

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(LAND DIVISION)  
AT DAR ES SALAAM**

**LAND CASE NO. 4 OF 2021**

**MAUA STEPHEN NDAKI** (*Administratrix of the estate of late  
Steven Njile Ndaki*).....**PLAINTIFF**

**VERSUS**

**TIB DEVELOPMENT BANK LIMITED**.....**1<sup>ST</sup> DEFENDANT**

**HALFAX INVESTMENT (T) LTD**.....**2<sup>ND</sup> DEFENDANT**

**KITINDI COMPANY LIMITED AUCTION**

**MART AND GENERAL BROEKRS**.....**3<sup>RD</sup> DEFENDANT**

**SOLICITOR GENERAL**.....**4<sup>TH</sup> DEFENDANT**

**RULING.**

**S.M. MAGHIMBI, J:**

On the 11<sup>th</sup> day of January 2021, the Plaintiff named above filed a suit against the four defendants seeking for declaratory orders that the suit premise is a matrimonial house of the plaintiff and the late Steven Njile Ndaki. She further prayed for declaratory orders that the suit premises was wrongly pledged as the collateral in loan agreement between the 2<sup>nd</sup> defendant and the 1<sup>st</sup> defendant. The plaintiff further prayed for a permanent injunction order restraining the 1<sup>st</sup> and 3<sup>rd</sup> defendant and their agents from unlawfully interfering with the Plaintiff's peaceful possession of

the suit premises and from conducting any activity or transaction in the disputed property.

While filing their Written Statements Defence, the 1<sup>st</sup> and 4<sup>th</sup> defendants filed along with it a notice of preliminary objection on point of law that:

1. The Plaintiff is bad in law for contravening section 6(2) of the Government Proceedings Act (Cap. 5 R.E. 2019) by instituting the suit against Government owned institution i.e 1<sup>st</sup> Defendant without issuing a ninety days Notice, on the intention to sue.
2. The plaintiff is defective for non joinder of the Attorney General as a necessary party in proceedings against the Government as prescribed in section 6(3) and (4) of the Government Proceeding Act (Cap. 5 R.E. 2019) as amended by section 25 of the Written laws (Miscellaneous Amendment) Act No. 1 of 2020

On the 17<sup>th</sup> day of March 2021, I ordered that the preliminary point of objection raised by the 1<sup>st</sup> Defendant be disposed of by way of written submissions. The 1<sup>st</sup> and 4<sup>th</sup> defendants filed their submissions accordingly. On her part, the plaintiff's submissions were drawn in gratis by Ms. Glory Sandewa, learned advocate from the Tanzania Women Lawyers Association.

I must be clear at this point that the submissions by the plaintiff were not at all replying the point of objection. Ms. Sandewa has completely misled herself on what was required to be submitted in reply of the objection. Instead of addressing the point of objection raised, she went on to prove the plaintiff's case by written submissions. Her submissions attempted to justify the plaintiff's interest on the suit property instead of addressing

whether the suit had complied with the provisions of Section 6(2) of the Government Proceedings Act, Cap. 5, R.E 2002. On that note, the plaintiff is rendered not to have filed any submissions in reply of the substance of the 1<sup>st</sup> and 4<sup>th</sup> defendants' preliminary objections. Determination of the objection will therefore base on the submissions of the defendant alone.

In her submissions to support the objection, Ms. Deborah Mcharo, learned State Attorney representing the first and fourth defendants, submitted that the first defendant, TIB Development Bank, (formerly known as Tanzania Investment Bank) was established by the Tanzania Investment Bank Act, 1970 (No. 20 of 1970) and is a bank solely owned by the Government of Tanzania by 100%.

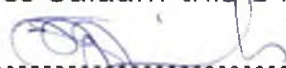
Having set out the existence of TIB Development Bank in connection with the Government, she then submitted on the first point that; the Plaint is bad in law for contravening section 6(2) of the Government Proceedings Act (Cap. 5 R.E. 2019) by instituting the suit against Government owned Institution i.e 1<sup>st</sup> Defendant without issuing a ninety days Notice, on the intention to sue. Her submission was that the law specifically requires issuance of a written notice of not less than ninety (90) days of intention to sue before suing the government. That the 1<sup>st</sup> Defendant being the Government Department was supposed to be issued with a ninety days' prior notice before the filing of this suit, something which was not done by the plaintiff.

On my part, I have found the first objection to be meritorious. As per the cited provision, since the 1<sup>st</sup> defendant is a Government owned Bank, coupled with the fact that the plaintiff is in that knowledge and that is why

she also sued the Solicitor General as necessary party, it goes without saying that the 1<sup>st</sup> and 4<sup>th</sup> defendants are Government entities making the suit beforehand to fall squarely into the compliance with the provisions of the Government Proceedings Act. To be more specific, the plaintiff was duty bound to comply with the provisions of Section 6(2) of the Act which requires a 90 days' notice be issued before a suit is instituted against the Government Department like the 1<sup>st</sup> defendant, something which the plaintiff failed to do.

Having made the above findings, I find the first point of objection as sufficient to dispose this suit. Having contravened the provisions of Section 6(2) of the Act, the suit beforehand is fatally defective. It is hereby struck out with costs.

Dated at Dar es Salaam this 14<sup>th</sup> day of July, 2021



.....  
**S.M MAGHIMBI**  
**JUDGE**

