

IN THE HIGH COURT OF TANZANIA
DAR ES SALAAM DISTRICT REGISTRY
AT DAR ES SALAAM
CIVIL CASE NO 27 OF 2019

SYKES TRAVEL AGENT LTD.....PLAINTIFF

Versus

NATIONAL IDENTIFICATION AUTHORITY(NIDA)1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

JUDGEMENT

3rd - 19th December, 2019

J. A DE- MELLO J;

While Countering the Plaintiff's claim, the Defendants raised the following two limbs of objections that ;

- 1. The suit is bad in law for non compliance with section 6 (2) of the Government Proceedings Act Cap. 5 (R.E 2002).**
- 2. The verification is defect contrary to Order VI Rule 15 (2) of the Civil Procedure Code [Cap. 33 R.E 2002]**

In the alternative, he prayed this Court to dismiss the entire Plaintiff with cost. Written submissions were preferred by Parties and, which the Court granted by setting a schedule frame for each. **Counsel Francis Mgare** represented the Plaintiff whereas the **1st** and, **2nd Defendants** were represented by **State Counsel Daniel Nyakiha**. Arguing on the 1st limb of the objection, **Counsel Daniel Nyakiha** averred that, suing of the **National Identification Authority** by the Plaintiff (herein referred to **NIDA**) and, the **Attorney General**, without issuing a ninety days notice prior to the commencement of the proceedings, is in contravention with **Government Proceedings Act Cap.** By referring to **paragraph 8** of the Plaintiff and, its **annexture B**, the 1st and 2nd Defendants had never been put to such notice of ninety (90) days but, seemed to have it on hold until when attached to the Plaintiff, he observed. This is the requirement of the law as a condition precedent, with a view of affording the **Ministry or Government Department**, ample adequate time of composing itself and, or responding properly to the matter.

To fortify the above, **State Counsel Daniel**, reproduced the entire section **6 (2)** of **Cap. 5 R.E 2002** wholesale as here under;

"No suit against the Government shall be instituted and heard unless the claimant previously submits to the government specifying the basis of his claim against the Government Ministry, Department, or Officer that, is alleged to have committed the civil wrong on which the suit is based".

To further buttress his argument, the case of **Arusha Municipal Council vs. Lyamuya Construction Company Ltd. [1998] TLR pg. 13** stating that, non compliance to the above provision renders the suit fatal, subject to dismissal. **Counsel Nyakiha** furthermore submitted that, **section 6(2) of Cap. 5** above is pari-materia with **section 97 of the Local Government (Urban Authorities) Act of 1982** referred in the above cited case.

Opposing the **1st** and **2nd Respondents** submissions, Counsel Francis Mgare for the plaintiff stated that, the **1st** objection raised by the Respondents does not qualify the test of a preliminary objection as defined in the famous case of **Mukisa Biscuit Manufacturing Company Ltd vs. West End Distributers Ltd (1969) E.A 696** at pg **701** where **New Bold P** (as he then was) defined what Preliminary Objection means;

"The preliminary objection is in the nature of what used to be a demurrer ,it raises a pure point of law which is argued on the assumption that all the facts pleaded by other side are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of the judicial discretion "

He also cited the case of **Tanzania Union Of Industrial And Commercial Workers Tuico At Mbeya Cement Company Ltd vs. Mbeya Cement Company Ltd. And National Insurance Corporations Ltd [2005]TLR 49** which cited with approval the **Mukisa's Biscuit** case supra. He further contended that, since Counsel for

the Respondents is not disputing the existence of the ninety (90) days Notice, the issue of whether or not the same was served to the Respondents, is a matter of fact which needs to be ascertained during hearing by way of evidence. However, he insists that, the Notice was prepared and, served to the Respondent, as he referred the annexed copy of the dispatch book in his written submissions evidencing the same, that it was on **11th September, 2018**, and, duly endorsed by the recipient. According to him, service is not a requirement of the law but to plead facts as opposed to evidence as per **Order VI Rule 3** of the **CPC Cap. 33 R.E 2002**. He distinguish the case cited by the Respondent that of **Arusha Municipal Council** as the Plaintiff issued a **thirty (30) days'**. In the present case the Plaintiff filed the Plaint on the **13th February 2019** long after the expiry of **ninety (90)** days as prescribed by the law. State Counsel seems to have ropped the 2nd limb of the Preliminary Objection and, focused on the **1st limb of objection** whose main controversy is whether it meets the test that the case of **Mukisa (supra)**.

It is a settled principle of law that, objections must be of pure points of laws without requiring another facts/evidence to prove its existence. This principle was also insisted in the case of **National Insurance Corporation of Tanzania & Another vs. Shengena Ltd., Civil Application No. 20 of 2017 (Unreported)** approving what the Mukisa's (supra) at page 9-10 had this to say;

"We take that to be position of the law on the meaning of preliminary objection. With this in mind, we ask ourselves does the so called Preliminary Objection in the instance case pass this

test. We think that it does not. The two so called points of objection are not self proof. They are subjected to proof of some other material facts”

In the present case the issue of whether OR not the **ninety (90) days** Notice was allegedly served to the **1st & 2nd Respondents** in as far as submissions and, annexure of the dispatch book is concerned, and which will in absence of it, to the Respondent, will require proof. Therefore, the objection is unmerited and, it collapse.

It is hereby dismissed, as we hear the substantive suit on its merits, with no orders as to costs.

It is hereby ordered.

J. A. DE-MELLO

JUDGE

19/12/2019