

**IN THE HIGH COURT OF TANZANIA
(IN THE MWANZA SUB-REGISTRY)**

AT MWANZA

LAND CASE NO. 40 OF 2022

PASKAZIA NGONGI

(The Administrator of the Estate

of the Late Mariam Salehe).....PLAINTIFF

VERSUS

VEDASTUS JOSEPH.....1ST DEFENDANT

HALMASHAURI YA JIJI LA MWANZA.....2ND DEFENDANT

HALMASHAURI YA MANISPAA YA ILEMELA.....3RD DEFENDANT

MWANASHERIA MKUU WA SERIKALI.....4TH DEFENDANT

WAKILI MKUU WA SERIKALI.....5TH DEFENDANT

RULING

Date of Last Order:09/06/2023

Date of Ruling:12/07/2023

Kamana, J:

In the capacity of the administrator of the estate of the late Mariam Salehe, the plaintiff Paskazia Ngongi filed a civil case against the above-named defendants for compensatory orders and alternatively for revocation of ownership of Plot No. 588 Block 'A' Kabuharo within Mwanza City, amongst other prayers. When served with the plaint, the second, third, fourth and fifth respondents raised preliminary objections.

The second respondent objected to the plaint on the ground that the plaintiff has no cause of action against it. The third, fourth and fifth respondents jointly raised two objections as follows:

1. The suit is bad in law as the plaintiff did not issue a ninety days' notice to the third defendant as required by section 6(2) of the Government Proceedings Act, Cap. 5 [RE.2019] and section 106 of the Local Government (Urban Authorities) Act, Cap. 288 [RE.288].
2. That the suit is time-barred as per the Law of Limitation Act, Cap. 89 [RE.2019].

For this Ruling, I think it is logical to dwell on the ground raised by the third, fourth and fifth respondents regarding the issuance of the notice as it determines the fate of the suit at hand. Arguments for and against the preliminary objections were submitted by written submissions at the instance of the parties and leave of the Court.

Submitting in support of the preliminary objection, Ms. Sabina Yongo, learned state attorney contended that the suit in question is prematurely filed in the Court since there is no ninety days' notice in respect of the third respondent. The learned state attorney argued that it is a mandatory requirement that a ninety days' notice be issued to the

government institution before that institution is sued. She went on to argue that a copy of such notice must be served to the Attorney General and the Solicitor General. To substantiate her arguments, Ms. Yongo referred to section 6(2) and (3) of the Government Proceedings Act and section 106(1)(a) and (b) of the Local Government (Urban Authorities) Act, Cap. 288.

The learned state attorney argued further that since the third defendant is the local government authority, the plaintiff was supposed to issue a ninety days' notice of her intention to sue it. She averred that annexure C (ninety days' notice) to the plaint does not show that the notice was served to the third defendant as it shows neither the signature nor stamp that proves that the notice was received by the third defendant. The legal mind also contended that Annexure C was not addressed to the third defendant.

In summing up her arguments, Ms. Yongo submitted that the suit is incompetent for the plaintiff's failure to issue a ninety days' notice to the third respondent and she prayed the Court to strike it out with costs. Bolstering her arguments, the learned state attorney invited the Court to consider the case of **Audacity Intercom (T) Limited v. Bukombe District Council and the Attorney General**, Civil Case No. 28 of 2021.

In her reply, the plaintiff contended that the third defendant was issued with a third days' notice as per section 106 of the Local Government (Urban Authorities) Act. She went on to argue that after the amendment of sections 6 and 106 of the Government Proceedings Act and the Local Government (Urban Authorities) Act respectively, she prayed to the District Land and Housing Tribunal (DLHT) to transfer her case which was filed in 2011 to the High Court to join the Attorney General as the defendant as per the requirements of the law. The plaintiff argued further that the DLHT granted her application and the suit was transferred to this Court and now is objected to by the defendants. She invited the Court to consider the transfer order issued by the DLHT on 22nd August, 2022.

Ms. Ngongi argued that she issued a ninety days' notice to the Attorney General and the Solicitor General under section (2) of the Government Proceedings Act. That being the case, she reasoned that it was immaterial whether she issued a ninety days' notice to the second or third respondent since the Attorney General and the Solicitor General were served with the required notice. On that account, Ms. Ngongi beseeched the Court to find the preliminary objection devoid of merits.

Rejoining, Ms. Yongo, learned state attorney reiterated her position that the suit is incompetent for the plaintiff's failure to issue the notice

to the third defendant as per sections 6 and 106 of the Government Proceedings Act and the Local Government (Urban Authorities) Act respectively. She contended that as per the cited sections, the notice ought to be issued to the government institution to be sued and a copy thereof to be issued to the Attorney General and the Solicitor General. Concerning the thirty days' notice issued to the second and third defendants, the learned state attorney took it as baseless considering that the law at the time of filing the suit required the plaintiff to issue a ninety days' notice to would-be defendants and the same was neither pleaded nor attached to the plaint.

I have dispassionately gone through the arguments of parties and the records availed to me. The issue for my determination is whether the preliminary objection is meritorious.

It is trite law that before instituting the suit against the government institution, a would-be plaintiff is mandatorily required to issue a ninety days' notice of his intention to sue the government institution. It is further a requirement that a copy of such notice be issued to the Attorney General and the Solicitor General. This is provided under section 6(2) of the Government Proceedings Act which states:

'(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 and the Solicitor General.'

When the government institution is the urban local government authority as the third respondent, the requirement is the same. Section 106 of the Local Government (Urban Authorities) Act states:

106.-(1) No suit shall be commenced against an urban authority-

(a) unless a ninety days' notice of intention to sue has been served upon the urban authority and a copy thereof to the Attorney General and the Solicitor General; and

(b) upon the lapse of the ninety days' period for which the notice of intention to sue relates.'

That being the legal position of the law, I paid a visit to the plaintiff to ascertain whether such requirement in respect of a ninety days' notice was complied with by the plaintiff so far as the third respondent is concerned. As per paragraph 16, the plaintiff avers that the notice was issued to the second, third, fourth and fifth defendants as shown in

Annexure C. I had ample time to peruse the Annexure. The same is the ninety days' notice issued by the plaintiff under sections 6 and 106 of the Government Proceedings Act and the Local Government (Urban Authorities) Act respectively. The notice was issued to the first, second, fourth and fifth defendants. In other words, the notice was not issued to the third defendant as rightly submitted by Ms. Yongo, learned state attorney.

In her submission, Ms. Ngongi argued that non-issuance of the ninety days' notice to the second and third defendants is immaterial when the notice is issued to the Attorney General and the Solicitor General. This was vehemently countered by the learned state attorney who asserted that the notice must be issued to the government institution and a copy thereof to the Attorney General and the Solicitor General. Without ado, I shake hands with Ms. Yongo that as per the requirements of sections 6 and 106 of the Government Proceedings Act and the Local Government (Urban Authorities) Act respectively, the notice is to be issued to the government institution to be sued and the copy thereof to the Attorney General and the Solicitor General.

In her submission, Ms. Ngongi tried to save the boat from capsizing by arguing that she issued a thirty days' notice of her intention to sue to the second and third defendants under section 106 of the Local

Government Act as it was before the amendments effected in 2020. She tried to impress the Court by attaching the transfer order from DLHT to the High Court which I did not see in the records. What I saw was her reply to the preliminary objection raised during the proceedings at the DLHT and not the transfer order. Further, it is trite law that in determining the preliminary objection, the court has to peruse the pleadings and its annexures only without requiring more evidence. **See: Ali Shabani and 48 Others v. Tanzania National Roads Agency and The Attorney General**, Civil Appeal No. 261 of 2020.

Upon going through the pleadings and annexures, I found neither the notice of thirty days that was issued to the third defendant nor the transfer order. However, assuming that the same was there, still, the case at hand is quite different from the case that was at the DLHT as there is no transfer order whether as annexure or pleaded in the plaint.

From the above, the preliminary objection is sustained and I hold that the suit is incompetent. Having found the suit to be incompetent, the remaining question is whether this court should continue labouring on the remaining objections. I see no reason to labour on them as their determination will not affect the course I have already navigated to. The suit is hereby struck out with leave to refile.

Given the nature of the suit that the plaintiff was acting as the administrator of the estate, I order no costs. It is so ordered.

DATED at MWANZA this 12th day of July, 2023.



KS KAMANA

JUDGE