

**IN THE HIGH COURT OF TANZANIA  
MUSOMA SUB- REGISTRY  
AT MUSOMA**

**LAND CASE NO. 3939 OF 2024**

**REFERENCE NO. 202402271000003939**

**BETWEEN**

**RAMADHANI SEMBEJO MONGU ..... PLAINTIFF**

**VERSUS**

**MUSOMA MUNICIPAL COUNCIL ..... 1<sup>ST</sup> DEFENDANT**

**MARTINE KOROGO ..... 2<sup>ND</sup> DEFENDANT**

**ANTHONY BAGALA ETUTU ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

19<sup>th</sup> & 20<sup>th</sup> June, 2024

**M. L. KOMBA, J.:**

Plaintiff's claim over defendants is a piece of land estimated to be ten (10) acres which is located at Gengeni street, Makoko ward within Musoma Municipal. The land is bordered by Okomu at north, Grace at the East side, Mount Kisibwi is found on West and at Southern part there is Binagi. As picked from plaint, the land was inherited from his parents who cleared virgin land in 1955 till 2019 when the 1<sup>st</sup> defendant trespassed and allocated land to 2<sup>nd</sup> and 3<sup>rd</sup> defendants.

In due course of preparation of hearing on 09/04/2024 1<sup>st</sup> and 4<sup>th</sup> defendants filed Preliminary Objection on Points of law that one; the plaintiff has declined display of the jurisdiction of this court as per Order VII Rule 1 (f) of the Civil Procedure Code [Cap. 33 R.E. 2019] (the Civil Code); and two, the suit contravened section 6 (2) of the Government Proceedings Act, Cap 5.

As PO was admitted, parties agreed to argue the preliminary points as raised. 1<sup>st</sup> and 4<sup>th</sup> defendants were represented by Mr. Anesius Kamugisha. When given time to argue the registered PO, he opted to argue just one point of law about compliance of section 6(2) of the Cap 5 believing the point will quench his thirst.

Mr. Kamugisha was brief while warning this court on jurisdiction as the matter is filed contrary to section 6 of Cap 5. It was his submission that it is the legal requirement that before the suit against Government is filed, the intended party who wish to sue the Government has to notify the Responsible Ministry or Office and then he is required to serve copy of said notice to Attorney General and Solicitor General.

He informed this court that he has read the pleadings in association of this suit and as per requirement of the law, notice was supposed to be

addressed to Musoma Municipal Council and copy to Attorney General and Solicitor General but there is no proof on whether the 1<sup>st</sup> and the 4<sup>th</sup> defendant were given notices, he jagged. From the plaint he submitted that only Solicitor General was given copy of notice and no copy were sent to Attorney General. basing on those materials, he was of the opinion that the suit is prematurely filed and pray it be struck out so that plaintiff may follow proper procedure.

Mr. Makongo who represented the second defendant submitted that he received a notice which was annexed to plaint. The notice was addressed to the 1<sup>st</sup> defendant and a hand written copy to Solicitor General. It was his prayer if the preliminary objection will be sustained, he prays for costs as the plaintiff has a tendency of filing many cases, he believes this is due to the fact that plaintiff is not paying court fee. Same position was submitted by the 3<sup>rd</sup> defendant who appeared in person.

The plaintiff started with a complain that the suit is delayed and the 1<sup>st</sup> defendant is causing destruction on the disputed land. About the filed PO he was very brief that he served the 90 days' notice.

During rejoinder, Mr. Kamugisha who appeared for the 1 and 4<sup>th</sup> defendant he maintained his submission in chief that the matter was filed prematurely and prayed it be struck out.

The issue which am called upon to decide is governed by law and, is about compliance. State Attorney noted non-compliance of the provision of law which is section 6(2) of Cap 5. For easy of reference, I reproduce it as follows;

*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.***  
*(Emphasis is mine).*

As captured from the front page, the plaintiff in this suit is suing the Government institution, Musoma Municipal Council and the fourth defendant was joined a necessary party as per section 6 (3) of Cap 5. There is no dispute that the notice was issued to 1<sup>st</sup> defendant and the 2<sup>nd</sup> and the 3<sup>rd</sup> defendant (although the law did not necessitate service of notice to the second and third defendant). The fourth was not served with

the copy and it is the office which specifically was mentioned in the above quoted section. They did not receive any copy of the said notice served to first defendant. To him the suit was filed premature, that means there is uncomplete process. I join hand with the State Attorney that the suit was filed before time, that is, before service to Attorney general was affected.

I peruse the plaint and found the plaintiff annexed the notice which was addressed to Musoma Municipal Council and copied to Solicitor General. Attorney General was not served with a copy of notice the fact which is contrary to the above cited law as interpreted by this court in **Evetha Mosha vs Arusha City Council & Two Others**, Civil Case No. 14 of 2021.

*'....the law states clearly that both the Attorney General and Solicitor General should be served with the said 90 days' notice. Had it been that it is not necessary to serve the notice to both, then the legislature would have stated that the 90 days' notice could be served to either the Solicitor General or Attorney General...failure to comply with the law mistakenly cannot be an excuse and justification to ignore the same...violation of section 6 (2) of the Government Proceedings Acts fatal.'*

Having the interpretation of this court in precedent and in the absence of proof of service by the plaintiff, I shall abide to the position of this court on

the subject without any further modification. Both the Attorney General and Solicitor General must be served. There is no proof, in the instant case that the Attorney General was served.

What I can say is that, the Preliminary Objection has merit and is hereby uphold. I proceed to strike out the plaint for want of fulfillment of the requirement of the law as in the indicated statute and precedent. I do so with costs.

Right of appeal explained.



*NK*  
**M. L. KOMBA**  
**Judge**  
**20<sup>th</sup> June, 2024**

Ruling delivered in chamber before Mr. Kitia Toroke, State Attorney for 1<sup>st</sup> and 4<sup>th</sup> defendant, and before 3<sup>rd</sup> defendant who appeared in person and plaintiff also appeared in person.

*NK*  
**M. L. KOMBA**  
**Judge**  
**20<sup>th</sup> June, 2024**