

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

LAND CASE NO. 340 OF 2015

**GLADNESS RAMADHANI MZIRAY .....**PLAINTIFF

VERSUS

**MIPEKO VILLAGE COUNCIL .....**1<sup>ST</sup> DEFENDANT

**TATU MOHAMED SALEHE .....**2<sup>ND</sup> DEFENDANT

**SAID OMARY MUKETO .....**3<sup>RD</sup> DEFENDANT

**ASHA MOHAMED LIWAKE .....**4<sup>TH</sup> DEFENDANT

**MAULIDY RASHID MICHENJE .....**5<sup>TH</sup> DEFENDANT

**BAKARI RASHID MICHENJE .....**6<sup>TH</sup> DEFENDANT

**HASSAN RAI KATUNDU .....**7<sup>TH</sup> DEFENDANT

**SALEHE OMARY KUNGI .....**8<sup>TH</sup> DEFENDANT

**RASHID MOHAMEDI MBOGA .....**9<sup>TH</sup> DEFENDANT

R U L I N G

Date of Last Order: 24/08/2020

Date of Ruling: 06/11/2020

The plaintiff, Gladness Ramadhani Mziray instituted Land Case No. 340 of 2015 against **Mipeko Village Council**, **Tatu Mohamed Salehe**, **Said Omary Muketo**, **Asha Mohamed Liwake**, **Maulidy Rashid Michenje**, **Hassan Rai Katundu**, **Salehe Omary Kungi** and **Rashid Mohamedi Mboga**. According to paragraph 11 of the amended plaint that dates 23<sup>rd</sup> April 2018 the plaintiffs'

claims against the defendants **jointly and severally** is for declaration that the plaintiff is the lawful owner of the un-surveyed land measuring 10 acres located at Kimbangulile suburb, Mipeko Village, Tambani Ward, Mkurunga District in Pwani Region.

The first Defendant, Mipeko Village Council raised an objection that this Court has no jurisdiction to entertain this matter for want of the 30 days statutory notice to sue the first Defendant.

The Preliminary Objection was argued by way of written submission. The Plaintiff had legal services of Mr. Brian William Magoma, learned counsel while the 1<sup>st</sup> Defendant enjoyed services of Ms. Mary K. Kavala, learned counsel.

Submitting in support of the Preliminary Objection, the learned Counsel for the 1<sup>st</sup> Defendant argued that the Plaintiff instituted this suit against the first Defendant without issuing a 30 days statutory notice as per the requirement of Section 190 (1) of the Local Government (District Authorities) Act [Cap. 287 R. E. 2002].

The learned counsel argued further that according to Section 26(1) & (2) (b) of Cap. 287, the Notice should be in the name of the respective Local Government authority and not in the name of any other person.

She concluded her submission by insisting that the Plaintiff had never issued such notice to the 1<sup>st</sup> Defendant, thus this Court has no jurisdiction to entertain this matter.

In his reply submission the Plaintiff's counsel argued that the Plaintiff issue a 30 days' notice to sue the 1<sup>st</sup> Defendant. He argued that on 10<sup>th</sup> August,

2015, the Plaintiff wrote a letter to the chairman of Mipeko Village, Tambani Ward, Mkuranga District in Pwani Region communicating among other things, her intent to sue the village council if she won't be given back her land. The letter bear a title:-

***"Utekelezaji wa Amri ya Baraza la kata ya Tambani juu ya Mgogoro wa Ardhi wa mwaka 2011 kati ya Gladness Ramadhani Mziray dhidi ya Joseph Emmanuel Ngaiza, Yusuph Ally Manzi, Omary Muya Mkumukwa, Aisha Said Shaweji, Constantino Godson Monday and Miraji Rashid Mwilenga".***

The letter was received by the Village Executive Officer of Mipeko village on 13<sup>th</sup> August 2015. The learned advocate is of the view that the letter suffices to be a 30 days statutory notice because it has the words 30 days legal notice bolded and that there is no stipulated format of the 30 days' notice. He thus, argued that the plaintiff has complied with the legal requirement by issuing 30 days' notice notifying Mipeko Village Council her intention to institute a suit against it for recovery of her land.

In her rejoinder, counsel for the first Defendant, reiterated her submission in chief and argued that, the letter written by the Plaintiff cannot be considered as a 30 days statutory notice as it was not addressed to Mipeko Village Council. It was addressed to the village chairman of Mipeko Village Council and not Mipeko Village Council. Thus, it did not comply with the requirement of sections 190(1), 26(1) and 26(2)(b) of Cap. 287.

From the submissions by the parties, it is not disputed that the Plaintiff wrote a letter dated 10<sup>th</sup> August 2015 to the village chairman of Mipeko Village Council and that in the said letter the Plaintiff has indicated that the

letter is also a 30 days statutory notice to sue the Village council. The issue is whether the said letter can be considered to be a valid 30 days statutory notice to sue the village council in this case.

Fortunately the said letter was annexed to the Plaintiff's reply submission. According to the heading and contests of the letter it seeks to inform the village chairman of Mipeko Vollection that the Plaintiff is in the process of executing the decision of the Ward Tribunal (Tambani Ward Tribunal in a case between her and Joseph Emmanuel Ngaiza, Yusuph Ally, Amanzi, Omari Muya Mkumulwa, Aisha Said Shaweji, Constantino Godson Monday and Miraji Rashid Mwilenga.

The letter indicates further that the village council was not party to the case, but is among the institutions responsible with the execution of the decree issued by the tribunal. And that upon failure of the village council to perform the duties imposed by the Ward Tribunal, the Plaintiff will sue the village council. The relevant part of the letter reads:-

*"kwa barua hii naomba Serikali ya Kijiji cha Mipeko kutekeleza maagizo ya Baraza la Kata la Tambani na maombi yangu ndani ya siku 30 tangu kupokelewa. kwa barua hii na kwamba ikiwa maombi yangu hayatakelezwa nitachukua hatua za kisheria ikiwa ni pamoja na kufungua kesi Mahakamani dhidi ya Serikali ya Kijiji cha Mipeko. **Barua hii ni Notisi ya Kisheria ya Siku thelathini."***

Although the Plaintiff mentioned that the letter constitutes a 30 days' notice to sue the village council, the contents of the letter shows the Plaintiff sought assistance of the village council in execution of the decision of the ward tribunal.

According to the said letter, the Plaintiff requested the village council do the following;

- i. to ascertain the boundaries of the Plaintiff's Land measuring 10 acres:-
- ii. To mention/identify the names of trespassers of the said land
- iii. To order vacant possession of the suit land;
- iv. To hand over the disputed land to the plaintiff

The assistance sought by the plaintiff from the village council is beyond execution of the decree of the tribunal however, I will not deal with that issue. I will only deal with the relevant issue which is whether the letter constitute a 30 days statutory notice. For a notice to be valid it should be addressed to a proper addressee and it should state clearly the cause of action, when and where it arose.

The proper addressee in the case at hand which involves a village, is the village council as per section 26(2) of the Local Government (District Authorities) Act, [Cap 287 R.E 2002]. The letter written by the plaintiff is addressed to the chairman of Mipeko Village Council. Thus, it was addressed properly.

On whether the letter states the nature of the cause of action, the response is in negative. The letter does not state any cause of action against the village council. As already highlighted, the letter concerns execution of the Tambani Ward Tribunal decree and not the alleged trespass by the defendants in this case. The defendants in this case are different from the defendants whose names appear in the alleged notice issued to Mipeko Village Council. Therefore the plaintiff's letter to the Chairman of Mipeko

Village council does not constitute a 30 days statutory notice to sue Mipeko village council in this case. In that regard, the plaintiff did not issue the statutory 30 days' notice before suing Mipeko Village Council.

The law is very clear that no suit can be instituted before the court in absence of 30 days' notice. In **Arusha Municipal Council versus Lyamuya Construction Company Limited** [1998] TLR 13 the Court of Appeal of Tanzania held that failure to issue the statutory notice before institution of the suit against the government makes the suit unmaintainable.

Therefore this Court do hereby struck out Land Case No. 340 of 2015 with costs for lack of 30 days statutory notice to sue the first defendant.



  
Z. D. MANGO  
JUDGE  
06/11/2020

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