

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 278 OF 2022

(Arising from the High Court of Tanzania, Land Division in Land Case
No. 145 of 2020 by Hon. Mgeyekwa, J)

LULUU GENERAL COMPANY LTD1ST APPLICANT

ISSA BADRU ALLY 2ND APPLICANT

VERSUS

TANZANIA COMMERCIAL BANK RESPONDENT

RULING

Date of last Order: 14.06.2022

Date of Ruling: 14.06.2022

A.Z.MGEYEKWA, J

On 10th June, 2022 the applicant herein, instituted this application against Tanzania Commercial Bank. The application is made under the certificate of urgency through Chamber Summons accompanied by an affidavit. The application was brought under section 95 and Order XXXVII

Rule 1 (a) and 2 (1) and section 68 (c) and (e) of the Civil Procedure Code Cap.33 [R.E 2019]. The application was supported by an affidavit deponed by Issa Budra Ally, the Director of the applicant. The respondent opposed the application by filing a counter-affidavit deponed by Avenatha Alfred, Principal Officer of the respondent and they raised two points of law as follows:-

- 1. The suit is incompetent for contravening the Government Proceedings Act.*
- 2. That the application is incompetent for non-joinder of necessary parties.*

When the matter was placed before me for hearing on 14th June, 2022 the applicant enjoyed the legal service of Mr. Kefa Manase, learned counsel whereas the respondent enjoyed the legal service of Mr. Emmanuel Mwakyembe, learned counsel.

Submitting in support of the application, Mr. Mwakyembe was brief and straight to the point. He contended that Tanzania Commercial Bank is a public company and the law requires an aggrieved party who intends to sue the Government institution is required first to issue a 90 days notice. To fortify his submission he referred this court to section 16 of the Government Proceedings Act as amended by section 26 of the Written

Laws (Miscellaneous Amendments) Act No. 1 of 2020 and the case of **Alyoce Chacha Kenganya v Mwitwa Chacha Wambura & 2 Others**, Civil Case No. 7 of 2019 at HC Musoma (unreported). Stressing on the point of issuing a 90 days notice, Mr. Mwakyembe submitted that issuing a 90 days notice is a mandatory requirement the same cannot be waived.

With respect to the second limb of the objection, Mr. Mwakyembe was brief and focused. He contended that the application is incompetent for the non-joinder of the necessary party. To buttress his contention he cited section 25 (a) of the Written Laws (Miscellaneous Amendments) Act No. 60 of 2020. He went on to submit that upon expiration of 90 days a suit is lodged and the Attorney General is joined as a necessary party to the suit. Mr. Mwakyembe continued to submit that in the matter at hand the applicant has not joined the Attorney General. Supporting his stance he referred this court to section 6 of the Government Proceedings Act which provides that non-joinder of the Attorney General shall vitiate the proceedings in any suit.

Insisting, the learned counsel for the respondent claimed that failure to join the Attorney General renders the application incompetent. Fortifying his argumentation he cited the case of **Gladness Mr. Rogathe**

Metile (Suing as the administratrix of the estate of the late REBEKA METILI) v TIPB Bank PLC & 3 others, Land Case No.2 of 2020.

On the strength of the above submission, he beckoned upon this court to strike out the application with costs.

In reply, the learned counsel for the applicant forcefully argued that the objections are baseless. On the first limb of the objection, Mr. Kefa valiantly argued that in the circumstances at hand, the matter is brought under a certificate of urgency in order to rescue the applicant's landed property which was going to be disposed of by the respondent. He added that the applicant s wanted the intervention of this court to halt the disposition of the suit landed property. It was his view that the requirement of issuing 90 days' notice would prolong the matter and the respondent could have disposed of the suit's landed property. Mr. Kefa submitted that the applicant could not file a Mareva application because there is a pending Land Case No. 145 of 2020 before this court.

Submitting on the second limb of the objection, the learned counsel for the applicants simply argued that the omission of joining the Attorney General is not fatal and the respondent ought to have raised this objection

at the earliest opportunity, the moment when the applicants lodged the Land Case No. 145 of 2020. Mr. Kefa went on to submit that failure to raise the objection at the earliest stage means the respondent waived his rights to raise the objections. He insisted that the respondent was required to raise his objection at the time when he lodged his Written Statement of Defence. To bolster his submission he referred this court to Order 1 Rule 13 of the Civil Procedure Code, Cap.33.

In conclusion, the learned counsel for the applicants urged this court to dismiss the preliminary objections with costs.

Having digested the learned counsels' submission and the pleadings therein on the sole preliminary objection raised by the respondent's learned counsel, I am settled that the issue for consideration is *whether the preliminary objections are meritorious.*

I have opted to start with the second objection, the respondent is claiming that the Attorney General who is a necessary party was not joined in the application at hand. The learned counsel for the applicants did not submit much on this point rather he claimed that the objection was required to be raised at the earliest stage when Land Case No. 145 of 2020 was lodged before this court. In my considered view, Mr. Kefa's

argument cannot stand since this application is lodged in court separately and after two years from the date when the applicants lodged the main case before this court in 2020.

Back on the wagon, gleaning from the application it comes out, quite clearly, that the applicants have lodged an application against a Government institution, however, they have not joined the Attorney General as a party to the suit. In my view, the omission was a serious infraction of the imperative requirements of the law. The law that has been infringed does not provide for any exception or leeway to what section 6 (3) of the Government Proceedings Act, Cap.5, as amended by the Written Laws (Miscellaneous Amendments) Act No.1 of 2020. For ease of reference, I reproduce section 25 (3) of the Written Laws (Miscellaneous Amendments) Act No.1 of 2020 which state that:-

*"All suits against the Government shall upon the expiry of the notice period, be brought against the Government, Ministry, government department, local government authority, an executive agency, public corporation, parastatal organization or public company that is alleged to have committed the civil wrong on which the civil suit is based, **and the Attorney General shall be joined as a necessary party**". [Emphasis added].*

Equally, in the case of **Thomas Ngawaiya v the Attorney General & 3 Others**, Civil Case No. 177 of 2013, the Court held that:-

"The provision of section 6 (2) of the Government Proceedings Act are express, explicit, mandatory, admit no implications or exceptions. They are imperative in nature and must be strictly complied with. Besides, they impose an absolute and unqualified obligation on the court." [Emphasis added].

Applying the above provision of the law and authority, it is clear that in any suit which involves a Government Institution, the Attorney General shall be joined as a necessary party, and as rightly submitted by Mr. Mwakyembe, the parties cannot be allowed to circumvent the mandatory procedural requirement. Therefore, the applicants were required to issue a 90 days Notice to the Attorney General and Solicitor General.

Based on the above findings, I hold that failure to serve the Attorney General and Solicitor General with a copy of 90 days' Notice vitiates the institution of the application at hand.

I find that the first Preliminary Objection raised by the learned counsel for the respondent is laudable. Therefore. I am not going to determine the remaining objection.

In the upshot, I hold that this application is incompetent before this Court. I accordingly proceed to strike out the Misc. Land Application No. 278 of 2022. No order as to costs.

Order accordingly.

DATED at Dar es Salaam this 14th June, 2022.




A.Z.MGEYEKWA

JUDGE

14.06.2022

Ruling delivered on 14th June, 2020 in the presence of Mr. Kefa, learned counsel for the applicant, and Mr. Mwakywembe, learned counsel for the respondent.




A.Z.MGEYEKWA

JUDGE

14.06.2022