

IN THE HIGH COURT OF TANZANIA

(LAND DIVISION)

AT DAR ES SALAAM

MISC. LAND APPLICATION NO. 552 OF 2021

HAMISI WAZIRI BUMBO.....1ST APPLICANT

HASSAN MOHAMED MZAVA.....2ND APPLICANT

AMINIEL SAFIEL MRUMA.....3RD APPLICANT

ABDUL LUTALE.....4TH APPLICANT

VERSUS

TEMEKE MUNICIPAL COUNCIL.....ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT


Date of last order: 02/6/2022

Date of ruling: 22/6/2022

RULING

A. MSAFIRI, J.

This is the ruling on preliminary objection raised by the respondents on 22nd November 2021 to the effect that;

This application is incompetent as the applicant did not serve the respondents with the 90 days' notice of intention to sue contrary to Section 6(2) of the Government Proceedings Act [CAP 5 R.E 2019] 

It is on record that on 12th October 2021, the applicants preferred the present application under Order VIII Rule 1 and Section 95 of the Civil Procedure Code [CAP 33 R.E 2019], (hereinafter to be referred as the CPC) seeking reliefs *inter alia* that the applicants be granted leave to sue for and on behalf of 36 others.

According to the joint affidavit affirmed by the applicants herein, it is contended that the applicants and 36 others whose names have been attached to the affidavit, constructed business stalls at Madenge Market situated at Yombo Street, Temeke Municipality. The applicants claimed that the business stalls were constructed following authorization from the 1st respondent.

The 1st respondent in its counter affidavit disputed that it did not authorize the applicants to construct the business stalls rather the applicants are the trespassers on the market place.

Although the business stalls were not authorized by the 1st respondent, the applicants were required to pay rent at the rates of Tshs 50,000/= to Tshs 75,000/=. Being resentful for the requirement to pay *Alle*.

monthly rent at the stated rate, the applicants intend to institute a case against the respondents. Hence they preferred the present application.

The above preliminary objection was disposed of orally whereby Lutufyo Mvumbagu, learned advocate and Ms Lucy Kimario, state attorney represented the applicants and the respondents respectively.

The respondents contended that, they were not served with 90 days' notice hence the present application is incompetent.

On reply, the learned advocate for the applicants contended that the preliminary objection raised by the respondents does not qualify to be termed as a preliminary objection as per the test laid down in the landmark case of **Mukisa Biscuits** which requires a preliminary objection to be on pure point of law.

The applicants contended further that on paragraph 8 of the affidavit in support of the application, the applicants stated that they have issued a 90 days' notice and the same was served on the respondents and the said notice has been attached as annexure A4.

The applicants contended further that the preliminary objection is pre-mature because still the applicants have time to issue the 90 days' *Allo.*

notice once leave is granted to the applicants to lodge the intended representative suit.

The applicants contended further that the present application is not suit as provided for under Section 22 of the CPC. Hence the preliminary objection should be overruled.

Having gone through the respective submissions by the parties rival and in support of the preliminary objection, the sole issue calling for my determination is whether the preliminary objection raised by the respondents has merits.

Firstly and foremost, I will begin with the contention by the learned advocate for the applicants that this is an application and not a suit. This Court in the case of **BURAFEX Ltd (Formerly known as AMETAA Ltd)v Registrar of Titles**, Civil Appeal No. 235 of 2019, HCT at Dsm (Unreported) defined the term suit in relation to mean;

"A suit is a proceeding of civil nature in various forms such as petition, application, appeal, review, revision or as referred in the Civil Procedure Code (supra) filed in a Court *Adls.*

of Law between two or more parties for determination of rights and duties of such persons

According to the **Black's law Dictionary 8th Edition on p. 1475** the term suit is defined to be;

"Any proceeding by a party or parties against another in a court of law"

It follows therefore that the term suit has a broad meaning to include applications like the one at hand. Now as the present application has been preferred against the Government, it is mandatory to issue a 90 days' notice as stipulated under Section 6(2) of the Government Proceedings Act [CAP 5 R.E 2019].

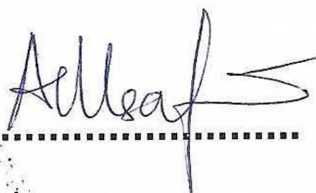
In the present matter the applicants claimed that there is a 90 days' notice issued and served against the respondents and the said notice has been annexed as annexure A-4 to the affidavit. The respondents contended that they have never been served with any notice.

I have gone through annexure A-4 which the applicants claimed to be a 90 days' notice. The said annexure is titled as "*Muhtasari wa Kikao cha* *Adls-*

Kujadili Mgogoro Kuhusiana na Vibanda vya Biashara baina ya wafanya biashara sokoni Madenge na Manispaa ya Temeke”

It is further indicated that after deliberation of the members the applicants herein inclusive, it was resolved that a suit be instituted in order for the applicants' rights regarding the business stalls be determined. The meeting was done on 21/9/2021 while the present application was lodged on 12/10/2021. At any rate the time frame between the meeting and the date in which the present application was lodged it cannot be said a 90 days' notice was properly served. Besides, at any rate annexure A-4 is not a notice of intention to institute a suit. It is just a meeting minutes. Similarly no proof whatsoever that annexure A-4 was served to the respondents.

In upshot and for the foregoing reasons, the preliminary objection raised by the respondents is hereby sustained. The application is hereby struck out with costs.


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A. MSAFIRI
JUDGE
22/6/2022

