

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

LAND DIVISION

AT DAR ES SALAAM

MISCELLANEOUS LAND APPLICATION NO. 454 OF 2023

CHRISTIAN LUCAS MOLLELAPPLICANT

VERSUS

SHIJA HUSSEIN MATULANGA1ST RESPONDENT

TANZANIA AIRPORT AUTHORITY2ND RESPONDENT

ATTORNEY GENERAL3RD RESPONDENT

R U L I N G

Date of last Order:04/09/2023

Date of Ruling: 20/09/2023

K. D. MHINA, J.

This is an application for Mareva Injunction, made under Sections 68(e) and 95 of the Civil Procedure Code, CAP 33 R.E 2019 and Section 2(1) and Section 2(3) of the Judicature and Application of Laws Act, CAP 358 R.E 2019)

The applicant is seeking for the following orders;

- 1. This Honourable court be pleased to issue an order of Mareva Injunction against the 2nd respondent from compensating the 1st respondent for the piece of land in dispute pending hearing and determination of the main suit, which will be filed after the expiry*

of ninety (90) days from the date respondents were served with the notice of intention to sue.

2. Costs of this application

The grounds for the application were expounded in the affidavit, which Christian Lucas, the applicant, swore in support of the application.

Briefly, according to the affidavit and affidavit in reply, the centre of controversy between the parties which triggered the filling of this application is 819.222 square meters piece of land located at Kipunguni Mashariki, Kipawa Ward in Ilala District.

The applicant alleges that the piece of land was given to him as a gift by Angela Kimario on 5 April 2014.

In January of 2023, the Tanzania Airport Authority collected valuation details from the owners of plots of land at Kipunguni Mashariki area, within Kipawa Ward in Ilala District, in order to take their lands and compensate them.

The applicant further alleges that being unaware of the valuation exercise, one Shija Hussein Matulanga used his absence as an opportunity to deceive the Tanzania Airport Authority to register him as the owner of

the disputed land where he has given VAL/TAA/DSM/KPN/1428 while he is not. That triggered the applicant to lodge a ninety-day notice.

At the hearing, the applicant was represented by Mr Kenneth Siwila learned advocate. The 1st respondent was represented by Mr. Hassan Lukwanya, a learned advocate, while Mr. Edward Jonathan Chitalula, a learned State Attorney, represented the 2nd and 3rd respondents.

Before going to the merits and demerits of the application, I have to deal with an issue raised by Mr. Lukwanya and Mr. Chitalula regarding the propriety of the 90 days notice.

It is pertinent to dispose of this issue first because it is the basis of the Mareva injunction.

On his side, Mr Lukwanya stated that the notice to sue concerned the Tanzania Civil Aviation Authority (TCAA), while at the court, the part to this application is Tanzania Airport Authority (TAA). Therefore, there was notice served to the 2nd respondent.

On the same issue, Mr. Chitalula submitted that the notice was defective. It contained two authorities.

He narrated that the Government Executive Agency, Act No. 30 of 1997, established the Tanzania Airport Authority under G.N No. 404 of

1999. On the other hand, the Tanzania Civil Aviation Authority was established by the Parliamentary Act in 2013. Therefore, these two are distinct authorities.

He further stated the content of the notice of the notice was in connection with the TCAA.

In response, Mr. Siwila stated that the notice to sue was directed to the 2nd respondent. Therefore, the content of the notice was immaterial since the 2nd respondent was aware.

Having considered the chamber summons and its supporting affidavit, the affidavit in reply, and the oral submission made by both learned counsel for the applicant and the respondents, the entry point on this is Section 6 (2) of the Government Proceedings Act, Cap 5, R: E 2019.

The law reads that;

*"(2) 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 provided]*

From above, it is essential that the notice must be served to the concerned Government entity and copied to the Attorney General and the Solicitor General.

Therefore, the notice must state clearly and specify which Government authority a person intends to sue. This is key for the purpose of informing the concerned authority about the intention and the nature of the claims. Also, to alert and notify the Government through the Attorney General of the intent to sue its entities so that he can join the proceedings.

In the absence of the above, it renders the notice defective.

In **Emmanuel Titus Nzunda Vs. Arusha City Council and Others**, Land Case No 28 of 2020, Tanzlii (HC-Arusha), this Court insisted on the compliance of the requirement of 90 days' notice by holding that;

"The 90 days' notice being a mandatory legal requirement, the same need be complied with before instituting suit or joining the government into any suit".

In the instant application, the notice was directed to the Director General of the Tanzania Airport Authority with the intention to sue the Tanzania Civil Aviation Authority.

The content of the notice mentioned the Tanzania Civil Aviation Authority, specifically paragraphs 3 and 4 of the notice.

Paragraph 3 read that;

"That Tanzania Civil Aviation Authority wants to compensate land owners in the Kipunguni area unfortunately the Authority registered Shija Hussein Matulanga as the owner of the land herein above".

And paragraph 4 reads;

"That on January 2023 when Tanzania Civil Aviation Authority came to collect valuation details for each piece of land to be compensated I was not around hence Shija Matulanga used my absence as an opportunity to deceive the authority to register him as the owner of the disputed land while he is not".

Flowing from above by law, TAA and TCAA are two distinct authorities, each capable of suing or being sued.

While TAA was established as an Executive Agency by the Government Notice No. 404 of December 1999, made under the Executive Agencies Act No. 30 of 1997, TCAA is established under Section 29 (1) of the Civil Aviation Act, Cap 80.

Therefore, the notice in this application is defective because;

One, while the party to this matter is TAA, the notice of intention to sue indicated that the applicant intends to sue TCAA, which is not a party to this matter.

Two, though the addressee in the notice was TAA, that cannot save the notice from being defective because the two authorities are distinct. That means you can indicate that you want to sue TCAA, but you address your intention to TAA.

Third, the notice on who was intended to be sued between TAA and TCAA is ambiguous.

From the discussion above, this application depends on the validity of the 90 days' notice. This is because, in applications of this nature, the 90 days' notice is considered as the existing legal impediment to enabling the applicants to file the injunction by way of Mareva.

But since in this matter that legal impediment is not proper, that means there is no longer any impediment invoking this Court to exercise its discretion to grant the order of Mareva injunction pending the expiration of 90 days' notice to sue the Government.

For the reason and analysis above, I don't see the reason to deliberate and determine the merits or demerits of the application.

Consequently, the application is struck out with costs.

It is so ordered.




K. D. MHINA
JUDGE
20/09/2023