

TANZANIA / JUDGMENT

MEINGARANA SADEMAKI

COURT
TANZLII

DECIDED
25 November 2024

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (LAND DIVISION) AT ARUSHA
LAND CASE NO. 5 OF 2024 MEING'ARANA SADEMAKI.....
PLAINTFF Versus ARUSHA CITY COUNCIL..... 1st DEFENDANT
PERMANENT SECRETARY, MINISTRY OF LANDS, HOUSING AND HUMAN SETTLEMENT
DEVELOPMENT..... 2nd DEFENDANT HONOURABLE ATTORNEY GENERAL.....
3rd DEFENDANT

RULING

25th November 2024 & 16th January, 2025 MWASEBA, J. This is a ruling in respect of preliminary objection raised by counsel for the defendants in the written statement of defence whose gist is couched in the following terms: The suit is bad in law for contravening the mandatory requirement of section 6(2) of the Government Proceedings Act, Cap. 5 [R.R 2019] On 25/11/2024, the matter was called on for hearing of the preliminary objection. The plaintiff was represented by Mr. Yoshua Mambo learned advocate while the defendants were ably represented by 1|Page Mr. Hance Mmbando, learned State Attorney. The preliminary objection was heard viva iwe. Submitting in support of the preliminary objection, Mr. Mmbando contended that according to the Government Proceedings Act, Cap. 5 [R.E 2019] (hereinafter GPA), the plaintiff before instituting the case, is bound to serve a notice of not less than 90 days to the Minister, department or the officer concerned about his intention to sue the government. He added that a copy of such notice shall be sent to the Attorney General and the Solicitor General. He insisted that under paragraph 23 of the plaint, the plaintiff asserted that he served the demand notice to the defendants on 27/12/2022 and he attached the notice as annexure MS 12. He firmly submitted that the purported notice is not endorsed to indicate that it was served and received by any of the defendants. According to the learned State Attorney, mere inscription of the addresses of the defendants in the notice is not conclusive that the notice was served upon the defendants. To substantiate his account, Mr. Mmbando relied on the following decisions of this court: Petro Potini Peter v. Mbulu Town Council and two others, Civil Case No. 20 of 2023 and Mashaka Abdallah and Another v. Bariadi Town Council and 2 Others, Land Case No. 3 of 2020 where the court observed that a mere composition of address 2 | Page or title of Solicitor or Attorney General In the absence of proof that they were served Is not enough. There must be evidence that the said notice reached the Solicitor General and the Attorney General. The learned State Attorney accounted that it was the plaintiff's duty to support with tangible proof that the

defendants were served, which he failed. He invited the court to sustain the preliminary objection and strike out the suit with costs. On his part, Mr. Mambo submitted that the claim was against the Ministry of Lands, Housing and Human Settlement Development, which was responsible for compensating the plaintiff. The plaintiff wrote the demand notice to its Permanent Secretary, who is responsible to respond to the claims as per the law. He added that the demand notice of intention to sue was directed to the first defendant as it was directly involved in this issue. He maintained that copies of the notice of intention to sue, were served upon all defendants, including the Attorney General and the Solicitor General on 28/12/2022. The notice was sent to them vide Tanzania Post office through EMS, whose receipts he referred as annexures MS 14, 15 and 16 in the additional list of documents to rely upon. According to Mr. Mambo, to substantiate that the notices were served and reached the defendants, the second defendant responded 3 | Page through a letter dated 31/01/2023 reacting to the claims. The said letter is referred as annexure MS 17 to the additional list of documents to be relied upon. It was counsel's insistence that the notice of intention to sue were served upon all the defendants along the plaint which was filed on 15/08/2024. He urged the court to overrule the preliminary objection for being untenable. In rejoinder submission, Mr. Mmbando argued that the list of additional documents to be relied upon, which the plaintiff's counsel relies on to assert that the notices were served was served on them on the date of hearing of the preliminary objection. On the EMS receipts relied on by the plaintiff as proof of service, Mr. Mmbando submitted that they do not indicate the addressees to whom the documents were served therefore cannot be relied upon as proof of service. He maintained that the receipts are three while there were four parties who were supposed to be served, which is another indicative that the defendants were not served with the notice of intention to sue. Regarding annexure MS 17, the learned State Attorney intimated that it was only the Commissioner for Lands who received the notice and responded promptly. It was further argument by the learned State Attorney that there is no proof of service of the notice of intention to the 4 | Page defendants in the pleadings, insisting on the prayer of striking out the suit with costs. I have reviewed the preliminary objection and the rival submissions by both counsel for the parties. The task I am endowed with, is to determine whether the raised preliminary objection has merits. In order to appreciate the issues in controversy, it is apposite to reproduce the gist of Section 6(2) of the GPA, which provides: "(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." (Emphasis added) According to the above provision, for a suit against the government to be considered competent, the plaintiff must issue the 90 days notice to the respective government institution, and copy of such notice must be served upon the Attorney General and the Solicitor General. In the case at hand, the plaintiff pleaded under paragraph 23 of the plaint that he wrote 90 days demand notice to all defendants on 5 | Page 27/12/2022. The said demand notice was annexed as annexure MS 12. Upon close scrutiny of the said annexure MS 12, it was addressed to the 1 and 2nd defendants. At the end of the said letter, it shows that copies were to be served upon the Office of the Attorney General and the Office of the Solicitor General. However, there is no indication whether the said

letter was served and received by the Attorney General and the Solicitor General as there is no endorsement. The only document to rely upon presupposing that the letter was received, is the letter by the 2nd defendant which was addressed to the 1st defendant, dated 31/01/2023. That letter indicates that the 2nd defendant was served with the said demand notice. However, the law puts mandatory requirement that the copy of the said demand notice must be served upon the Attorney General and the Solicitor General. The plaintiff's counsel purports to rely on annexures MS 14, 15 and 16 contending that they indicate service of the demand notice to the defendants. I have revisited the said annexures, nothing therein shows that they relate to documents sent to any of the defendants. The EMS receipts simply indicate the amount paid without any information about the document to be posted and its destination. They cannot therefore be relied upon to conclude that the 90 days demand notice was sent to the defendants. 6| Page It is common knowledge that service of any document is received through endorsement either in the document itself or in the dispatch book. In the absence of endorsement on the said 90 days notice by the Office of the Attorney General and the Solicitor General, it cannot be safely vouched that the duo were appropriately served with the said notice in compliance with section 6(2) of GPA. I am guided by the two authoritative decisions of this court in *Petro Potini Peter* (supra) and *Mashaka Abdallah and Another* (supra). The two decisions though persuasive, they reflect the correct position of the law. For example, in *Mashaka Abdallah* (supra), the court underscored the importance of endorsement in the said notice to prove service. It observed: "Equally, the annexed KLC/D in the reply to the written statement of defence submitted by Mr. Mushobozi to be proof of service, in my opinion it is not. It is just evidence that they commissioned TPC to deliver unknown documents to the Attorney General. It is not stated if the document the complained notice of the intention (sic) to sue the Government. Of importance, there is evidence of receiving the document at TPC but there is no evidence that the TPC posted the document to the 23d and 3rd defendants. Again, as it is therefore, it is unknown if the 2nd and 3d defendants were served at Dar es Saiaam as per KLC/D or at Bariadi as indicated in the unendorsed notice." 7| Page The above prescript falls squarely in the facts of this case. I therefore find no compelling reasons to depart from it. In the light of the above deliberations, the plaintiff's suit is incompetent for failure to adhere to the mandatory requirement of section 6(2) of the GPA, which casts duty upon the plaintiff to ensure service of the copy of the 90 days notice upon the Attorney General and the Solicitor General. In the end result, the preliminary objection is hereby sustained. Having sustained the preliminary objection, the suit is rendered incompetent for failure to serve the 90 days demand notice on the Attorney General and the Solicitor General. The suit is hereby struck out with costs. DATED at ARUSHA this 16th day of January, 2025 8| Page

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