

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

LAND CASE NO.127 OF 2020

CHARLES MIKERA BENASIUS..... PLAINTIFF

VERSUS

THE COMMISSIONER FOR LAND.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

REGISTRAR OF TITLES.....3RD DEFENDANT

KINONDONI MUNICIPAL COUNCIL.....4TH DEFENDANT

PEREUS NORBERT ALIAS PEREUS RWEZAURA....5TH DEFENDANT

RULING

Date of Last Order:08.07.2021

Date of Ruling: 13.08.2021

OPIYO, J.

Kinondoni Municipal Council, being the 4th defendant here in above, through the services of her learned Solicitor, Leah Kimaro, has objected the instant suit on point of law that, the case is bad and contravenes the provisions of the Local Government (Urban Authorities) Act and its amendment under the Written Laws Miscellaneous Amendment) Act, No.1 of 2020. It was insisted in her written submissions in support of the

preliminary objection that, the case is premature for being instituted prior to issuance of a 90 days' notice to the 4th defendant subject to section 33 (1) (a) of the Written Laws Miscellaneous Amendment) Act, No.1 of 2020, which amended section 106 of the Local Government (Urban Authorities) Act, Cap 288 R.E 2002. The said provision of law states that;-

"No suit shall be commenced against an urban authority

a) Unless a ninety days' notice of intention to sue has been served upon the urban authority and a copy thereof to the Attorney General and the Solicitor General and

b) Upon the lapse of the ninety-day's period for which the notice of intention to sue relates."

She supported her arguments by the decision of this Court by Maige J in **Lidey M. Kibona versus Godfrey Conrad Mosha and 4 Others, Land Case No. 142 of 2018, High Court of Tanzania (Land Division)**, where it was observed that, it is elementary position of the law that, for the suit against the government to stand it must be preceded by 90 days statutory notice.

Miss Kimaro went on to argue that, the notice so used as shown in annexure GF-5 was issued on the 1st of August 2017 before the coming into operation of the new above cited. Hence the attached notice has not complied with the mandatory requirements of the law and therefore, the objection should be allowed.

In reply, the learned Advocate for the plaintiff Mr. Augustine Mathern Kusalika maintained that, the case has been properly filed as per the requirements of the law. The 4th defendant was served notice as shown by annexure GF-5. The case was then instituted after the 30 days' notice had expired vide Land Case No. 301 Of 2017. Unfortunately, the previous case was later withdrawn by the plaintiff with leave to refile which was granted by this court, hence the case at hand was instituted as it stands now. He insisted that the cases cited by the learned Solicitor for the 4th defendant are all distinguishable with the matter at hand as it is clear that the notice was served to the defendant before the case was filed in this court.

Having appreciated the arguments from both parties through their respective counsels, the issue for determination in this matter is whether the objection has merit or not. The learned Solicitor for the 4th defendant insisted that, the current case was filed against the mandatory provisions of section 33 (1) (a) of the Written Laws Miscellaneous Amendment) Act, (supra). As for Mr. Kusalika, his arguments relied on annexure GF-5 to maintain that, the notice was dully served to the 4th defendant. He further insisted that, this case was filed as second bite after the same was withdrawn and the plaintiff was granted leave to refile by this court. My findings however are inline with the arguments of Ms. Kimaro that, the suit has been filed prematurely. The mandatory requirement of giving a 90 days' notice to the 4th defendant was not complied with, **{see section 33 (1) (a) of the Written Laws Miscellaneous Amendment) Act, supra}**. The notice which has been annexed in the plaint was overtaken by events after the amendments so made in section 106 of Local

Government (Urban Authorities) Act, (supra). The same was issued on 1st of August 2017 while the instant suit was filed the 30th day of July 2020 when the new law was already in operation, hence, a new notice in compliance of the changes in the law has to be issued to the defendant in question.

In addition to that observation, I did note that, the plaintiff's counsel maintained that, the said notice is still operational for reasons that, the case was filed within the operational requirements of the said notice (vide Land Case No. 301 of 2017) but was withdrawn while the court allowed the plaintiff to refile the same, hence the instant case. With due respect, these arguments by the plaintiff's counsel in his submissions are unfounded. The records available show that, Land case No. 301 of 2017 was struck out, by Awadh J. (as he then was) after being found that the same was filed prematurely. This followed an objection against it from 1st and 2nd defendant in this case (also 1st and 2nd defendant in the former case), who joined hand with the Registrar of Tittle who was the 3rd defendant in the said case. Therefore, there was no such an order allowing the plaintiff to refile his case. Even if there was leave to re-file, the same is usually subjected to other conditions surrounding filing the suit. Leave to refile does not waive the other operational conditions as a matter of general rule.

This being the case, I have no option other than to sustain the preliminary raised by the 4th defendant, owing to the non-compliance to the mandatory provisions of the law regarding the procedures of suing the 4th

defendant, see **Lidey M. Kibona versus Godfrey Conrad Mosha and 4 Others.**

Eventually, the case is hereby struck out. No order as to costs.



A handwritten signature in blue ink, appearing to be "M.P. OPIYO", written over a horizontal line.

**M.P. OPIYO,
JUDGE
13/08/2021**