

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

CIVIL CASE NO. 28 OF 2021

**AUDACITY INTERCON (T) LIMITED-----PLAINTIFF
VERSUS
BUKOMBE DISTRICT COUNCIL----- 1st DEFENDANT
THE ATTORNEY GENERAL-----2nd DEFENDANT**

RULING

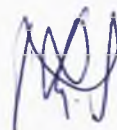
*Last Order: 11.05.2022
Ruling Date: 27.05.2022*

M. MNYUKWA, J.

Upon being served with plaint which was filed in this court on 16/11/2021, the second respondent, the Attorney General through her learned counsel, Ms. Sabina Yongo when filing the written statement of defence raised a preliminary objection on a point of law to the effect that:

"The suit is incompetent for being prematurely brought before this honourable court without prior 90 days' notice contrary to section 6(2) of the Government Proceedings Act, Cap 5 R.E 2019."

As a matter of practice, the court scheduled the preliminary objection to be heard first and the hearing was done by way of oral



submission. During the hearing, the plaintiff afforded the service of Ms. Stella Sangawe, learned counsel while the first and second respondent were represented by Mr. Joseph Komba and Ms. Sabina Yongo, learned state attorneys.

In her submission, Ms. Sabina Yongo submitted that, it is the requirement of the law that, the plaintiff should give 90 days' notice before suing the Government. That, the requirement is provided under section 6(2) of the Government Proceedings Act, Cap 5 R.E 2019. The section requires the plaintiff to serve the defendants, Government institutions, with a copy of the notice which should be served to the Attorney General and Solicitor General. The counsel added that, the wording of the section places a mandatory condition for the plaintiff to serve the Attorney General and the Solicitor General since the word "shall" has been used.

She went on that, the plaintiff instituted a suit against the Government as per the requirement of section 4(1) of the Government Proceedings Act as amended by section 26 of the Written Laws Miscellaneous Amendment Act No 1 of 2020. Thus, even if the plaintiff instituted a suit against Bukombe District Council, the Attorney General is required to be given a prior notice as the law requires.



She further referred paragraph 15 of the Plaintiff which shows that the notice was given to the defendants as noted in Annexure "**Anar 6**" but she claimed that there is no proof of service that the same were received by the defendants as the plaintiff failed to exhibit if the said notice was sent either by post or any other mode. She added that, the records show that the first defendant replied to the demand notice but insisted that, the notice was not served to the Attorney General and Solicitor General. She refers this court to the case of **Charles Mikera v Commissioner for Lands and 4 others**, Land Case No 127 of 2020, in which the plaintiff failed to comply with the requirement of the law and the court struck out the suit. She thus, prays the suit be struck out with costs.

Responding, the counsel for the plaintiff was very brief, she claimed that, the 90 days' notice was served to the first defendant and second defendant, the Attorney General, the Solicitor General and the District Medical Officer of Bukombe District Council through post office as Exhibited on "**Anar 6**" and that the first defendant replied to that notice.

Re-joining, the counsel for the second defendant insisted that, what is required is a proof of service which is not shown in this case and that what gives power to this court to hear and determine the matter is the notice whose service was not proved.



Having heard the submissions of both parties, in support for and against the preliminary objection, the court now is called out to determine on whether the notice was served to the Attorney General and the Solicitor General as claimed by the plaintiff so as to be in a position to hold whether the raised preliminary objection has merit or not.

Before I embark to determine the preliminary objection raised by the second defendant, I find it pertinent to put it clear that, the first defendant being the local Government authority is a Government for the purpose of section 26 of the (Miscellaneous Amendments) Act, 2020 which defined Government to include the local government authority. For that purpose, any suit brought against it, the requirement of the Government Proceedings Act, Cap 5 R.E 2019 and of the (Miscellaneous Amendments) Act, 2020 should be complied with.

Turning now to the preliminary objection raised, the counsel for the second defendant claimed that the plaintiff failed to adhere with the mandatory condition of section 6(2) of the Government Proceedings Act, Cap 5 R.E 2019 and therefore the suit is incompetent before the court. She claimed that, the copy of the notice was not served to the Attorney General and Solicitor General as the law requires. On the other hand, the counsel for the plaintiff admitted that, indeed, that is the requirement of



the law. However, she avers that the Attorney General and Solicitor General were served with the notice as it is stated in the plaint in which annexure "Anar 6" shows that the copies of the notice were served to them and she added that the same were served and it was served through post.

From the above competing arguments from the counsel of the plaintiff and the defendant, I revisited the above section as it is provided for under the Government Proceedings Act, Cap 5 R.E 2019 and for easy of reference the same is hereby quoted:

"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 to the Attorney General and Solicitor General."

Furthermore, section 31(1)(a) of the (Miscellaneous Amendments) Act, 2020 provides that:

"No suit shall be commenced against a local government authority unless a ninety days' notice of intention to sue has been served upon the local government and a copy thereof to the Attorney General and Solicitor General. ."



From the above provisions of laws, it is clear that when a person wants to institute a case against the government, apart from serving the ninety days' notice to the government ministry or department, the copy of that notice should be served to the Attorney General and the Solicitor General respectively. This is the mandatory requirement, in which a party intending to sue the Government shall serve the notice to them.

When referring to paragraph 15 of the plaintiff's plaint, it provides that annexure "**Anar 6**" which is the copy of the notice, the following persons were copied namely; the Managing Director of Audacity Intercom (T) Ltd, the District Medical Officer of Bukombe District, the Office of the Attorney General and the Solicitor General. Both of them were copied in the said notice that they were copied for information.

Upon my perusal in the available record, I did not see any proof of service to substantiate that the service was done to the Attorney General and the Solicitor General apart from the mere assertion of the counsel for the plaintiff in her submission that they were served through post office and the attachment in the plaint, annexure "**Anar 6**" which shows that they were copied for information.

It is a trite position of law that, in determining the preliminary objection, the court has to look to the pleadings and its annexures only



without requiring more evidence. (See the case of **Ali Shabani and 48 Others v. Tanzania National Roads Agency and The Attorney General**, Civil Appeal No. 261 of 2020.)

In our case at hand, nothing in the pleadings exhibit that the Attorney General and the Solicitor General were served with the notice as claimed by the counsel for the second defendant. Thus, it was expected that the pleadings could have shown that the notice was served to the Attorney General and the Solicitor General and the same was received by them. The importance of serving the notice to the Attorney General and Solicitor General, need not to be emphasized since apart from informing them the suit has been instituted against them, it also helps them to prepare defence or to be ready for mediation if the circumstances as the case requires.

When referring to the case of **Mashaka Abdallah and Another v Bariadi Town Council and 2 others** (Land Case No 3 of 2020) [2021] TZHC 6534 (10 September 2021), the court stated that:

"... In fact, the Attorney General being the Chief Legal Adviser to the Government in terms of the provisions of Article 55 of the Constitution of the United Republic of Tanzania, 1977 and also as legislated in the office of the Attorney General (Discharge of Duties) Act No 4 of 2005 is



clothed with mandate to decide whether the intended suit subject to the notice of intention to sue is meritorious or otherwise. In orderly way of executing government businesses, the duty is exercised in liase with the Ministry, Government Institution or independent department of Government to whom the claims are directed."

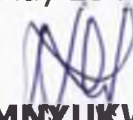
From the pleadings available in the court file, I agree with the argument of the counsel for the second defendant that no proof of service to exhibit the notice was served to them and in the upshot, I upheld the preliminary objection, thus the suit is hereby rendered incompetent and is accordingly struck out with no order as to costs.

It is so ordered.




M.MNYUKWA
JUDGE
27/05/2022

Court: Ruling delivered on 27st May 2022 in the absence of both parties.


M.MNYUKWA
JUDGE
27/05/2022