

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

MISC. CIVIL APPLICATION No. 21 OF 2022

**NASSOR AMOR NASSOR-----1st APPLICANT
ASSILE AMOR NASSOR-----2nd APPLICANT
JOHA AMOR NASSOR-----3rd APPLICANT
ESMA AMOR NASSOR-----4th APPLICANT
SALMA AMOR NASSOR-----5th APPLICANT
REHEMA AMOR NASSOR-----6th APPLICANT**

VERSUS

**ASSISTANT REGISTRAR OF TITLES-----1st RESPONDENT
FATUMA SAID SEIF-----2nd RESPONDENT
THE ATTORNEY GENERAL-----3rd RESPONDENT**

RULING

*Last Order date: 28.07.2022
Ruling Date: 29.07.2022*

M. M NYUKWA, J.

By way of chamber summons, the applicants filed this application under section 99(1)(b), (d) and (f) of the Land Registration Act, Cap 334 RE:2019 and Section 95 of the civil Procedure Code, Cap 33 RE: 2019



accompanied with an affidavit jointly deposed by the applicants. The applicants prayed for the following orders: -

- i. That, this court has to order the first respondent to amend the tittle deed No. 033005/30, plot No 78, Block "B" Azimio in Mwanza City, and restore the details available in its original register before being transferred by way of inheritance to the 2nd Respondent.*
- ii. Costs of the appeal.*
- iii. Any other relief that this court will find fit and just to grant.*

During the hearing of this application, the applicants engaged the services of Mr. Akram Adam learned advocate and the 1st and 3rd respondents were represented by Ms. Sabina Yongo, learned state attorney while the 2nd respondent afforded the services of Mr. Chama Matata, learned advocate.

When the 2nd respondent was served, he filed a notice of preliminary objection with three points as follows: -

- i. That the applicants are not the owner of the house situated in plot No. 78 Block B Azimio at Nera Street in Mwanza city, therefore has no locus to institute this application.*



- ii. *That this application is prematurely filed before this court and it is not maintainable for the reason that the Probate Case in regard to plot No. 78 Block B Azimio at Nera Street in Mwanza city, is still pending as Probate Case No. 06 of 2016 before Nyanguge Primary Court.*
- iii. *That the application before this court is incompetent as it was brought without giving a ninety days' notice to the 1st and 3rd respondents*

On 28.07.2022 when the matter came for hearing of the preliminary objections, Mr. Akram Adam promptly conceded to the 3rd point of preliminary objection that the application is incompetent before this court as it was brought without giving a ninety days' notice to the 1st and 3rd respondents. He prays the matter to be struck out with no order as to costs.

The 1st and 3rd respondents' learned state attorney, Ms. Sabina Yongo did not object to Mr. Akram brief submissions and prayer to the preliminary objection rather Mr. Chama Matata the 2nd respondent's advocate support the applicants counsel prayer to struck out the application but objected as to costs insisting that the costs of this application be borne by the applicants as her client incurred instructions



fees. In regard to the other preliminary objections, the 2nd respondent abandoned it, as the 3rd preliminary objection will dispose of the matter.

Rejoining briefly, Mr. Akram claims that both parties incurred costs but parties are relatives therefore costs should not be awarded.

From the parties' submissions, I entirely agree with them that, this application is incompetent before this court as it was filed contrary to the requirement of the law. It goes without say that, the 1st respondent in this application is a government entity in which before suing it, the applicant has to issue a ninety days' notice. It has to be understood that, for the purpose of section 26 of the (Miscellaneous Amendments) Act, 2020 which defined Government to include a government ministry, local government authority, independent department, executive agency, public corporation, parastatal organization or public company established under any written law to which the Government is a majority shareholder. For that purpose, any suit brought against the Government, the requirement of the Government Proceedings Act, Cap 5 R.E 2019 and of the (Miscellaneous Amendments) Act, 2020 should be complied with.

The requirement of issuing notice is provided by the law under section 6(2) of the Government Proceedings Act, Cap 5 Re: 2019 which provides that: -



6.-(1) ...

(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.

The issue of serving ninety days' notice is of significant importance as it affords an opportunity to the Attorney General who stands on behalf of the Government of which in our case at hand is also a party to the application. Thus, helps to know the nature of the litigation and how to go about it. As it was correctly observed by my learned brother Hon. Dyansobera, J in the case of **Thomas Ngawaiya v The Attorney General and 3 others**, Civil Case No 177 of 2013, HCT at Dar es Salaam that:

"The statutory notice, is in my view, not an empty formality. It is a measure of public policy, the underlying purpose being advancement of justice and securing public good by avoidance of unnecessary litigation...."



Likewise, in the case of **Mashaka Abdallah and Another v Bariadi Town Council and 2 others** (Land Case No 3 of 2020) [2021] TZHC 6534 (10 September 2021), the court stated that:

"... In fact, the Attorney General being the Chief Legal Adviser to the Government in terms of the provisions of Article 55 of the Constitution of the United Republic of Tanzania, 1977 and also as legislated in the office of the Attorney General (Discharge of Duties) Act No 4 of 2005 is clothed with mandate to decide whether the intended suit subject to the notice of intention to sue is meritorious or otherwise. In orderly way of executing government businesses, the duty is exercised in liase with the Ministry, Government Institution or independent department of Government to whom the claims are directed."

Being persuaded with the above authority, I had no hesitation to say that the requirement of issuing ninety days' notice before suing Government is of utmost importance due to its underlying intention. In the circumstance, I proceed to hold that failure to serve ninety days' notice is fatal and that, this application is incompetent before the court. I therefore proceed to struck out Misc. Civil Application No 21 of 2022. As to the costs of this application, I agree with the applicants' learned counsel that for the reasons that there is a relationship ties, as the matter involves family members, each party has to bear its own costs.



It is so ordered.



M. MNYUKWA
JUDGE
29/07/2022

Court: Ruling delivered on 29/07/2022 in the presence of the 4th, 5th and 6th applicants and in the absence of the respondents.

M. MNYUKWA
JUDGE
29/07/2022