

IN THE HIGH COURT OF TANZANIA

(MOROGORO SUB-REGISTRY)

AT IJC MOROGORO

MISC. LAND APPLICATION NO. 71 OF 2023

FIRMIN MIZAMBWA.....APPLICANT

VERSUS

MOROGORO MUNICIPAL COUNCIL..... 1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

30th Oct, & 30th Nov, 2023

CHABA, J.

The Applicant filed an application under the certificate of urgency, and under section 2 (3) of the Judicature and Application of Laws Act, [CAP. 358 R. E. 2019] and section 95 of the Civil Procedure Code, [CAP. 33 R. E. 2022], requesting the Court to issue a temporary injunction order pending filing of the suit. The affidavit in support of the application was taken by Firmin Mizambwa, the applicant herein. The applicant claims to be the owner of all that piece of land described in Town Plan No. 10/MOR/382/052012, for purposes of building a University, and that he has been residing at the suit premises since 2000.



He acquired the land through different means, he bought 25 acres from Exaud Chacha in 2000, he was allocated 25 acres by the authority through a letter with Ref. TMM/MTC.70/026 in 2000; in 2008, he was handed over 75 acres by his group members; he bought 25 acres from Dickson Mkude in 2010 and in 2000 he was allocated 100 acres through a letter with Ref. TMM/MTC.70/027. He claims to have made substantial development on the land, to wit; he planted teak trees, cashew trees, neem trees and other hard wood trees. He claims to have built two permanent houses, a bore hole and animal shed. He surveyed the land, and entered into an agreement with Mpoki Enterprises to prepare a Town Plan, the Town Plan was approved by the Municipal Council in 2012, and the Ministry of Land had also approved the Plan in 2012.

He claims further that, the office of the Assistant Commissioner for Lands in Morogoro and the Municipal Director had reassessed the land in 2022 and gave it Number LD/MG/4571/03/01, and they had attempted to re-survey the area, and despite the resistance through various communications between the applicant and the Commissioner for Lands and the Municipal Director, the Commissioner and the Surveyors surveyed the land on 28th August, 2023. That, during the survey, they destroyed the trees, the houses and the shed, this is what prompted the applicant to file this application under the certificate of urgency.

The respondents filed their joint counter affidavit in which they stated that, the disputed land is within the Forest Reserve, that the land was declared the Forest Reserve since 1953 through the Government Notice No. 204 dated 17th July, 1953 covering a total land of 12,950 hectares. The land is owned by Mvomero District Council. The respondents acknowledge in paragraph 5 of the affidavit that, the applicant has indeed developed the land and has made substantial development on the land. The respondents say, the land was surveyed since 1953. That, there was a Directive from the President of the United Republic of Tanzania in 2021 that the land be re-assessed and allocated to the citizens in accordance with the law. The respondents admit that, the land was re-surveyed for residential purposes, the respondents accentuated further that, they were only implementing the directives of the President.

Together with the counter affidavit, the respondents raised an objection to the effect that, the application contravened the provisions of Section 6 (2) of the Government Proceedings Act, [CAP. 5 R. E. 2019] as amended by the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020.

I shall first determine the preliminary objection on a point of law raised by the respondents before determining the application itself. The applicant has acknowledged that, he has filed the application before the 90 days' notice to sue the Government expired, and that serving of the Notice is a mandatory

requirement. He however argues that, the Court is asked to waive the requirement of the Notice due to the nature and the circumstances of the matter. The applicant has never prayed for waiver of the requirement of Section 6 (2) of the Government Proceedings Act or the Local Government (Urban Authorities) Act. The applicant says, the Notice was already served to the Municipal Director since 1st September, 2023, and also claims that, the 90 days' Notice was served to the Solicitor General and the Commissioner for Lands since 5th September, 2023. The respondents say there was no Notice issued or served to the respondents.

I saw the Notice; it is annexed in the affidavit as an annexure but not marked. The Notice is dated 01st September, 2023, it was addressed to the Municipal Director of Morogoro Municipal Council, and copied to the Solicitor General and the Attorney General. There is however, no proof that the Notice was served to the Municipal Director, or to the Attorney General or the Solicitor General.

From the records, there was no notice of intention to sue served as required under Section 106 (1) (a) of the Local Government (Urban Authorities) Act [CAP. 288 R. E. 2019], as amended by Written Laws (Miscellaneous Amendments) Act, No. 1 of 2020. The Municipal Council cannot be taken to Court without a prior Written Notice issued under the Local Government (Urban Authorities Act), [CAP. 288 R. E. 2019]. The Notice was issued under Section 6 (2) of the Government Proceedings Act (supra), but again the Notice was never served or proved to be

served. Under both laws, no suit shall be commenced against an Urban Authority or Government unless a ninety (90) days' notice of intention to sue is served upon the Local Government or the Government. The Counsel representing the applicant said, the notice was served to the Municipal Director and that, a copy was served to the Attorney General as well as to the Solicitor General.

With the above finding, I hold that the notice was not properly served to the Municipal Director, as the Notice was to be issued under the Local Government (Urban Authorities) Act (supra). The applicant also failed to prove that, he had served the Municipal Director with the Notice, he also failed to prove that copies of the Notices were served on the Attorney General and the Solicitor General. It is provided under Section 6 (2) of the Government Proceedings Act [CAP. 5 R. E. 2019] 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".

Since the 1st respondent is a Local Government Authority and hence by virtue of Written Laws (Miscellaneous Amendments) Act, No. 1 of 2020 whose amendments included all suits against, inter-alia, Local Government Authorities in the list of Government suits, the applicant was duty bound to serve the Local Government with a 90 days' Notice. When suing the Local Government or the Government the procedure for institution of proceedings against the Government must conform to the provisions of the Government Proceedings Act (supra) regardless of the nature of the claim. The absence of the Notice out-rightly ousts the jurisdiction of the Court to entertain the suit or the application that is instituted before the Court.

For the above stated reasons, the preliminary objection raised by the 1st and 2nd respondents is upheld, hence the application is therefore struck out for being incompetent with costs. I so order.

DATED AND DELIVERED AT MOROGORO this 30th day of November, 2023.




M. J. Chaba

Judge

30/11/2023

Court:

Ruling delivered this 30th day of November, 2023 in the presence of Mr. Asifiwe Alinanuswe, Learned Advocate for the Applicant and in the presence of Ms. Emma Ambanisye, also Learned State Attorney for the Respondents.




A.W. Mmbando

DEPUTY REGISTRAR

30/11/2023

Court:

Rights of the parties to appeal to the CAT fully explained.




A.W. Mmbando

DEPUTY REGISTRAR

30/11/2023