

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)**

**AT DAR ES SALAAM**

**LAND CASE NO.193 OF 2023**

**MASHAKA HASHIM MOTO (As Administrator of the Estate of the late MGENI MOHAMED).....PLAINTIFF**

**VERSUS**

**KHAMIS RASHID KHAMIS.....1<sup>ST</sup> DEFENDANT**

**ABDALLAH KASSIM.....2<sup>ND</sup> DEFENDANT**

**ASSISTANT REGISTRAR OF TITLES.....3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> DEFENDANT**

**R U L I N G**

*Date of Last Order: 27.07.2023*

*Date of Ruling: 25.08.2023*

**T. N. MWENEGOHA, J.**

The following objections are in need of determination by this Court, from all defendants. The 1<sup>st</sup> and 2<sup>nd</sup> defendants raised four objections as follows

- 1. That, the suit is time bared.**
- 2. The suit is resjudicata.**
- 3. That, the plaintiff has no locus standi to sue on this matter.**
- 4. That, the plaintiff didn't state the value of the subject matter.**

On the other hand, the 3<sup>rd</sup> and 4<sup>th</sup> defendants, jointly, raised two objections as follows:-

- 1. The plaintiff has no cause of action against the 3<sup>rd</sup> and 4<sup>th</sup> defendants.**
- 2. The suit is untenable for being filed without serving a 90 days' statutory notice to the 3<sup>rd</sup> and 4<sup>th</sup> defendants.**

On the 27<sup>th</sup> July, 2023, this Court ordered the hearing of all objections to be by way of written submissions. The schedule for the same was that, the defendants were to file their submissions on the 4<sup>th</sup> of August, 2023, followed by a reply by 14<sup>th</sup> August 2023 and rejoinders from the defendants if any, by 18<sup>th</sup> August, 2023.

The 1<sup>st</sup> and 2<sup>nd</sup> defendants failed to file their written submissions in support of their objections. Hence this Court finds the same to be worth of dismissal for want of prosecution. Therefore, we remained with two objections from the 3<sup>rd</sup> and 4<sup>th</sup> defendants.

Represented by Selina Kapange, learned State Attorney, her submissions on the 1<sup>st</sup> objections were that, there is no part of the plaint, where it has been stated that the 3<sup>rd</sup> and 4<sup>th</sup> defendant sold or advertised the suit property for sale to any person. She insisted that, it is obvious that, the plaintiff has no cause of auction against the 3<sup>rd</sup> and 4<sup>th</sup> defendants. She cited the case of **Peter Keasi versus The Editor, Mawio Paper and Another, Civil Case No. 145 of 2014, High Court of Tanzania at Dar es Salaam(unreported).**

On the 2<sup>nd</sup> objection, it was argued that, the plaint contravenes the provisions of **Section 6(2) and (3) of the Government Proceedings Act, Cap 5 R. E. 2019.** The plaintiff did not serve a 90 days' statutory notice

to the 3<sup>rd</sup> and 4<sup>th</sup> defendants as required. Therefore, the suit has been prematurely filed.

In reply, the plaintiff who appeared in person, maintained that, it is not true that, the 3<sup>rd</sup> and 4<sup>th</sup> defendants were not mentioned in the plaint. That, under paragraph 6, the plaintiff seeks an order from the Court against the 3<sup>rd</sup> defendant, to substitute the name of the 1<sup>st</sup> defendant with those of the plaintiff. The 3<sup>rd</sup> defendant being the custodian of the register of land, can only be rectified by the order of Court. As for the 2<sup>nd</sup> objection, the plaintiff insisted that, the notice was served through an EMS courier and was received as shown by annexure JH-7. Hence, both objections are devoid of merits. To beef up his arguments, he cited the case of **Riziki Samuel (As Adminstrator of the Estate of the Late Mama Rukia Hattas) versus Melchiad Peter Kimaro and Another, Land Case No. 02 of 2021, Land Case No. 02 of 2021, High Court of Tanzania at Moshi (unreported).**

I have gone through the arguments for and against the objections at hand. The issue for determination is whether the same have merits or not.

Starting with the 1<sup>st</sup> objection, the plaintiff has no cause of action against the 3<sup>rd</sup> and 4<sup>th</sup> defendant, the learned State Attorney, submitting on this objection, contended that, the plaint did not mention at all the two defendants, (3<sup>rd</sup> and 4<sup>th</sup>). Hence, the plaintiff has no cause of action against them. After going through the plaint, I found the 3<sup>rd</sup> defendant to have been mentioned at paragraph 6 as argued by the plaintiff himself. The plaintiff wants this Court to order the 3<sup>rd</sup> defendant to rectify the register, by removing the name of the 1<sup>st</sup> defendant as owner of the suit land, and replace it with that of the plaintiff. Therefore, the 3<sup>rd</sup> and 4<sup>th</sup> defendants were

sued as necessary parties, for proper execution of the decree incase, it comes in favour of the plaintiff. Therefore, the 1<sup>st</sup> objection is devoid of merits and it is overruled accordingly.

Turning to the 2<sup>nd</sup> objection, the plaintiff has relied on annexure JH 7 to prove that, the 90 days' notice was served to the 3<sup>rd</sup> and 4<sup>th</sup> defendants. The said annexure contains a copy of the notice in question, written on the 5<sup>th</sup> July 2022. Also, annexure JH7 contain a copy of tracking information as the notice was sent via EMS. According to the tracking information, it has been shown that, the notice was being sent to the 4<sup>th</sup> defendant. However, the same was delivered to one Grace Asenga, on the 3<sup>rd</sup> March 2023.

From such observation above, several questions come to mind, such as when was the notice posted, as the same was written on September 2022 and delivered to Grace Assenga on March 2023. Further, who is Grace Assenga? These questions leave the Court with no choice other than to believe that, the mandatory provisions of **Section 6(2) and (3) of the Government Proceedings Act, Cap 5, R. E. 2019** were not complied with. The 3<sup>rd</sup> and 4<sup>th</sup> defendants were not served with the statutory notice prior to the filing of the case. Hence, as per **Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd (1969) EA 966**. I find merit on the 2<sup>nd</sup> objection. Consequently, the same is sustained.

In the end, the suit is struck out with no order as to costs.

It is so ordered.



  
**T. N. MWENEGOHA**  
**JUDGE**  
**25/08/2023**