

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

CIVIL CASE NO. 30 OF 2016

HERMANUS PHILIPPUS STEYN.....PLAINTIFF

VERSUS

THE MONDULI DISTRICT COUNCIL.....1ST DEFENDANT

THE DISTRICT EXECUTIVE DIRECTOR OF THE

MONDULI DISTRICT COUNCIL.....2ND DEFENDANT

RULING

DR. OPIYO, J.

This is a preliminary objection in respect of Preliminary objections raised by the defendants that;

1. The plaintiff has violated the demand of section 190 of the Local government [District Authorities] Act which stresses a notice of 30 days to be issued before suing the Local Government Authority.
2. The same matter has once been filed in the Commercial Court.
3. The plaintiff has no cause of action against the defendants.

4. Plaintiff has no locus stand to file a suit based on ownership of Land being a foreigner.

Upon courts order dated 30/11/2017, this matter was argued by way of written submissions. In support of the first point of objection, the respondents counsel, one Peres Sene to Parpai argued that, although it is crystal clear that this suit has been instituted against the Local Government Authority, Monduli District Council, but the same is in violation of section 190 of Cap. 287 R.E. 2002 which requires issuance of the 30 days' notice of intention to sue to the Authority before the filling of a suit. The basis of argument is that there is no 30 days' notice that was issued to the first defendant as required by provision of the law the law referred to above. That, the plaintiff only served the second defendant who is not a Local Government contemplated under Section 190 of Cap. 287. He therefore argued that since the suit is in violation of above law it ought to be struck out forthwith.

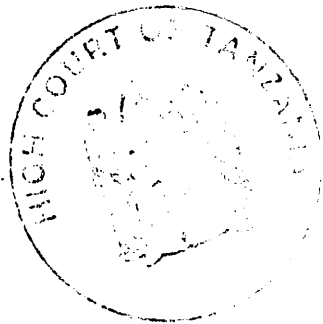
In reply on this point of objection, the counsel for the plaintiff. Mr. Ngimaryo submitted that the notice was dully served on Monduli District Executive Director on 21st/9/2016 and suit was filed on 25th October 2016, 4 days after expiration of 30 days notice period. He argued that service to the 2nd defendant who is an Executive Director of the 1st defendant suffices and amounts to service to the 1st defendant in terms of section 192(1) of Cap. 287 which allows service by delivery of notice to the Authority's Chief Executive officer. Thus, the chief Executive of

Monduli District Council being District Executive Director (2nd Defendant) it suffices to issue him notice to sue the 1st defendant.

In disposing this point of objection, the issue to settle is whether the issuing of notice to the second defendant suffices the requirement of Section 190 of Cap. 287 requiring issuing of 30 days notice to the Local Government Authority, 1st defendant herein. Annexure 'O' to the plaint is a notice of intention to file a civil suit dated 16 September 2016 which was directed to the District Executive Director, of Monduli District Council. It was delivered and received by the 2nd Defendant on 21/9/2016. The issue now is whether the 2nd defendant is the Local Government Authority referred to in section 190 of Cap. 287 for whom the notice of 30 days notice has to be served to before being sued. The Counsel for the plaintiff argues that, in terms of section 192 (1) of the same Act service of notice to the Chief Executive Officer of the authority in this case the DED, amounts to service to the Authority itself.

It is true service by delivery of notice to the Chief Executive officer of an organization is a proper and satisfactory service of notice as argued by the counsel for the plaintiff. However that is only applicable when the notice itself is addressed or directed to the Local Government Authority in question, and its Chief executive office received it in its behalf. It does not cover the situation when the same is directed to the Chief Executive as a distinct party to the suit, like in this case. In such circumstances, he

receives a suit in his own capacity as a party to the suit, not on behalf of the Authority. From the pleadings in this case both the Monduli District Council and Monduli District Executive Officer are parties to a civil suit, for which notice was only issued to the DED only. Failure to serve notice to the Monduli District Council is in violation of section 190 of Cap. 287 as argued by the counsel for the defendants. The suit that has been filed in violation of the above provision of law is incompetent before the law. The same is therefore struck out. As this point of objection alone suffices disposing the suit, dwelling on the remaining points of objection is a mere time wasted I need not opt for. I make no order as to costs.



A handwritten signature in black ink, appearing to be "M. Opiyo", written over a horizontal line.

**DR. M. OPIYO,
JUDGE
18/5/2018**