

IN THE HIGH COURT OF TANZANIA

(At Dar es Salaam)

Civil Case No. 29 of 2010

RAJABU MIKIDADI MWILIMA MFAKWENDA.....PLAINTIFF

VS

THE EDITOR HOJA NEWSPAPER.....1ST DEFENDANT
SONGORO MNYONGE.....2ND DEFENDANT
THE MINISTER OF HOME AFFAIRS.....3RD DEFENDANT
THE ATTORNEY GENERAL.....4TH DEFENDANT

RULING

Date of last Order: 10-10-2011

Date of Ruling: 31-10-2011

JUMA, J:

This is a Ruling on a Notice of Preliminary Objection on the point of law which was raised by Kings Law Chambers Advocates on behalf of the Editor Hoja Newspaper (1st defendant) and Songoro Mnyonge (the 2nd defendant herein). These two defendants have advanced the following grounds as a basis of their objection:

- i) That the plaintiff has failed to provide a ninety day statutory notice of his intention to sue the Government;

- ii) That the plaintiff has no cause of action as against the defendants;
- iii) That the plaintiff amended the contents of the plaint after reading the written statement of defence;
- iv) the content of plaint is frivolous.

The hearing proceeded by way of written submissions. The two defendants' submissions supporting the preliminary objection were filed on 11th August 2011. Plaintiff's replying submissions were drawn and filed by Chuwa & Co. Advocates on 23rd August 2011. I have given considerable weight to the arguments of the learned Counsel contained in their respective submissions. It is clear to me that the points of objection can be disposed of quickly by looking at the pleadings.

With regard to the 90-day notice, the right to sue the Government in Tanzania is a statutory right whose initial phase is the lodging of the 90-day Notice. The 3rd defendant Ministry falls under the definition of suit against the Government. Without lodging this 90-day notice no civil action can be initiated against the concerned Ministry of the Government. This is underscored by section 6 of this **Government Proceedings Act** which provides that,

6.-(1) Notwithstanding any other provision of this Act, civil proceedings may be instituted against the Government subject to the provisions of this section.

Section 6-(2) of the **Government Proceedings Act** provides the initial procedural requirements before filing of a suit against the Government:

"...(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..."

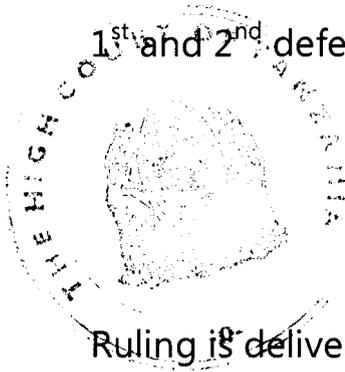
The issue whether the plaintiff issued a 90-day statutory notice is clearly answered in affirmative by paragraph 16 of the AMENDED PLAINT read together with annexure "E" to that same plaint:

*16. That the Plaintiff had earlier issued a 90 days statutory notice to sue to the 3rd and 4th Defendants but still they have refused to heed to the demands. **(Photocopy of the said notices are Annexed as Annexure "E")***

The point of objection contending the lack of the 90-day statutory notice is clearly devoid of merit and it is hereby dismissed.

The 1st and 2nd defendants have not specified whether the contention that the plaintiff has no cause of action as against the defendants is with respect to all the four defendants. Be that as it may, the law in Tanzania is now settled that question whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone together with anything that is attached to the plaint so as to form part of it and upon an assumption that any express or implied allegations of fact in it are true: **See Rugazia J., in Aikangai Alphonse Riwa Vs. Kinondoni Municipal Council & Others, Land Case No.113 of 2004 (Land Division DSM)**. Upon my perusal of the plaint, the second point of objection has no merit and shall be dismissed. I am satisfied that the plaintiff has disclosed a cause of action contending that on 19th September 2008 the 1st and 2nd defendants in the newspaper titled HOJA published a defamatory statement against him to the affect that: **"Kada wa CCM atimuliwa nchini, yathibitika sio raia wa Tanzania, apewa siku 90 kujiandaa kuondoka, ni raia wa Burundi."** And having found that the Plaint discloses a cause of action, I will reject the objection raised by the defendants contending that the content of plaint is frivolous.

Records of proceedings do not support the objection by the 1st and 2nd defendants that the plaintiff amended the contents of the plaint after reading the written statement of defence. On 10th June 2010 Mr. E. Chuwa (for the plaintiff) prayed for and was granted leave to amend the plaint. Mr. Didace the learned Advocate, who appeared for the 1st and 2nd defendants, did not object the proposed amendment of the plaint. The third ground of objection is similarly devoid of merit and is hereby dismissed. The 1st and 2nd defendants shall pay the costs.



A handwritten signature in black ink, appearing to be 'I.H. Juma', is positioned above the printed name.

I.H. Juma

JUDGE

31-10-2011

Ruling is delivered in presence of parties on record.

A handwritten signature in black ink, appearing to be 'I. H. Juma', is positioned above the printed name.

I. H. Juma

JUDGE

31/10/2011