

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF ARUSHA
AT ARUSHA**

Land Case No. 98 of 2016

- 1. SIARA LEYANI
- 2. NGWARU NGILEPOI
- 3. AMANI SOLOMON
- 4. EZEKIEL SOLOMON
- 5. SOLOMON KISIKA
- 6. LUCAS NANGARI
- 7. LOPON MILERI
- 8. ZABLON SAMSON
- 9. ISAYA LEE
- 10. OLONGISHU NGILAPOI
- 11. LAANDARE NGILEPOI

.....PLAINTIFFS

Versus

- 1. MELUSORI LENGIDA
- 2. LASIPONYE MRIKANI
- 3. BARIKI SUMUNI LIBILIBI
- 4. EMAIRETE VILLAGE COUNCIL

.....DEFENDANTS

RULING

DR.M. OPIYO, J

On 28th, February 2018, Defendants herein through their Counsel Daudi Semalie did raise preliminary objections on the point of law to the effect,

- (i)** That, the suit is hopeless time barred for being instituted beyond the order of this Honourable Court on **6 .2.2018.**

- (ii) That, the suit is bad in law for offending the provisions of order VI , Rule, 15(3) of the Civil Procedure Code, Cap 33 R.E 2002
- (iii) That, the suit is bad in law for Violation of Section 190(1)of the Local Government (District Authorities) Act, Cap 287 , R.E 2002

On the 1st Preliminary objection,that, the suit is hopeless time barred for being instituted beyond the order of this Honourable Court on 6 .2.2018.it was Mr Semalie submission that, On 6th day of February, 2018, the parties herein appeared before this Court for necessary orders including to know whether the plaintiff Counsel has issued a notice of intention to sue the 4th Defendant as required by the Local Government (District Authorities) Act, Cap 287 R.E 2002.On that day, the Counsel for the plaintiff asked for leave to file amended plaint out of time after 9th plaintiffs decided to withdraw from land case No 98/2016 and therefore only eleven plaintiffs remained on board.The Court granted the Plaintiff Counsel a leave to file his amended plaint on 9th day of February, 2018 but rather he filed the same amended plaint on **16th day of February, 2018** without seeking leave of the Court to file the amended plaint out of time as evidenced by receipt No 20040242.

It was his further submission that,there is no dispute that the amended plaint was filed 7days out of the prescribed time. The consequence of filing the suit out of time was well elaborated in the case of **The Ministry of**

Agriculture, Food Security and Co- operatives and Attorney General V. African Construction Co.ltd,Misc. Commercial Application No 39 of 2006 (Unreported) High Court of Tanzania, Dar es Salaam Registry, Massati, J as [he then was] held:-

"Section 3 (1) of the Law of Limitation Act, enjoins the Court to dismiss any proceedings which finds was instituted out of time , whether or not limitation is set up as a defence. I would give the effect of this section by dismissing the present petition without going into the merits of the other preliminary objection, since a plea of limitation is sufficient to dispose of the matter"

On the 2nd Preliminary objection, that, the suit is bad in law for offending the provisions of order VI , Rule, 15(3) of the Civil Procedure Code, Cap 33 R.E 2002.Mr Semalie submitted that, the amended plaint which was filed sometimes on 16/02/2018 before this Honourable Court, one can detect that it was drawn **by Edmund R Ngemela Esq.)**from a firm styled Equality Attorneyand it was signed by the plaintiffs and signed by his Advocate, but was not dated as required by the law and therefore contravene Order VI Rule 15(3) of the Civil Procedure Code,(Cap 33 R.E2002) which states:-

"The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."

It was his submission that, this Court in the case of **Roba General Merchants Versus The Director General of Tanzania Harbours Authority and two others** , In Civil Case No 161 of 2004(Unreported)at page 5, 2nd paragraph , **A. Shangwa, J, had this to say:**

"Also, it is true as submitted by the learned Counsel for the 3rd defendant that the pleadings are not properly verified. Whereas the verification clause is signed, it does not state the date on which it was signed. This is contrary to the Mandatory provisions of O. VI, r.15 (3) of the Civil Procedure Code, 1966."

He further submitted that, there is no dispute that the amended plaint was signed by plaintiffs and their Advocate, but it was not dated as required by the above provisions of the law and the same renders the plaint to be defective deserving dismissal with costs.

On the 3rd Preliminary objection, that, the suit is bad in law for Violation of Section 190(1) of the Local Government (District Authorities) Act, Cap 287 , R.E 2002. Mr Semalie submitted that, the amended plaint which was drawn and filed under paragraph 9 of the plaint which reads:

"That, the plaintiffs via their Advocates requested this Court to amend the plaint to join the 4th Defendant and before join the

4th Defendant, the plaintiffs issued a statutory notice which was saved to the 4th Defendant via his address after the 4th Defendant has refused to receive the said statutory notice."

It was his contention that, impliedly the Counsel for the Plaintiffs admitted without leaving a shadow of doubt that the 4th Defendant and her agent were not served with a statutory notice of 30 days as required by law under Provisions of Section 190(1) of the Local Government (District Authorities) Act, Cap 287 R.E 2002, which provides:

"190-(1) No suit shall be commenced against the Local government authority until one month notice of intention to commence the suit has been served upon the authority by intending plaintiff or his agent"

It was his further submission that, the 4th Defendant was not served with a statutory notice of one month or her agent as required by the law, since the agent of the 4th defendant is well known as a firm styled Northern Law Chambers Advocates and Legal Consultants which was prosecuting the land case No 98 of 2016 on behalf of the 1st, 2nd and 3rd Defendant who were sued previously on their individual Capacity before the Plaintiff Counsel could be given leave to join the 4th Defendant. He therefore prayed that, for that violation the suit ought to be dismissed with costs.

In response to the defendants submissions, on the first preliminary objection that the suit is time barred for contravening this court's order

dated 06/02/2018, it was Mr Ngemela submission that, this court ordered that the amended plaint be filed before 16th February, 2018 to which they accordingly complied with.

Responding to the defendant's second point objection, that the plaintiff's amended plaint was not dated. He submitted briefly that, the plaintiff's amended plaint was accordingly dated and in his submission he did attach the copy of the said amend plaint which was signed.

On the last ground of preliminary objection that the suit is bad in law for violation of S 190 (1) of the Local Government (District Authorities) Act (supra) it was Mr Ngemela submission that, the plaintiff's amended plaint and the statutory notice was initially saved via the 4th defendant physical address, but he refused. The plaintiffs then decided to save the 4th defendant via his known postal address via EMS on the 4th day of October, 2017 and he has attached the copy of the EMS showing the mode of service. It was his contention that the service through postal address is allowed as an alternative mode of service, and that the 4th defendant's allegation that he was not saved with the said notice or that the amended plaint was filed before 30 days lacks merit.

I have considered parties submission for and against the points of preliminary objections, in the first that the suit is time barred for being instituted beyond the order of this court dated 06/02/2018. It is the defendant's counsel submission that, on 6th day of February, 2018, the

parties herein appeared before this Court for necessary orders, the Counsel for the plaintiff seeks a leave to file amended plaint out of time after 9th plaintiffs decided to withdraw from land case No 98/2016 and therefore only eleven plaintiffs remained on board. The Court granted the Plaintiff Counsel a leave to file his amended plaint on 9th day of February, 2018 but rather he filed the same amended plaint on 16th day of February, 2018 without seeking a leave of the Court to file the amended plaint out of time as evidenced by receipt No 20040242.

I have gone through this courts proceedings on the orders I made on the 06/02/2018. The records shows that there was an alteration of the dates in which the plaintiff was supposed to file the amended plaint. It seems at first, we agreed the same should be filed on the 16/02/2018 but later it was ordered that plaintiff file the same on the 09/02/2018. What is depicted is that the plaintiff's counsel could no grasp the chance properly and proceeded to file in the on the original date we had agreed on. In the circumstances, there is possibility of confusion on the actual date of filing after such alteration. Therefore in the interest of justice such doubts should be resolved in favour of the plaintiffs by not dismissing the suit for being time barred. This preliminary objection is dismissed.

Coming to the second preliminary objection that the amended plaint is not dated, I have gone through the amended plaint, this point need not detain me. It is true as submitted by the learned counsel for the defendant that the amended plaint does not have the date in which it was signed. This is

contrary to the Mandatory provision of Order VI Rule 15 (3) of the Civil Procedure Code, (supra). This renders the suit incompetent.

And on the last preliminary objection that, the suit is bad in law for violation of section 190(1) of the Local Government (District Authorities) Act Cap 287 R.E 2002. It was Mr Semalie submission that, the 4th defendant was not saved with a statutory notice of 30 days as required by law, under section 190 (1) of the cap 287 (supra) the said provision clearly states that, no suit shall be commenced against the Local Government Authority until one month notice of intention to commence the suit has been served upon the authority by intending plaintiff or his agent. The learned Counsel for the plaintiff stated that, the plaintiff's amended plaint and the statutory notice was initial saved via his physical office the 4th defendant refused. The plaintiffs then decided to save the 4th defendant via his known postal address via EMS on the 4th day of October, 2017 and he has attached the copy of the EMS showing the mode of service.

From the pleadings I total agree with the counsel for the defendants that the 4th defendants was not properly saved with the statutory notice as there is no proof that the 4th defendants received the said notice, Mr. Ngemela attached the copy of the EMS receipt showing the mode of service they used to send the notice to the 4th defendants. I regret to say that under the surrounding circumstances of this case the receipt from EMS alone is not enough proof of the service. The plaintiffs ought to have attached the dispatch from the EMS Showing that the 4th defendant or his

agent had received the said notice, in absence of that dispatch then the conclusion is that the 4th defendant was not saved with the required statutory notice.

In the upshot, from the above analysis, it is my finding that the second and the third preliminary objections have merits. The suit is incompetent, the same is strike out. I make no order as to costs.

(Sgd)

DR. M.OPIYO,

JUDGE

20/07/2018

I hereby certify this to be a true copy of the original



S.M. KULITA



DEPUTY REGISTRAR

ARUSHA

03/08/2018