

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA
LAND CASE NO. 27 OF 2023**

**HASSANI SALMINI NTANDU (The Adm. of the
estate of the late Mariamu Kholo Mrasi)..... PLAINTIFF**

VERSUS

1. MSISI VILLAGE COUNCIL

2.THE DIRECTOR SINGIDA DISTRICT COUNCIL

3.THE ATTORNEY GENERAL

4.MIRAJI SHABANI

5. ALLY RAMDHANI MAKIYA

... DEFENDANTS

RULING

Date of Ruling: 25/08/2023

A. J. Mambi, J

This Ruling is in respect of the preliminary objection on points of law raised by the 1st, 2nd and 3rd defendants that the plaint is misconceived for non-compliance with the Laws. Before the matter went on for hearing, the 1st, 2nd and 3rd defendants through the learned State Attorney Ms. Kumbukeni Kondo raised a preliminary objection on the following points of law that; *The suit is bad in law for contravening section 6 (2) of the*

Government Proceedings Act, Cap.5 [R.E.2019] and that the suit in law for suing a wrong and non-existing party.

During hearing the first, second and third defendants which are government agencies and departments were represented by the learned State Attorneys, Mr. Agweyo and Ms. Kumbukeni.

Addressing the point of preliminary objection, the learned State Attorneys submitted that the plaint contravenes the Government Proceedings Act as the 1st and 2nd defendants who were government Agencies was not served with ninety days' notice before the plaintiff sued them. The Learned State Attorney referred the decision of the court in **Maltinea Holland vs Tanzania Civil Aviation and Tanzania Airport Authority, Civil Case No.89 of 2022 at page 13.**

Responding to the point of preliminary objection the plaintiff counsel Mr. Maarifa briefly submitted that they filed ninety days' notice prior to suing the government and served the notice to the defendants on 17/2/23. He argued that the Village Chairman signed the dispatch and they replied through their letter dated 11/04/2022. He was of the view that the provisions of the Government Proceedings Act does not apply to the Municipal Director and Village Council.

I have keenly gone through and considered the preliminary objections raised by the defendants and submissions from both parties. Before addressing other limbs of the preliminary objection, in their point of the preliminary objection, the defendants faulted the plaint that it was filed in contravention of section 6 (2) of the Government Proceedings Act, Cap 5 [R.E2019]. In my considered view the main issue is whether the plaint contravenes the provisions of the law and whether plaint is defective. It is trite law that before any party sues the government or government agency or department he/she must first serve a ninety days' notice and that notice must be served to all responsible government agencies, Authorities or Departments. My perusal from the records show that the Attorney General was served the required notice but the Director of Municipal Council and the Village council were not served. The argument by the plaintiff counsel that the Director of Municipal and Village council are not covered by the provisions of the law lacks merit. I wish to refer section 6 (2) of the Government Proceedings Act, Cap 5 [R.E2019] here under below:

*"6(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”.

The question is, did the plaintiff served the first, second and third defendants who are governments agencies with ninety days notice?. My perusal from the records does not show if the 1st and 2nd defendants were served with such notice. It appears the plaintiff served the Village council personally instead of the Village Council as local government agency. This in my view cannot qualify as the 90 days’ notice under the provision of section 6 (2) of the Government Proceedings Act, Cap 5 [R.E2019].

Section 6 (2) of the Government Proceedings Act mandatorily requires that before any civil suit that involve the government the party suing the government must first file the ninety days’ notice to all government agencies that are intended to be sued.

The word “**shall**” under the provision implies mandatory as per the Interpretation of Law Act Cap 1 [R.E.2019]. This means that the 1st and 2nd defendants as the government agencies and authorities were required to be served with the notice ninety days before commencing any suit. See also ***Arusha Municipal vs Lyamuya Construction Company Ltd 1998 TLR pg 13.***

In brief, the suit before this court is not proper for contravening section 6 (2) of the Government Proceedings Act, Cap 5 [R.E2019]. In my considered view, the suit before this court has not been properly prepared in line with the requirements of the laws.

In my considered view, since the plaintiff did not comply with the mandatory requirements of the law, it is as good as saying there was no suit filed at this court.

Having observed that the plaintiff failed to comply with the mandatory legal requirements, I am constrained to hold that the preliminary objection raised by the defendants has merit. Since there was no ninety days' notice served to the other defendants means that there is no suit before this court. In this regard, since there is no proper suit before this court, I don't see the rationale for discussing other points of preliminary objection.

Reference can also be made to the decision of the court of Appeal of Tanzania in ***The Director of Public Prosecutions v. ACP Abdalla Zombe and 8 others*** Criminal Appeal No. 254 of 2009,

CAT (unreported) where the court held that:

*"this Court always first makes a definite finding on whether or not the matter before it for determination **is competently before it**. This is simply because this Court and all courts have no jurisdiction, be it statutory or inherent, to entertain and determine any incompetent proceedings."*

From the foregoing brief discussion, I am of the settled mind that the suit before this court unsuitable and untenable and it could not have founded a proper suit before this court. I thus entirely agree with the defendants State

Attorneys that the suit is bad in law for non-compliance with the legal provisions of the law.

For reasons I have given above, I am of the settled view that the preliminary objection beforehand is meritorious and is accordingly upheld.

From my analysis and observations, I find the preliminary objection on the requirement of ninety days' notice is meritorious and is accordingly upheld and sustained. In the premises and from the foregoing reasons, the plaint filed by the plaintiff is hereby struck out. I make no order as to costs. It is so ordered.

Order accordingly



A.J. MAMBI

JUDGE

25/08/2023

Ruling delivered in Chambers this 25th of August, 2023 in presence of both parties.



A.J. MAMBI

JUDGE

25/08/2023

Right of appeal explained.



A.J. MAMBI

JUDGE

25/08/2023

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke, positioned above the printed name and title.