

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA
CIVIL CASE NO. 16 OF 2023

HOMBOLO INVESTMENTAPPLICANT

VERSUS

CHAMWINO DISTRICT COUNCIL1ST RESPONDENT

THE ATTORNEY GENERAL.....2nd RESPONDENT

RULING

Date of Ruling: 17/10/2023

A.J.Mambi, J.

This ruling emanates from the preliminary objection raised by the 1st and 2nd, Respondents. Earlier the applicant filed his plaint via civil case No.16 of 2023. However, the respondents raised a preliminary objection basing on three points of law. One of the point or limb of preliminary objection was that the plaint didn't comply with section 6(2) of the Government Proceedings Act, Cap 6 [R.E2019]. The respondents arguments in this point is that the Solicitor General was

not served with ninety days' notice as mandatorily required by the law which is contrary to section 6 of the Government Proceeding Act, Cap. 5.

In response the, plaintiff counsel briefly conceded with preliminary objection by stating that they omitted to serve the copy of the ninety days' notice to the Solicitor General.

Having heard very brief submissions, I did not detain myself addressing the other points preliminary objection rather than going straight to the first point of preliminary objection. Despite admission of the plaintiff counsel on the preliminary objection, this court needs also to satisfy itself as to whether the plaint contravenes section 6 (2) of the Government Proceedings Act, Cap 6 [R.E2019].

As I alluded above the respondents in their preliminary objection stated that the plaint offended section 6 (2) of the Government Proceedings Act. In this regard, the main issue is whether the suit contravenes the provisions of the law and whether the plaint is defective. It is on the records that the plaintiff served the Ninety days' notice to the first and second respondent but for unknown reason he omitted to serve the same notice to the Solicitor General as required by the law.

This in my view is contrary to the provision of the law that is section 6 (2) of the Government Proceedings Act Cap 5 [R.E. 2019]. It is clear that the law mandatorily requires parties to first file 90 days' notice before suing the government or any government agency or authority and that notice must be copied to the Solicitor General. For easy reference the provision of the law (Cap 5) provides that;

*"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 serve the Solicitor General with ninety days' notice before filing his application?. My perusal from the records show that the plaintiff did not serve the ninety days' notice to the Solicitor General. This as good as saying there was no prior ninety days' notice before filling a plaint which is a suit against the government.

In my view, failure to serve the 90 days' notice to the Solicitor is as good saying there was no prior ninety days' notice to sue the

government. Indeed 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 day notice. In my view, the court can not at any rate "dispense with the issuing of the notice to the respondents where the party has failed to comply with the mandatory requirement of section 6 (2) of the Government Proceedings Act. My reasoning are based on the fact that since the said provision makes mandatory that before suing the government or its agencies, the plaintiff or applicant must serve a prior 90 days' notice to all government agencies or department that form part of the case and the copy must be served to the Solicitor General.

The word '**shall**' that appears in this section means it is mandatory to serve the government a 90 days' notice before filing any suit or application. Reference can be made on s. 53(2) of the Law of Interpretation Act, Cap 1 [R: E 2019].

This means that the Solicitor General who appears at the court on behalf of the Attorney General to represent the government was required to be served with the ninety days' notice before commencing any suit. In this regard, this section bared the plaintiff from filing the

suit that was against the government authorities since the plaintiff did not serve ninety days' notice of intention to commence the suit.

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 respondents has merit. Since there was no valid ninety days' notice served to the Solicitor General means that there is no suit before this court.

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 is unsuitable and untenable, and it could not have founded a proper suit before this court. I thus entirely agree with the learned State Attorneys that failure to serve the Solicitor General with

mandatory notice to sue was bad in law which renders the application at this court untenable.

For reasons I have given above, I am of the settled view that the preliminary objection before this court is meritorious. I thus find that 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 suit filed by the plaintiff is hereby struck out. I make no order as to costs.

Order accordingly.



A. J. MAMBI

JUDGE

17/10/2023

Ruling delivered in Chambers this 17th of October 2023 in presence of both parties



A. J. MAMBI

JUDGE

17/10/2023