

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF BUKOBA
AT BUKOBA
LAND CASE NO. 03 OF 2021**

1. LUHAMA KATOTO RANCH CO. LTD } PLAINTIFFS
2. HASHIM LUKWENDA LUHILELEA }

VERSUS

1. TANZANIA INVESTMENT BANK LTD }DEFENDANTS
2. NATIONAL RANCHIING CO.LTD }

RULING

Date of Ruling: 13/08/2021

Mwenda, J.

This is a ruling on Preliminary objection raised by the defendants against the plaintiff's suit. The said preliminary objection reads:-

*"That the application (sic.) is incompetent before this Honourable Court for contravening Section 6(3) & (4) of the **Government Proceedings Act [Cap 5 R.E 2019]** as amended by the Written Laws (Miscellaneous Amendments) Act, No. 1 of 2020."*

At the hearing of this preliminary objection, the defendants were represented by Lameck Buntuntu and Ms. Tausi Sued, the learned State attorneys while the plaintiffs were represented by Mr. Kabunga, Learned Advocate.

In their submission in chief, Mr Buntuntu submitted that the present suit contravenes **section 6 (3) & (4) of the Government Proceeding Act [CAP 6 R.E 2019]** as amended by **Written Laws (Misc. Amendment) Act No.1 of 2020**. He stated that through that amendment all suits for and against the government shall be brought against the government, ministry department, local government, executive agency, public corporation, parastatal organization or public company upon expiry of *90 days' notice* by joining the Attorney General as a necessary party.

The learned state attorney further submitted that TIB and the National Ranching Company Limited are parastatal organizations and therefore they ought to be sued by joining the Attorney General as the necessary party. He stated that under **section 18 of the Government Proceedings Act** the word Government has been defined and section 19(7) of the Act put it clear that in any proceedings against the executive agency the Attorney General shall be joined as a necessary party. He said in this case the attorney general was neither served with a *90 days' notice* nor joined as a necessary party. In support of his argument the learned state attorney cited a case of **MSK Refinery ltd vs TIB Bank ltd & another Misc. Civil Application No. 307**

of 2020 where Kakolaki J. insisted that on the suits of this nature joining the Attorney General as a necessary party is a mandatory condition.

He thus concluded by praying this application to be struck out for being in competent.

In reply to the learned state attorney's submissions, Mr Kabunga learned Advocate submitted to the effect that, this suit is competent before this court and that the **Government Proceedings Act [Cap. 5 R.E 2019]** cannot be read in isolation from other Laws. He submitted that according to the Written Statement of Defence, the defendant are limited liability companies governed by the **Company Act [Cap. 212 R.E 2019]** capable of suing and being sued on their own names and have perpetual successions. According to the learned advocate this status is what made them enter into contracts in their own names. He went further to submit that allegations that they are parastatal organization is not supported by any evidence, and that it is the matter which need to be ascertained by evidence then it is not fit to stand as preliminary objection. In support to this argument he cited the case of **Mkisa Biscuits Manufacturing Company ltd vs Western Distributaries ltd (1969) EA page 696** where it was held *inter alia* that *preliminary objection on jurisdiction is a point of law that can stand but not this suit.*

Again Mr. Kabunga submitted that non-joinder of Attorney General is curable under ***Order 1 Rule 9 and Rule 10 of the Civil Procedure Code [CAP 33 R.E 2019]*** where this court may order joining him. He also averred that after all they have already issued a *90 days' notice* to the Attorney General on 22/06/2021. On the case of *MSK Refinery Ltd V. TIB Bank Ltd & another (supra)* which was cited by the learned State attorney, the learned advocate was of the view that, it is distinguishable because firstly, the said ruling emanates from Misc. Application Civil Suit No. 80 of 2020 where the application was struck out and the main suit remained and secondly the said case did not consider other laws. He said the amendment to the *Government Proceedings Act, [Cap. 5 R.E. 2019]* vide *Written Laws (Miscellaneous Amendments), No. 1 of 2020* did not make the *Companies Act [CAP 212 R.E. 2019]* redundant. He added that, the *MSK Refinery Ltd V. TIB Ltd & Another (supra)* is not binding to this court and this court should not follow it as it makes a very bad precedent. He thus prayed preliminary objections to be overruled.

In rejoinder Ms. Tausi Suedi, learned state attorney submitted that it is true that *Companies Act [Cap 212 R.E 2019]* governs the first and second defendant and also that they have capacity to sue and being sued by their own names and with perpetual succession. However, the laws cited by Mr. Kabunga, the learned Advocate i.e. the *Companies Act [Cap 212 R.E 2019]* and the *Civil Procedure Code [Cap 33 R.E 2019]* are substantive laws and

when it comes to disputes such as this one there are laws governing the process. Defendants being any party in conflict has to take judicial notice on this status as there is no need of producing evidence.

Learned state attorney averred further that issuance of 90 days' notice is mandatory and therefore the act by the plaintiff's advocate to issue 90 days' notice after filing/institution of the suit is wrong as the law state that the notice shall be filed before institution of the suit. In this matter the learned state attorney stated that the present suit was filed on 08/ 03/2021 and the notice was filed on 22/06/2021 after the suit has already been filed and therefore the said notice cannot act retrospectively/ backwards. She also said that non-joinder of Attorney General vitiates the proceedings of any suits brought in term of subsection 3 of section 6 of the *Government Proceedings Act, [Cap.5 R.E.2019] as amended by the Written Laws (Miscellaneous Amendment) Act No. 1 of 2020*

In rejoinder to the submissions by the advocate for the plaintiffs that ***Order 1 Rule 9 & 10 of the Civil Procedure Code*** may be invoked to cure the irregularities of no-joinder of the Attorney General, the learned state Attorney submitted that this order from *Civil Procedure Code, [Cap 33 R.E 2019]* does not apply as the only law that governs and/or regulates procedures on suits filed for and against the government is the *Government Proceeding Act [Cap. 5 R.E.2019]*. With regard to the case of ***MSK Refinery Limited V. TIB Limited & Another (supra)*** which the learned advocate for

the plaintiffs said it is a bad precedent, she submitted that the same fits in this matter. She concluded by resorting to the defendant's previous prayers that this suit is incompetent and should struck out.

Having heard the submissions made by learned counsels for the plaintiffs and respondents, the issue in this matter is whether the preliminary objection is meritorious.

It is not in dispute that the amendment made to the **Government Proceedings Act** vide the **Written Laws (Misc. Amendment) Act No. 1 of 2020** mandatorily requires suits against the government and its entities to be preceded by issue of 90 days' notice and after expiry of the said notice the Attorney General Must be joined as a necessary party.

This section reads as follows:-

Section 6

(3) All suits against the government shall upon the expiry of the notice period be brought against the government, ministry, government department, local government authority, executive agency, public corporation, parastatal organization or public company that alleged to have committed the civil wrong on which the civil suit is based and the attorney General shall be joined as necessary party.

(4) Non-joinder of the attorney general as prescribed in subsection 3 shall vitiate the proceedings of any suit brought in term of subsection 3".

Mr. Kabunga, the learned advocate for the plaintiff was of the view that the defendants do not fall under the *Government Proceedings Act, [Cap 5 R.E.2019]* since they are companies regulated by the *Companies Act, [Cap 212 R.E 2019]*, capable of entering into contracts, with legal successions and which can sue or being sued by their own names. This court researched on the establishments of the Defendant companies and came to realise that they are both registered under BRELA. The similarities of the duo companies is that they are both owned by the Government. Tanzania Investment Bank Ltd is owned by the Government where the Treasurer Registrar owns 99.1 shares and the National Insurance Corporations own 0.1 shares. All shares of the National Ranching Company Limited (under the Ministry of Livestock and fisheries) are owned by the Treasurer Registrar.

The defendants being Government owned entities they are then parastatal organizations. Section 2 of the Parastatal Organization (Financial Supervision & Control) Act, No.16 of 1975 defines Parastatal organization as follows:

Section 2. ...

"Parastatal organization" means anybody corporate established by or under any written law other than-

(a) N/A

(b) N/A

but includes any company the whole of the share capital of which is owned by the Government or any parastatal organization (including any such company).

From the foregoing definition it is clear that, the defendants are parastatal companies and falling within the purview of ***section 6(3) and (4) of the Government Proceedings Act [Cap 5 R.E 2019]***.

Mr. Kabunga was of the view that the evidence is required to prove that the defendants are indeed parastatal companies but as I have highlighted above these companies are parastatal which only require taking judicial notice and exercising due diligence. Be that as it may during submissions, the advocate for the plaintiff stated that, they issued notice to the Attorney General and this court considered it as an admission by the plaintiffs that the defendants are parastatal organisations. Sections 60 of the Evidence Act, [Cap 6 R.E 2019] reads as follows:

S.60.

"No fact need be proved in any civil proceedings which the parties thereto or their agents agree to admit at the hearing or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings...."

The learned Advocate was of the view that failure to issue notice and join the Attorney General as a necessary party is curable under ***Order 1 Rule 9& 10 of the Civil Procedure Code*** but as rightly stated by the State Attorney that the law governing suits against the government ties is the ***Government Proceedings Act, [Cap 5 R.E. 2019]***. Section 6(2) of this Act state as follows:-

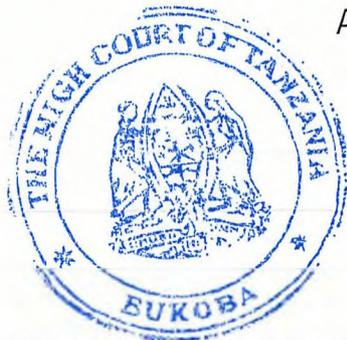
"no suit against the government shall be instituted and heard, unless the claimant previously submits to the government minister, department or office concerned a notice of not less than ninety days of his intention to sue the government"

From the foregoing section, the 90 days' notice should be issued before filing a suit and therefore the notice filed by the plaintiffs on 22/06/ 2021 is of no legal effect as it cannot act retrospectively.

I am thus inclined to join hands with Hon Kakolaki J, in MSK'S decision that failure to issue *90 days' notice* to the Attorney General and join him as necessary Party renders this suit incompetent and the preliminary objection is hereby sustained.

This suit is hereby strike out for being incompetent and the plaintiff shall pay costs.

Ordered accordingly.

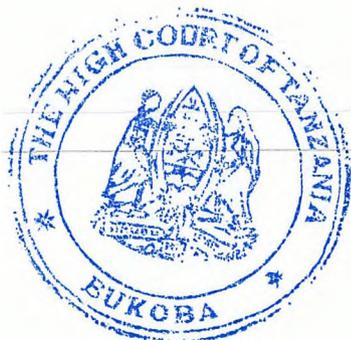



A. Y. Mwenda

Judge

13.8.2021

Ruling delivered in chamber under the seal of this court in the presence of the learned state Attorney for the defendants Mr. Buntuntu and in the presence of the Advocate for the plaintiff Mr. Kabunga.




A. Y. Mwenda

Judge

13.8.2021