

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL CASE NO. 50 OF 2020

BLC INVESTMENT (T) LIMITED.....PLAINTIFF

VERSUS

STAMIGOLD COMPANY
LIMITED.....1ST DEFENDANT

THE ATTORNEY
GENERAL.....2ND DEFENDANT

RULING

Date of Last Order: 16/11/2021

Date of Ruling: 1/7/2022

LALTAIKA, J;

This is a ruling on the Preliminary Objection on point of law raised by the defendants' learned counsel Ms. Kause Izina on the following ground,

- 1. That the suit is bad in law for contravening section 6(2) and (3) of the Government Proceedings Act, Cap 5 R.E.2019.*

Consequently, this matter was fixed for hearing by way of written submissions. Both parties were represented by learned advocates; Mr.

Emily Laus appeared for the plaintiff while Ms. Kause Izina appeared for the defendants.

Submitting in support of the preliminary objection, Ms. Izina stated while citing the provisions of section 5(2) and (3) of the Act, she that it is the requirement of law that any person with the intention to institute the suit against the Government has to issue a 90 days' notice. To support her statement, she cited the case of **AVIC Shanti Tanzania Limited vs Stamigold Company Limited**, Civil Case No.210 of 2019, High Court at Dar es Salaam.

She elaborated that in the present suit the plaintiff has failed to comply with the requirement of the said provision on the ground that he has not pleaded in his plaint that he served the notice to the Attorney General and to the Solicitor General. Such failure, Ms. Izina argued, renders the whole suit incompetent before this court. To cement her argument Ms. Izina cited the case of **Thomas Ngwawaiya vs Attorney General & 3 Others**, Civil Case No.177 of 2013.

Ms. Izina suggested the remedy for failure to comply with the provisions of section 6(2) is to strike out the suit, she amplified her argument by citing the case of **Ghati Methusela vs Matiko W/O Marwa Mariba**, MZA Civil Application No.06 of 2006, CAT.

From the above submission Ms. Izina prayed for this court to strike out the suit with costs.

In reply Mr. Laus faulted the 2nd defendant for misleading the court on the ground that on the 30th 2019, the plaintiff through the services of Barlaw Attorney wrote a letter to the Treasury Registrar office with reference number BA/Let/36/BMK/19 with the caption of 90 days' notice

for intension to sue, the same was served on 11th July 2019. He went on to submit that on the 24th October 2019 the plaintiff wrote another letter with reference number BA/Let/45/BLC/19 as a statutory notice requiring the defendant for payment of the sum owed, the same letter was also served to the Attorney General Chambers on the 30th October 2019.

Mr. Laus contended that failure to annex the notice cannot be rendered as an omission to serve the defendant is accordance to section 6 of the Act. On the other hand, he is also of the view that the preliminary objection raised by the defendant has not met the test of being purely point of law which was discussed in the case of **Mukisa Biscuit Manufacturing Co. vs West end Distributors Limited**, Civil Appeal No.9 of 1969, E.A.696. Mr. Laus also cited the case of **Sykes Travel Agent Ltd vs National Identification Authority & Another**, Civil Case No.27 of 2019.

In conclusion Mr. Laus prayed for this court to dismiss the preliminary objection as raised by the defendant.

In his rejoinder Ms. Izina reiterated her submission in chief.

Having keenly considered the submission from the advocates for both parties, the issue for determination is whether the suit contravened the provisions of section 6 of the Government Proceedings Act.

I should take off by stating that it is trite law that any suit against the Government shall be instituted upon presenting and expiry of a ninety days of intention to sue the Government.

It is Ms. Izina's submission that the plaintiff failed to comply with provisions of section 6 of the Act, for failing to serve the statutory notice

to the defendants. I have gone through the pleadings annexed to the plaint, I am in agreement with Mr. Laus to the extent that notice of intention to sue was first served to the 1st defendant on 28th June, 2019 while on 30th October 2019, the plaintiff's demand notice was received at the office of the Attorney General. However, there is no proof that the plaintiff served the same to the solicitor general in accordance with the provisions of section 6 of the Government Proceedings Act, which requires the plaintiff to present the notice to the relevant department of the government and also send the copy to the attorney general and the solicitor general. The provisions of section 6 (2) 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 and the Solicitor General. (Emphasis added)***

I am of the considered view that since the law has made a mandatory requirement for the claimant to send a copy of his claim to the Attorney-General and the Solicitor General, failure to comply makes the suit untenable. I am in agreement with Ms. Izina's submission that the remedy for failure to serve both the attorney general and the solicitor general is to strike out the suit. I am fortified by the decision of this court when faced with akin situation in the case of **Peter Joseph Chacha vs. The Attorney General & Another**, Civil Case No.01 of 2021, High Court at Arusha, the court made the following observation;

"I find it to be a condition precedent that, for the suit against the government to be filed and heard, a notice or claim must be served to the government department or an officer against whom the suit is intended to be brought and a copy of it, be served to the Attorney General and the Solicitor General. This means, a suit against government should not be admitted and entertained before the plaintiff has proved to have issued the notice of intention to sue and serve the copy to the Attorney General and the Solicitor General. It is therefore the duty of the plaintiff to prove before he is entitled to file the said suit that the provision of section 6(2) of the Government Proceedings Act (supra) as amended, has been complied with"

Equally in the case of **Joshua Arthur Mhagama & 6 Other vs Tanzania Electric Company & Others**, Land Case No.42 of 2022, High Court Land Division, the court deliberated on the mandatory requirement to serve the statutory notice where the court quoted with approval the case of Thomas Ngawaiya vs Attorney General & Others, Civil Case No.177 of 2013 High Court, the court had this to say;

".... the omission was a serious contravention of the imperative requirements of the law. I am in accord with Mr. Erigh that the 90 days' Notice was not issued to the Attorney General"

In this matter, Mr. Laus submitted that section 6(2) does not require that the said statutory notice with intention to sue to be appended or pleaded in the plaint. I find that argument devoid of merit on the ground that parties are bound by their pleadings. It is through pleadings where one can find the basis of his claim. The argument that the solicitor general was served but the same was not pleaded in the plaint, is indeed from

the bar. To add emphasis on the importance of pleading I find it appropriate to borrow a leaf from the case of **NBC Bank Limited & Another vs Bruno Vitus Swalo**, Civil Appeal No.331 of 2019 CAT, the court held that;

"We feel compelled, at this point, to restate the time-honoured principle of law that parties are bound by their own pleadings and that any evidence produced by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored...."

For the foregoing reason, I hold that failure comply with the mandatory provision of section 6(2) of the Act invalidates the plaintiff's suit at hand. In the upshot, I find that the Preliminary Objection raised by the learned State Attorney praiseworthy.

I hereby sustain the preliminary objection and proceed to struck out the Civil Case No. 50 of 2022. No order as to costs.



E.I. LALTAIKA

JUDGE

1/7/2022