

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND CASE No. 214 OF 2020**

**TERESA SANKY RIGONI..... PLAINTIFF**

**VERSUS**

**PETER BREUER.....1<sup>ST</sup> DEFENDANT**

**MADINA JUMA MVUMBA.....2<sup>ND</sup> DEFENDANT**

**LATIFA KASSIM ALLY.....3<sup>RD</sup> DEFENDANT**

*Last order:9/9/2021*

*Ruling:01/11/2021*

**R U L I N G**

**MANGO, J.**

The Plaintiff instituted this suit seeking declaratory order that she is the lawful owner of Plot No. 4 and 31 Block "B" Ununio Low Density area. On 9<sup>th</sup> September 2021, the Court noted that there is no express cause of action against the defendants as the Plaintiff's claim against the defendants suggests existence of double allocation of the disputed land. The Court raised the issue on whether the plaint discloses any cause of action against the defendants. And whether the suit is competent before this court for failure to join the Land allocating authority and the Attorney General as necessary parties. Parties were invited to submit on the two issues. By leave of the Court parties submitted on the two issues by way of written submissions.

Submitting on the two issues raised by the Court, Mr. Howard Macfarlane Msechu, learned counsel for the Plaintiff argued that the Plaintiff discloses a cause of action against the Defendants. He referred this Court to Paragraph 4 of the Plaintiff in which the Plaintiff alleges that, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are trespassing into the disputed land claiming to be the lawful owner of Plot No. 31 which was allocated to the Plaintiff. The learned counsel conceded that nature of the cause of action in this suit dictates joinder of the Commissioner for Lands and the Attorney as necessary party to this suit. He submitted that, this suit was filed prematurely prior to expiry of the 90 days statutory notice issued to the relevant authorities because the dispute required immediate intervention by the Court.

He submitted further that non joinder of parties is not fatal as Order I Rule 9 of the Civil Procedure Code, [Cap 33 R. E. 2019] provides that no suit shall be defeated by reason of misjoinder and non-joinder of parties. He therefore prayed to amend his Plaintiff in order to join the Commissioner for Lands and Attorney General as necessary party to the suit as the 90 days statutory notice has already expired.

Mr. Karol Valerian Tarimo and Mr. Hassan Chande Hame learned advocates for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent conceded that the nature of the dispute in this case compels joinder of the Commissioner for Lands as a defendant to this suit and the Attorney General as the necessary party. They prayed that the Plaintiff be struck out for non-joinder of a necessary parties.

In his rejoinder the Plaintiff reiterated his submission in chief.

I have considered submissions by both parties and the Plaintiff. According to the Plaintiff, the dispute was caused by the decision of the Commissioner for Lands communicated to the parties to this case via a letter dated 19<sup>th</sup> September

2018. In his letter, the Commissioner for Lands ordered the Plaintiff to surrender one of two the Plots contained in Certificate of title No. 36859 as compensation to the family of Madina Juma, the 2<sup>nd</sup> defendant. The reason of the Commissioner's decision as reflected in the mentioned letter is that, the late Madina Juma who was the original owner of the suit land prior to its survey, was not compensated as required by the law. In paragraph 12 of the Plaintiff, the Plaintiff referred to the decision by the Commissioner as illegal decision. The plaintiff indicates that the suit land comprises of two Plots, Plot No.4 and Plot No. 31. The said letter does not indicate which Plot was to be allocated to the family of the 2<sup>nd</sup> defendant. Paragraph 13 of the Plaintiff indicates that the 3<sup>rd</sup> defendant trespassed into the Suitland. In such circumstances, I find the Plaintiff to have established a cause of action against the 2<sup>nd</sup> defendant as the Court will need to determine whether the second defendant trespassed into the suit land or not.

However, this Court finds the suit to be incompetent before it for failure to join as necessary party, the Commissioner for Lands and the Attorney General. I hold so due to the fact that the alleged trespass to the suit land has its roots in the decision of the Commissioner in his efforts to resolve the dispute between the Plaintiff and the family of the 3<sup>rd</sup> defendant administratively. Facts contained in the Plaintiff establishes that technically the suit land has been double allocated. It has been allocated to the Plaintiff and later, to the family of the 3<sup>rd</sup> defendant as Compensation for land acquisition. In such circumstances, the land allocating authority need to be party to the case. The law, section 6(2) of the Government Proceedings Act, [Cap. 5 R.E 2019] provides expressly on the requirement to issue a 90 days' notice prior to institution of a suit. The section reads: -

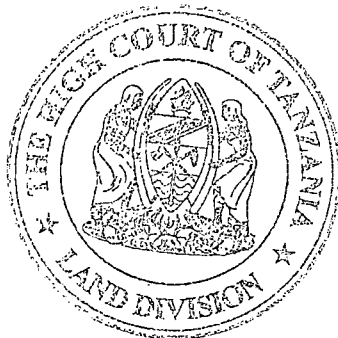
*No suit against the Government shall be instituted and heard unless the claimant previously submits to the Government Minister, Department or officer concerned a notice of not less than ninety days of his intention to sue the Government, specifying the basis of his claim against the Government and he shall send a copy of his claim to the Attorney General and the Solicitor General.*


As to when the suit should be instituted section 6(3) of the Government Proceedings Act reads: -

*All suits against the Government **shall after the expiry of the notice be brought against the Attorney General** and a copy of the **Plaint** shall be served upon the Solicitor General, Government Ministry, Department or Officer that is alleged to have committed the civil wrong on which the civil suit is based. (emphasis added)*

The Plaintiff admitted in his submission that he has instituted this suit prior to the expiry of the 90 days statutory notice period. He also notified the Court that as of now, he has already issued a statutory notice to sue the land allocating authority and 90 days has already lapsed. In such circumstance, I find it proper to struck out this incompetent suit which was instituted prematurely prior to the expiry of the statutory notice and allow the plaintiff to institute her case properly.

Given the nature of the dispute between parties I award no costs.



  
**Z. D. MANGO**  
**JUDGE**  
**01/11/2021**