Judicial Crossroads on Bona Fide Pre-Action Steps: Assessing High Court Decisions in Tanzania

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Abstract
The bona fide pre-action framework under section 13 of the Civil Procedure Code requires attention to genuine steps taken to resolve a dispute before litigation, yet it does not expressly prescribe a pleading form, exceptions, sanctions, or the legal effect of non-compliance. Recent High Court decisions have therefore moved in different directions: some treat the requirement as a mandatory gateway whose breach justifies striking out, others treat it as a facilitative norm, and a third group asks whether the conduct of the parties discloses a sincere and genuine attempt judged contextually. This article addresses that uncertainty through doctrinal analysis of the statutory text, recent case law, Tanzanian ADR literature, and lessons from England and Australia. It argues that the pre-action requirement should be enforced as a real pre-action discipline, but not as an automatic jurisdictional bar. The article proposes proportionate pre-action protocol rules requiring pleading or disclosure of bona fide steps, recognising practical forms of compliance, providing exceptions for urgency and futility, and prescribing graduated sanctions such as amendment, stay, costs and, in exceptional cases, striking out.

Keywords: *Bona fide pre-action steps; pre-action framework; civil procedure; access to justice; jurisdictional gateway.*

1.0 Introduction

Civil procedure has two related but sometimes competing functions. It structures the orderly resolution of disputes, but it must also preserve the right of parties to have genuine controversies determined on their merits.1 In Tanzania, that tension is now visible in litigation concerning the bona fide step requirement under Section 13 of the Civil Procedure Code, which speaks of bona fide steps to resolve disputes before proceedings are initiated in court.2 The pre-action framework is important because it places pre-action conduct at the front door of civil litigation, yet it does so without the procedural architecture normally associated with pre-action protocols.

[1] B. D Chipeta, '*Civil Procedure in Tanzania: A Student's Manual'* (Law Africa revised edn 2013) ch 1.
[2] *Civil Procedure Code, Cap 33 R.E. 2023, s 13.*

The policy behind the pre-action requirement is not isolated. The Constitution directs courts to promote reconciliation and amicable settlement where appropriate.[1] The Civil Procedure Code separately recognises out-of-court settlement by conciliation, negotiation and mediation, and allows settlement agreements to be registered in a court of competent jurisdiction.[2] Tanzanian ADR scholarship has long explained that ADR was introduced partly to improve the quality, efficiency and accessibility to civil justice, and partly because ordinary litigation is costly, technical and adversarial.[3] At a general level, ADR literature describes negotiation and mediation as processes that redirect parties from positional contest to problem-solving, interest identification and durable settlement.[4]

The difficulty is that Section 13 is drafted in a way that simultaneously encourages settlement and creates uncertainty. Subsection (1) states that a person is deemed to have taken bona fide steps if the steps constitute a sincere and genuine attempt to resolve the dispute out of court, having regard to the person's circumstances and the nature and circumstances of the dispute.[5] Subsection (2) gives examples such as notification, appropriate response, exchange of relevant information, consideration of reconciliation, negotiation, mediation, arbitration, warning, diversion and independent evaluation.[6] Subsection (3) confirms that the list is not closed, while subsection (4) states that the pre-action requirement applies to all proceedings intended to be initiated in court.[7]

The core problem is remedial. The framework does not say that a suit filed without pleaded pre-action engagement is void. It does not say that the court lacks jurisdiction. It does not require a certificate, statement, affidavit or annexure. It does not suspend limitation, define exceptions, prescribe the role of defendants, or identify the sanctions for breach.[8] The silence has produced a line of High Court decisions which, while

[1] *Constitution of the United Republic of Tanzania 1977, art 107A(2)(d).*
[2] *Civil Procedure Code, Cap 33 R.E. 2023, s 71(1)-(3).*
[3] J. Clement Mashamba, '*Alternative Dispute Resolution (ADR) in Tanzania: Law and Practice*' (Mkuki na Nyota 2013) 45-51.
[4] Y. Shamir, '*Alternative Dispute Resolution Approaches and their Application*' (UNESCO 2003) 1-8.
[5] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1).*
[6] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(2).*
[7] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(3)-(4).*
[8] *Compare Civil Procedure Code, Cap 33 R.E. 2023, s 13, with Civil Dispute Resolution Act 2011 (Cth), ss 6-12.*

attempting to give effect to the same text, diverge on whether the pre-action requirement is jurisdictional, directory or contextual.

This article contributes to the emerging literature in four respects. First, it treats the pre-action requirement not merely as an ADR clause but as a civil procedure problem concerning pleadings, jurisdiction, remedies and access to justice. Secondly, it groups the recent authorities thematically rather than narrating them one by one. Thirdly, it draws lessons from England and Australia, two common-law systems with developed pre-action discipline through express protocol machinery, costs sanctions, stays and non-invalidation rules. Fourthly, it proposes a practical framework for rules or legislative amendments suitable for Tanzania rather than leaving reform as a list of open questions.[9]

1.1 Methodology and Scope

This article adopts a doctrinal legal methodology. It analyses primary legal materials, namely the Constitution, the Civil Procedure Code, the Government Proceedings Act, where statutory notices are relevant, and recent High Court decisions on the pre-action requirement.[10] It also uses secondary materials on civil procedure, ADR, access to justice and pre-action procedure in England and Australia.[11] Nevertheless, existing Tanzanian literature has addressed ADR, mediation, civil procedure and access to justice in broader terms, but it has not yet sufficiently examined the bona fide step requirement as a distinct pre-action procedural gateway whose breach may affect pleadings, jurisdiction, sanctions and access to court.

The case law sample is limited to decisions delivered between 2025 and 2026 because the pre-action requirement, as reformulated in the 2023 revised edition of the Code and applied in recent litigation, became a live and repeated issue during that period. The sample includes decisions in which the pre-action requirement was directly argued, [12] decisions in which the court raised the point, [13] and decisions where the pre-action

[9] For the need to avoid treating procedure as an obstacle to substantive justice, see Mulla, The Code of Civil Procedure (18th edn, LexisNexis 2017) vol 1, preliminary commentary.
[10] *Government Proceedings Act, Cap 5 R.E. 2023, s 6.*
[11]See e.g., Chipeta (n 1); Mashamba (n 5); Shamir (n 6); Adrian Zuckerman, Zuckerman on Civil Procedure: Principles of Practice (4th edn, Sweet & Maxwell 2021).
[12]*Frode Farestveit v Mrisho Kinega* Mrisho (Civil Case No. 23523 of 2024) [2025] TZHC 7090.
[13] *Beka Trading Company Limited and Another v Tanzania Electrical Mechanical and Electronics Service Agency and Another* (Civil Case No. 10631 of 2025) [2025] TZHC 7247. Also, in *Joseph Chilery Mayenje and*

requirement was discussed in relation to demand notices, statutory notices, administrative complaints, court-annexed mediation, applications or petitions.[14]

The article deliberately avoids treating every cited case as having the same precedential weight. Decisions are read for their reasoning, factual setting and procedural consequence. Where a decision is known principally through how it was cited in another decision, the article treats it cautiously and uses it only to identify the line of reasoning attributed to it.[15] This avoids selection bias and avoids converting cross-citations into independent factual findings.

The interpretive approach is textual, purposive, and remedial. Textual analysis asks what the pre-action requirement says and does not say. [16] Purposive analysis asks how the pre-action requirement advances amicable settlement, timely justice, and responsible litigation. Remedial analysis asks what consequence best fits the statutory text, the overriding objective, and the constitutional preference for substantive justice.[17]

The article is not empirical. It does not measure settlement rates, litigation cost, or party experience. Its conclusions are therefore normative and doctrinal, and they should be complemented by empirical research if the Rules Committee considers detailed rule-making.

The lesson-drawing discussion is limited to England and Australia. They are used to draw reform lessons from jurisdictions with more elaborate pre-action machinery. England is useful because its Civil Procedure Rules employ pre-action protocols, proportionality, stays, and costs rather than automatic nullity. Australia is useful because the Civil Dispute Resolution Act 2011 (Cth) uses statutory language strikingly close to Tanzania's pre-action framework, while expressly providing that failure to file a genuine steps statement does not invalidate the proceedings.[18]

Others v Abrahamu Godwin Msyete and Others (Land Case No. 000020518 of 2025) [2026] TZHC Land D 309, the court raised the issue of Section 13 suo motu.

[14] *Dew Drop Drinks Company Limited v Lemon Dove Company Limited* (Civil Case No. 26624 of 2025) [2026] TZHC 752.

[15] *Joseph Chilery Mayenje and Others v Abrahamu Godwin Msyete and Others* (Land Case No. 000020518 of 2025) [2026] TZHC Land Division 309, discussing *Alkemist Worldwide Limited v Hotel Sea Cliff Limited* (Civil Case No. 19658 of 2025) [2025] TZHC 7346.

[16] *Civil Procedure Code, Cap 33 R.E. 2023, ss 3A, 3B and 13.*

[17] *Constitution of the United Republic of Tanzania 1977, art 107A(2)(e).*

[18] *Civil Dispute Resolution Act 2011 (Cth), ss 4, 6, 7, 10-12.*

2.0 Statutory and Doctrinal Framework

Section 13 is headed "Bona fide steps to resolve dispute". The phrase "bona fide" imports sincerity and good faith rather than rigid formality.[19] The statutory language does not demand a particular ritual. It asks whether the steps taken, viewed in light of the person's circumstances and the nature of the dispute, amount to a sincere and genuine attempt to resolve the dispute out of court.[20]

Three features of the text matter. First, the examples in subsection (2) are broad and practical: notice, discussion, response, disclosure, consideration of facilitated processes and negotiation.[21] Secondly, the examples are non-exhaustive, which allows courts to recognize statutory notices, correspondence, meetings, administrative engagement, mediation invitations, payment proposals and other genuine settlement conduct.[22] Thirdly, the section applies to all intended court proceedings, but universal application is not the same as automatic invalidation.[23]

The relationship between the pre-action requirement and court-annexed ADR is also important. Court-annexed mediation occurs after filing, while the pre-action requirement concerns pre-action conduct.[24] A litigant who does nothing before filing and later attends mediation has not literally complied with pre-action discipline. Nevertheless, post-filing mediation may reduce prejudice and may justify a proportionate remedy short of striking out, especially where the defendant participates without timely objection.

The doctrine of preliminary objection also limits how the pre-action requirement should be raised. A preliminary objection must be founded on a pure point of law which, if argued on the assumption that all pleaded facts are correct, may dispose of the suit.[25] Whether a party made a sincere and genuine attempt to resolve a dispute will often require

[19] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1).*
[20] Abdallah H Gonzi, '*Timely Justice: The Requirement to take Bona Fide Steps before Litigation under Section 13 of the Civil Procedure Code of Tanzania - its Relevance and Challenges*' (Legal Brief Online Lawyers' Forum, 12 April 2026) 34-36.
[21] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(2)(a)-(g).*
[22] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(3).*
[23] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(4).*
[24] Civil Procedure Code, Cap 33 R.E. 2023, ss 71-74; Civil Procedure Code (Court Annexed Mediation and Arbitration) Rules, GN No 422 of 2021.
[25] *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696.

evidence of correspondence, meetings, notices, responses, urgency, futility or prejudice. It will not always be a pure point of law.[26]

The doctrinal question is therefore not whether the pre-action requirement matters. It plainly does. The question is whether every defect in compliance should be treated as an incurable jurisdictional defect. That question must be answered by considering text, purpose, remedy and lessons from England and Australia, not merely by emphasising the word "shall" or the phrase "all proceedings".

More so, the bona fide step framework should be interpreted in light of Article 107A(2)(d) and (e) of the Constitution.[27] Article 107A(2)(d) requires courts, in the exercise of judicial authority, to promote reconciliation and amicable settlement of disputes where appropriate.[28] This constitutional directive gives normative support to the pre-action requirement because bona fide pre-action steps are intended to encourage parties to explore settlement before invoking the adjudicatory jurisdiction of the court.[29] However, Article 107A(2)(e) also requires courts to administer justice without being unduly constrained by procedural technicalities.[30] The two provisions must therefore be read together. the pre-action requirement should be enforced as a serious procedural obligation, but it should not be converted into an automatic procedural weapon for defeating claims where the omission is curable, causes no prejudice, or where the circumstances justify immediate recourse to court. This approach is supported by the Court of Appeal of Tanzania in *Zuberi Musa v Shinyanga Town Council*, where the Court emphasised that Article 107A(2)(e) is not intended to abolish procedural rules, but to ensure that such rules are applied in a manner that advances, rather than obstructs, substantive justice.[31] The Court recognised that procedural rules remain important for the orderly and predictable administration of justice, but they should not be applied rigidly where doing so would defeat the justice of the case.[32] Applied to the pre-action requirement, this

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[26] *New Era Stores v Ocean Trading Co*. [1950] KLR 53; *Captain Harry Gandy v Caspar Air Charters Ltd* [1956] 23 EACA 139.
[27] *Constitution of the United Republic of Tanzania 1977, art 107A(2)(d)-(e)*; *Civil Procedure Code, Cap 33 R.E. 2023, s 13*.
[28] *Constitution of the United Republic of Tanzania 1977, art 107A(2)(d).*
[29] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1)-(4).*
[30] *Constitution of the United Republic of Tanzania 1977, art 107A(2)(e).*
[31] *Zuberi Musa v Shinyanga* Town Council, Civil Application No. 100 of 2004, Court of Appeal of Tanzania, unreported.
[32] *Ibid.*

means that the requirement of bona fide pre-action steps should promote responsible litigation and amicable settlement, while courts should retain discretion to impose proportionate remedies such as amendment, stay, directions, mediation referral or costs, instead of striking out every suit automatically.[33]

3.0 Thematic Review of the High Court Decisions

The preceding discussion has shown that the bona fide step requirement under Section 13 of the Civil Procedure Code introduces a procedural duty whose precise legal effect remains unsettled. The High Court decisions on bona fide pre-action steps do not speak with one voice. Some decisions treat compliance with the pre-action requirement as a mandatory condition precedent to the institution of proceedings,[34] while others regard it as a facilitative provision intended to promote amicable settlement without defeating access to court.[35] A further line of decisions adopts a middle position by examining the conduct of the parties, the nature of the dispute, the steps actually taken before filing, and the prejudice occasioned by non-compliance. For that reason, a mere chronological narration of cases is inadequate.[36] What is required is a thematic examination of the judicial reasoning underlying the decisions.

This part, therefore, analyses the High Court jurisprudence under three broad themes: the strict or mandatory approach, the permissive or directory approach, and the contextual or proportionality-based approach. The purpose is not simply to identify which cases fall into each category, but to examine the legal issue raised in each decision, the reasoning adopted by the court, and the implications of that reasoning for civil procedure in Tanzania. Such an approach enables the article to determine whether the pre-action requirement has been judicially constructed as a

[33] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1)-(4); Constitution of the United Republic of Tanzania 1977, art 107A(2)(d)-(e).*

[34] See for example, *Frode Farestveit v Mrisho Kinega Mrisho* (Civil Case No. 23523 of 2024) [2025] TZHC 7090; *Beka Trading Company Limited and Another v Tanzania Electrical Mechanical and Electronics Service Agency and Another* (Civil Case No. 10631 of 2025) [2025] TZHC 7247; *Alkemist Worldwide Limited v Hotel Sea Cliff Limited* (Civil Case No. 19658 of 2025) [2025] TZHC 7346.

[35] See *Dew Drop Drinks Company Limited v Lemon Dove Company Limited* (Civil Case No. 26624 of 2025) [2026] TZHC 752; *Imalaseko Investment Limited v Amer Mohamed Mbarak Company Limited and Another* (Land Case No. 29281 of 2024) [2026] TZHC Land Division 189; *Kolon Global Corporation v Pipes Industries Company Ltd* (Miscellaneous Commercial Application No. 21845 of 2025) [2026] TZH Commercial D 119.

[36] *Bernadetha George Obuya v Yusuph Razac Ladha and Others* (Land Case No. 12826 of 2024) [2026] TZHC 2706; Tai Five Hotel Ltd v Board of Trustees of Public Service Social Security Fund (PSSSF) and Another (Land Case No. 6952 of 2026) [2026] TZHC 2819; Vigu Trading Company Limited v Imperium Opes Group Limited and Others (Land Case No. 6175 of 2026) [2026] TZHCLandD 347.

jurisdictional gateway, a procedural discipline, or a flexible case-management tool.

3.1 The strict jurisdictional approach

The strict approach treats the pre-action requirement as a condition precedent to civil litigation. Its real concern is not merely whether a demand letter was sent, but whether the plaintiff approached the court after making a genuine attempt to resolve, narrow, or clarify the dispute. In *Frode Farestveit v Mrisho Kinega Mrisho*[37] the court did not treat pre-action correspondence as automatically sufficient. The issue was whether the correspondence revealed a sincere settlement effort rather than a bare assertion of entitlement. The decision therefore, gives the pre-action requirement a substantive quality: compliance is not proved by the existence of paper, but by conduct showing that litigation was not the first meaningful step.

The same jurisdictional discipline appears in *Beka Trading Company Limited and Another v Tanzania Electrical, Mechanical and Electronics Service Agency and Another*[38]. The court drew a line between notice of intention to sue and bona fide settlement engagement. Its real issue was whether a statutory or formal notice could perform the additional function of settlement dialogue. By treating the pre-action requirement as a separate gateway, the court protected the legislative policy of early dispute resolution. The difficulty, however, is that the court moved from that policy to the drastic consequence of incompetence although the pre-action requirement itself does not prescribe nullity or striking out.

In *Alkemist Worldwide Limited v Hotel Sea Cliff Limited*[39]the court reinforced the pleading dimension of the strict approach. The question was not simply whether negotiations had occurred somewhere outside the pleadings, but whether the initiating process disclosed facts from which the court and the defendant could see that the pre-action requirement had been complied with. The decision is important because it converts bona fide steps from background conduct into a pleaded material fact. Its weakness is that it risks allowing form to prevail over substance where genuine correspondence exists but is poorly pleaded.

[37]Civil Case No. 23523 of 2024, High Court of Tanzania at Dar es Salaam, [2025] TZHC 7090.
[38]Civil Case No. 10631 of 2025, High Court of Tanzania at Dar es Salaam, [2025] TZHC 7247.
[39]Civil Case No. 19658 of 2025, High Court of Tanzania at Dar es Salaam, [2025] TZHC 7346.

Mortgage and statutory sale cases show the reach of the strict school. In *Issa Hamad Kivina and Another v Equity Bank Tanzania Limited and Others*[40], the plaintiffs argued, in substance, that a completed mortgage sale made pre-action engagement futile. The court rejected that argument because futility had not been demonstrated in a manner that displaced the pre-action requirement. The doctrinal issue was whether commercial urgency or completed transactions justify bypassing pre-action engagement. The decision gives certainty to lenders and purchasers, but it also shows why an express exception for futility and preservation of property is necessary.

The distinction between pre-filing and post-filing ADR was made sharply in *John Alex Kapama v Chande Ally Chande*[41]. The court held that court-annexed mediation after institution could not retrospectively become the pre-action step contemplated by the pre-action requirement. The reasoning is coherent at the level of chronology: a post-filing process is not a pre-action process. Yet the decision leaves an important remedial question unanswered. If parties have already undergone mediation under court supervision, striking out may repeat the cost and delay without improving the settlement culture.

The strict school is strongest where the plaintiff did nothing or pleaded nothing. It becomes more contestable where the plaintiff sent statutory notices, engaged some defendants, or participated in later mediation. *Yassa General Supplies Limited v Temeke Municipal Council and Another*[42], *Dr Siana Ellena Kinyaiya v Judith Mwakasege and Others*[43], *Charles Werongo and Another v CRDB Bank PLC and Others*[44] and *Yusufu Shaban Omari v Abdulrahman Mohamed Kwadu*[45] demonstrate the strict school's three practical extensions: government notices are not automatically enough, annexures cannot replace clear pleading, partial engagement with one defendant may not suffice against all defendants, and even applications may fall within the phrase "all proceedings".

These extensions explain why the controversy is significant for access to justice; the pre-action requirement is being used not only to discipline

[40] Land Case No. 19389 of 2025, High Court of Tanzania, Land Division, [2026] TZHC Land Division 34.
[41] Land Case No. 332 of 2023, High Court of Tanzania, Land Division, [2026] TZHC Land Division 179.
[42] Land Case No. 25701 of 2026, High Court of Tanzania, Land Division, [2026] TZHC Land Division 193.
[43] Land Case No. 26408 of 2025, High Court of Tanzania, Land Division, [2026] TZHC Land Division 206.
[44] Land Case No. 311 of 2024, High Court of Tanzania, Land Division, [2026] TZHC Land Division 120.
[45] Land Case No. 19597 of 2025, High Court of Tanzania, Land Division, [2026] TZHC Land Division 312.

suits, but also to police the competence of diverse civil processes. The normative weakness of the strict approach is remedial excess. The pre-action requirement speaks in flexible language of sincerity, genuineness, circumstances, and non-exhaustive steps.[46] It does not create a tribunal, a certificate, a time limit or a statutory bar. For that reason, the strict school is persuasive as to obligation, but less persuasive as to automatic jurisdictional consequence. Its best use is to justify directions, amendments, stays, or costs in ordinary cases, and striking out only where non-compliance is total, deliberate or abusive.

3.2 The permissive approach

The permissive approach rejects the proposition that every pre-action requirement objection defeat jurisdiction. In *Dew Drop Drinks Company Limited v Lemon Dove Company Limited*[47]The court treated the pre-action requirement as a facilitative provision designed to encourage settlement rather than a jurisdictional guillotine. The real issue was whether statutory silence on sanctions could be filled by judicial implication. The court answered in the negative, thereby protecting access to court while still recognising the desirability of pre-action engagement.

In *Imalaseko Investment Limited v Amer Mohamed Mbarak Company Limited and Another*[48], The court focused on the wording of the pre-action requirement. It reasoned that the phrases “shall be deemed” and “may be taken” identify conduct that may amount to bona fide steps; they do not say that a suit is incompetent if the plaintiff has not pleaded a prescribed formula. The analytical value of the decision lies in its insistence that courts should not manufacture a sanction that Parliament did not provide. Its weakness is that, if taken too far, it may make the pre-action requirement practically toothless.

Commercial litigation illustrates why the permissive approach has force. In *Exim Bank Tanzania Limited v Arusha Sundries Limited and Others*[49], The dispute arose in a context where demand, default notices, restructuring engagement and payment discussions may all serve settlement functions. The court treated commercial correspondence as potentially relevant to bona fide steps. The decision is significant because

[46] *Civil Procedure Code, Cap 33 R.E. 2023, s 13.*
[47] Civil Case No. 26624 of 2025, High Court of Tanzania at Dar es Salaam, [2026] TZHC 752.
[48] Land Case No. 29281 of 2024, High Court of Tanzania, Land Division, [2026] TZHC Land Division 189.
[49]Commercial Case No. 15988 of 2025, High Court of Tanzania, Commercial Division, [2026] TZHC Commercial D 107.

it resists a mechanical distinction between a demand letter and an attempt to settle. In many commercial disputes, a demand letter is precisely the document that informs the debtor of the dispute, invites payment and opens the door to negotiation.

In *Aisha Ally Diyanga v Johra Hassan Mamba and Others*[50], The court considered the pre-action requirement in the setting of a company petition. The real issue was whether pre-action settlement should be treated the same way in ordinary debt litigation and in disputes involving corporate mismanagement, unfair prejudice or preservation of company affairs. The court declined to treat the pre-action requirement as an automatic bar. This is persuasive because petitions often seek supervisory, protective or status-based relief, and the need for court intervention may arise before meaningful negotiation is realistic.

The clearest access-to-justice reasoning appears in *Mohammed Enterprises (Tanzania) Limited v Eliphaz Manyiri*[51]. The plaintiff had pleaded public notices, local administrative engagement and demands to vacate. The court held that those facts could amount to bona fide steps and added that striking out would be inappropriate where the matter had already passed through court-annexed mediation. The point is not that post-filing mediation is literally pre-action compliance. It is that the remedy must be proportionate to the prejudice. Where the statutory objective has substantially been pursued during the case, automatic striking out may waste rather than save judicial resources.

Similarly, *Kolon Global Corporation v Pipes Industries Company Ltd*[52] offers a sophisticated critique of the strict school. The court treated the pre-action requirement as relevant to case management, costs, mediation and conduct, but declined to treat it as an automatic jurisdictional bar. That decision is valuable because it locates the pre-action requirement within the broader machinery of civil procedure. The pre-action framework influences how litigation should be managed; it does not necessarily decide whether the court exists as a forum.

[50]Miscellaneous Civil Cause No 29215 of 2025, High Court of Tanzania at Dar es Salaam, [2026] TZHC 2858.
[51]Land Case No. 12527 of 2025, High Court of Tanzania, Land Division, [2026] TZHC Land Division 299.
[52]Miscellaneous Commercial Application No. 21845 of 2025, High Court of Tanzania, Commercial Division, [2026] TZHCComD 119.

The weakness of the permissive approach is enforcement. If courts merely say that the pre-action requirement is directory and move on, parties may rationally ignore it. A provision requiring sincere and genuine attempts to resolve disputes cannot be reduced to judicial advice. The permissive cases are therefore strongest when they reject automatic nullity, not when they deny meaningful procedural consequences.

3.3 The contextual proportionality approach

The contextual approach offers the most coherent middle ground. In *Bernadetha George Obuya v Yusuph Razac Ladha and Others*[53], The objection was raised after the plaintiff had closed her case and the defence hearing had commenced. The real issue was therefore not abstract compliance alone, but timing, prejudice and the propriety of using the pre-action requirement late in the proceedings. The court declined to strike out automatically and treated the existence of bona fide steps as a factual question. This is doctrinally persuasive because a preliminary objection should not depend on contested facts.[54]

In *Tai Five Hotel Ltd v Board of Trustees of Public Service Social Security Fund (PSSSF) and Another*[55]The court held that a 90-day notice to a public body could complement the pre-action requirement where it disclosed the dispute, informed the defendant of the material facts and invited engagement before the expiry of the notice period. The decision does not equate every government notice with bona fide steps. Its real contribution is a content-based test: a statutory notice may count if, in substance, it allows the recipient to investigate, respond, settle or narrow the dispute.[56]

The same factual sensitivity appears in *Kayen Investments Limited v Rena Callist Nyamwelo and Others*[57]. The court looked beyond the label placed on the plaintiff's conduct and considered whether the conduct, in context, was directed at avoiding litigation or narrowing the controversy. This matters because subsection (3) expressly provides that the listed steps are not exhaustive. A rigid checklist would contradict that statutory design and punish litigants for failing to use prescribed vocabulary.

[53] Land Case No. 12826 of 2024, High Court of Tanzania at Dar es Salaam, [2026] TZHC 2706.
[54] *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696.*
[55] Land Case No. 6952 of 2026, High Court of Tanzania at Dar es Salaam, [2026] TZHC 2819.
[56] *Government Proceedings Act, Cap 5 R.E. 2023, s 6.*
[57]Land Case No. 12518 of 2025, High Court of Tanzania, Land Division, [2026] TZHC Land Division 341.

In *Vigu Trading Company Limited v Imperium Opes Group Limited and Others*[58], the court treated the adequacy of negotiations and settlement efforts as a matter that may require evidence. The decision is significant for preliminary objections. A defendant may raise the pre-action requirement as a pure point of law where the plaint is completely silent and no factual dispute arises. But where the plaint or annexures disclose letters, meetings, administrative complaints, payment proposals or mediation invitations, the court may need evidence before deciding whether the steps were sincere and genuine.

This contextual school best fits the policy of ADR in Tanzania. Mashamba explains that court-annexed mediation was introduced to reduce delay and improve the quality of civil justice, [59] while Gonzi J has argued that the bona fide step standard is inherently dependent on the person's circumstances and the nature of the dispute.[60] The thematic lesson is therefore clear: the question is not whether a case belongs to a strict, permissive or contextual list. The question is what the plaintiff actually did, what the defendant knew, whether the omission caused prejudice, and what remedy will advance timely, proportionate and substantive justice.

4.0 Normative Issues Arising from the Tanzanian Cases

The conflicting High Court approaches reveal deeper normative questions about the role of civil procedure in Tanzania. The pre-action framework is not merely a technical rule requiring parties to communicate before litigation. It raises broader questions concerning access to justice, the limits of judicial power, procedural good faith, the relationship between pre-action obligations and court-annexed mediation, and the appropriate sanction for procedural default. The cases, therefore require analysis beyond their immediate outcomes, because each line of authority carries different consequences for litigants, advocates, courts, and the administration of civil justice.

This part identifies the principal normative issues emerging from the Tanzanian jurisprudence. These include whether the pre-action

[58]Land Case No. 6175 of 2026, High Court of Tanzania, Land Division, [2026] TZHC Land Division 347.
[59]J Clement Mashamba, '*Alternative Dispute Resolution (ADR) in Tanzania: Law and Practice'* (Mkuki na Nyota 2013) 47-51, 111-114.
[60]Abdallah H Gonzi, *Timely Justice: The Requirement to take Bona Fide Steps before Litigation under Section 13 of the Civil Procedure Code of Tanzania - its Relevance and Challenges'* (Legal Brief Online Lawyers' Forum, 12 April 2026) 34-38.

framework should be treated as jurisdictional or procedural, whether failure to plead bona fide steps should automatically defeat a suit, whether statutory notices and demand letters amount to sufficient compliance, and whether striking out is a proportionate response to non-compliance. It also considers the implications of the pre-action requirement for government proceedings, multi-party suits, applications, petitions, urgent matters, contractual ADR clauses, and subsequent court-annexed mediation. The central concern is whether the interpretation of the pre-action requirement should promote settlement without undermining the constitutional and procedural commitment to substantive justice.

4.1 Pleading and proof

The first normative issue is pleading. Because bona fide steps are facts within the plaintiff's knowledge, the plaint should ordinarily disclose what was done before filing. This may be by pleading a letter of claim, statutory notice, meeting, mediation invitation, exchange of documents, payment proposal, administrative engagement or reasons why no steps were taken.[61] Pleading should not, however, be equated with jurisdiction. A defective pleading may be amended unless the omission is incurable or abusive.[62]

The Rules Committee should therefore prescribe a short pleading requirement. A plaint, petition or originating application should contain a paragraph titled "Bona fide pre-action steps". The paragraph should either state the steps taken or explain why none were taken. This would convert the pre-action requirement from an uncertain objection into an orderly pleading discipline.

4.2 Demand letters and statutory notices

The second issue is whether a demand letter or government notice is enough. A demand letter is not automatically sufficient merely because it precedes litigation. Its sufficiency depends on the content. A letter that identifies the issues, invites response, offers discussion or proposes settlement may be a bona fide step. A letter that merely threatens litigation may not.[63] Likewise, a 90-day notice under the Government Proceedings Act may amount to a bona fide step if it communicates the

[61] *Civil Procedure Code, Cap 33 R.E. 2023, Order VI.*
[62] *Ibid, Order VI rule 17.*
[63] Beka Trading (n 15).

dispute and invites meaningful engagement, but it should not automatically satisfy the pre-action requirement in every case.[64]

The proposed rule should therefore recognise statutory notices as possible, but not conclusive, evidence of compliance. Courts should examine whether the notice enabled the recipient to understand the claim and consider resolution. This approach respects both the Government Proceedings Act and the independent purpose of the pre-action requirement.

4.3 Applications, Petitions, and Special Proceedings

The third issue is scope. The pre-action requirement (4) states that the pre-action requirement applies to all proceedings intended to be initiated in court.[65] A literal reading includes plaints, petitions, originating summonses and applications. Yet some proceedings are urgent, ex parte, protective or statutory in nature. It would be artificial to require full negotiation before an injunction to preserve property, an ex parte order, a limitation-saving filing or a statutory application where the court order itself is the legally required step.

The better approach is to require a statement, not necessarily prior settlement engagement, in such proceedings. The applicant should state either what was done or why pre-action steps were not possible, proportionate or appropriate. That solution gives the pre-action requirement universal reach without sacrificing practical justice.

4.4 Multi-Party Disputes

The fourth issue is multi-party litigation. The bona fide step framework becomes more difficult to apply where a suit involves several defendants whose legal interests are not identical. The difficulty is not merely numerical. Some defendants may be alleged wrongdoers, some may be public authorities joined because effective relief cannot be granted without them, and others may be formal or necessary parties. In such circumstances, a plaintiff may have engaged one category of defendants but not another. Automatic striking out against all defendants may therefore be excessive where the omission does not prejudice every party and can be cured by case-management directions. Courts should instead ask whether the plaintiff took reasonable bona fide steps toward known

[64] *Government Proceedings Act, Cap 5 R.E. 2023, s 6*.
[65] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(4).*

adverse parties, whether later-joined or formal parties suffered prejudice, and whether a stay, amendment, mediation referral or directions would cure the omission.[66]

The decision in *Joseph Chilery Mayenje and Others v Abrahamu Godwin Msyete and Others* demonstrates the point. The suit was brought by three plaintiffs against five defendants. The first and second defendants were alleged to have trespassed on the disputed land and erected structures, while the Commissioner for Lands, the Registrar of Titles and the Attorney General were joined as public defendants because the dispute also touched land administration. The plaintiffs argued that they had complied with the pre-action requirement because they had served a ninety-day statutory notice on the public defendants and had confronted the first and second defendants by objecting to the alleged invasion and construction activities.[67]

The court rejected that argument while holding that compliance with the pre-action requirement is mandatory and that the purpose of the pre-action requirement is to engage all parties to a suit through deliberate pre-litigation bona fide steps. The ninety-day notice was considered insufficient because it was issued to comply with government proceedings requirements and was not directed to the first and second defendants, who were alleged to have committed the trespass. The court also held that confronting alleged trespassers and objecting to construction activities did not, without more, amount to the kind of sincere and genuine pre-action engagement contemplated by the pre-action requirement. In doing so, the court preferred the strict line of authority and declined to follow the permissive approach in *Dew Drop Drinks Company Limited v Lemon Dove Company Limited*.[68]

The case is useful because it shows that a statutory notice to government defendants is not automatically equivalent to engagement with all parties to a multi-party dispute. Where private defendants are the factual source of the dispute, they should ordinarily be notified of the issues and invited to respond, negotiate, mediate or otherwise participate in settlement efforts. That conclusion is consistent with decisions such as *Beka Trading*

[66] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1)-(4).*
[67] *Joseph Chilery Mayenje and Others v Abrahamu Godwin Msyete and Others* (Land Case No 000020518 of 2025) [2026] TZHCLandD 309 (HC Land Div, 22 April 2026) 1-4.
[68] Joseph Chilery Mayenje (n 69) 5-12; *Dew Drop Drinks Company Limited v Lemon Dove Company Limited* (Civil Case No 26624 of 2025) [2026] TZHC 752 (HC, 11 March 2026).

Company Limited and Another v Tanzania Electrical Mechanical and Electronics Service Agency and Another and *Yassa General Supplies Limited v Temeke Municipal Council and Another*, which treat a ninety-day notice as insufficient where it is merely a procedural notice and not a genuine invitation to resolve the dispute.[69]

At the same time, the case exposes the risk of excessive sanctions. The matter was struck out in its entirety, although some steps had been taken against some parties, and the issue was raised by the court *suo motu*. This demonstrates the need for a proportionality rule in multi-party suits. The inquiry should not end with whether every defendant was engaged in exactly the same manner before filing. It should focus on whether the plaintiff acted reasonably in the circumstances, whether the omitted engagement concerned a known adverse party, whether the failure prevented meaningful settlement, and whether the omission can be cured without defeating substantive justice.[70]

A rule should therefore expressly provide that compliance in multi-party suits is assessed proportionately. The plaintiff should not be required to undertake impossible engagement with unknown, nominal, formal or later-joined parties. However, known adverse parties whose interests are directly affected should ordinarily be notified of the issues in dispute and given a reasonable opportunity to respond. Where engagement is incomplete but curable, the preferred response should be a stay, focused pre-action directions, amendment of pleadings, referral to mediation or costs orders. Striking out should be reserved for total non-compliance, deliberate evasion, bad faith, incurable prejudice or abuse of process.[71]

4.5 Court-annexed mediation after filing

The fifth issue is whether court-annexed mediation cures non-compliance. It cannot rewrite the chronology: mediation after filing is not a pre-action step. Yet it may mitigate prejudice and influence remedy. If the parties

[69] *Beka Trading Company Limited and Another v Tanzania Electrical Mechanical and Electronics Service Agency and Another* (Civil Case No 10631 of 2025) [2025] TZHC 7247 (HC, 26 November 2025); *Yassa General Supplies Limited v Temeke Municipal Council and Another* (Land Case No 25701 of 2026) [2026] TZHCLandD 166 (HC Land Div, 17 April 2026).

[70] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1); Constitution of the United Republic of Tanzania, 1977, art 107A(2)(d)-(*e); *Joseph Chilery Mayenje* (n 69) 12.

[71] *Civil Procedure Code, Cap 33 R.E. 2023, s 13(1)-(3); Dew Drop Drinks Company Limited* (n 70).

have already engaged in court-annexed mediation, the court should consider whether striking out still serves any useful purpose.[72]

The proper question should be remedial, not metaphysical. A post-filing mediation should not automatically cure the defect, but it may justify costs, directions, amendment or dismissal of the preliminary objection rather than striking out.

5.0 Lessons from England and Australia

A lesson-drawing discussion is necessary because the interpretive difficulty created by the pre-action requirement is not unique to Tanzania. Other common-law jurisdictions have also attempted to encourage early settlement while preserving access to courts. England and Australia are particularly useful because both jurisdictions impose or encourage pre-action engagement, yet their systems generally avoid treating non-compliance as an automatic jurisdictional bar.[73]

England provides guidance through its pre-action protocols and the Practice Direction on Pre-Action Conduct and Protocols. The English model requires parties to exchange sufficient information, understand each other's position, consider ADR, narrow issues and reduce costs before proceedings are commenced.[74] However, the consequence of non-compliance is usually addressed through case management directions, stays, costs orders, interest consequences or other sanctions rather than automatic invalidation of proceedings. The decisions in *Halsey v Milton Keynes General NHS Trust*, *Dunnett v Railtrack plc*, *PGF II SA v OMFS Company 1 Ltd* and *Churchill v Merthyr Tydfil County Borough Council* show that English courts may strongly encourage ADR and penalise unreasonable conduct, but the remedy must remain proportionate and consistent with the right of access to a judicial hearing.[75]

Australia is even closer to the Tanzanian language because the Civil Dispute Resolution Act 2011 (Cth) uses the terminology of genuine steps.

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[72] *Civil Procedure Code, Cap 33 R.E. 2023, ss 71-74*; *Civil Procedure Code (Court Annexed Mediation and Arbitration) Rules, GN No 422 of 2021.*

[73] Lord Woolf, '*Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales*' (HMSO 1996) ch 1; Practice Direction - Pre-Action Conduct and Protocols, paras 1-4; Civil Dispute Resolution Act 2011 (Cth), ss 3-4.

[74] Practice Direction - Pre-Action Conduct and Protocols, paras 3-4 and 6.

[75] Practice Direction - Pre-Action Conduct and Protocols, paras 13-16; Halsey v Milton Keynes General NHS Trust [2004] EWCA Civ 576, [2004] 1 WLR 3002; Dunnett v Railtrack plc [2002] EWCA Civ 303, [2002] 1 WLR 2434; PGF II SA v OMFS Company 1 Ltd [2013] EWCA Civ 1288, [2014] 1 WLR 1386; Churchill v Merthyr Tydfil County Borough Council [2023] EWCA Civ 1416.

Under that Act, a person takes genuine steps if the steps constitute a sincere and genuine attempt to resolve the dispute, having regard to the person's circumstances and the nature and circumstances of the dispute.[76] The Act requires applicants and respondents to file genuine-steps statements, imposes duties on lawyers, and permits courts to consider compliance when exercising powers and awarding costs.[77] Most importantly, it expressly provides that failure to file a genuine-steps statement does not invalidate the proceedings.[78]

The lesson for Tanzania is that it can enforce bona fide pre-action steps as a meaningful obligation without converting the pre-action requirement into an automatic procedural guillotine. England shows the value of detailed pre-action protocols and proportionate sanctions. Australia shows the value of a statutory statement model, recognised exceptions and an express non-invalidation rule. Together, they support a Tanzanian approach that requires pleading or explaining bona fide steps, gives defendants an opportunity to challenge compliance, and leaves the court with a graduated menu of remedies proportionate to the circumstances of each case.[79]

5.1 England and Wales: pre-action protocols, proportionality and sanctions

England and Wales provide a useful comparison because it has moved from broad encouragement of settlement to an integrated system of pre-action protocols and case management powers. The Practice Direction on Pre-Action Conduct and Protocols states that pre-action protocols explain the conduct and steps the court normally expects parties to take before proceedings.[80] Where no specific protocol applies, the general Practice Direction applies.[81]

The objectives of English pre-action conduct are concrete: parties should exchange sufficient information to understand each other's position, make

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[76] *Civil Dispute Resolution Act 2011 (Cth), ss 3 and 4(1A).*
[77] *Civil Dispute Resolution Act 2011 (Cth), ss 6, 7, 9, 11 and 12;* Federal Court Rules 2011 (Cth), r 8.02.
[78] *Civil Dispute Resolution Act 2011* (Cth), s 10(2); Attorney-General's Department (Cth*), Civil Dispute Resolution Act 2011*; *Superior IP International Pty Ltd v Ahearn Fox Patent and Trade Mark Attorneys* [2012] FCA 282; *Superior IP International Pty Ltd v Ahearn Fox Patent and Trade Mark Attorneys* (No 2) [2012] FCA 977.
79Practice Direction - Pre-Action Conduct and Protocols, paras 13-16; Civil Dispute Resolution Act 2011 (Cth), ss 6-12; Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175.
[80]*Practice Direction - Pre-Action Conduct and Protocols, para 1.*
[81]*Practice Direction - Pre-Action Conduct and Protocols, para 2.*

decisions on how to proceed, try to settle without proceedings, consider ADR, support efficient case management and reduce costs.[82] These objectives closely resemble the policy behind Tanzania's pre-action framework, but England expresses them through detailed practice rules rather than leaving courts to infer consequences from general language.
Proportionality is central. The Practice Direction states that a pre-action protocol must not be used as a tactical device to secure unfair advantage and that only reasonable and proportionate steps should be taken to identify, narrow and resolve issues.[83] This is a critical lesson for Tanzania. A pre-action regime should prevent premature litigation, but it should not become a tactical trap.

English practice identifies ordinary steps before issue: the claimant should write a concise claim letter, the defendant should respond within a reasonable time, and key documents relevant to the dispute should be disclosed.[84] Litigation is described as a last resort, and parties are expected to consider negotiation or another form of ADR.[85]

The remedial model is equally important. If proceedings are issued, the court considers non-compliance when giving directions and making costs orders. The court considers whether parties complied in substance and is not likely to be concerned with minor or technical infringements, especially where the matter is urgent.[86] Available consequences include relieving parties from compliance, staying proceedings while steps are taken, and applying sanctions.[87]

Sanctions in England are graduated. The court may order costs, indemnity costs, interest deprivation or enhanced interest.[88] The notable point is that non-compliance does not automatically invalidate the proceedings. It triggers case management and costs consequences.

English case law on ADR confirms the same proportionality. In Halsey, the Court of Appeal accepted that an unreasonable refusal to mediate may justify costs sanctions, but it resisted the proposition that parties should be

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82 *Practice Direction - Pre-Action Conduct and Protocols, para 3.*
83 *Ibid, para 4.*
84 *Ibid, para 6.*
85 *Ibid, paras 8-10.*
86 *Ibid, paras 13-14.*
87 *Ibid, para 15.*
88 *Idid, para 16.*

deprived of access to court merely because mediation was suggested.[89] In Dunnett, an otherwise successful party was penalised in costs for unreasonably refusing ADR.[90] In PGF II, silence in the face of an invitation to mediate was treated as unreasonable conduct capable of incurring costs and consequences.[91]

The position has developed further. In Churchill, the Court of Appeal held that a court may stay proceedings or order parties to engage in a non-court-based dispute resolution process, provided the order does not impair the essence of the right to a fair trial and is proportionate to achieving a legitimate aim.[92] Churchill is especially relevant to Tanzania because it shows that robust ADR encouragement can coexist with access to court if the remedy is tailored, proportionate and rights-sensitive.

5.2 Australia: genuine steps, statements and explicit non-invalidation

Australia is even closer to Tanzania because the Civil Dispute Resolution Act 2011 (Cth) uses the language of "genuine steps". The Act's object is to ensure, as far as possible, that people take genuine steps to resolve disputes before certain civil proceedings are instituted.[93] A person takes genuine steps if the steps constitute a sincere and genuine attempt to resolve the dispute, having regard to the person's circumstances and the nature and circumstances of the dispute.[94]

The Australian examples are materially similar to Tanzania's pre-action framework: notification of issues, appropriate response, provision of relevant information and documents, consideration of ADR, agreement on a facilitator, attending the process, considering another process, and attempting negotiation.[95] The list is also non-exhaustive.[96]

The difference lies in procedural detail. An applicant instituting civil proceedings in an eligible court must file a genuine steps statement at the time of filing.[97] The statement must specify the steps taken or the reasons

[89] *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576, [2004] 1 WLR 3002.
[90] *Dunnett v Railtrack plc* [2002] EWCA Civ 303, [2002] 1 WLR 2434.
[91] *PGF II SA v OMFS Company 1 Ltd* [2013] EWCA Civ 1288, [2014] 1 WLR 1386.
[92] *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416.
[93] *Civil Dispute Resolution Act 2011 (Cth), s 3.*
[94] *Ibid (Cth), s 4(1A).*
[95] *Ibid,s 4(1). Compare Civil Procedure Code, Cap 33 R.E. 2023, s 13(2).*
[96] *Ibid, s 4(2).*
[97] *Ibid, (Cth), s 6(1).*

why no steps were taken, including urgency or safety and security concerns.[98] A respondent served with the applicant's statement must file a statement indicating agreement or specifying disagreement and reasons.[99] The Australian Act also imposes a professional duty on lawyers to advise and assist clients to comply.[100] The Federal Court forms reflect this machinery by providing an Applicant's Genuine Steps Statement under rule 8.02.[101]

Most importantly for Tanzania, Australia expressly rejects automatic invalidation. Section 10(2) states that failure to file a genuine steps statement does not invalidate the application, response or proceedings.[102] Instead, the court may take into account whether a required statement was filed and whether genuine steps were taken when exercising its powers or awarding costs.[103]

The Australian Attorney-General's Department describes the Act as deliberately flexible and notes that what constitutes a genuine step depends on the context of the particular dispute.[104] It also states that non-compliance may have consequences, such as cost implications, and refers to Superior IP as an example of judicial willingness to impose consequences.[105]

Australian civil procedure also reinforces proportionality through case management. In Aon Risk Services, the High Court emphasised that litigation is not only a private contest between parties; delay and inefficient conduct affect other litigants and the public administration of justice.[106] That principle supports sanctions for irresponsible pre-action conduct without converting every defect into a jurisdictional bar.[107]

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[98] *Civil Dispute Resolution Act 2011 (Cth), s 6(2).*
[99] *Ibid, Cth), s 7.*
[100] *Ibid, 2011 (Cth), s 9.*
[101] *Federal Court of Australia, Forms under the Federal Court Rules 2011, Form 16 Applicant's Genuine Steps Statement, r 8.02.*
[102] *Civil Dispute Resolution Act 2011 (Cth), s 10(2).*
[103] *Civil Dispute Resolution Act 2011 (Cth), ss 11-12.*
[104] *Attorney-General's Department (Cth), Civil Dispute Resolution Act 2011.*
[105] Superior IP International Pty Ltd v Ahearn Fox Patent and Trade Mark Attorneys *[2012] FCA 282; Superior IP International Pty Ltd v Ahearn Fox Patent and Trade Mark Attorneys (No 2) [2012] FCA 977.*
[106] *Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175*.
[107] *Aon Risk Services Australia Ltd v Australian National University (2009) 239 CLR 175*.

5.3 Lessons for Tanzania

England and Australia point in the same direction. Pre-action obligations are meaningful, but their breach is normally managed through procedural directions, stays, costs, interest or professional responsibility, not automatic nullity. England supplies detailed protocols and proportional sanctions. Australia supplies a statutory statement model and an express non-invalidation rule. Tanzania currently has the obligation but not the machinery.[108]

The lesson is therefore not that Tanzania should copy either system wholesale. Tanzania should adopt a tailored model: a mandatory statement of bona fide steps, flexible examples of compliance, clear exceptions, a respondent's right to challenge or explain, and graduated sanctions. This model would respect the Tanzanian text while avoiding the unfairness of a jurisdictional guillotine.[109]

6.0 Proposed Framework for Tanzanian Courts Pending Reform

Pending appellate or legislative clarification, courts should apply a five-stage proportionality test. This is a proposed test, not a statement of binding current law.[110]

First, the court should identify whether the proceeding falls within the pre-action requirement. The starting point is that it does because subsection (4) applies to all proceedings intended to be initiated in court.[111] But the court should consider whether the nature of the proceeding makes pre-action engagement impossible, unsafe, futile or inappropriate, such as urgent injunctions, preservation orders, ex parte proceedings, limitation emergencies, fraud, violence, statutory sales or statutory applications where court intervention is the mechanism prescribed by law.[112]

Secondly, the court should ask whether the initiating document pleaded or disclosed bona fide steps or reasons for non-engagement. Silence should

[108]Practice Direction - Pre-Action Conduct and Protocols, paras 13-16; *Civil Dispute Resolution Act 2011 (Cth), ss 10-12.*
[109]*Civil Procedure Code, Cap 33 R.E. 2023, ss 3A-3B and 13.*
[110]*Ibid, s 13(1) and (4).*
[111]*Ibid, s 13(4).*
[112]*Civil Dispute Resolution Act 2011 (Cth), s 6(2)(b),* recognising reasons for not taking steps, including urgency and safety or security concerns.

normally be corrected by amendment, particulars or affidavit evidence unless the facts show total disregard or abuse.[113]

Thirdly, the court should assess substance rather than labels. The question is not whether the plaintiff used the words "the pre-action requirement". It is whether the plaintiff's conduct showed a sincere and genuine attempt to resolve, narrow, clarify or evaluate the dispute.[114] Relevant conduct includes demand letters, statutory notices, responses, meetings, exchange of documents, payment proposals, mediation invitations, administrative complaints and prior negotiations.[115]

Fourthly, the court should assess timing and prejudice. A defendant who raises the pre-action requirement promptly is in a stronger position than one who waits until after pleadings, mediation or trial. The court should ask whether the omission caused prejudice and whether the prejudice can be cured by stay, directions or costs.[116]

Fifthly, the court should select a proportionate remedy. The menu should include dismissal of the objection, amendment, particulars, stay for pre-action engagement, referral to mediation, costs, denial of costs, interest consequences, adverse case management directions or, in exceptional cases, striking out.[117] Striking out should be reserved for total non-compliance, deliberate evasion, abuse of process, incurable prejudice or a special statutory framework that expressly requires prior exhaustion.[118]

7.0 Recommendations for Legislative or Rules Committee Reform

Parliament or the Rules Committee should adopt pre-action protocol rules under the Civil Procedure Code. The rules should not merely repeat the pre-action requirement. They should operationalise it.

First, every plaint, petition, originating summons or originating application should contain a short statement of bona fide pre-action steps. The statement should identify the steps taken, dates of engagement where

[113] *Civil Procedure Code, Cap 33 R.E. 2023, Order VI rr 17-18.*
[114] *Ibid, s 13(1)-(3).*
[115] *Ibid, s 13(2)-(3).*
[116] *Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd* [1969] EA 696; *New Era Stores v Ocean Trading Co* [1950] KLR 53.
[117] *Practice Direction - Pre-Action Conduct and Protocols, paras 13-16; Civil Dispute Resolution Act 2011 (Cth), ss 10-12.*
[118] *Practice Direction - Pre-Action Conduct and Protocols, paras 13-16; Civil Dispute Resolution Act 2011 (Cth), ss 10-12.*

available, parties engaged, documents exchanged and outcome. Where no steps were taken, the statement should give reasons.

Secondly, the rules should recognise standard forms of compliance: a letter of claim, response to a letter of claim, statutory notice that invites engagement, meeting, negotiation, mediation invitation, conciliation attempt, administrative complaint, document exchange, payment proposal, issue-narrowing correspondence or any other sincere and genuine attempt appropriate to the dispute.

Thirdly, the rules should create clear exceptions. They should include urgency, injunctions, preservation of property, limitation, safety or security concerns, domestic or commercial power imbalance, fraud, risk of asset dissipation, public interest, futility, statutory schemes requiring immediate court action, ex parte proceedings and circumstances where engagement would be oppressive or disproportionate.

Fourthly, the rules should provide a respondent's mechanism. The defendant or respondent should plead whether the statement of bona fide steps is admitted, disputed or insufficient, and should state reasons. This would avoid surprise preliminary objections and enable early judicial case management.

Fifthly, the rules should prescribe graduated sanctions. The default response to non-compliance should be directions, amendment, stay or costs. Striking out should be discretionary and exceptional. Where a lawyer failed to advise a client on the requirement, the court should have power to make costs orders against the lawyer personally in an appropriate case.

Sixthly, the rules should clarify the relationship between the pre-action requirement and government notices. A 90-day notice should qualify as a bona fide step only where, in substance, it identifies the dispute and allows the public authority to consider settlement or response. A bare notice that only threatens suit should not automatically satisfy the pre-action requirement.

Seventhly, the rules should clarify multi-party suits. Compliance should be assessed against known adverse parties. Failure to engage an unknown, later-joined or nominal party should not automatically defeat the whole suit. The court should have power to direct post-filing engagement with any party who was not reasonably engaged before filing.

Eighthly, the rules should clarify applications and petitions. The applicant should file a statement of steps or reasons for non-engagement. In urgent or ex parte matters, the statement may be brief and may be supplemented after the urgent relief is heard. This preserves both the pre-action requirement and the effectiveness of urgent remedies.

Ninthly, the rules should clarify the interaction with court-annexed mediation. Post-filing mediation should not automatically cure pre-action non-compliance, but successful or good-faith participation may mitigate sanctions. Conversely, a party that ignores pre-action engagement and then obstructs court-annexed mediation should face costs or case management consequences.

Tenthly, the rules should address limitations. Where parties agree to engage in pre-action settlement discussions, the rules should encourage written standstill agreements or provide a mechanism for filing protective proceedings and staying them while compliance occurs. England's Practice Direction expressly recognises that pre-action rules do not alter limitation and permits a stay where proceedings are issued to preserve time.

8.0 Counterarguments and Response

A strict view may argue that without striking out, parties will ignore the pre-action requirement. The answer is that meaningful sanctions need not be jurisdictional. Stays, costs, denial of costs, adverse interest and professional costs orders can be effective without destroying meritorious claims.

A permissive view may argue that any pre-action obligation burdens access to court. The answer is that access to justice includes timely, affordable and proportionate dispute resolution. [119] Properly designed pre-action steps do not deny access to court; they make litigation more informed and less wasteful.[120]

[119] Lord Woolf, '*Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales'* (HMSO 1996) ch 1.
[120] Hazel Genn, *Judging Civil Justice* (Cambridge University Press 2010) chs 1-3.