

TANZANIA / JUDGMENT

petro potini peter vs mbulu town council 2 others 2023 tzhc 22519 8 november 2023

COURT
TZHCDECIDED
8 November 2023

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA IN THE SUB REGISTRY OF
MANYARA AT BABATI CIVIL CASE NO. 20 OF 2023 PETRO POTINI PETER.....
PLAINTIFF VERSUS MBULU TOWN COUNCIL..... Ist DEFENDANT M/S
CHINA SICHUA INTERNATIONAL COOPERATION CO. LTD..... 2nd DEFENDANT THE
HONOURABLE ATTORNEY GENERAL..... 3rd DEFENDANT

RULING

31st October & 8th November, 2023 Kahyoza, J.: This ruling is in respect of the preliminary objection raised by the 1st and 3rd Defendants, to the effect that the suit is incompetent and bad in Law for contravening section 6(2) of the Government Proceedings Act, [Cap. 5 R.E. 2019]. There is only one issue, whether the Plaintiff instituted the suit prematurely without issuing a notice of his intention to sue to the Attorney General and the Solicitor General. Petro Potini Peter, the plaintiff sued Mbulu Town Council, M/S China Sichua International Cooperation Co. Ltd and The Honourable Attorney General, praying for general damages for trespass and vacant possession. i The first and third defendants filed a joint written statement of defence, where they raised a point of preliminary objection that- "1. This suit is premature for failure to issue 90 days' notice contrary to section 6 (2) of the Government Proceedings Act R.E 2019 as amended by Written laws (Miscellaneous Amendment) Act No. 1 of 2020." Is the suit incompetent for contravening section 6(2) of the Government Proceedings Act? It is settled that a person intending to sue the Government including the local government should issue a ninety days' statutory notice of his intention to sue under section 6(2) of the Government Proceedings Act, [Cap. 5 R.E 2019] (the Act). The first and third defendants' representative, Mr. Mkama Musalaba, the learned State Attorney, submitted in support of the preliminary objection, that the Plaintiff instituted the suit pre-maturely as he failed to issue a 90 days' notice to the Attorney General and the Solicitor General. He contended that the notice attached to the Plaint was address to the Attorney General but the plaintiff did not serve it to the Attorney General and the Solicitor General. He contended that the Plaintiff's failure to serve the Attorney General and the Solicitor General was violation of section 6 (2) of the Act 2 read together with section 191 of the Local Government (District Authorities) Act, [Cap 287 R.E 2002]. The learned State Attorney, submitted further that is settled that no suit shall be commenced unless a 90 days' notice has been served to

the Attorney General through the Solicitor General. To buttress his argument, he cited the cases of Peter Joseph Chacha vrs. The Attorney General & Another, Civil Case No. 1 of 2021, High Court of Tanzania at Arusha (unreported) and Asalea Lujabiko Kihupi & Others vrs. the Attorney General & Others, Land Case No. 177 of 2021 at Dar-es-salaam High Court (T) sub-registry (unreported) where this Court struck out the suit for failure to comply with Section 6 (2) of the Act. Mr. Mkama prayed the objection to be sustained and the suit struck out for being filed prematurely with costs. The Plaintiff's learned advocate Ms. Mariam, replied that the plaintiff issued and served the statutory notice of his intention to sue the first and third defendants. She contended that she had a copy of the notice bearing a stamp of the office of Solicitor General. She asserted further that her client's attempt to serve the Attorney General proved futile as the Office of the Attorney General refused service. She added that a person her client met at the Attorney General's Office directed him to take a notice to the Solicitor 3 General. She stated categorically that her client served Mbulu Town Council. She beseeched the Court to overrule the objection. In his brief rejoinder, Mr. Mkama submitted that parties are bound by their pleadings, and that the notice attached to the plaint does not contain the official stamp of either the Attorney General or the Solicitor General. Further, the State Attorney submitted that the plaintiff's advocate conceded that the Attorney General was never served as they refused service. However, she did not adduced any evidence to substantiate the contention that the Attorney General refused service. Having considered the pleadings and the rival arguments, I find it undisputed that the plaintiff never served a 90 days' statutory notice of his intention to sue to the Attorney General and the Solicitor General. The purported notice, attached to the plaint, cannot be said to have reached to the Attorney General for the following reasons; one, there is nothing to suggest that the Attorney General was served with the notice of the plaintiff's intention to sue; and two, there is no proof of service establishing that the Attorney General refused service. I now, consider the issue whether the Mbulu Town Council was never served with the notice of an intention to sue. The Plaintiff's advocate 4 submitted that Mbulu Town Council served. Mr. Mkama did not counter that contention. Even if, Mr Mkama had countered that contention, I would find against him as there is evidence to suggest that the notice was served to Mbulu Town Council. The Plaintiff attached a copy of the dispatch book. I, therefore, find that the first plaintiff served Mbulu Town Council with a notice of the intention to sue. The remaining issue is whether the Plaintiff served a notice of intention to sue to the Attorney General. There is no doubt that the Plaintiff did not serve the notice. The Plaintiff's advocate's contention, without evidence, was that the Attorney General refused service. I am unable to buy the contention that the Attorney General refused to be served. The Plaintiff ought to have said that in his Plaint and provided better and further particulars as to the date when he attempted to serve the Attorney General. I would suggest that since the allegation that, the Attorney General refused service is very strong, the Plaintiff ought to have substantiated that allegation by an affidavit. Not only that, if the Attorney General refused physical service, the plaintiff ought to have used other means of service like, sending the notice by register mail. Section 6(2) of the Act clear, is service to the Attorney General is mandatory. Section 6(2) of the Act provides that- 5 "(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" I also share the holding of this Court in Mashaka Abdallah and Another vs Bariadi Town Council and 2 Others, (Land Case No. 3 of

2020) [2021] TZHC 6534 (10 September 2021) that, the plaintiff must prove not only that he prepared a 90 days' notice but also that he served the same to the Attorney General via the Solicitor General or both as the law requires. In Mashaka Abdallah and Another vs Bariadi Town Council and 2 Others, this Court observed that- "It is also being noted that mere composition of the address or the title the Attorney General and Solicitor General in the notice without evidence that they were served in itself cannot be proof of service. There must be evidence that the said notice reached the Attorney General and Solicitor General respectively. " (Emphasis added) In the end, I find that the plaintiff did not a serve the notice of his intention sue the government to the Attorney General in violation of section 6(2) of the Government Proceedings Act. Hence, the Plaintiff instituted 6 the suit prematurely and for the reason the suit is incompetent. I strike out the suit with costs to the first and third defendants. To avoid, uncalled for litigations, I tax the costs, awarded to the first and third defendants at Tzs. 300,000/=, under order 44 of the Advocates Remuneration Order, 2015 GN. No. 263/2015. I order accordingly. Dated at Babati this 8th day pf November, 2023. John R. Kahyoza Judge Court: Ruling delivered in the absence of the Parties. B/C Ms. Fatina Haymale (RMA) present. « John R. Kahyoza Judge 8.11.2023 7

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ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/305004/source_file/petro-potini-peter-vs-mbulu-town-council-2-others-2023-tzhc-22519-8-november-2023.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/petro-potini-peter-StatutoryNoticeRequirement-tzhc-2023--6a3ea52d3b1caa91298264a0

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