

IN THE HIGH COURT OF TANZANIA

(COMMERCIAL DIVISION)

AT DAR ES SALAAM

COMMERCIAL CASE NO. 151 OF 2017

EAST COAST OIL AND FATS LIMITED PLAINTIFF

VERSUS

THE TANZANIA BUREAU OF STANDARDS 1ST DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 2ND DEFENDANT

RULING

Date of the Last Order: 04/04/2018

Date of the Ruling 16/04/2018

SEHEL, J.

This is a ruling on a preliminary objection raised by the defendants against the plaintiff's suit. The objection raised is to the effect that the suit is incompetent for contravening Section 6(2) of the Government Proceedings Act, Cap. 5.

At the hearing of the preliminary objection, learned state attorney Ms. Leisha Shao and William Luoga Legal Officer from the 1st defendant

appeared to argue the objection while learned advocate Dr. Masumbuko Lamwai and Ms. Catherine Solomoni, learned advocate appeared to oppose the objection.

Ms. Shao was brief in her submission that pursuant to Section 6(2) of the Government Proceedings Act, cap. 5 the plaintiff is required to issue a notice to sue of not less than ninety days. She pointed out that the Plaintiff had filed a suit against Tanzania Bureau Standard which is a statutory body that works as a Government agency under the Ministry of Trade and Industry and Attorney General has been joined as a second defendant. She contended that the imports of the wording of Section 6(2) of Cap 5 is that courts are prohibited to hear suits in absence of notice by claimant. She said the act of the Plaintiff to file a suit without notice makes the suit incompetent before this Court therefore it shall be strike out with costs. She cited the case of Arusha Municipal Council vs Lyamuya Construction Company Ltd (1998) T.L.R Page 13 where it was held that the language of statute is very clear, it contains prohibitory institution of suit where there is no notice. She concluded her submissions by arguing that non-compliance renders the suit unmaintainable. It should be strike out with costs.

Counsel Lamwai in his reply acknowledged that Section(2) of the Government Proceedings Act requires for issuance of ninety days notice to the Government Department and copy of it is to the Attorney General before institution of a suit. He contended that the requirement of Section 6(2) of the Government Proceedings Act, Cap. 5 does not set a maximum time limit within which a notice is to be operated.

He said the Plaintiff did comply with Section 6(2) of the Government Proceedings Act, Cap 5 as such the objection has no merit. He pointed out that the Plaintiff annexed to its plaint Annexure P9 which is a letter from his office dated 10th April, 2017 titled "90 days statutory notice to claim for damages". This letter is threatening for two actions. One to sue the 1st Defendant for compensation for Tshs. 50 million for lack of raw materials and warehouse costs and the second one is a notice that an application for prerogative orders will be made. Counsel Lamwai pointed out that an application for prerogative order was made but it was strike out. However the suit was not filed hence the present suit. He contended that the notice attached to the plaint is still valid for purposes of this suit.

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He further argued the defendants in their written statement of defence they did not dispute its existence.

It was replied that the defendants could not dispute the existence of Annexure P9 because it was not attached to the plaint served upon them. She also said Annexure P9 refers to declaratory orders and not to a suit thus it cannot be taken to be a notice to sue.

From the submissions made by counsels, it is agreed upon that section 6(2) of the Government proceedings Act, Cap 5 requires for a ninety days notice to be issued. This section provides:-

"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".



The above provision of the law is crystal clear that before a party institutes a suit against the Government such a party must have previously issued a notice of not less than ninety days to the Government Minister, department or Officer concerned and a copy of it to the Attorney – General. The said notice must specify the basis of the claim. Counsel for Plaintiff contended that the Plaintiff did comply with the requirement of Section 6(2) of the Government proceedings Act, Cap.5, as evidenced by Annexure P9 to the plaint which shows that it was duly received by the Attorney General. Learned State Attorney contended that the said Annexure P9 was not attached to the Plaint served upon them and even if it was attached, it was for declaratory order and not for the purposes of this suit.

I have perused the court file and I have taken note that Annexure P9 is attached to the plaint contained in the court file. This Annexure P9 shows that it was written on 10th April, 2017 titled “90 days statutory notice to claim damages due to contradicting reports of testing of code palm olein sample ex mt pyxis Delta”. The notice was addressed to Director General, Tanzania Bureau of Standards and copied to the Attorney



General and Commissioner General, Tanzania Revenue Authority. The said notice was duly received by all parties on 10th April, 2017 as evidenced by received stamps.

It follows then that even though Annexure P9 to the plaint was not attached to the plaint served upon the defendants but the said notice was duly issued to the concerned Government Department and copied to the Attorney as required by Section 6(2) of the Government Proceedings Act, Cap. 5. Further as I have instigated herein, Annexure P9 specified the basis of the Plaintiff's claim that it is for claiming damages arising from contradictory reports. The basis of the Plaintiffs claim according to paragraph 15 of the plaint is the arbitrary of the 1st Defendant of conducting second testing of the import and in so doing potentially caused serious financial injury to the plaintiff.

For all purposes the plaintiff's notice to sue, attached to the plaint as Annexure P9, complies with the requirement of Section 6(2) of the Government Proceedings Act, Cap -5. In that respect, I find no merit to the objection raised by the dependants. I thus proceed to dismiss the objection. Costs shall be to the main suit.



It is so ordered.

DATED at Dar es Salaam this 16th day of April, 2018.



B.M.A Sehel

JUDGE

16th day of April, 2018