

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY

AT MWANZA

LABOUR DISPUTE NO. 02 OF 2021

1. RASHID ALLY.....1<sup>ST</sup> COMPLAINANT  
2. LUCAS NKINGWA.....2<sup>ND</sup> COMPLAINANT

VERSUS

1. MWANZA URBAN WATER  
SUPPLY AND SANITATION AUTHORITY.....1<sup>ST</sup> RESPONDENT  
2. THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT

RULING

31<sup>st</sup> March, March, 2022

DYANSOBERA, J.:

This complaint has been filed by the above two complainants against the two respondents claiming, *inter alia*, statutory PSSSF contributions and general damages arising from their termination.

The respondents, apart from filing response to the statement of complaint, have raised a preliminary objection on points of law on the ground that **the suit is incompetent for being prematurely brought before this Honourable Court contrary to section 6 (2) of the Government Proceedings Act, Cap 5 R.E.2019.**

At the hearing of the preliminary objection, the respondents were represented by Ms Sabina Yongo and Oscar Twakazi, both learned State Attorneys while the complainants appeared in person and were unrepresented.

Supporting the preliminary objection, Ms Sabina Yongo submitted that this matter is incompetent before this court for having been prematurely brought filed hence contravening Section 6 (2) of the Government Proceedings Act [Cap. 5 R.E. 2019]. According to her, it is a legal requirement under that provision that before suing the government or her institution, the complainant must give notice of his intention to sue to the respondent and a copy to be served on the Attorney General and the other Solicitor General and the notice must be of 90 days. The learned State Attorney clarified that at page 11 of the statement of the claim the complainants said that they fulfilled the requirement of issuing 90 days statutory notice to the 2<sup>nd</sup> respondent vide 90 days' statutory notice dated 17.11.2021 but the present complaint was filed on 20.12.2021, after the elapse of 34 days only. This, to the learned State Attorney's view, indicates the complaint is premature and ninety days period was yet to expire. On the aim of giving 90 days' statutory notice to the Attorney

General, learned State Attorney contended that it is to give the Government enough time to go through the claims and see the possibility of settling the dispute before it is taken to court.

It was learned State Attorney's further contention that Section 6(2) is clear that notice must be served on three parties, namely, the actual government institution, the Attorney General and the Solicitor General. It was submitted for the respondents that the law was also contravened because there is nothing showing that the 1<sup>st</sup> respondent and the Solicitor General were given such notice. In her opinion, the consequence of the failure has been a subject of discussion in various court decisions. This court was referred to Land Case No. 6 of 2019 between **Nyakilago Aloyce v. Administrator General and Yono Auction Mart and Co. Ltd**, High Court at Musoma. It was prayed for the respondents that the suit be struck out with costs.

In response, the 1<sup>st</sup> and 2<sup>nd</sup> complainants disputed the incompetence of their suit. The 2<sup>nd</sup> complainant who also argued on behalf of the 1<sup>st</sup> complainant said that they followed all the procedures. He argued that their first letter of termination was dated 12.09.2021. They referred their labour dispute to the Commission for Mediation and

Arbitration and they were given some benefits. They then served the 90 days' statutory notice to the 2<sup>nd</sup> respondent on 18.11.2021, instituted the case on 1.1.2022.

As to whether the institution of their suit was after the expiry of the said notice, the 2<sup>nd</sup> complainant argued that their computation of 90 days starts on 12.09.2021 when they were served with the letter of termination 20<sup>th</sup> December, 2021 when suit was filed in this court, the 90 days' statutory notice had already expired. The 2<sup>nd</sup> complainant argued that they have documents to prove their argument that the suit was filed after the expiry of 90 days' notice. The 2<sup>nd</sup> complainant further argued that the 1<sup>st</sup> respondent objected on 7.2.2022 on the expiry of 90 days but the complainants were served with the objection late. After they replied, the 1<sup>st</sup> respondent made no response. The 2<sup>nd</sup> claimant stated that when they went to the CMA on 27.09.2021, it partly allowed their claims and that in this court they are claiming their PSSF contributions and arrears of seven months.

The complainants admitted that they did not serve the Solicitor General with the said notice as required by law.

In a brief rejoinder, learned State Attorney told the court that the argument by the complainants that the computation starts on 12.09.2021 is baseless because the law is clear. Insisting that the complainants filed their complaint on 20.12.2021, learned State Attorney pleaded that parties should be bound by their pleadings and the court should consider the complainants' documents and annexures.

She stressed that the issue is the date the notice was issued and the date the case was opened in court. With respect to CMA case, it was argued for the respondents that that is a case different from the present one.

Ms Sabina Yongo reiterated that this suit should be struck out for being competent.

I have perused the documents on my hand and have considered the submissions for and against the preliminary objection. Section 6 (2) of the Government Proceedings Act [Cap 5.R.E.2019] is clear and provides:-

(2) 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'.

According to the complaint filed by the claimants, the date of filing it in court was on 20<sup>th</sup> December, 2021. The 90 days' statutory notice which was made under section 6 (2) of the Act was signed by the 1<sup>st</sup> and 2<sup>nd</sup> claimants on 18 November, 2021 and under paragraph 5, the claimants indicated that the period of notice was 90 days. As rightly submitted by the learned State Attorney, the present suit was filed after 34 days only. The law as set out above is clear 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. Clearly, this suit has been prematurely filed and is in contravention of the clear provisions of section (2) of the Act.

Besides, in February, 2020, the Parliament of the United Republic of Tanzania enacted the Written Laws (Miscellaneous Amendments) Act, No. 1 of 2020 to include all suits against Public Corporations, Parastatal

Organisations, Executive Agencies and Local Government Authorities in the list of government suits.

Likewise, after the amendment any suit by or against such legal entities are treated like Government suits and the procedure for institution of such proceedings must conform to the provisions of the Government Proceedings Act regardless of the nature of the claim. Under the current procedure, before suing a public corporation, parastatal organisation, executive agency or local government authority, the plaintiff or claimant for that matter, has to serve such legal entity with a 90 days' notice of intention to sue. The notice should articulate the factual basis of the claim and reliefs sought. Further, a copy of the notice must be served upon the Attorney General and Solicitor General. The plaintiff may institute the suit after the expiration of the notice period and a copy of the plaint should be served on the defendant and the Solicitor General. That is the law.

In the instant suit, such procedure was not followed. The present claimants did not sent a copy of the notice to the Solicitor General. This, the claimants have admitted.

For the reasons stated, I find this suit having been prematurely filed before the expiration of the 90 days' statutory notice and without serving a copy of the notice to the Solicitor General as the law requires. For that reason, it is incompetent and the court cannot hear it.

The preliminary objection is upheld and the suit is struck out with costs to the respondents.



**W.P. Dyansobera**

**Judge**

**31.3.2022**

This ruling is delivered at Mwanza under my hand and the seal of this Court on this 31<sup>st</sup> day of March, 2022 in the presence of the two claimants and in the presence of Ms Sabina Yono and Oscar Twakazi, learned State Attorneys for the respondents/Defendants.

**W.P. Dyansobera**

**Judge**