

IN THE HIGH COURT OF UNITED REPUBLIC OF TANZANIA

BUKOB DISTRICT REGISTRY

AT BUKOBA

LAND CASE NO. 7 OF 2019

CORONELIA KATARAHORE.....PLAINTIFF

VERSUS

1. ANATORY JOHN AMANI.....1ST DEFENDANT

2. KAGERA FARMERS COOPERATIVE BANK LTD-2ND DEFENDANT

3. DEPOSIT INSURANCE BOARD.....3RD DEFENDANT

RULING

03/08/2021 & 13/08/2021

NGIGWANA, J.

In this ruling the court is called upon to resolve three Preliminary objections on point of law raised by the 2nd and 3rd defendants through Mr. Lameck Buntuntu, learned State Attorney challenging the suit as follows; **One**, the suit is bad in law for failure to issue statutory notice of intention to sue the Government Institution as required under section 6(1) (2) and (3) of the Government Proceedings Act Cap. 5 R: E 2019. **Two**, that the Plaint is bad in law as it does not disclose any cause of action against the defendants. **Three**, that the suit is bad in law for being filed with a plaint which has incurably defective verification clause since it offends the mandatory procedure provided for under Order VI rule 15(2)(3) of the Civil Procedure Code Cap. 33 R: E 2019.

When the matter was called on for hearing the 2nd and 3rd defendant had the services of Mr. Buntuntu, learned State Attorney while the Plaintiff had the services of Mr. Alli Chamani, learned counsel.

In his submission in support of the first point of Preliminary objection, Mr. Buntuntu argued that it is imperative to join the Attorney General as a necessary party in suits against the Government or Government institution. He added that in the instant suit the 2nd defendant Kagera Farmers' Cooperative Bank Ltd that falls within the meaning of the Government Institutions because it is under Bank of Tanzania (BOT) while the 3rd defendant is Liquidator appointed by Tanzania Central Bank thus failure to issue notice and join the Attorney General to the suit renders the suit incompetent for being prematurely filed. The State Attorney referred this court to the case of **Aloyce Chacha Kenganga versus Mwita Chacha Wambura and 2 Others**, Civil Case No. 07 of 2019 HC Musoma (unreported) where the court emphasized that it should be known that the requirement of issuing a statutory notice to the Government before suing it is not without good reasons. Buntuntu further argued that Section 6(1)(2) (3) of the Government Proceedings Act Cap. 5 of R;E 2019 have to be read together with section 24 and 25 of the Written Laws (Miscellaneous amendments) Act No. 1 of 2020.

Reacting on this point, Mr. Chamani for the Plaintiff argued that the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020 was assented on 14/02/2020 while the present suit was instituted on 21/06/2019, thus the amendments have nothing to do with this suit since the law doesn't apply retrospectively unless expressly stated. Mr. Chamani further stated that the case cited by the learned State Attorney is distinguishable because

in that case the Attorney General and Commissioner of Mines Musoma were present hence there was no need for 90 days' notice. He faulted the State Attorney saying, he has misdirected himself to the law.

In his rejoinder, the State Attorney conceded that this suit was filed in this court on 21/06/2019 but the Government Proceedings Act cap. 5 R: E 2019 was already in place, and the issue of notice was there, and it can never be said that it was introduced by the current amendments.

He added that, the amendment did not do away the requirement notice but it has come to widen the interpretation as to what constitutes a government for purposes of suits against the Government.

Now, the issue to resolve here is whether the 1st limb of preliminary objection is meritorious.

Section 6 (2) of the Government Proceedings Act Cap. 5 R: E 2019 provides: -

*No suit against the Government shall be instituted and heard unless the claimant previously submits to 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 General Attorney***"(emphasis supplied).

It must be noted that compliance of this section is not optional but mandatory since its non-compliance renders the suit incompetent for being prematurely filed. It was stated by this court in the case of **Thomas Ngawaiya V. The Attorney General and 3 Others, Civil Case No. 177 of 2013** that Section 6 of the Government Proceedings Act is

mandatory and an ambiguous. 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 General Attorney.

The words of the court are as here under:

*"The provisions of Section 6(2) of the Court Proceedings Act are **express, explicitly, 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".*

With no doubt I subscribe to the above position of the law, in which its non-compliance cannot be cured by the Principle of Overriding Objective. The rationale behind giving notice to the Government before filing a suit gives, the Government the opportunity to settle the claim before a law suit is filed and to investigate the claim so that it can properly defend herself or to correct the conditions as practices that led to the claim. Such a rationale should never be undermined or disregarded. See the decision of this court (Kahyoza, J) in the case of **Aloyce Chacha Kenganga** (supra) and the Attorney General shall be joined as a necessary party."

Basically, this court is in agreement with Mr. Buntuntu that the amendments effected in 2020 through the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020 did not at all affect the requirement of notice as per Section 6 (2) of the Government Proceedings Act.

For more clarity, Section 25 of the Written Laws (Miscellaneous amendments) Act No. 1 of 2020 provides;

The principal act is amended in Section 6, by (1) deleting subsection (3) and substituting for it the following: - "(3) ***All suits against the Government shall upon the expiry of the notice period, be brought against the Government, Ministry, Government department, local Government authority, Executive Agency, Public Corporation, Parastatal Organization or Public Company that is alleged to have committed the civil wrong on which the civil suit is based specifying the bases of his claim.***"

(4)"*the non-joinder of the Attorney general as prescribed under subsection (3) shall vitiate the proceedings of any suit brought in terms of subsection (3)*"

As per Section 26 of the amendment Act, the Government shall include a Government Ministry, Local Government Ministry, Local Government authority, independent Department, Executive Agency, Public corporation, Parastatal Organization or a Public company established under any Written Law to which the Government is a majority shareholder.

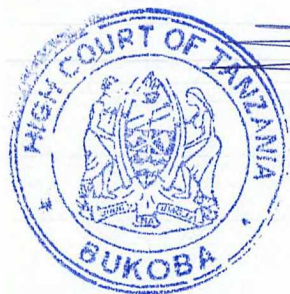
In the case at hand, the plaintiff's advocate Mr. Alli Chamani does not contest on that mandatory requirement. The Plaintiff under paragraph 2 and 3 of the Plaint agrees that the 2nd defendant is an artificial person whose business was banking services while the 3rd defendant is artificial personnel who is liquidator of the 2nd defendant. Mr. Chamani did not dispute that the 2nd defendant is a Cooperative Bank and he has admitted that the 3rd defendant is a Liquidator of the 2nd defendant after being appointed by Tanzania Central Bank since 4th January 2018.

It goes without saying that under such a situation, 90 days' notice before filing the suit against the 2nd & 3rd defendants was imperative. It means that serving the notice precedes the filing of the suit, and filing a suit is not possible before serving the notice. After the expiry of the 90 days' notice, that is where the suit against the 2nd and 3rd defendants can be brought, and it is mandatory to join the Attorney General as a necessary party. In the case at hand, no notice was issued as required by the law.

For reasons stated above, I find that the suit was prematurely instituted for failure to issue a mandatory 90 days' notice of intention to sue the 2nd and 3rd defendants. At this juncture I find dealing with the remaining limbs of preliminary points of objection will not serve any purpose in this case, hence no need to labor on them.

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

It is so ordered.



E.L. NGWIGWA

JUDGE

13/08/2021

Date: 13/8/2021

Coram: Hon. Emmanuel Ngiwana, J.

Plaintiff: Present & represented by Mr. Chamani Alli

1st Defendant: Absent

2nd Defendant: Absent on notice

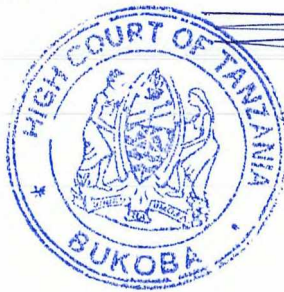
3rd Defendant: Absent on notice

B/C: Lilian Paul

Mr. Alli Chamani, Adv:

My Lord, I am for the Plaintiff who is present also holding brief for Mr. Buntuntu who is absent. The matter is for ruling. I am ready.

Order: Ruling delivered this 13th day August, 2021 in the presence of the Plaintiff and her advocate Mr. Alli Chamani who is also holding brief for Mr. Buntuntu who is absent, and in the presence of E. M. Kamaleki, Judge's Law Assistant.



E.L. NGWIGWA

JUDGE

13/08/2021