

IN THE HIGH COURT OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LAND CASE NO. 10 OF 2019

JULIUS MASAWA & 14 OTHERS PLAINTIFFS

VERSUS

TANZANIA RAILWAYS CORPORATION1ST DEFENDANT

THE ATTORNEY GENERAL 2ND DEFENDANT

RULING

15th & 26th February, 2021

RUMANYIKA, J.:

Upon one being duly served with 7th Sept. 2020 3rd party notice, without ado the 3rd party Mwanza City lodged a 3 limb-preliminary point of objection (the p.o).

It is from the outset equally worth to be noted that when, pursuant to records of 08/02/2021, and, by consent the p.o was called on 15/02/2021 for hearing, Ms. Subira Mwandambo learned state attorney for TRC and the AG (the 1st and 3rd defendants) could not appear as she was on duty therefore caught up in the Court of Appeal of Appeal of Tanzania currently sitting here in the city. It is on that common understanding therefore, mistakenly thought that I considered Mr. Maliki learned state

attorney for Mwanza City (the 3rd party), on that one as also holding briefs of the fellow Ms. Subira Mwandambo, learned state attorney. Mr. Godfrey Ernest learned counsel appeared for Julius N. Masawe and 14 others (the plaintiffs).

Essentially, the three limbs of p.o read thus; **(1)** that without serving a statutory 90 days' notice the suit was prematurely instituted **(2)** that with respect to the disputed plots the plaintiffs had no good cause of action against the 3rd party **(3)** that the 3rd party had no interest on the disputed plots.

In a nutshell Mr. Maliki learned state attorney submitted; one; that as defined also Mwanza City council was government by virtue of Section 6(4) of the Government Proceedings Act entitled to be served with such notice. We pray that the case be struck out stressed the learned state attorney. Two; that the plaintiffs had no cause of action against the 3rd party much as the disputed plot may have been the 1st defendant's property alleged encroached by the plaintiffs and therefore the former had no interest whatsoever in the plots. That's all.

Mr. Godfrey Ernest submitted that not only the p.o was, in all aspects misplaced because if anything, initially the 3rd party was only joined pursuant to order of this court (Matupa, J) but for some reasons later dropped, but also all the points raised was so factual that it needed evidential proof. That is it.

The pivotal issue is whether the case is properly before the court. The answer is yes formain reasons; **(a)** at the instance of the 2nd defendant one having had been served with a 3rd party notice according to records a few months ago, it may be too early for one to blame because it is not the plaintiffs that initiated the notice. Nevertheless it would have defeated both logic and common sense if, issuance and service of a 3rd party notice it came next to a statutory 90 days' notice. After all according to records, say few years ago, by order of the court (Matupa, J) the present 3rd party was dropped the plaintiffs would not have reasonably anticipated as said, at the instance of the 2nd defendant one being joined as 3rd party and on that basis serve the 90 days' notice. In fact on this one the plaintiffs were never late much as it was not the plaintiffs' duty to serve one a 3rd party notice only the defendants were.

With regard to the issue of cause of action, the 3rd party interest and the like, to begin with I would agree with Mr. Godfrey Ernest learned counsel that whether or not the disputed land belonged to the 1st defendant or that the plaintiffs were duly allocated the suit plots by the 3rd party it is worth the name not a p.o because it all needed evidential proof.

Without running risks of jumping onto merits of the case, it is common knowledge that it is not the 1st defendant who, by way of granted right of occupancy allocate land only the local government authorities do. It would have been a different scenario which is not the case here, if against the 1st defendant the plaintiffs only claimed deemed right of occupancy.

In the upshot, the p.o runs short of merits. It is overruled. Mwanza City Council hereby stands and they shall, for avoidance of doubts in this case remain the 3rd party. Mention for necessary orders on 15/03/2021. The plaintiff to lodge such amended plaint on or before. It is so ordered.



S. M. RUMANYIKA
JUDGE

16/02/2021

The ruling delivered under my hand and seal of the court in chambers this 26/02/2021 in the absence of the parties.




S. M. RUMANYIKA

JUDGE

26/02/2021