

**IN THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY
AT MWANZA
LAND CASE NO. 4 OF 2021**

MSAFIRI MAKINDI MTIGANDI PLAINTIFF

VERSUS

MWANZA CITY COUNCIL 1ST DEFENDANT

THE ATTORNEY GENERAL 2ND DEFENDANT

AYUBU ASHIBERI 3RD DEFENDANT

PAMELA DARIA MUGARULA3RD PARTY DEFENDANT

RULING

ROBERT, J:-

The Plaintiff, Msafiri Makindi Mtigandi, has commenced legal proceedings against the Defendants, requesting a court order to invalidate the allocation of Plot No. 104 Block "3," which is presently registered under the names of Pamela Daria and/or Ayubu Ashiberi. The Plaintiff also seeks to have the disputed plot allocated to himself and the award of general damages.

Prior to the hearing of this suit, the first and second defendants raised a preliminary objection on a point of law to the effect that:-

This suit is prematurely brought before this Honourable Court without prior 90 days' notice to the first and second Defendants and Solicitor General contrary to section 6(2)&(3) of the Government Proceedings Act, Cap. 5 R.E.2019 and section 106(1)(a)(b) of the Local Government (Urban Authorities) Act, (CAP, 288) as amended by the Written Laws (Miscellaneous Amendment) Act, No. 01 of 2020.

Upon the scheduled hearing of the objection, Mr. Constantine Ramadhan, learned counsel, appeared on behalf of the Plaintiff. The first and second Defendants were represented by Ms. Sabina Yongo, Felician Msetti, and Allen Mbuya, State Attorneys. Ms. Marry Maganga, learned counsel, appeared for the third Defendant, while Ms. Monica Kabadi, learned counsel, represented the third party Defendant.

Highlighting on the point objection, Ms. Sabina Yongo, asserted that the objection raised pertains to the necessity of providing a 90-day notice to the Government by any individual intending to initiate legal proceedings. She claimed that, it is mandated by section 6 (2) of the Government Proceedings Act that a copy of the notice must be duly served to both the Attorney General and the Solicitor General. She contended that, the use of the term "shall" within the provision signifies its mandatory nature, requiring strict compliance.

Additionally, she submitted that section 106 (1) (a) and (b) of the Local Government Urban Authorities Act impose an analogous requirement on any party seeking to bring a legal action against the Local Government.

She firmly asserted that despite the Plaintiff's statement in paragraph 11 of the Complaint, wherein she claimed to have served the 90-day Notice to the first and second Defendants, the attached Notice (Annexure D) fails to indicate whether it was indeed served to the mentioned Defendants as alleged. Moreover, the Notice lacks any stamps or documentation confirming receipt or dispatch, thus failing to provide evidence of its delivery to the first and second Defendants. Furthermore, the Plaintiff did not clarify whether they served the Solicitor General as required by the law. Consequently, she argued that the legal requirement was not satisfied.

To reinforce her argument, she made reference to the case of **Audacity Intercon (T) Limited vs. Bukombe District Council and AG**, Civil Case No. 28 of 2021, decided by the High Court at Mwanza, where it was determined at page 6 that it is a mandatory legal requirement for a copy of the 90-day Notice to be served individually to both the Attorney General and the Solicitor General.

Thus, she prayed that the matter be struck out with costs for being incompetent.

Ms. Marry Maganga and Monica Kabadi, esteemed legal representatives, expressed their support for the objection raised by the counsel for the first and second Defendants.

In response to the preliminary objection, Mr. Ramadhan submitted that the Plaintiff did indeed file a 90-day notice to sue the Government. He argues that based on paragraph 11 of the Complaint, it is evident that the Plaintiff submitted the notice, and counsel for the first and second Defendants has acknowledged that the notice is attached to the plaint. Therefore, the question at hand is not whether the notice was filed but rather concerns the proof of service. Mr. Ramadhani argues that this matter cannot be determined as a preliminary point of objection since it requires evidence, which can only be presented during the trial.

Furthermore, he maintains that section 6 (2) of the Government Proceedings Act and section 106 (1) (a) and (b) of the Local Government Urban Authorities Act do not stipulate that a notice must be stamped by the Government or accompanied by a dispatch. According to his interpretation, the law allows for the parties to establish the mode of service during the trial.

Mr. Ramadhani further asserts that on February 15, 2023, the Plaintiff filed a Notice of additional documents and served all parties, including a copy of the dispatch to indicate the mode of service used by the Plaintiff.

Regarding the argument that paragraph 11 does not indicate whether the Solicitor General was served, Mr. Ramadhani maintains that this argument lacks merit. He states that the Solicitor General is not a party to the suit, and that is why the Solicitor General was not specifically mentioned in the pleadings. However, he maintained that, the absence of such mention does not imply that the Solicitor General was not served.

He submits that the case of **Audacity Intercon (T) Limited** (supra) is distinguishable from the present case because, in this matter, the Plaintiff served the Notice, and the only dispute revolves around the proof of service, which will be established during the trial. Additionally, he argues that the cited case is not binding on this Court. Mr. Ramadhani implores the court to consider the circumstances of this case and dismiss the point of objection, allowing the case to proceed so that the Plaintiff may have an opportunity to prove the service during trial.

In a brief rejoinder, Ms. Yongo submitted that, the objection raised doesn't bring up a question of evidence but a requirement of the law at

the time of filing the case and before hearing according to the cited provisions in the Notice of preliminary objection.

She maintains that, even if this was a matter of evidence, the plaintiff has not pleaded if he served the Solicitor General. He cannot therefore bring evidence to establish what is not pleaded in the plaint.

On the argument that the cited provisions do not have a requirement for stamp and dispatch, she argues that this is a misinterpretation of the law. She contended that service cannot be proved without stamp of the recipient and dispatch.

On the list of additional documents, including the dispatch which shows proof of service, she maintains that, the attached dispatch do not indicate if service was done to the Solicitor General.

On the argument that Solicitor General is not pleaded because he is not a party to the case, she submitted that the law is clear that the Solicitor General must be served not only when he is a party to the case.

Therefore, she prayed that the matter be struck out with costs for being incompetent before the Court.

This court has carefully considered the preliminary objection raised by the first and second Defendants regarding the Plaintiff's failure to

provide a 90-day notice as required by section 6(2) and (3) of the Government Proceedings Act, Cap. 5 R.E. 2019, and section 106(1)(a)(b) of the Local Government (Urban Authorities) Act, (CAP, 288) as amended by the Written Laws (Miscellaneous Amendment) Act, No. 01 of 2020. The objection questions the competence of this suit on the grounds of premature initiation without prior notice to the Defendants and the Solicitor General. It raises a legal point regarding the mandatory requirement of providing a 90-day notice to the Government before initiating legal proceedings.

Having considered the arguments and submissions from both parties, this court finds that the preliminary objection raised by the first and second Defendants has merit. The provisions of section 6(2) and (3) of the Government Proceedings Act and section 106(1)(a)(b) of the Local Government (Urban Authorities) Act clearly stipulate the mandatory requirement of providing a 90-day notice to the Defendants and the Solicitor General before initiating legal proceedings. The Plaintiff's failure to demonstrate satisfactory indication of serving the notice and the lack of clarity regarding the service to the Solicitor General raise valid concerns regarding compliance with the legal requirements.

While Mr. Ramadhani argued that the proof of service can be established during the trial, this court finds that the preliminary objection pertains to a question of competence at the stage of filing the case. The requirement of providing a 90-day notice is a precondition to commencing legal action, and its fulfillment must be demonstrated at the time of initiating the suit. The Plaintiff's failure to adequately establish compliance with this requirement renders the case incompetent as presently filed.

Accordingly, this court upholds the preliminary objection raised by the first and second Defendants and finds the Plaintiff's suit to be incompetent due to the failure to provide a 90-day notice as mandated by section 6(2) and (3) of the Government Proceedings Act and section 106(1)(a)(b) of the Local Government (Urban Authorities) Act. The Plaintiff's case is struck out. Each party to carry their own costs.

It is so ordered.




K.N. ROBERT
JUDGE
2/6/2023