

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
(ARUSHA DISTRICT REGISTRY)**

**AT ARUSHA**

**CIVIL CASE No. 01 OF 2021**

**PETER JOSEPH CHACHA ..... PLAINTIFF**

**VERSUS**

**THE ATTORNEY GENERAL .....1<sup>ST</sup> DEFENDANT**

**THE MINISTER FOR HOME AFFAIRS .....2<sup>ND</sup> DEFENDANT**

**RULING**

04<sup>th</sup> & 29<sup>th</sup> April 2020

**TIGANGA, J**

This ruling is in respect of the preliminary objection raised by the defendants against the suit filed by the plaintiff. In this case the plaintiff one Peter Joseph Chacha claims from the defendants, the Attorney General and the Minister for Home Affairs the following reliefs;

- i) Restitution of the Plaintiff's studio equipments by considering the guarantee and updates.
- ii) Declaration that the defendant did deprive the plaintiff studio equipments.
- iii) Payment of Tshs.493,920,000/= being specific damages.

- iv) An order for payment of the general damages suffered by the plaintiff as a result of the defendant's delay in settling the plaintiff's claim.
- v) An order for the defendant to pay interest on commercial rate on the decretal sum as the court will make from the date of judgment till the date of full payment.
- vi) Cost of the suit.
- vii) Any other relief as this court may deem just to grant.

The cause of action arose from the act of seizure of the property of the plaintiff by the police officers which the plaintiff alleges to be contrary to section 38(1)(2)(3) of the CPA Cap 20 R.E 2002]. When the plaint was served to the defendants, they through the office of Solicitor General filed the joint written statement of defence which was accompanied with the notice of preliminary objection raising two points of law that;

- a) This suit is time barred,
- b) This suit is bad in law for contravening with section 6(2) of the Government Proceedings Act [Cap 5 R.E 2019].

As a matter of practice, the preliminary objection was to be and was argued first. The arguments were made orally. During hearing of the preliminary objection, the defendants were represented by Mr. Mkama Msalama, and Zamaradi Johanis learned State Attorneys, while the plaintiff appeared in person fending for himself. Before the hearing had commenced, the learned State Attorney withdrew the 1<sup>st</sup> point of preliminary objection thus remaining with the second point only.

In the submission in chief, the learned State Attorneys submitted that the plaintiff failed to serve the copy to the Solicitor General as required by section 6(2) of the Government Proceedings Act [Cap 5 R.E 2019] which requires the person intending to sue the government, Minister, government department, local government authority, executive agency, public corporation, government parastatal and public company, to issue and served the said government department or officer with a 90 days notice of intention to sue the government before filing a suit against the government.

According to him the law requires them to serve the said copy to the Attorney General and Solicitor General. Constructing the provision of the law alleged to be contravened, the learned State Attorney submitted that,

the said provision is mandatory and this can be established by the use of the word "shall". Cementing on the argument, he cited the provision of section 53(2) of the Interpretation of Laws Act [Cap. 1 R.E 2019] that whenever the word "shall" is used conferring a function, then the function becomes mandatory. Further arguing on the point, the learned State Attorney submitted that, failure to comply with the mandatory provision renders the matter before the court a nullity. In line with this argument, he cited the persuasive authority of the case of **Ngwabo Mwasasu & 10 others vs TANROADS and Attorney General**, Land Case No. 08 2020 HC. Mbeya, Utamwa, J, at page 11-14. He asked the court to struck out the suit for failure by the plaintiff to comply with the requirement of the Government Proceedings Act, (supra) because there is no proof annexed to the plaint or any paragraph in it, showing that the plaintiff served a copy of the notice or claim either to the Minister, Attorney General and Solicitor General. He reminded the court, the principle of law that parties are bound by their own pleadings and that in this case the plaint filed by the plaintiff is silent on this matter. He prayed the matter to be struck out with costs.

In reply submission, the plaintiff submitted that, the allegations and the arguments by the State Attorney that the Minister for Home Affairs,

Attorney General and Solicitor General were not served with the notice is unfounded as the service to the Minister is evidenced by the copy of the EMS, while in respect of Attorney General and Solicitor General there is a receiving stamp of the office of Attorney General on the copy of the letter he served. He informed the Court that, the office of the Solicitor General and Attorney General are in the same building and they are just adjacent offices. He said when he served them the person who received the service did not tell him that, that was not the office of the Solicitor General. In his view the defendant is employing technicalities with intent to defeat justice. He prayed the court to find that this is nothing but technicalities of procedures which should not be allowed to defeat justice. He also submitted that, even in the verification clause of the written statement of defence proves that the Minister of Home Affairs, the Attorney General and Solicitor General were served as the person who verified said the contents of the paragraphs were true to the best of his knowledge.

In the rejoinder made by the learned State Attorney, he submitted that there is no evidence in the pleading or any annexure proving that the Solicitor General or Attorney General were served with the copy of the notice, he submitted that the said SSP Deus Shatta was verifying the

paragraph he pleaded in the written statement of defence not the plaint filed by the plaintiff. He said so because in the plaint there is no single paragraph showing that, the service of the notice was effected to Solicitor General and Attorney General therefore there was nothing which the defendant would have admitted to the effect that the two offices were served with the copy of the notice of claim.

Further arguing in support of the preliminary objection, the learned State Attorney submitted that, the offices of the Solicitor General and that of the Attorney General are two distinct offices; therefore serving one office does not mean that the other office is automatically served. He urged the court to find that, failure to serve the Solicitor General was not an issue of technicalities and therefore on that base, sustain the preliminary objection.

That being the summary of the arguments by the parties, it can be gathered from their arguments that, they are not disputing the position of the law that, in Tanzania for an individual to sue the government, he is required under section 6(2) of The Government Proceedings Act [Cap. 5 R.E 2019] as amended by Written Laws (Miscellaneous Amendments) (Act No. 4) Act No. 11 of 2019 to issue and serve a 90 days notice to the

Government, Ministry, government department, local government authority, executive agency, public corporation, government parastatals and public company of the intention to sue the government. The law also requires a copy of the notice or claim, as a matter of necessity, to be served to the Attorney General and the Solicitor General. The law put emphasis that in every suit against the above listed government authorities shall be termed as the suit against the government and the Attorney General shall be joined as the necessary party.

The gist of the objection in this case is that, the plaintiff did not serve the Solicitor General contrary to the above cited law. The plaintiff contends that, he served the Attorney General with the copy of the notice and the copy which was intended to be served to the Solicitor General was left in the office of the Attorney General and by so doing the plaintiff believes that the said copy was communicated to the Solicitor General. He invited the court to consider the proximity of the two offices, and here he meant the existing relationships between the two offices and the fact that the two offices are in the same building and adjacent to each other.

While I am in agreement with the argument by the plaintiff that the two offices are closely related in terms of functionability, basing on the fact

that, in every proceeding involving the government, the Attorney General is a necessary party and the Attorney General appears in Court through the Solicitor General therefore, given these facts one can easily the two offices. However, it can be found that, the legislature while aware of that functional proximity of the two offices, still after establishment of the office of Solicitor General under paragraph 2(1) of the Office of Solicitor General (Establishment) Order, 2018 GN. No. 50 of 2018, amended the law and made it mandatory that over and above serving the Attorney General with a copy of the notice served to the government department or officer intended to be sued, that copy must also be served the Solicitor General.

From the wording of the law, sending the copy of the notice to the two offices was made mandatory by the legislature itself by the use of the word "shall" which in terms of section 53 of the Interpretation of Laws Act [Cap. 1 R.E 2019] whenever the word "shall" is used to confer any function that function becomes mandatory. Further to that, reading between lines the provision of the law at issue, I find it to be a condition precedent that, for the suit against the government to be filed and heard, a notice or claim must be served to the government department or an officer against whom the suit is intended to be brought and a copy of it, be served to the



Attorney General and the Solicitor General. This means, a suit against government should not be admitted and entertained before the plaintiff has proved to have issued the notice of intention to sue and serve the copy to the Attorney General and the Solicitor General. It is therefore the duty of the plaintiff to prove before he is entitled to file the said suit that the provision of section 6(2) of the Government Proceedings Act (supra) as amended, has been complied with.

In this case, the plaintiff did not annex with the plaint any proof that he complied with the law. However, during the hearing of this preliminary objection, he submitted in court a copy of the letter which he alleged to be the notice he served to the Minister and Attorney General. While aware that the plaintiff is a lay person who fends for himself, without representation, I find for the interest of justice to consider the copy despite the fact that, the procedure for submitting the same was flouted. Looking at the copy of the letter allegedly served to the Attorney General, it is a letter written by the plaintiff on 02<sup>nd</sup> September 2020 and was addressed to His Excellence the Minister of Home Affairs (sic) of P. O. Box 2916 Dodoma, Tanzania. The letter was copied and therefore was intended to be served to the Attorney General of P.O. Box 3144 Arusha. From that letter,

there is no indication that there was another copy made to the Solicitor General. This means and it can conveniently be found that, in the first place, the plaintiff did not intend to serve a copy of notice/claim to the Solicitor General, as had he so intended, he would have copied the solicitor General as well with the said latter. The fact that he did not copy him leads us to the conclusion that, the plaintiff did not serve the Solicitor General as he could not have served him without first copying the notice to him.

That said, I find the service of the copy to the Solicitor General to be mandatory. Failure to comply with it, takes away the jurisdiction of the court to entertain the matter. This is based on the fact that, it is a condition precedent that the suit can be filed and entertained by the court after the notice was issued and served in accordance to section 6(2) of the Government Proceedings Act (supra) as amended.

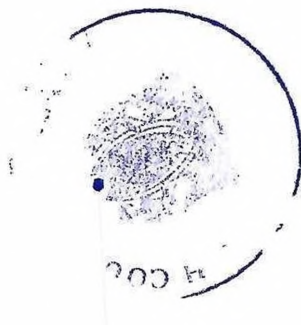
On the strength of the authority and the arguments herein above, and as held by my senior brother Hon, Utamwa, J, in the case of **Ngwabo Mwasasu & 10 others vs TANROADS and Attorney General**, (supra) the requirement to serve the Solicitor General with the copy of the Notice/claim is mandatory, and its contravention cannot be saved or cured by

even the principle of overriding objective as provided under section 3A and 3B of the Civil Procedure Code [Cap 33 R.E 2019].

To sum-up on the point, I find that, the Solicitor General was not served with the copy of the notice as required by law something which vitiates the suit. Therefore the suit is thus struck out for violation of the provision of section 6(2) of the Government Proceedings Act as amended. Given the nature of the dispute, no order of costs is made.

It is accordingly ordered.

**DATED** at **ARUSHA**, this 29<sup>th</sup> day of April, 2022



**J. C. TIGANGA**

**JUDGE**