

**IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

HC CIVIL CASE No. 07 OF 2019

ALOYCE CHACHA KENGANYA PLAINTIFF

VERSUS

MWITA CHACHA WAMBURA 1ST DEFENDANT

THE ATTORNEY GENERAL 2ND DEFENDANT

COMMISSIONER OF MINES MUSOMA 3RD DEFENDANT

RULING

17th December, 2019 & 6th February, 2020

Kahyoza, J.

Aloyce Chacha Kenganya, sued the **Mwita Chacha Wambura**, the Attorney General and the Commissioner of Minerals Musoma (the defendants) for declaration that **the Commissioner of Minerals Musoma** issued illegally and unprocedurally a mining licence to **Mwita Chacha Wambura** which covers the area he (Aloyce) owns. The defendants filed their defence and contended that the suit was not maintainable on the ground that the Aloyce Chacha did not issue a ninety days' notice to the Commissioner of Minerals Musoma and the Attorney General the before instituting the suit, the Court has no jurisdiction and that there is no entity known as Commissioner of Minerals Musoma.

The issue for determination are: -

1. Was the defendant's failure to issue notice before instituting a suit as required by law fatal or curable defect?
2. Is this Court vested with jurisdiction?
3. Is the suit not maintainable for suing a non-existing party?

Was the plaintiff's failure to issue notice before instituting a suit as required by law a fatal or curable defect?

The defendants submitted that the Section 6(2) of **the Government Proceeding Act**, [Cap.5 R.E.2002], requires the person who intends to sue a Government to first issue a statutory notice to the relevant Government officer or institution and copy the said notice to the Attorney General. He contended that the plaintiff did not comply with that requirement. Section 6 provides that-

"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 Plaintiff's advocate Mwita Emmanuel does not contest the fact that the law required the plaintiff to issue a statutory notice to the Commissioner of Minerals and serve a copy to the Attorney General before instituting the suit. He contends that the defendants failed to

show how they were going to be affected by non-issuance of the 90 days statutory notice. He refers this Court to the case of **Alliance One Tobacco and Two Others Versus Mwajuma Hamis (As Administratrix of the Estate of Philimon R. Kilenyi) and another: Misc Civil Application No 803 of 2018.**

Further, the learned Advocate for the Plaintiff submitted that in certain exception circumstance, the requirement of 90 days statutory notice can be waived. He added that the Plaintiff in the instant suit, prayed to waive the said notice. He requested the Court to encourage a practice of praying for waiver of the statutory notice in the suit instead of instituting a separate application for that purpose as it will reduce multiplicity of suits or applications.

I passionately considered the plaintiff's arguments and came to the conclusion that the arguments are convincing but not tenable in law. It is the position of the law as stated in **Thomas Ngawaiya Vs the Attorney General and 3 other Civil Case No 177 of 2013** that section 6 of the Government Proceedings Act is mandatory and unambiguous. It requires a person intending to sue the Government to issue a notice to the relevant Government officer or institution and copy the same to the Attorney General specifying the bases of his claim. This Court stated that-

*"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."

I subscribe to the above position of the law. The law must be complied with. Parties cannot be allowed to circumvent the mandatory procedural requirements. This was the position adopted by the Court of Appeal in **SGS Societe Generale de Surveillance SA and another v. VIP Engineering & Marketing Ltd and another** (Civil Appeal No. 124 of 2017). In that case, the Court of Appeal turned down the Appellants' invitation to invoke the overriding principle to dismiss one of the objections raised by the Respondent that had urged the Court to strike out the appeal for failure of the Registrar to endorse the Memorandum of Appeal with which the appeal had been instituted. In upholding the objection, the Court of Appeal stated that-

*"The amendment by Act No. 8 of 2018 was 'not meant to enable parties **to circumvent the mandatory rules of the Court or to turn blind to the mandatory provisions of the procedural law which go to the foundation of the case**'".*

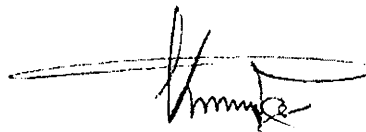
I have considered the plaintiff's argument that he applied for waive of the statutory notice in the plaint. Indeed, that Plaintiff under paragraph six of the Plaint sought for leave of this Court to waive the mandatory requirement of issuing a statutory notice before suing. I have pointed out above that the requirement for a statutory notice is mandatory. The law does not mandate the Court to dispense with the requirement for a

statutory notice. It should be known that the requirement for issuing a statutory notice to the Government before suing it is not without good reasons. Giving a statutory notice to the Government before filing a suit gives the Government the opportunity to settle the claim before a lawsuit is filed and to investigate the claim so that it can properly defend itself or to correct the conditions or practices that led to the claim.

For reasons stated above, I find the suit was prematurely instituted for failure to issue a ninety days' notice of intention to sue to the second and third defendants. I find no good reason for considering other issues pointed above.

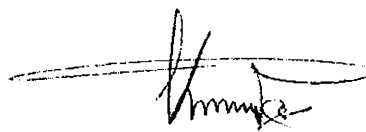
In the upshot, I sustain the first limb of the preliminary objection and strike out the suit with costs.

It is ordered accordingly.



J. R. Kahyoza
JUDGE
7/2/2020

Court: Ruling delivered in the presence of Mr. Julius Adv. for the plaintiff and in the absence of the defendants. B/C Charles.



J. R. Kahyoza, J.
7/2/2020