

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

**LAND CASE NO. 28 OF 2020**

**EMMANUEL TITUS NZUNDA.....PLAINTIFF**

**VERSUS**

**ARUSHA CITY COUNCIL .....1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**THE SOLICITOR GENERAL.....3<sup>RD</sup> DEFENDANT**

**ANNA GERALD MRUTU (As administrator of  
the estate of the late GERALD SEMSI MRUTU) .....4<sup>TH</sup> DEFENDANT**

**NAVONE GERALD MRUTU (As Administrator of  
the estate of the late GERALD SEMSI MRUTU) .....5<sup>TH</sup> DEFENDANT**

**RULING**

23/05/2022 & 04/07/2022

**KAMUZORA, J.**

The Plaintiff instituted a suit against the Defendants praying for an order of the court declaring him a *bonafide* purchaser of the disputed property and hence a beneficial owner thereof. Before the matter could be scheduled for hearing, the State Attorney representing the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, Mr. Mkama Msalama raised a preliminary point of law that the plaint is incurably defective for contravening section 6(2) of the Government Proceedings Act Cap 5 R.E 2019. The said section reads: -

*"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."*

I have considered the pleadings and the submissions by the parties. There is no dispute that the law under section 6(2) of the Government proceedings act imposes a mandatory requirement of issuing a 90 days' notice before the institution of any suit against the government. It is also not disputed that in the present suit the government is being suit by the Plaintiff. What is in dispute is whether there was compliance to the requirement of issuing a 90 days' notice under the above quoted provision

Mr. Mkama argued that this present suit was filed before this court without complying to the above requirement hence contravening a mandatory legal requirement. He supported his argument with the cases of **Salim O. Kabora Vs Kinondoni Municipal Counsel and 3 others**, Land Case No. 10 of 2020 where the suit was struck out because the Attorney General and the Solicitor General were not served with notice under section 6 (2) of the Act. He also cited that case of **Charles Mikera Benasius Vs the Commissioner for Lands and 4 others**, Land Case No. 127 of 2020 where the suit was trucked out for being prematurely filed before issuing a 90 days' notice. He therefore prays for this court to

sustain the objection, find the suit prematurely filed and strike out the suit with costs. The objection was also supported by the counsel for the 4<sup>th</sup> and 5<sup>th</sup> Defendants Mr. Erick Baltaza Kimaro who argued on the same line that the Plaintiff failed to comply to the legal requirement and thus, the suit be struck out with costs.

The counsel for the Plaintiff Ms. Subira Omary submitted that, the Plaintiff complied to the legal requirement by issuing a 90 days' notice as required by the law. She explained that, the notice to the 2<sup>nd</sup> Defendant was issued through his officer Grace Raymond on 1<sup>st</sup> April 2020 but she refused to put official stamp and such fact is supported by the affidavit of Advocate Anna Malewa as pleaded under paragraph 17 of the Plaintiff's reply to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants' written statement of defence to the amended plaint.

The counsel added that, as the Plaintiff do not agree with the issue that they did not serve the Defendants with the 90 days' notice, the point raised become point of fact that need evidence to prove thus not a point of law. To support this argument, he referred the cases of **Mukisa Biscuits Manufacturing Co. Ltd Vs. West End Distributors Ltd** (1969) EA 696 and the case of **Permanent Secretary Ministry of**

**Education and Vocational Training, AG Vs. Lugano S. Kalomba and 22 others**, Civil Application No 18 of 2013, Court of Appeal at DSM.

I will start by addressing the competence of the point of objection raised by the counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants. I do not agree with the Plaintiff contention that the present objection is not a point law on account that it needs evidence to prove issue of service. The requirement for issuing and serving a 90 days' notice is a legal requirement and the same need be directly shown in the pleadings as to its compliance. It is not something that needs evidence to prove as alleged by the counsel for the Plaintiff. It is therefore my settled position that, what is raised by the counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants is a pure point of law. The referred the cases of **Mukisa Biscuits Manufacturing Co. Ltd (supra)** and the case of **Permanent Secretary Ministry of Education and Vocational Training, AG (supra)** are therefore irrelevant to this matter.

Turning to the objection raised, I have gone through the pleadings in the original plaint and amended plaint, the Plaintiff under paragraph 19 and 18 pleaded and attached the 90 days' notice to the 3<sup>rd</sup> Defendant, the Solicitor General served on 27<sup>th</sup> March 2020 and a 30 days' notice to the 1<sup>st</sup> Defendant served on 8<sup>th</sup> November 2019. No notice in relation to the

2<sup>nd</sup> Defendant was pleaded or attached. In his reply to the amended written statement of defence of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants the Plaintiff attached the affidavit of Advocate Anna Malewa in need to show that the 90 days' notice was also served to the 2<sup>nd</sup> Defendant.

The 90 days' notice being a mandatory legal requirement, the same need by complied with before instituting suit or joining the government into any suit. It is upon the Plaintiff to attach a notice showing that the same was duly served and received. The claim that there is an officer of the second Defendant who received the notice but refuse to stamp it is unjustified. It cannot be said that the Attorney General refused to stamp the document while the Solicitor General received and stamped the same. To me filing an affidavit to prove the refusal is an afterthought as the same could have been pleaded from the beginning. Even a copy alleged to be sent to the Attorney General was not attached to the pleadings. It is therefore my settled mind that, the 2<sup>nd</sup> Defendant was not served with a mandatory 90 days' notice.

On the argument that only a 30 days' notice was issued to the 1<sup>st</sup> Defendant, the counsel for the Plaintiff submitted that, the Plaintiff acted upon the Local Government (Urban Authorities) Act, Cap. 288 R.E 2002 which was not yet amended. That, the Written Laws Miscellaneous

Amendment Act which came into force on 14<sup>th</sup> February 2020 cannot act retrospectively to impose a new obligation of issuing 90 days' notice to the 1<sup>st</sup> Defendant while 30 days' notice was already issued on 8<sup>th</sup> November 2019.

Ms. Subira insisted that, the amendment can affect the procedure only but cannot act retrospectively unless there is good reason to the contrary. She referred the case of **Lala Wino Vs Karatu District Council**, Civil Application No. 132/02/2018, CAT at Arusha (unreported) and the case of **S.S. Makongoro Vs. Severino Consigilion**, Civil Appeal No. 6 of 2003, CAT at DSM (unreported). She maintained that, the law does not nullify any act that was done before the amendment and the law which imposed the 90 days' notice instead of 30 days' notice did not state categorically if the amendment has any retrospective operation.

I agree that the law does not have retrospective effect except on procedural matters. In the matter at hand, the respondent issued a 30 days' notice to the 1<sup>st</sup> Defendant, on November 2019 but instituted this suit on September 2020. In my view, the Plaintiff was bound by the amendment which came into operation on February 2020. The Plaintiff could have been exempted from such amendment if at the time of the amendment the suit was already filed in court. But, as the suit was yet to


be filed, after the amendment, the Plaintiff was bound by the law to issue a 90 days' notice. I do not therefore agree with the contention by the Plaintiff that allowing the 90 days' notice amount to applying the law retrospectively.

The law is very clear that the 90 days' notice must be served to the government ministry or department or officer being made part to the suit and a notice be served to the Attorney General. The 1<sup>st</sup> Defendant being a government department, the Plaintiff was responsible to issue of 90 days' notice thus, such a requirement was not met in the present suit.

I therefore find merit in the preliminary point of objection and sustain the same. The suit is therefore struck out for being prematurely filed in court. The Plaintiff shall bear the costs.

It is so ordered.

**DATED** at **ARUSHA** this 4<sup>th</sup> Day of July 2022.

  
D.C. KAMUZORA  
JUDGE



