

ENHANCING GOOD GOVERNANCE

The Imperative of Timely Responses to 90-Day Notices and Swift Compliance with Court Decrees

Introduction

1 In Tanzania, the legal framework governing civil proceedings against the government is outlined in the Government Proceedings Act, Cap 5. A crucial element of this framework is Section 6(2), which mandates that a 90-day notice of intention to sue must be served before initiating any civil action against a ministry, department, or public officer. This provision also requires that the Attorney General and the Solicitor General be notified, as they play vital roles in the intended proceedings.

The 90-Day Notice Requirement

The 90-day notice, as stipulated in Section 6(2), serves an essential purpose:

"6(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."

This notice aims to alert the concerned government body about potential legal action, providing an opportunity for early intervention and resolution. The 90-day period allows the government to assess the complaint, explore possible resolutions, and potentially avoid the escalation of disputes to the court. Ideally, this mechanism is designed to promote efficiency in resolving disputes, reduce the judiciary's burden, and conserve public resources.

Challenges in the Practical Application of the 90-Day Notice

Despite its well-intended purpose, the practical application of the 90-day notice requirement often falls short. In many instances, government ministries, departments, or public officers fail to take any initiative within the stipulated 90 days. This neglect includes

not acknowledging the receipt of the notice or failing to address the complaint. As a result, the aggrieved party is frequently left with no alternative but to proceed with filing a civil suit, even in cases where an amicable resolution could have been achieved.

The Role of the Attorney General's Office

In promoting good governance, it is critical that government entities respond promptly and effectively to these notices, regardless of how minor the complaint might appear. The Attorney General's office, as the chief legal advisor to the government, must ensure that timely and substantive responses are provided. Where necessary, efforts should be made to resolve the issues within the 90-day period to avoid unnecessary litigation.

Financial Implications of Delayed Responses

Failure to respond appropriately not only increases the volume of litigation but also leads to significant financial losses for the government in terms of compensation to successful litigants. These are funds that could have been conserved had the issues been addressed during the notice period. The cost of litigation and subsequent compensation can be substantial, further straining public resources that could be better allocated elsewhere.

Compliance with Court Decrees: A Critical Aspect of Good Governance

Beyond the issue of responding to 90-day notices, there is a critical need to address the government's compliance with court decrees. According to Sections 16(1), (2), and (3) of the Government Proceedings Act, decrees against the government cannot be executed through attachments but must be satisfied through the issuance of a certificate to the Treasury.

Section 16: Execution of Decrees

— "16.-(1) Where in any civil proceedings by or against the Government, any order, including an order as to costs, is made by a court in favour of a person against the Government or against an officer of the Government as such, the proper officer of the court shall, on an

application in that behalf made by or on behalf of that person, issue to that person a certificate containing particulars of the order.

(2) If the order provides for the payment of money by way of damages or other relief, or of costs, the certificate shall state the amount so payable and the Permanent Secretary to the Treasury or such other Government accounting officer as may be appropriate shall, subject as hereinafter provided, pay to the person entitled or to his advocate the amount appearing by the certificate to be due to him together with any interest, lawfully due thereon.

(3) Save as is provided in this section, no execution, attachment or similar process shall be issued out of any court for enforcing payment by the Government of any money or costs referred to in this section; and no person shall be individually liable under any order for payment by the Government or any Government department or any officer of the Government as such of the money or costs." _

Unfortunately, executing a lawful decree against a government ministry or department is often more challenging than prosecuting the civil suit itself. This challenge undermines the rule of law and the public's trust in the government's commitment to justice.

The Responsibility of the Government

It is high time for the government to set a positive example by respecting court decrees and acting swiftly to satisfy them. The Attorney General's office and the Solicitor General should be proactive in ensuring that decrees against the government are complied with immediately. Likewise, when the government emerges as the decree holder in civil litigation, it should act promptly to execute the decree against the debtor.

The Role of the Judiciary

The courts of law, too, must play an active role in ensuring that the decrees they issue are executed without delay. This is especially important when the decrees involve

government ministries and departments. The courts must be vigilant in safeguarding the integrity of their decrees, ensuring that they are not mere formalities but are effectively and timely enforced.

Conclusion

This is a call for the government to accord due weight to the 90-day notice of intention to sue and to respect court decrees when the application for execution is at issue. Similarly, when the government is awarded a decree, it must ensure that it is executed promptly for the public's benefit. The law provides these periods with the expectation that they are sufficient for the government to address and resolve the matters at hand. Ignoring these notices and failing to comply with court decrees undermines the principles of good governance.

By actively engaging with 90-day notices and ensuring compliance with court decrees, the government will not only uphold good governance principles but also protect public resources and maintain the public's trust in the legal system. The courts, too, must ensure that their decrees are more than just words on paper; they must be instruments of justice that are enforced promptly and effectively.

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