

TANZANIA / JUDGMENT

MS JUED HOMES SCANNED

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TANZLIIDECIDED
3 October 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM LAND CASE NO.24790 OF 2024 M/S JUED HOMES LIMITED..... 1st PLAINTIFF PAUL ALENDWASEN MEENDA.....2nd PLAINTIFF VERSUS FATAEL ANDERSON SWAI..... 1st DEFENDANT INSPECTOR GENERAL OF POLICE.....2nd DEFENDANT DAR ES SALAAM ZONAL POLICE COMMANDER..... 3rd DEFENDANT DAR ES SALAAM ZONAL CRIME OFFICER (ZCO)..... 4th DEFENDANT KINONDONI REGIONAL POLICE COMMANDER..... 5th DEFENDANT KINONDONI REGIONAL CRIME OFFICER(RCO) 6th DEFENDANT THE ATTORNEY GENERAL..... 7th DEFENDANT 1

RULING

1&h December2024 & &h January2025 L.HEMEDJ On 03rd day of October 2024, the Plaintiffs through the legal service of Mr. Peter Michael Madeleka, learned advocate instituted the instantaneous suit against the herein defendants. The Plaintiffs are suing the 1st Defendant for trespass and unlawfully possession of land on Plot No. 487 registered under Title No. 52250, Mikocheni Phase II Area, Dar es Salaam City. The plaintiffs are thus seeking for the following reliefs:- "i) An order declaring the 1st Plaintiff the lawful owner of the disputed piece of land... ii) Declaration that the Defendants' acts against the Plaintiff and her properties are unlawful and uncalled for, Hi) An Order against the Defendants restraining them permanently from trespassing or in anyway, interfering with the Plaintiff's operations or suit properties on the above claim. 2

- a. " General and punitive damages (sic) iv) Costs against the Defendants
- v) Any other order as the Court may deem just to grant." The defendants resisted the suit by filing the respective written statement of defence. The 2nd, 3rd, 4th, 5th, 6th and 7th defendants raised a preliminary objection in iimine iitis^wis.- "The suit is incompetent and untenable in law for failure to issue and serve 90 days statutory notice of intention to sue the 2fd, 3d, 4h, 3h, &h and 7th defendants." Hearing of the said preliminary objection was done by way of written submissions which were filed timely as directed by the court. Mr. Stephen Kimaro, learned state attorney acted for the 2nd up to 7th defendants while the plaintiffs enjoyed the legal services of Mr. Peter Michael Madeleka, learned advocate. I have keenly read the said rival submissions, the question for determination remains to be whether the

preliminary objection 3 is meritorious. The basis of the preliminary objection is that the 2nd up to 7th defendants have been sued contrary to section 6(2) of the Government Proceedings Act [cap.5 R.E 2019] which provides thus:- "Afo 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." [Emphasis added] The above provision requires that, prior to instituting any suit against Government Minister, Department or officer concerned; the claimant must issue a notice of not less than ninety days of intention to sue. In *Mukisa Biscuit Manufacturing Co.Ltd vs. West End Distributors Ltd* (1969) E.A 696 the court held thus:- 4 "A preliminary objection consists of a point of law which has been pleaded, or which arises by dear implication out of pleadings, and which if argued... may dispose of the suit". [Emphasis added] It is clear from the pleadings that the 2nd up to 7th defendants are Government officers who fall squarely to the requirements stated in the aforesaid provision. In the Complaint, it has not been pleaded if the 2nd up to 7th defendants were served with the ninety days' notice of intention to sue. In his submissions to resist the preliminary objection, Mr. Madeleka has asserted that requirement of ninety days' notice is mandatory only when the Government or Government institution or government officer is being sued alone. According to him, when the Government institution or Government officer is sued jointly with another person, a party upon whom the Government Proceedings Act (supra) does not apply, the ninety days' statutory notice becomes not mandatory. Mr. Madeleke relied on section 6(5) of the Government Proceedings Act (supra) which provides thus:- 5 "Notwithstanding the provisions of subsection (3), the Attorney General may, unless another person ought to be sued, be sued or be joined as a co- defendant, in proceedings against the Government." In the light of the above provision, the learned counsel for the plaintiffs had the view that the ninety days' notice of intention to sue the 2nd up to 7th defendants was not mandatory as they have been sued together with the 1st Defendant against whom section 6(2) of the Government Proceedings Act (supra) does not apply. He concluded by urging the court to find the preliminary objection devoid of merit. Mr. Stephen Kimaro, the learned state attorney insisted issuance of the 90 days' notice prior to instituting a suit against government institution is mandatory. In his view, failure to comply with the requirement of section 6(2) of the Government Proceedings Act (supra) renders the suit incompetent before court. Having carefully gone through the rival submissions, I have realized that both learned counsel are at one on the requirement of statutory notice when suing the Government as provided under section 6(2) of the Government Proceedings Act (supra). They only differ on the circumstance under which the statutory notice is mandatory. On his part, Mr. Madeleka has consistently insisted that where the Government institution is sued jointly with a party who is not a government officer or institution, issuance of statutory notice becomes not mandatory under section 6(5) of the Act. The position taken by Mr. Madeleka calls the court to decide on whether section 6(5) of the Government Proceedings Act (supra) provides for exception to the requirement of statutory notice provided under section 6(2) of the Act. I

have read section 6(5) and found it making reference to section 6(3) of the Act. I have opted to reproduce the two section for scrutiny. "6-(1)...

- (3) AH suits against the Government shall, after the expiry of_ the notice be brought, against the. AttorneyzGeneraij. and a copy of the plaint shall be served upon the Solicitor General, Government Ministry, Department or Officer that is alleged to have committed the civil wrong on which 7 the civil suit is based...
- (5) Notwithstanding the provisions of subsection (3), the Attorney. General, may, unless another person ought to be sued, be sued or be joined as a cozdefendanti m proceedings, against the Government. "[Emphasis added] The above-cited provisions provide for who must be joined in suits initiated against the Government. Subsection (3), envisages that suits against the Government must be filed against the Attorney General. The solicitor general and the department or officer alleged to have committed civil wrong will only be served with the Plaint. Subsection (5) makes it necessary to join the Attorney General in all proceedings against the Government, Government Institution or Government Officer. From the fore going, subsection(5) does not provide any exception to the requirement of issuing the ninety days statutory notice to the Government whenever it is intended to institute a suit against it. In other words, the requirement of issuance of statutory notice to sue under section 6(2) of the Government Proceedings Act {supra} is mandatory and there is no exception to that. This was also insisted by this court in 8 Thomas Ngawaia vs. Attorney General & 3 others [2018] T.L.R 592 where it was stated thus:- "The provisions of section 6(2) of the Government Proceedings Act are express^ explicit mandatory, admit no implications or exceptions. They are imperative in nature and must be strictly complied with. Besides, they impose absolute and unqualified obligation on the court." [Emphasis added] I have also taken time to go through all 24 sections of the Government Proceedings Act {supra}) but I could find none of them exempting a party who sues the Government jointly with persons not subject of the Act, from issuing a ninety days' notice of intention to sue. This being the case, I do subscribe to the position taken in Thomas Ngawaia case{supra) that the Government Proceedings Act imposes an obligation to the court not to admit or hear any suit against the Government filed without issuance of ninety days' notice of intention to sue contrary to section 6(2) of the Act. 9 The suit at hand has been instituted against the 2nd up to 7th defendants who are Government officers without a prior notice of intention to sue contrary to section 6(2) of the Act. The matter is thus premature against the 2nd up to 7th defendants and thus incompetent before this court. It is trite law that a suit which is found incompetent, deserves to be struck out. I do hereby proceed to strike out the entire suit for being filed in court prematurely. Each party to bear its own costs. Order accordingly. DATED at JM^jCWsALAAM thfc-®th January 2024. HEMED JUDGE io

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