

**IN THE HIGH COURT OF TANZANIA**

**(LAND DIVISION)**

**AT DAR ES SALAAM**

**MISC. LAND APPLICATION NO. 376 OF 2023**

**RABBO JOACHIM MASUMBUKO THOBIAS ..... APPLICANT**

**VERSUS**

**THE TANZANIA NATIONAL ROAD AGENCY ..... 1<sup>ST</sup> RESPONDENT**

**THE COMMISSIONER FOR LANDS ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

*08/02/2024 & 22/02/2024*

**RULING**

**A. MSAFIRI, J**

In this suit the plaintiff is claiming among other things, a declaration order that the plaintiff was legally and lawfully occupying the premises with C.T. No.112547 located on Plot No.29 Block "Q" Luguruni area, in Dar es Salaam together with the other two unsurveyed plots known as KBM/KBM/278 and KBM/KBM/546 at Kibamba Shule area in Ubungo Municipality, Dar es Salaam. He also prayed for the declaration that the demolition carried on the said properties was unlawful. He prays for compensation of the demolished structures above, the lost hardware materials and the encroached land all worth TZS. 862,000,000/= *ALLS.*

Upon the service, the defendants have filed their written statement of defence and with it, filed a Notice of preliminary objection to the effect that;

- 1. This suit is incompetent and bad in law for contravening Section 6(2) of the Government Proceedings Act, Cap 6 R.E. 2019.*

On 18/02/2023 when the matter was set for hearing of the preliminary objection the plaintiff was legally represented by Mr. Thomas Massawe, learned advocate while all the three defendants were legally represented by Mr. Mkama Msalama and Ms. Inna Ally Salum both learned State Attorneys.

The hearing was conducted orally and Mr. Msalama learned State Attorney on behalf of the defendants was the first to submit that this suit is incompetent for contravening Section 6(2) of the Government Proceedings Act.

That the reason was that the 90 days' notice attached was not served to the 1<sup>st</sup> defendant and was not copied to the Attorney General (3<sup>rd</sup> defendant).

He said that Section 6(2) of the Government Proceedings Act makes it mandatory for the issue of 90 days' notice where one intends to sue the

*Ally.*

Government or Government institutions. He stated that the Notice had to be served to the Government institution concerned and copied to the Attorney General and the Solicitor General.

He was of the view that since the 1<sup>st</sup> and 2<sup>nd</sup> defendants are Government institutions, they were to be served with 90 days' notice as per Section 16 of the Government Proceedings Act as amended by Section 26 of the Written Laws (Misc. Amendment) Act Cap 1 of 2020.

He further added that the word shall which appears in the cited provision means mandatory, hence the plaintiff had to serve the 1<sup>st</sup> and 2<sup>nd</sup> defendants a 90 days' notice to sue the Government and give copy to the Attorney General, failure of which the matter becomes incompetent. He prayed that this suit be strike out as it contravenes the law.

To bolster his points he cited the case of **Peter Joseph Chacha vs The Attorney General & Another**, Civil Case No. 01 of 2021.

In reply Mr. Massawe learned Advocate for the plaintiff contended the preliminary objection. He argued that first it was raised under the law which does not exist, that is the Government Proceedings Act, Cap 6 while the defendant's counsel has relied his submissions on the Government Proceedings Act, Cap 5, he urged the court not to consider the preliminary objection. *Alle*

Regarding to service of 90 days' notice, Mr. Massawe submitted that the 1<sup>st</sup> defendant was served with 90 days' Notice in his office by dispatch on 26/05/2023. And that the 2<sup>nd</sup> defendant was served by the Post Office Register through Post Office.

He added that the Attorney General was served through Post Office Register No. EE244231357TZ dated 26/05/2023, and the same was received by the Attorney General on 29/05/2023 by Officer Kulthum Hamid.

He concluded that all the three defendants were properly served with 90 days' Notice as required by the law under Section 6 of the Government Proceedings Act. He pointed that the referred cases by the counsel for the defendants are distinguishable, and he prayed that this preliminary objection be overruled with costs.

On rejoinder, Mr. Msalama learned State Attorney confessed that the Government Proceedings Act is Cap 5 and not Cap 6 as he cited. However, that since we have only one law regarding Government Proceedings Act in Tanzania, such error should not be regarded as fatal.

He added that non-citation of the law is not fatal and can be corrected.

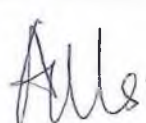
*Alle*

Mr. Msalama contended the issue of 90 days' Notice that there is no proof that the 1<sup>st</sup> defendant was served notice by dispatch and that the argument by the plaintiff's counsel that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were served 90 days' notice through Post office is after thought because there is no document to prove that they were served.

After a careful consideration of the submission of the parties, it would appear that the defendants alleges not to have been served with 90 days' notice to either party among the three defendants. Such omission according to the defendants is fatal capable of striking out this suit.

Mr Massawe for the plaintiff alleges to have served the 90 days' Notice to all of the three defendants with proof of dispatch and Post Office receipts. Such facts are vehemently disputed by Mr. Msalama for the defendants on the ground that in the pleadings there are no attached documents in proof of service of the said 90 days' Notice to the defendants.

In determining this preliminary objection I will be guided by the issue ***whether the 90 days' notice was served to the defendants as per the law requirement.***

The law under Section 6(2) of the Government proceedings Act provides; - 

***"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."**(emphasis supplied)*

The plaintiff have pleaded to have served 90 days' notice to the defendants under paragraph 18 of the plaint, however, the said Notice attached appears to have been addressed to the 1<sup>st</sup> defendant because it bears the address of the 1<sup>st</sup> defendant, and copies were served to the 2<sup>nd</sup> defendant, and 3<sup>rd</sup> defendant.

The court records show that the 90 days' Notice was served to the Attorney General on 26/05/2023, whereas, the same was received on 29/05/2023 for me, this Notice was in compliance with the law.


However, the records show that the 2<sup>nd</sup> defendant was served with Notice on 16/11/2023, the same was received on 17/11/2023, while this suit was instituted before this court on 01/11/2023 as per the facts in the Plaint. Surely, this Notice was completely not in compliance with the law that requires the Notice to be served **not less than ninety days** from the date of the intention to sue. It is apparent that the Notice was served to the 2<sup>nd</sup> defendant **15 days later** after the date of filing this suit, *Alb.*

contrary to the law. In addition, the notice to the 1<sup>st</sup> defendant would need evidence as the claimed dispatch was not attached with the Plaint.

To be precise this preliminary objection is sustained because save for the Notice to the 3<sup>rd</sup> defendant, the Notice to the 1<sup>st</sup> and 2<sup>nd</sup> defendants were not served in compliance with the law as provided under Section 6(2) of the Government Proceedings Act.

In the case of **Nassoro Mbaruku Nassoro (The Administrator of the Estate of Kurwa Abdallah Salum) vs Makubi Hamisi Mwinyihija & 2 Others**, Land Case No. 340 of 2022, my learned brother Mhina J, when referring to the case of **Emmanuel Titus Nzunda vs City Council and Others**, Land Case No. 28 of 2020, Tanzlii (HC-Arusha) observed that; -

*'The 90 days' Notice being a mandatory requirement, the same need to be complied with **before instituting suit** or joining the government into any suit. It is upon the plaintiff to attach a notice showing that the same was dully served and received. (Emphasis is mine).*

I agree with such observation because the intention of the 90 days' Notice before instituting suit against the Government or its institution is to grant ample time to resolve the dispute amicably, failure of which the Government is denied such opportunity to deal administratively with the matter and avoid litigation, which is beneficial to both sides. 

I hereby struck out this suit for non-compliance with the law under Section 6(2) of the Government Proceedings Act, Cap 5 [R.E. 2019]. I issue no order as to the costs.

It is so ordered.



  
A. MSAFIRI

JUDGE

22/02/2024