

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

LAND CASE NO. 125 OF 2020

**MAMU YASSON MAMU T/A
BEST CLEAN KUKU BORA FOOD PROCESSORS.....PLAINTIFF**

VERSUS

HUSSEIN TOGOLO.....1ST DEFENDANT

TATU NYAMONGA.....2ND DEFENDANT

RAMADHANI MAPUNDA.....3RD DEFENDANT

VODP COOPERATIVE SOCIETY.....4TH DEFENDANT

Date of Last Order:3/9/2021

Date of Ruling:11/10/2021

R U L I N G

MANGO, J.

The Plaintiff deals with Poultry keeping and slaughtering business at Chanika area, Zingiziwa Ward, Ilala Dar es salaam. She instituted this case against the defendants alleging that the first, second and third defendants are illegally trespassing into the suit premises with intent to evict the Plaintiff, demolish the premises and consequently alienating the plaintiff's trading properties and infrastructure. She prayed for the following orders: -

- i. Permanent and perpetual injunction restraining the Defendants, assignees, workmen, their tenants or their**

- agents from interfering with the plaintiff's peaceful enjoyment of the suit premises;
- ii. **Payment of Tshs 320,000,000/- being specific damages for the amount incurred for building and renovation for the poultry industry equipment;**
 - iii. **Payment of the mesne profit for unlawfully occupying the demised premises leased by the Plaintiff business at the rate of Tshs. 600,000/- per month from the date of demolition to the final disposal of the suit;**
 - iv. **Payment of Tshs. 63,070,000/- being the value of machineries, stock, documents destroyed and confiscated from the Plaintiff;**
 - v. **Payment of loss of Gross profit to the Plaintiff at the rate of projected profit of Tshs 95000/- per day from the date of demolition to the date of final determination of the suit.**
 - vi. **Costs of the suit; and**
 - vii. **Payment of General damages.**

In their written statement of defence the first, second and third defendant denied most of the Plaintiff's claims and raised a preliminary objection on point of law containing the following points:

- i. **That the Plaintiff has no cause of action against the first, second and third defendants for want of suing the proper party;**

- ii. The suit is incompetent for contravening the mandatory provisions of section 33(1)(a) of the Local Government (Urban Authorities) Act No. 1 of 2020 [Cap. 288 R. E. 2002].**
- iii. The suit is incompetent for contravening section 25(a) of the Written laws (Miscellaneous Amendments Act), 2020.**
- iv. That the suit is an abuse of Court Process;**
- v. That the suit violates the mandatory provisions of Order VII Rule1(f) of the Civil Procedure Code (Cap 33 R. E. 2019).**

The Preliminary objection was heard ex-parte following non-appearance of the Plaintiff and his advocates for two consecutive dates when the matter was scheduled for hearing. During hearing, the Defendants' counsel Mr. Joseph Sang'udi dropped the third, fourth, fifth and sixth points of objection. He submitted only on the first and second points of objection.

Submitting on the first point of objection, the learned advocate argued that, the Plaintiff does not disclose any cause of action against the first, second and third Defendants. He referred this Court to paragraphs 5, 6, 7 and 8 of the Plaintiff which contain facts constituting the cause of action and argued that the same do not disclose any cause of action against the defendants. He explained that paragraph 5 of the Plaintiff concerns a notice of demolition of the structures constructed in the suit land. The notice indicates that it was issued by the Ward Executive Officer of Zingiziwa ward and not the defendants. Paragraph 6 indicates that the Plaintiff's demand notice was addressed to Ilala Municipal Council. Paragraph 10 of the Plaintiff indicates that the defendants are employees of the Ilala Municipal Council and they were implementing the work assigned to them by their employer. He argued further that, any destructions alleged to have caused by the

Defendants were caused in the course of implementation of the duties assigned to the Defendants by their employer. Thus, the Plaintiff has no cause of action against the defendants, his cause of action, if any, should be pursued against Ilala Municipal Council.

On the second limb of objection, the Defendants Counsel argued that, the Plaintiff has contravened section 33(1) of the Local Government (Urban Authorities Act) No. 1 of 2021 which requires the Plaintiff to issue 90 days' notice of intention to sue an urban Authority. He argued further that, the notice needs to be served to the relevant authority and the Attorney General. To support his arguments, he cited the case of **ABDALLAH OMARI NDOGONDOGO AND OTHERS VERSUS SOAP AND ALLIED INDUSTRY AND OTHERS**, Land Case No. 78 of 2020 in which my brother, Hon. Mgeta, J. held that suing a Local Government authority without joining the Attorney General is fatal. The Defendants counsel prayed that the preliminary objection be sustained with costs.

I agree with the counsel for the first, second and third defendants that, before instituting a suit against Government authorities, the Plaintiff need to issue a 90 days statutory notice to the relevant authority and serve the same the Attorney General and the Solicitor General. And that, the Attorney General must be included as a necessary party to all civil suits against Government institutions. Such conditions for instituting a suit against a government institution are expressly provided under section 6(2) and 6(3) of the Governments Proceedings Act, [Cap. 5 R.E 2019]. However, I find the second limb of objection to be irrelevant to this case as the suit before me does not include any government institution and there is

no prayer that has been made to include any government institution in this suit.


On the first point of objection that the Plaintiff does not disclose any cause of action against the first, second and third defendant I agree with the Defendant's advocate that, the law, Order VII Rule 5 of the Civil Procedure Code, [33 R.E 2019] requires the Plaintiff to show that the defendant is liable to be called upon to answer the Plaintiff's demands in other words to show cause of action. The term cause of action has been defined in a number of cases including the case of **STANBIC FINANCE TANZANIA LTD VERSUS GIUSEPPE TRUPIA AND CHIARA MALAVASI [2002] TLR 221** where cause of action was defined to mean facts which gives a person a right to judicial redress or relief against another as found in the Plaintiff and its annexures. Applying the legal requirements to the facts in this suit, I find the Plaintiff to have failed to establish any cause of action against the first, second and third Defendants. In holding so, I considered all paragraphs of the Plaintiff that contains facts establishing the cause of action in this suit. As mentioned by the defendant's counsel, under paragraph 5 of the Plaintiff, the Plaintiff alleges that he was served with a public notice. The Public notice which is attached to the Plaintiff as Annexure V1 indicates that it was issued by the Zingiziwa Ward Executive Officer. Although the name of the second defendant appears as the person who signed the Public notice, she did not sign the same in her personal capacity but as the Zingiziwa Ward Executive Officer. In such circumstances, the Plaintiff cannot allege to have a cause of action against the second Defendant in this case. If the Plaintiff has any concern on the public notice he ought to

pursue the same against the authority which issued the notice and not the officer who signed the notice on behalf of the authority named therein.

In addition, the Plaintiff acknowledged in paragraph 6 and 7 of the Plaint that she issued a demand notice and wrote a letter to the first, second and third defendants' Employer Ilala Municipal Council concerning the demolition of the suit premises allegedly effected by the mentioned defendants. This establishes that, the alleged demolition was not effected by the defendants in their personal capacities. Such facts establish, that the Plaintiff has no cause of action against the Defendants in their personal capacities. If he has any cause of action, it should be against the authorities that were involved in the alleged demolition of the suit premises.

For that reason, I hereby struck out the Plaint for failure to disclose a cause against the defendants in this case.




Z. D. MANGO
JUDGE
11/10/2021