

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(IN THE DISTRICT REGISTRY OF MWANZA)**

AT MWANZA

LAND CASE NO. 03 OF 2021

**HAMAD HUMUD SEIF1ST PLAINTIFF
HUMUD SEIF RIYAMI..... 2ND PLAINTIFF**

VERSUS

**MWANZA CITY COUNCIL 1ST DEFENDANT
THE ATTORNEY GENERAL 2ND DEFENDANT**

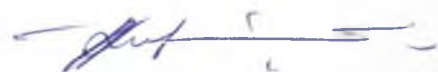
RULING

1st September & 3rd November, 2021

ISMAIL, J.

Competence of the suit filed by the plaintiffs herein is on the line. This is in view of the preliminary objections raised by the defendants, contending that the suit is incompetent on account of the following 'maladies':

- 1. That the plaintiff did not serve a 90-day notice on the defendants, thereby offending the provisions of section 6 (2) and (3) of the Government Proceedings Act, Cap. 5 R.E. 2019; and*



2. That there is a non-joinder of the Commissioner for Lands who is a proper party to the proceedings.

At stake in these proceedings is the ownership of parcels of land, known as Plots No. 102 Block "E" and 104 Block "E", Nyegezi Mwanza. The pieces of land were allegedly allocated to the plaintiffs, before they were allegedly invaded by the 1st defendant, re-surveyed them, and created a pathway that divided them into two halves. The contention by the plaintiffs is that all this was done without neither consulting the plaintiffs nor compensating them for the loss suffered as a result of the parcellation. It is the plaintiffs' prayer that, besides declaring them as lawful owners of the said pieces of land, there should a declaration to the effect that the 1st defendant's acts are unlawful. There is also a claim of compensation for destruction of the said land; as well as general damages, the aggregate of which is TZS. 55,000,000/-.

The points of objection were raised in the written statement of defence filed by the defendants on 11th May, 2021. Disposal of the objection was done through written submissions.

At the point of filing written submissions, the defendants chose to abandon the 2nd ground of objection. This left the 1st point as the sole ground of objection. With respect to the remaining ground of objection, the



defendants' contention is that there is no proof that the plaintiffs conformed to the requirement of section 6 (2) of Cap. 5. The counsel argued that compliance with that entails submitting a notice to the ministry, department or officer concerned with a copy thereof served on the Attorney General and Solicitor General.

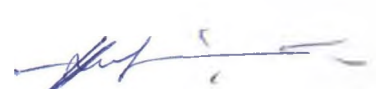
In the absence of a dispatch book or a stamp on the purported notice (Annexure C to the plaint), the counsel argued, it cannot be said that such notice was issued and served consistent with the law. Relying on the decision of this Court in ***Charles Mikera Benasius v. The Commissioner for Land & 4 Others***, HC-Land Case No. 127 of 2020 (unreported), the defendants prayed that the matter be struck out.

In his rebuttal submission, Mr. James Njelwa, counsel for the plaintiff contended that the objection raised is not a preliminary objection worth its name. Applying the test set out in ***Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors Ltd*** [1969] EA; and ***COTWO (T) OTTU UNION & Another v. Hon. Idd Simba, Minister of Industries and Trade & Another*** [2002] TLR 88, Mr. Njelwa argued that, since the dispute is on whether such notice was served on the addresses, the 2nd defendant ,and the Solicitor General, then this is a point which requires adduction of evidence. He took the view that impeachment of the plaintiffs' action with

respect to service will be done at the hearing and when Annexure C is tendered in court. This is in view of the fact that the said annexure has been pleaded to in paragraph 11, and that the same would have to be tendered in court during trial.

Mr. Njelwa held a conviction that the point raised required ascertainment of a fact which is yet to be done. As such, the objection raised fell short of a point of objection, arguing that, the same is merely an issue which can be argued in the normal course of hearing of the substantive matter. On this, counsel cited the decision of the Court in ***Musangang'wanda v. Chief Japhet Wanzagi & 8 Others*** [2006] TLR 351; and the Court of Appeal's decision in ***Mount Meru Flowers Tanzania Ltd v. Box Board Tanzania Ltd***, CAT-Civil Appeal No. 260 of 2018 (unreported). He urged the Court to dismiss the objection with costs.

While Mr. Njelwa's submission has narrowed down the objection raised by the defendant to a question of whether this is a pure point of objection or not, a question which shall be addressed shortly, it should be pointed out that issuance of notice of intention to sue the government is an imperative prerequisite. It is in compliance with the requirement set out under section 6 (2) of Cap. 5. It serves as a condition precedent, and a party that defies it puts his claim in serious jeopardy. It is simply that filing of a suit must be



preceded by issuance of the notice of intention to sue the Government. The cited provision states as hereunder:

"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."

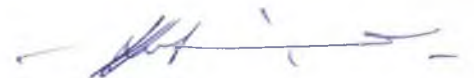
That the compliance with the requirement is not an "either-neither situation" has been underscored in numerous court decisions, one of which is the decision of this Court in the case of **Thomas Ngawaiya v. Attorney General & 3 Others**, HC-Civil Case No. 177 of 2013 (unreported), in which it was held:

"The provisions of section 6 (2) of the Government Proceedings Act are express, explicit, mandatory, admit no implications or exceptions. They must be strictly complied with. Besides, they impose absolute and unqualified obligation on the Court."

In the present case, the dispute revolves around the service of the said notice on the intended addressees, including the 2nd defendant and the Solicitor General. The Defendants hold the view that the alleged service is

not evident, connoting that if such service is not evidenced then it is as good as no notice was issued. It is this evidential question that the plaintiffs cling on and argue that it dilutes the objection to a normal factual point that does not qualify to be a preliminary point of objection.

While the argument by Mr. Njelwa makes some serious sense, it should not be lost on him that the aspect of service of a copy on the prospective defendants and their counsel, the Solicitor General, is part of the requirements under section 6 (2) quoted above. This implies that it is not enough to serve copies on the prospective defendants, if such service did not extend to the Solicitor General. In my view, issuance of the notice and the obligation to serve all the intended parties constitute the totality of the legal requirement under section 6 (2) of Cap. 5. Absence of one imputes non-compliance or an infraction of the law. In my humble view, taking stock of compliance with the law in suits under the cited law, especially section 6 (2), is not an evidential issue which would await adduction of evidence. It constitutes the very foundation of the legitimacy of the suit. It is in the same mould as ascertainment of whether the suit is time barred or not. It only requires sighting the document and establish compliance or lack of it. Up until that stage, no adduction or analysis of evidence would be required, and this rules out the argument that this is a substantive matter which would



await commencement of the plaintiffs' case and parading of a witness to testify on an issue which does not go to the heart of the parties' main contention.

I take the view that, this is not a situation which would be likened to other forms of factual contestations covered in the cited decisions. This is simply a point which arises by clear implication of the pleading that can be spotted with ease, in the same category as that listed in the case of ***Karata Ernest & Others v. The Attorney General***, CAT-Civil Revision No. 10 of 2010 (unreported). It is my conclusion that the objection raised by the defendants is a valid objection whose purity is beyond reproach, and I dismiss Mr. Njelwa's contention in this respect.

Reverting to the notice of intention to sue, what cannot be controverted is the fact that, whilst the notice of intention to sue was addressed to the defendants and copied to the 2nd defendant and the Solicitor General, nothing indicates that the same was served on the 2nd defendant and the Solicitor General. Absence of such indication is what the defendants contend that it infringed the law. I cannot agree more with this contention. The plaintiffs have simply shed no shred of assurance that this small yet important aspect of compliance was adhered to.

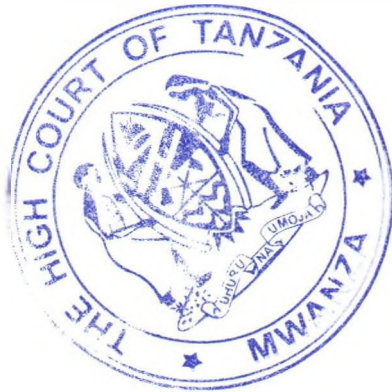


In the circumstances where the plaintiffs have failed to satisfy the Court that the law was conformed to, the irresistible conclusion is that the suit pending in this Court did not pass the eligibility test requisite for making the it competent.

In consequence, I sustain the objection and order that the suit be and is hereby struck out with costs.

It is so ordered.

DATED at **MWANZA** this 3rd day of November, 2021.



M.K. ISMAIL

JUDGE

Date: 03/11/2021

Coram: Hon. C. M. Tengwa, DR

Plaintiff: }

Defendants: } Absent

B/C: J. Mhina

Court:

Ruling delivered in the absence of both sides.

C. M. Tengwa

DR

At Mwanza

03^d November, 2021

