

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

LAND CASE NO. 184 OF 2023

UTEGI TECHNICAL ENTERPRISES (INTL) LT.....1ST PLAINTIFF

ALUTECH ENGINEERS (E.A) LTD2ND PLAINTIFF

VERSUS

TEMEKE MUNICIPAL COUNCIL 1ST DEFENDANT

TANZANIA RAILWAYS CORPORATION 2ND DEFENDANT

REGISTRAR OF TITLE 3RD DEFENDANT

COMMISSIONER FOR LAND 4TH DEFENDANT

DIRETOR OF SURVEY AND MAPPING 5TH DEFENDANT

THE ATTORNEY GENERAL 6TH DEFENDANT

SEAGLOW SHIPPING SERVICES LIMITED 7TH DEFENDANT

DONALD CHACHA TOGOCHA8TH DEFENDANT

FORCE FOCUS AUCTION MART CO LIMITED 9TH DEFENDANT

IGALULA AUCTION MART LIMITED 10TH DEFENDANT

RULING

Date of Last order: 05/09/2023

Date of Ruling: 12/09/2023

A. MSAFIRI, J.

This is the land case, whereby the plaintiffs are claiming for declaration that they are the rightful and beneficial owners of the disputed land against the defendants. It is alleged that the disputed land is unsurveyed piece of land located in the Kurasini area at Mivinjeni, within the

Alle.

Temeke Municipality, with estimation value of TZS 17,000,000,000/- within the jurisdiction of this Court.

The defendants upon service, filed their written statement of defence (WSD) and vehemently denied the plaintiff's claims. The 1st, 2nd, 3rd, 4th, 5th, and 6th defendants also raised one preliminary objection to the effect that;

- 1. That the suit is incompetent for non-compliance with the provisions of **section 6(2) of the Government Proceedings Act** (Cap 5 R.E. 2019) as amended by Written Laws (Miscellaneous Provisions) Act No. 1 of 2020.*

It is the law that once a preliminary objection has been raised, it has to be disposed of first before proceeding on other stages on the case. Therefore the raised preliminary objection was argued by written submissions where the plaintiffs enjoyed the legal services of Mr Living Raphael, learned Advocate, Carolyne Lyimo learned State Attorney appeared for the 1st to 6th defendants, Emmanuel Hando for the 7th and 8th defendants while the preliminary objection was heard ex-parte against the 9th and 10th defendants.

Ms Carolyne was the first and she submitted in support of the preliminary objection and stated that this suit is good for struck out against the 1st defendant with costs because the suit is incompetent for

non-compliance with the provisions of Section 6(2) of the Government Proceedings Act as amended.

She was of the view that the preliminary objection is purely on point of law and in conformity with the conditions set in the famous case of **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd** [1969] 1 EA 696 that it was held that;-

"...a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point of objection may dispose of the suit. Examples are an objection to the jurisdiction to the of the court or plea of limitation, or submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration"

She argued that all suits against the Government must commence after issuing 90 days as per Section 6 of the Government Proceedings Act. She added that Section 106 (1) of the Local Government (Urban Authorities) Act, Cap 288 as amended by the Written Laws Miscellaneous Amendments) Act, No. 1 of 2020 provides that;

'No suit shall be commenced against an urban authority- (a) unless a ninety days' notice of intention to sue has been served upon the urban authority and a copy thereof to the Attorney General and the Solicitor General'

ALLS

She pointed that the word 'shall' implies a mandatory provision of the law, but in this suit the Temeke Municipal Council being the 1st defendant among the defendants was issued a 30 days' notice instead of 90 days' notice contrary to the law.

To bolster her points, Ms Lyimo cited the case of **Abuu Sadiki Lema vs Ilala Municipal Director and 2 Others**, Land Case No. 114 of 2022 (Unreported) HC Dar es Salaam on page 10 where the Court held that; -

'Applying the above provision, it is clear that in any suit which involves the local government, the same must be issued with a 90 days' Notice. Therefore, it is a mandatory requirement for the plaintiffs to issue a 90 days' notice to the City Council.'

She prayed that the suit be struck out with costs.

In response, Mr. Rafael learned Counsel for the plaintiffs started by appreciating and acknowledging the proper principles and citation of the law by the learned State Attorney in which he subscribed to the same.

However, he contended that although the issued notice to the 1st defendant was of 30 days, yet the suit did not commence until the 90 days has passed and that the suit was instituted more than six months later.

Alle

Mr Rafael was of the view that spirit of the 90 days' notice is not on the wording but the intention of the law, which is not to take the Government by way of surprise. That being the case, the case was not instituted after the lapse of 30 days but six months later which is equal to 90 days. He stated that the notice was served to the 1st defendant on 23.12.2022 while the suit was instituted before this Court on 09.06.2023 which is more than six months from when the 1st defendant was served with notice to sue as per the proof of service dated 23.12.2022 in the additional documents.

Mr. Rafael was of the view that the principle established in the case of **Abuu Sadiki Lema vs Ilala Municipal Director, Tanzania Airports Authority and the Attorney General**, Land Case No. 114 of 2022, is distinguishable from the present suit since in the cited case, the notice was not issued at all which is different from the current suit where the notice was issued and the suit did not commence until the lapse of 90 days' notice though the notice contained wording of 30 days' notice.

To bolster his argument Mr. Rafael cited the case of **Essaji vs. Solonki** [1968] EA 2018 224 where it was held that; -

'The administration of Justice should normally require that substance of all disputes should be investigated and decided on their merits and that errors and lapses should not necessarily debar a litigant from pursuit for his rights'

Adls

Mr Rafael ended by submitting that the given Notice suffices the requirements of Section 6 of the Government Proceedings Act.

I have gone through the rival submissions of the parties and I believe that the issue to determine is whether the given notice suffice the purpose of the law under Section 6 of the Government Proceedings Act, Cap 5 [R.E. 2019] as amended by Section 25 of the written Laws (Miscellaneous Amendment) Act 2020 which provides; -

'The principal Act is amended in section 6, by- (a) deleting subsection (3) and substituting for it the following-

"(3) All suits against the Government shall, upon the expiry of the notice period, be brought against the Government, ministry, government department, local government authority, executive agency, public corporation, parastatal organization or public company that is alleged to have committed the civil wrong on which the civil suit is based, and the Attorney General shall be joined as a necessary party.'

However, Section 26 of the same Act provides that; -

'The principal Act is amended in section 16, by adding immediately after subsection (3) the following:

"(4) For the purposes of subsection (3), the word "Government" shall include a Government ministry, local government authority, independent department, executive

Alls

agency, public corporation, parastatal organization or a public company established under any written law to which the Government is a majority shareholder.”

I am of the view that the intention or purpose of the above provision was that the issue of the prior 90 days Statutory Notice to the Government is to inform the Government of the nature of the claim and ample time to deal administratively with the matter and avoid litigation. The intention of the 90 days' notice to the Government is not to set the matter for litigation but first, to give the Government the time to check on the claims, meet with the opponent party and try and if possible, settle the matter amicably out of Court.

In this suit all other defendants were required to be issued with notice were properly served with the 90 days' notice of intention to sue i.e. the 2nd, 3rd, 4th, 5th, and 6th defendants except the 1st defendant only who was served with 30 days' notice. I agree with Mr. Rafael's arguments that, despite the fact that the 1st defendant was issued with 30 days' notice, the suit did not commence until after the expiration of 90 days, whereas it shows that the Notice was issued to the 1st defendant on 23.12.2022 but the suit was instituted against the 1st defendant on 09.06.2023 which is more than six month. This was way after the

AUG

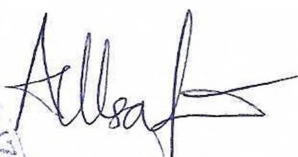
expiration of 90 days, which I find is in compliance with the provisions of the Government Proceedings Act, (supra).

The reason for my finding is that the suit was not instituted against the 1st defendant after expiration of 30 days issued Notice but, after expiration of 90 days which is as per the law requirement. That is to say the 1st defendant was properly informed and had an ample time to either resolve the matter administratively or by negotiations with the plaintiffs.

I am of the view that the serving of 30 days' notice to the 1st defendant is not fatal taking into consideration that the plaintiffs did not act upon the time given in the Notice given but acted after the expiration of 90 days provided by the law. Avoiding technicalities, I invoke the principle of overriding objectives under Section 3A and 3B of the Civil Procedure Code Cap 33 [R.E. 2019] to cure the defect herein. Proviso provides; -

For the foregoing reasons I find the objection to have no merit and I overrule it accordingly. No order as to the costs.

It is so ordered.


A. MSAFIRI
JUDGE
12/09/2023

