudhani Amir and Others** , Civil Appeal 138 of 2016)

[2018] TZCA 30; and **Ibrahim Abdallah v Selemani Hamisi** (Civil Appeal 314 of 2020) [2022] TZCA 43 to mention but a few decisions.

For these reasons, I strike out the suit as incompetent. The plaintiff is at liberty to bring a fresh suit after complying with the law regarding statutory notice to sue the local government authority and subject to the law of limitation. Costs be borne by the plaintiffs.

DATED at BABATI this 9th day of June, 2024




F.M. MIRINDO

JUDGE