

**THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
MBEYA DISTRICT REGISTRY
AT MBEYA
LAND CASE NO. 05 OF 2022**

**NDERUNGO M. R. A @ ROMUALD MATERU
@ ROMUALD MATTERU.....PLAINTIFF**

VERSUS

**MBEYA CITY COUNCIL.....1ST DEFENDANT
ELLY MUWANGA.....2ND DEFENDANT
HON. ATTORNEY GENERAL.....3RD DEFENDANT**

R U L I N G

Dated: 30th June & 11th July, 2022

KARAYEMAHA, J

The plaintiff, namely, Nderungo M.R.A @ Romuald Materu @ Romuald Matteru instituted the present suit against Mbeya City Council, Elly Muwanga and Hon. Attorney General claiming for specific damages against them jointly for trespassing into his three business rooms at Meta causing down time, loss of business income and goods damages.

Along with their Written Statement of Defence, the Mbeya City Council and the Hon. Attorney General (hereinafter the 1st and 3rd defendants) raised points of preliminary objections (the pos) as follows:

1. That this matter is unmaintainable in law for contravening section 106(1) and (2) of the Local Government (Urban Authorities) Act [Cap 288 R.E 2002] as amended by section 33 of the Written Laws (Miscellaneous Amendment) Act No. 1 of 2020.
2. That the matter at hand is incompetent in law for being res judicata contravening section 9 and 10 of the Civil Procedure Code [Cap 33 R.E 2019].
3. That the plaintiffs' case is unmaintainable in law for contravening Order VII Rule 3 of the Civil Procedure Code [Cap 33 R.E 2019].

The pos were argued by way of written submissions upon parties' candid prayers which were granted by this court on 19/05/2022. Whereas the plaintiff prosecuted the case in person, the 1st and 3rd defendants were represented by Mr. Davis Mbembela, learned City State Attorney.

Submitting in support of the 1st po Mr. Mbembela argued that the plaintiff instituted the instant case without issuing a 90 days' statutory notice to the 1st and 3rd respondents as per the mandatory requirement of section 106 (1) of the Local Government (Urban Authorities) Act [Cap 288 R.E 2002] (hereinafter, the Local Government Act). He argued further that that according to Section 14 of the Local Government Act

the notice was to be addresses to Mbeya City Council. He stated that in this case it was addressed to the City Director who is nonexistent person in law and quite different from the former. He insisted that the Mbeya City never received a notice before commencement of this suit. He cited **Arusha Municipal Council vs. Lyamuya Construction Company Limited** [1998] TLR 13; **Gladness Ramadhani Mziray vs. Mipeko Village Council & 8 others**, Land Case No. 340 of 2015 (HC-DSM) and **Hermanus Philipus Steyn vs. Monduli District Council and the District Executive Council of the Monduli District Council**, Civil Case No. 30 of 2016 (HC-Arusha) (both unreported) to implore the court that a suit instituted against the Urban Authority without a notice of 90 days is unmaintainable.

In his reply, the plaintiff submitted that the 1st and 3rd defendants were served with the 90 days' notice of intention to sue them through the City Director who received a letter on its behalf. He has argued that the title of the of the notice clearly indicates that it was issued to sue the Mbeya City Council but it was considered by reading words in isolation. He submitted that the cited cases of **Gladness Ramadhani Mziray** (supra) and **Hermanus Philipus Steyn** (supra) are distinguishable because in the former the High Court had to treat a

letter as a notice and in the latter the notice was addressed to the Monduli District Executive Officer and the court found that the Monduli District Council was not served.

After a careful consideration of the plaint and its annexure and the submissions of parties, the issue for determination is whether the 90 days' notice was served upon the 1st and 2nd defendants.

Luckily, the notice of 90 days was annexed to the plaint and marked MET 3. It is titled;

*"RE; NOTICE OF 90 DAYS OF INTENTION TO SUE MBEYA
CITY COUNCIL NDERUGO M.R.A @ ROMUALD MATTERU
FOR A CLAIM TSHS. 220,000,000/= (TSHS. TWO HUNDRED
AND TWENTY MILLION ONLY) AS DAMAGES."*

This notice was addressed to the City Director of Mbeya city Council as admitted by the plaintiff in his reply submission. My construction of the above is that the City Director was informed of the notice of 90 days and further of the plaintiff's intention to sue Mbeya City Council by Nderungo M.R.A @ Romuald Matteru for a claim Tshs. 220,000,000/= as damages. The plaintiff alleges under paragraph 14 that the notice was served to the 1st defendant on 08/11/2021 and copied to the 3rd defendant but remained silent. The copy of the

dispatch book indicates that it was addressed to the City Director and received by someone who simply appended a signature thereto. The issue is whether the City Director who was addressed the notice 90 days is the Mbeya City Council referred to in section 106 (1) (a) and section 3 (1) of the Local Government Act. The plaintiff argued that the City Director received the notice on behalf of the 1st and 3rd defendants. Mr. Mbembela argued that since the law requires the notice to be served upon the Urban Authority, it was therefore to be served upon Mbeya City Council and no body else. I agree with him. This is because service to the City Director is a proper and satisfactory service of notice when the notice is addressed or directed to the Mbeya City Council who is its chief executive officer. In my considered opinion, it does not cover the situation where the notice is addressed or directed to the City Director as a distinct person on belief that he/she would receive it on behalf of the Mbeya City council. A point worthy noting is that for a notice to be valid it should be addressed to the proper person/addressee stating clearly the cause of action, when and where it arose. The proper addressee in the present case was Mbeya City Council and the Hon. Attorney General and not the Mbeya City Director who is not part to this suit. It goes without saying, therefore that the plaintiff violated section 106 (1) and (2) of the Local Government Act. Therefore, a notice of 90

days addressed to the City Director did not constitute a 90 days' notice to sue the 1st and 3rd defendants.

What is the impact of such failure? The rule of the thumb is that failure to issue a statutory notice before institution of the suit against the urban authority or Government makes the suit unmaintainable and strips off the Court with requisite jurisdiction. See the case of **Arusha Municipal Council (supra)**; **Gladness Ramadhani Mziray (supra)** and **Hermanus Philipus Steyn (supra)**. Guided by the principle developed in the foregoing precedents and a guide from section 106 of the Local Government Act, the suit is incompetent and unmaintainable. In the result, therefore, **Land case No. 5 of 2022** is struck out with costs. Taking on board the nature of this case, I am comfortable to hold a view that this point of po suffices to dispose of the suit. An attempt to dwell on the remaining pos is just a mere wastage of time which I do not opt for.

It is so ordered.

Dated at **MBEYA** this **11th** day of **July, 2022**



J.M. KARAYEMAHA
JUDGE