

THE UNITED REPUBLIC OF TANZANIA

(JUDICIARY)

THE HIGH COURT - LAND DIVISION

(MUSOMA SUB REGISTRY)

AT MUSOMA

LAND CASE No. 21 OF 2022

1. BWIRE NYAMWERO BWIRE  
2. ROSE LAURENT MAGOTI } ..... PLAINTIFFS

*Versus*

1. NATIONAL MICROFINANCE BANK PLC  
2. SMALL INDUSTRIES DEVELOPMENT  
ORGANISATION (SIDO)  
3. THE ATTORNEY GENERAL  
4. SUBIA GENERAL SUPPLIES & TRIBUNAL  
BROKERS LIMITED  
5. NUTMEG AUCTIONEERS & PROPERTY  
MANAGERS CO. LTD &  
6. ANNA NICHOLAUS KYAMBA } DEFENDANTS

**RULING**

02.05.2024 & 06.05.2024

Mtulya, J.:

The provision of section 6 (2) of the **Government Proceedings Act [Cap. 5 R.E. 2019]** (the Act) was enacted in the following words:

*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.***

(Emphasis supplied).

In the instant case, the plaintiffs have sued a government institution called **Small Industries Development Organization (SIDO)** (the second defendant) and joined the **Attorney General** (the third defendant) as a necessary party to comply with section 6 (3) of the Act. In order to comply with section 6 (2) of the Act, the plaintiffs had issued a ninety days' notice of intention to sue the second defendant and copied the same to the Solicitor General.

On the 4<sup>th</sup> April 2024, **Mr. Kitia Sylvester Turoke**, learned State Attorney for the second and third defendant appeared in this court and registered two points of law resisting the jurisdiction of this court to entertain the case, namely: first, the plaintiff has declined display of the jurisdiction of this court as per Order VII Rule 1 (f) of the **Civil Procedure Code [Cap. 33 R.E. 2019]** (the Civil Code); and second, the suit contravened section 6 (2) of the Act.

Mr. Kitia was summoned on 2<sup>nd</sup> May 2024 to explain his points of protest and appeared in this court carrying two decisions in **John Nyaitara Steven v. North Mara Gold Mine Limited**, Land Case No. 20 of

2022 and **Evetha Mosha v. Arusha City Council & Two Others**, Civil Case No. 14 of 2021. According to Mr. Kitia, the jurisdictional clause in the twenty second paragraph of the plaint does not show that this court has jurisdiction to resolve the matter as per requirement of Order VII Rule 1(f) of the Code and standard practice set in the precedent of **John Nyaitara Steven v. North Mara Gold Mine Limited** (supra). In substantiating his submission, Mr. Kitia stated that the plaintiffs have just stated: *the action arose in Musoma where the plaintiffs and defendants conduct their business and the subject matter is situated within the territorial jurisdiction of the court*, which does not show jurisdiction of this court.

Regarding the second complaint, Mr. Kitia briefly stated that the enactment of section 6 (2) of the Act was enacted by use of the word *and* between the Attorney General and Solicitor General hence both the third defendant and Solicitor General must be notified of the intention of the plaintiffs to sue the second defendant. In making his point appreciated, Mr. Kitia cited page 8 in the Ruling of this court in the precedent of **Evetha Mosha v. Arusha City Council & Two Others** (supra), which shows that: *the law states clearly that both the Attorney General and Solicitor General should be served*.

In replying the two points of protest, the plaintiffs stated that the second and third plaintiffs have registered points of law without

abiding with Order VI Rule 7, Order VIII Rule 23 and section 95 of the Civil Code, as: first, they did not pray for amendment of their joint written statement of defence; second, they noted existence of the plaint in their fifth paragraph of the joint written statement defence. The plaintiffs submitted further that section 6 (2) of the Act was complied as the Attorney General was served via Solicitor General and the Attorney General had appeared in the instant case.

In order to verify their submission, the plaintiffs have cited a decision in **Mashaka Abdallah** [*The administrator of the Estates of Mhoja Juma*] & **Another v. Bariadi Town Council & Others**, Land Case No. 3 of 2020, at page 8, which shows that: *mere composition of the address or tittle the Attorney General or Solicitor General in the notice without evidence that they were served in itself cannot be proof of the service*. According to the plaintiffs, the case shows that postal issues produce complications hence the office of the Attorney General and Solicitor General were established at grassroot levels to work as single and one office to serve the Tanzanian communities, and in any case the contents in the notice are the same.

The plaintiffs submitted further that the notice to sue government institution should not be given any importance as there is precedent in **Gwabo Mwansasu & Ten Others v. Tanzania National Roads Agency & Another**, Land Case No. 8 of 2020, which

stated that notice is intended for filing of suits in court and for further purposes. On the jurisdiction clause and the mandate of this court, the plaintiffs stated that the twenty second paragraph is a jurisdictional clause and does not display jurisdiction of the court in itself, but reading from the nineteenth, twentieth and twenty second paragraphs together as a whole, the jurisdiction is clearly displayed.

According to the Plaintiffs, there is no any law which provides that jurisdiction of the court has to be displayed in a single paragraph of jurisdictional clause and that the second and third defendants have not protested the paragraphs in their written statement of defence. Finally, the plaintiffs prayed this court to decline the points of protest in favor of the principle of overriding objective and Ruling of this court in **National Microfinance Bank PLC & Another v. Bwire Nyamwero Bwire, & Another**, Misc. Land Application No. 96 of 2023.

In a brief rejoinder, Mr. Kitia submitted that the issues raised by the plaintiffs have no merit as the points of law resisting jurisdiction of courts may be raised at any point even during the hearing of the case and in the present case, the hearing button was not yet switched on for hearing proceedings to take its course. In explaining his point, Mr. Kitia had cited the precedent of the Court of Appeal in **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan**

**Senthil Kumai**, Civil Appeal No. 179 of 2016. According to him, the procedure of suing Government institutions is peculiar and has its special enactment which requires both the third defendant and Solicitor General to be served and the plaintiffs have conceded that they have not complied with the law regulating service to notify the third defendant.

In the opinion of Mr. Kitia, if the procedure is not complied, then the entire proceedings of this case is a nullity for want of the condition enacted in section 6 (2) of the Act, as the matter in dispute touches jurisdiction of the court. In his submission, Mr. Kitia thinks that issues of amendment of the written statement of defence or Orders VI, VIII and section 95 of the Civil Code do not relate to the second and third defendants and in any case in resolving points of law, courts are not supposed to invite written statements of defence.

Mr. Kitia submitted further that the law in Order VI Rule 1(f) of the Code and precedent in **John Nyaitara Steven v. North Mara Gold Mine Limited** (supra) require jurisdiction clause to be detailed and self sufficient in showing jurisdiction of the court and there is no need for the court to scrutinize facts in the whole plaint in search of its mandate.

In ending his rejoinder, Mr. Kitia contended that all cases cited by the plaintiffs do not relate either to the enactment of section 6 (2) of the Act or jurisdiction clauses in plaints, and that the principle of overriding objective cannot be invited when there is breach of mandatory provision of the law.

I have read the decisions of the Court of Appeal in **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai**, (supra) and **National Insurance Corporation Limited v. Johanes Jeremiah & Two Others**, Civil Appeal No. 61 of 2021 and found that: *a point of law challenging jurisdiction of the court can be raised at any stage of proceedings, even at an appellate stage*. The practice from the indicated decisions shows further that when the point is raised, it has to be resolved first before proceeding to the merit of the matter. This court has been cherished the practice without any reservations in the precedent of **Agripa Fares Nyakutonya v. Baraka Phares Nyakitonya**, Civil Appeal No. 40 of 2021 and **Morris Mess Akoto v. Zulfa Joseph Akoto**, (PC) Civil Appeal No. 78 of 2022.

Similarly, I have perused page 14 and 15 of the judgment of the Court of Appeal in **Mondorosi Village Council & Two Others v. Tanzania Breweries Limited & Four Others**, Civil Appeal No. 66 of 2017 and noted that: *the principle of overriding objective cannot be*



*applied blindly against the mandatory provisions of the procedural law which go to the very foundation of the case.* The question before this court then is whether section 6 (2) of the Act is mandatory procedural law which goes to the very foundation of the case.

This court in the decision of **Evetha Moshia v. Arusha City Council & Two Others** (supra) has impliedly replied the question, at page 8 of the Ruling, in the following words:

*...the law states clearly that both the Attorney General and Solicitor General should be served with the said 90 days' notice. Had it been that it is not necessary to serve the notice to both, then the legislature would have stated that the 90 days' notice could be served to either the Solicitor General or Attorney General...failure to comply with the law mistakenly cannot be an excuse and justification to ignore the same...violation of section 6 (2) of the Government Proceedings Act is fatal.*

Having the interpretation of this court in precedent, there is no need for the same court to indulge in alternative interpretations of the indicated section, unless there are compelling reasons on the subject. I see no any pressing reasons in the instant case and in any case the plaintiffs have declined to cite any law in enactment or practice regulating the subject. This court will abide with its previous



decision on the subject without any further interpolations. Both the Attorney General and Solicitor General must be served. There is no proof in the instant case to show that the Attorney General was served.

I have scanned the provision of Order VII Rule 1 (f) of the Code and decision in **Assanand & Sons (Uganda) Limited v. East African Records Limited** [1959] EA 360 and found that the provision places upon a plaintiff the obligation of pleading the facts showing that the court has jurisdiction. In that case, a mere assertion by the plaintiffs that the court has jurisdiction is not enough. In brief, the rule requires the facts showing that the court has jurisdiction to be stated in the jurisdictional clause. According to the precedent, *that is a matter of great importance, for if the court does not have jurisdiction, any judgment which it gives is a nullity.*

This court in following the move, stated that courts of law cannot wander in plaints in searching for facts showing that they have jurisdiction (see: **China Pesticides (T) Limited v. Safari Radio Limited**, Commercial Case No. 179 of 2014). Last month, April 2024, this court has supported the passage without any hesitancies in the precedent of **John Nyaitara Steven v. North Mara Gold Mine Limited** (supra) and resolved that jurisdiction of special courts, like

commercial, labour and land divisions of this court must be specifically stated in the jurisdictional clause of the plaints.

In the instant case, the plaintiffs, in the twenty second paragraph of the plaint have indicated that: *the action arose in Musoma where the plaintiffs and defendants conduct their business and the subject matter is situated within the territorial jurisdiction of the court*, which is similar as: *the plaintiff resides in Dar Es Salaam and that the cause of action arose in Dar Es Salaam thus the court is vested with geographical and pecuniary jurisdiction to adjudicate the same*, which was held to be fatal in the precedent of **China Pesticides (T) Limited v. Safari Radio Limited** (supra).

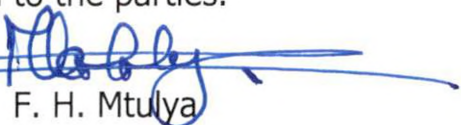
I am aware the plaintiffs claim that the jurisdiction can be ascertained from reading the nineteenth, twentieth and twenty second paragraphs together as a whole. However, the law in precedents requires the facts showing the court has jurisdiction has to be clearly stated in the jurisdictional clause. It is not the court's role to wander about in plaints to search for facts showing that the court has jurisdiction. As there are precedents of this court on the subject, this court shall follow the course and hold the plaintiffs' plaint is fatal as it is difficult to comprehend its contents in terms of jurisdiction of this court land-division.

In the end, I am moved by the submission of Mr. Kitia and strike out the plaint for want of the law in the indicated statutes and precedents of this court and Court of Appeal. I do so without costs as the plaintiffs are lay persons searching for their rights in this court.

Ordered accordingly.

Right of appeal explained to the parties.



  
F. H. Mtulya

**Judge**

06.05.2024

This Ruling was delivered in Chambers under the Seal of this court in the presence of the first plaintiff, **Mr. Bwire Nyamwero Bwire** and second plaintiff **Ms. Rose Laurent Magoti** and in the presence of **Mr. Davis Mzahula**, holding brief of **Mr. Emmanuel Werema**, learned counsel for the sixth defendant, and in the presence of **Mr. Anesius Stewart** and **Mr. Abdallah Makulo**, learned State Attorneys for the second and third defendants.

  
F. H. Mtulya

**Judge**

06.05.2024