

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

**CIVIL CASE NO. 25 OF 2022**

**SANING'O KALEKU ..... PLAINTIFF**

**VERSUS**

**TANZANIA ELECTRIC SUPPLY COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**LONGIDO DISTRICT COUNCIL ..... 2<sup>ND</sup> DEFENDANT**

**HONOURABLE ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

21<sup>st</sup> March & 3<sup>rd</sup> May, 2023

**KAMUZORA, J.**

The Plaintiff sued the Defendants seeking declaration by this court that the suit land belongs to the Plaintiff and the Defendants are trespassers for using the Plaintiff's land without prior notice or consent. The Plaintiff also prays for the Defendants to be ordered to pay fair, prompt and adequate compensation to the Plaintiff for the action of taking his land and using it for construction of the electricity poll for Kenya- Tanzania power Inter- Connect Project (400kv) project, payment of general damages and costs of the suit. The Plaintiff's claims were strongly contested by the Defendants through a joint written statement

of defence accompanied by a notice of preliminary objection on points of law which states that:

- 1) That the suit is hopelessly time barred.*
- 2) That, this suit is incompetent and bad in law for contravening section 6(2) of the Government Proceedings Act [ Cap 6 R.E 2019].*
- 3) That, the suit is unmaintainable and bad in law for offending Order VII Rule 1 (f) and rule 3 of the Civil Procedure Code [ CAP 33 R.E 2019].*

The Preliminary objection on points of law was heard by way of written submissions. As a matter of legal representation, the Plaintiff enjoyed the service Mr. Joseph Moses Oleshangay, learned advocate from the Legal and Human Rights Centre while the Defendants were dully represented by Mr. Mkama Msalama, learned State Attorney from the Office of the Solicitor General. The both filed submissions as scheduled save for rejoinder submission.

Arguing in support of the first point of objection, Mr. Msalama referring paragraph 8 to 13 of the Plaint submitted that, the Plaintiff claims for adequate compensation after the 1<sup>st</sup> Defendant acquired his land for public purpose in year 2019 for the construction of the project of Kenya Tanzania Power International Connection. That, from 2019 when the cause of action arose to 15<sup>th</sup> day of September 2022 when the

present suit was filed, three years have passed. That, it is a trite law under 1 part 1 of the Schedule of the Law of Limitation Act Cap 89 R.E 2019 that, the time limit on suit found on compensation is one year. Referring the provision of section 5 of the Law of Limitation Act, Cap 89 R.E 2019, it is the firm stand by Mr. Mkama that the limitation on claim for compensation in this matter lapsed in the year 2020. That, the Plaintiff's suit is time barred thus, this court lacks jurisdiction to entertain it. To cement on this, he cited the case of, **Tanzania National Road Agency and another Vs. Jonas Kinyagula**, Civil Appeal No 471 of 2020 CAT at Kigoma (Unreported).

Mr. Msalama went on and argued that, the Plaintiff did not plead in the plaint for exemption of the time and what hindered him from filing the suit on time. To support his argument, he cited the following cases; **M/S. P & O International Ltd Vs. The Trustee of Tanzania National Park**, Civil Appeal No 265 of 2020, CAT at Tanga (unreported), **Dr. Ally Shabhy Vs. Tanga Bohara JAMEAT** [1997] TLR 308 and **Loswaki Village Council and Another Vs. Shibeh Abebe** [200] TLR 214.

Arguing in support of the second point of objection, Mr. Msalama submitted that the suit is incompetent for contravening section 6(2) of

the Government Proceedings Act Cap. 5 R.E 2019 and section 190 of the Local Government (District Authorities) Act as amended by section 31 of the Written Laws (Miscellaneous Amendment) Act No. 1 of 2020. That the said provisions require the Plaintiff to issue and serve 90 days' notice before instituting a suit against government. That, the law uses the word 'shall' and subject to the provision of section 53 (2) of the Interpretation Act [Cap 1 R.E 2019, the word 'shall', is used in conferring function which must be performed.

It is the argument by Mr. Msalama that the Plaintiff did not serve 90 days' notice of the intention to sue to the government to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant as required by the law. That, failure to do so renders the suit incompetent for being prematurely filed. In support of his argument, Mr. Msalama referred this court to the cases of **Gwabo Mwansasu and 10 others Vs. Tanzania National Roads Agency and the Attorney General**, Land Case No 8 of 2020 HC at Mbeya (unreported) and **Peter Joseph Chacha Vs the Attorney General and another**, Civil Case No. 1 of 2021 HC at Arusha (unreported).

On the 3<sup>rd</sup> objection, it is the submission by Mr. Mkama that the suit is in contravention of Order VII Rule 1(f) (i) and rule 3 of CAP 33 R.E 2019 as the Plaintiff's plaint does not contain any paragraph which

states the facts showing that this court has jurisdiction to hear and determine the suit and the facts showing the value of the subject matter. To support his argument, he cited the case **of Ester Alphonse Mahende and another Vs. Maendeleo Bank PLC and another**, Land case No 95 of 2017 HC at Dar es Salaam Land Division (Unreported). It is the Defendants' prayer for this court to find merit in the preliminary objections and dismiss the suit with costs.

In reply submission, Mr. Joseph, counsel for the Plaintiff submitted in respect of the first objection that the Defendant misconceived the reliefs sought by the Plaintiff. That, there are number of reliefs prayed for by the Plaintiff and ownership of the disputed land is the centre of dispute. Pointing at paragraph 13 of the plaint, Mr Joseph argued that, the acquisition of the disputed land was incomplete until the time of filing this suit hence, the centre of dispute remains wholly on ownership based. That, whether the land has been acquired or not, it is a question of evidence that cannot be determined at this stage. He referred the case of **Mukisa Biscuits Manufacturing Co. Ltd Vs. West End Distributors LTD** (1969) E.A 696.

Responding to the 2<sup>nd</sup> objection, Mr. Joseph argued that the Plaintiff have issued a 90 days' notice dated 19<sup>th</sup> April 2022 to all parties in this

case in accordance to the law, a letter with Ref: LHRC/LACA/164/2022. Pointing at paragraph 16 of the Plaintiff he stated that, the 1<sup>st</sup> Defendant received the same as per annexure SM9. That, the 2<sup>nd</sup> Defendant was physically served with the 90 days' notice and refused to accept the same as evidenced by annexure SM9.

On the 3<sup>rd</sup> objection, he submitted that the requirement of statement of value are necessary to determine the court's jurisdiction or court fee. He started that such circumstances are not applicable in this case since this suit is purely against the Government in which this court is a proper court to determine the suit regardless of the value of the property. He referred two authorities; **Tambuli Group of Companies Limited Vs NMB Bank PLC**, Civil Case No 25 of 2022 HC at Dar es Salaam and **CRDB Bank PLC Vs. Lazaro Samwel Nyalandu**, Commercial Case No 3 of 2019 HC.

The counsel for the Plaintiff added that, at paragraph 7 of the plaintiff the disputed property described. Reference was also made to the cases of; **Oilcom Tanzania Vs. Christopher Letson Mgalla**, Land Case No 29 of 2015, **Bosco Richard Philipo Vs Asili Lodges and Camps Ltd**, Labour Application No 90 of 2021, **Charles Peter Semwenda (Administrator of the Estate of Mkame Mohamed Sungura**

**(Deceased) Vs. Azania Bank Ltd and 7 others**, Land Case No 108 of 2022 Dar es Salaam and **Mbwana M. Chuma Vs. Dar es Salaam Park Land Holding Limited**, Land Appeal No 34 of 2022.

Mr. Joseph also submitted that the preliminary points of objections are contrary to the principle of overriding objective as provided under section 3A (1) (2) of the CPC. He argued that, if the suit will be struck out it will not facilitate the just, expeditious and affordable resolution of the dispute in this case as the government has misappropriated the Plaintiff's land without following due process of the law. That, the Defendants have not been prejudiced in anyway with the manner in which the plaint was formed. He thus urged this court to dismiss the objections and the suit be determined on merit.

From the pleadings and the submissions by counsel for the parties in respect of the preliminary objections, the issue for the determination by this court is whether the objections are of merit or not.

In respect of the first point of objection that the suit is time barred, the Plaintiff's counsel contended that the reliefs sought were misconstrued by the Defendant as the main claim is based on ownership rather than compensation. From the plaint, the Plaintiff sought for following reliefs; a declaration that the suit land belongs to the Plaintiff

and the Defendants are trespassers for using the Plaintiff's land without prior notice or consent, Defendants to be ordered to pay fair, prompt and adequate compensation to the Plaintiff for the action of taking his land and using it for construction of the electricity poll for Kenya-Tanzania power Inter- Connect Project (400kv) project, payment of general damages and costs of the suit.

The first relief is based on ownership of land and in my view, claim for ownership of land ought to be brought as land matter as per the Land Disputes Court Act, Cap. 216 and not as a civil matter as it is in this case. Time limitation for relief based on recovery of land is twelve years as per item 22 of the Schedule to the Law of Limitation Act. The relief for compensation based on land also ought to be brought as land matter and if not based on land matter, it can be brought as civil suit. But in any case, its time limitation is one year as provided for under item 1 of the Schedule to the Law of Limitation Act. Reading the whole plaint, I discovered that the 2<sup>nd</sup> relief on compensation was raised as an alternative relief to the first relief of ownership in the sense that, if the court agrees that the Defendants have to maintain the Plaintiff's land, the Defendants should be ordered to fairly compensate the Plaintiff for the said land. Since the time for claiming ownership had not lapsed, I



find that the suit was on time except that the reliefs sought cannot be granted in civil suit.

My conclusion above would have entailed the striking out of the suit but I find it prudent to discuss shortly other two objections. On the second point of objection the issue is whether the 90 days' notice was issued. The Defendants claimed that 90 days' notice of the intention to sue to the government was not served to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as required by the law and that failure to do so renders the suit incompetent for being prematurely filed. The Plaintiff contended that the same was issued to the Defendants as pleaded under paragraph 16 of the plaint and supported by annexure SM9.

I have carefully read the said paragraph and its annexure. The said annexure evidence service of the notice to the office of the Hon. Attorney General (3<sup>rd</sup> Defendant herein) and the Office of the Solicitor General both on 19<sup>th</sup> day of April 2022 as it contains seals of the said offices. The same is attached with service notification titled TANESCO customer with reference ARS042022NCR-0032 dated 19<sup>th</sup> April 2022 proving that the 1<sup>st</sup> Defendant was served. It also contains a receipt showing that the executive director was served through post office and I believe it was the executive director of the 2<sup>nd</sup> Defendant. The Plaintiff

alleged that the second Defendant refused service thus, was served through Tanzania Postal Corporation as per post receipt dated 25/04/2022 with Barcode RD101521798TZ paid via control number 995121437365.

From the above analysis, I am satisfied that the Defendants were properly served with the 90 days' notice. I therefore find no merit in the second objection.

The third point of objection is based on the argument that the Plaintiff's plaint contravened Order VII Rule 1(f) (i) and rule 3 of the Civil Procedure Code Cap 33 R.E 2019 for failure to contain paragraphs stating fact on the jurisdiction of this court to hear and determine the suit and the fact on the value of the subject matter. The above provision prescribes particulars which must be contained in the plaint and they include among others; the facts showing that the court has jurisdiction and a statement of the value of the subject matter of the suit for the purposes of jurisdiction and of court fees.

There is no doubt that in the present case those facts were not captured in the plaint. The Plaintiff contended that since the suit is against the government then this court is vested with jurisdiction to

entertain it and much as court fees are exempted, there is no need of indicating the same.

I do not agree with the Plaintiff's contention because suits against the government are not exempted from complying with the requirement of Order VII Rule 1. The said provision is applicable to all suits irrespective of who is suing or being sued. The wording of the provision uses the word 'shall' to imply mandatory requirement. As per the provision of section 53(2) of the Interpretation of Laws Act Cap 1 R.E 2019 the word 'shall' is interpreted meaning, the so conferred must be performed. The contention by the Plaintiff that there was no need to state the jurisdiction because this court is vested with jurisdiction to try cases against the government is unmaintainable. While I agree that this court is vested with jurisdiction to entertain suit where the government is involved, it does not take away the requirement for a Plaintiff to state such fact in the plaint. The law requires parties to specifically refer the court to its jurisdiction over the matter.

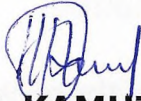
Similarly, the contention that there was no need to state the value as the Plaintiff was exempted from paying court fee is baseless. The purpose remains the same that a statement on the value of the subject matter of the suit is needed for the purposes of determining the

jurisdiction of the court and of court fees. Court fees cannot be assessed where the value of the property is not indicated. It is not always that where a part seeks for exemption, the same ought to be granted. There are circumstances where the exemption may not be granted and thus, it becomes important that the value of the suit property be indicated in the plaint. In my view, fee exemption does not take away the requirement for pleading the value of the disputed property or claim. Thus, in the absence of a clause stating the jurisdiction of the court and the value of the subject matter, the suit is incompetent for contravening Order VII Rule 1 of the CPC. I therefore find merit in the 3<sup>rd</sup> objection and the same is sustained.

In the Upshot, I find this suit incompetent for containing reliefs not awardable in normal civil suit and for contravening Order VII Rule 1 of the CPC. The suit is therefore struck out with costs.

**DATED** at **ARUSHA** this 3<sup>rd</sup> day of May, 2023.



  
**D.C. KAMUZORA**  
**JUDGE**