

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
[IN THE DISTRICT REGISTRY OF ARUSHA]**

AT ARUSHA

LAND CASE NO. 19 OF 2022

STEPHANO ALOYCE ELIAHU.....1ST PLAINTIFF

ELIZABETH ELIAHU MARTI.....2ND PLAINTIFF

SION ELIAHU MARTI.....3RD PLAINTIFF

NAISILIGAKI ELIAHU MARTI.....4TH PLAINTIFF

VERSUS

MLANGARINI VILLAGE COUNCIL.....1ST DEFENDANT

REGISTERED TRUSTEES OF THE

OBLATE SISTER OF ASUMPTION.....2ND DEFENDANT

THE COMMISSIONER FOR LAND.....3RD DEFENDANT

THE REGISTRAR OF TITLES.....4TH DEFENDANT

THE HONOURABLE ATTORNEY GENERAL.....5TH DEFENDANT

RULING

15th August, 2022

TIGANGA, J.

In this case the four plaintiffs sued the defendants for recovery of 20 acres of land situated at Mlangalini village Olomitu Chekereni which they have been using as a family since 1952 up to 2008 when it was invaded by the 1st defendant who sold the same to the 2nd defendant. when the defendants were served with the plaint the learned state Attorney for the



1st, 3rd, 4th and 5th defendants as well as the counsel for the 2nd defendant raised the preliminary objection on points of law that,

1. The plaintiff claim is time barred
2. That the suit offends section 6 (2) Of the Government Proceedings Act, Cap 5 R.E 2019 for failure to serve the mandatory notice to the 3rd, 4th and 5th defendants
3. That the suit is an abuse of the court process in light of the existence of the ruling of District Land and Housing Tribunal at Arusha (Hon. C.P Kamugisha- Chairperson in Application No. 57 of 2013 dated 11th April 2014)
4. That there is no statutory Notice issued pertaining the suit land.

As a matter of practice, the preliminary objection was to be heard first. At the hearing, the plaintiffs appeared in person fending for themselves, as they were not represented by the Advocate while all defendants were represented. While the 1st, 3rd, 4th and 5th, were represented by Ms. Zamaradi Johanes, learned State Attorney, the 2nd defendant was represented by Mr. Mnyiwala Mapembe, learned Advocate.

When the matter was called for hearing of the preliminary objection, the plaintiffs conceded the third point of preliminary objection that upon reflection, they have noted that, the 3rd preliminary objection has merit

as they did not follow the mandatory procedure of serving the notice to 3rd 4th and 5th defendants. They asked the matter to be struck out without costs but with the leave to refile.

Responding, Ms. Zamaradi Johanes, learned State Attorney, did not dispute their prayers. However, she reminded the court that, one of the objection raised was on time limitation, she asked the court to dismiss the suit instead of striking out. But, upon being reminded that, the concede objection is based on the fact that, that the necessary procedure in filing the suit was not adhered to the omission which renders the suit to be as good as if it was not filed at all. Having been so reminded Ms. Zamaradi asked the court in its order to remind the plaintiff on the consideration of the aspect of time limitation when planning to refile the suit in court.

On his part, Mr. Mnyiwala Mapembe, Advocate also had no objection on the prayer, but he asked the matter to be struck out with costs.

In rejoinder the defendants insisted the matter to be struck out without costs as they are being helped by the people from Human right under legal aid.

Now, following the concession by the plaintiffs, on the 2nd point of preliminary objection raised which is based on failure by the plaintiff to issue and serve the notice of intention to sue the 3rd, 4th and 5th


defendants in terms of section 6 (2) Of the Government Proceedings Act, Cap 5 R.E 2019 and the prayer that the suit be stuck out without costs which prayers was not objected by the counsel for defendants save for the prayers to wave costs which they resisted, I find merit on the said preliminary objection as conceded. Consequently, basing on the concession by the plaintiffs, the suit at hand is hereby struck out as that is the only remedy available.

Regarding the issue of costs, from the record, and their submission in rejoinder, the plaintiffs are being helped by the Legal and Human Right Centre, Arusha Legal Aid Clinic under the Legal Aid Act No. 1 of 2017 and its Rules GN. 109 of 2019 and even the court waived court fees for them. That being the case, they cannot be condemned to pay costs. That said, the order trucking out the suit is without costs.

It is accordingly ordered.

DATED at MWANZA this 15st day of August 2022




J. C. TIGANGA
JUDGE