

IN THE HIGH COURT OF TANZANIA

MUSOMA SUB- REGISTRY

AT MUSOMA

LAND CASE NO. 25 OF 2022

REFERENCE NO. 20221107000459616

BETWEEN

SALOME SEMWENDA PLAINTIFF

VERSUS

MUSOMA MUNICIPAL COUNCIL 1ST DEFENDANT

ATTORNEY GENERAL 2ND DEFENDANT

RULING

01st & 03rd July, 2024

M. L. KOMBA, J.:

Plaintiff's claim over defendants is surveyed land located at Bweri with identity of plot number 713 and Title number 563444. From the plaint, it was alleged that plaintiff was ordered by the 1st defendant to return title deed or to remove her house form the said plot. Following that harsh order/directives she decided to file a suit to this court claiming to be declared a lawful owner of the plot no 713 Bweri.

In due cause of preparation of hearing on 18/06/2024 1st and 2nd defendants filed Preliminary Objection on Point of law that; the suit is bad

in law and incompetent for contravening the mandatory provision of section 6 (2) of the Government Proceedings Act, Cap 5 thus this court lacks jurisdiction to entertain it.

As PO was admitted, parties agreed to argue the PO as raised. 1st and 2nd defendants were represented by Ms. Neema Mwaipyana, A senior state Attorney while plaintiff stood solo without representation.

Ms. Mwaipyana was brief on jurisdiction of this court as the matter is filed contrary to section 6 of Cap 5. From the plaint it was her submission that there is no paragraph in which plaintiff plead that she served the Attorney General. Notice which is attached was addressed to Land Commissioner and Musoma Municipal and the copy was sent to Solicitor General. She said the Attorney General was not served with a copy as per section 6 (2) of Cap 5 which direct no suit against the Government shall proceed unless the notice is issued and copy is served to relevant authorities. She said, the plaintiff failed to prove that Attorney General was served with a copy of notice and therefore the case is pre-mature. She prayed it be struck out with costs as was in **Petro Potini Peter vs Mbulu Town Council and 2 Others**, Civil Case 20 of 2023 HC Babati at page 6 and 7.

On her side, plaintiff informed this court that she remembers she followed all procedures and lawyers of the Municipal signed as per attachment "G" and "I" of the plaint. She wonders why the Objection was filed this late as the suit started in 2022 and Municipal council was aware of the suit. On services copy of notice as per law it was her submission that solicitor General received notice that's why they prepared WSD which was filed by Attorney General. it was he stance that Solicitor General was supposed to share the document with other Offices. She prayed the PO to be overruled and case to continue on merit.

While rejoining Ms. Mwaipyana maintained that there is no proof of service of notice as per law. Further it was her submission that PO on jurisdiction of the court may be raised at any time while insisting that parties are bound by their own pleading and the record in the Plaint show only Solicitor general was served with summons and not the Attorney General.

I am called upon to decide if the Preliminary Objection has merit. The issue raised and 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).

In the case at hand, the plaintiff is suing Government Institutions, Musoma Municipal Council and the Attorney General as a necessary party as per section 6 (3) of Cap 5. There is no dispute that the notice was issued to 1st defendant as submitted by the plaintiff and seen from plaint. The second defendant was not served with the copy and it the office which specifically was mentioned in the above quoted section. State Attorney was of the position that this court lacks jurisdiction to entertain this suit as procedures were not followed.

I examine the plaint and found the plaintiff annexed the notice which was addressed to Musoma Municipal Council and copied to Solicitor General and Attorney General but there is no proof if the latter received her copy. That is contrary to the above cited law which has been interpreted by this court in several cases to mention the few are, **Petro Potini Peter vs Mbulu**

Town Council & 2 Others (supra), and **Bwire Nyamwero Bwire and Another vs National Microfinance Bank and 5 others**, Land Case No. 21 of 2022 and **Evetha Masha vs Arusha City Council & Two Others**, Civil Case No. 14 of 2021. In the latter case it was said;

'.....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 hold 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 and that means the suit was filed before time, that is, before service of notice to Attorney General.

I find the Preliminary Objection has merit and I 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
03rd July, 2024

Ruling delivered in chamber before Ms. Neema Mwaipyana and Mr. Abdallah Makulo, State Attorneys for 1st and 2nd defendants, and before the plaintiff who appeared in person.

NK
M. L. KOMBA
Judge
03rd July, 2024