

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

MBEYA DISTRICT REGISTRY

AT MBEYA

CONSOLIDATED LAND APPEAL NO. 59 AND 66 OF 2020

(Originating from the Decision of the District Land and Housing Tribunal for Mbeya
Application No. 130 of 2017)

MBEYA CITY COUNCIL APPELLANT

VERSUS

ROMUALD ANDREA MATERU1ST RESPONDENT

LUTH LIMBOKA MWESI 2ND RESPONDENT

STEPHANO ROBERT MANDOWA 3RD RESPONDENT

JUDGMENT

Date of last order: 13/07/2022

Date of judgment: 13/09/2022

NGUNYALE, J.

The first respondent ROMUALD ANDREA MATERU successful sued the appellant and other respondents over a land dispute in the District Land and Housing Tribunal for Mbeya at Mbeya hereinafter to be referred to as 'DLHT'. Both the appellant in one side and the 2nd and 3rd respondents in the other side were aggrieved by the victory of the 1st respondent, the



appellant preferred Land appeal No. 59 of 2021 and the 2nd and 3rd respondents preferred Land Appeal No. 66 of 2021 to challenge the said victory. Basing on the prayer of the parties the appeals were consolidated in order to be determine as one appeal per order of the Court dated 7th June 2022.

The factual background giving rise to this appeal may briefly be stated as follows; the 1st respondent was owning surveyed pieces of land described as plots No. 37 and 38 Block 'X' Sisitila within the city of Mbeya and another un-surveyed portion measuring $\frac{3}{4}$ of an acre at the same area. It is further alleged that without consent or consultation with the 1st respondent the appellant re-surveyed the suit land coming out with new plot numbers namely plot numbers 447,448,449,450, 451, 452 and 453 Block "C" Sisitila area in Mbeya City. Plot No. 451 Block "C" was allocated to the 3rd respondent. The said resurvey process on the land of the 1st respondent established new features namely roads and market. The 1st respondent alleged that he had exclusive right over the suit land after being issued with title deed, the re-survey has disturbed his development plan over the suit land, he strongly believed that he is a lawful owner of plot No. 37 and 38 Block "X" Sisitila and the un-surveyed portion, therefore the subsequent survey and re allocation were illegal. The



appellant contended that the re-surveying exercise had justification as far as the city land planning is concerned, the 1st respondent was to return the documents of ownership for re-allocation of new numbers basing on the new survey plan.

The first respondent preferred the Application No. 130 of 2017 in the DLHT seeking various reliefs including the declaration that he is a lawful owner of Plots No. 37, 38 and un surveyed portion also nullification of the results of the whole process of re-surveying. The DLHT granted the application with costs plus general damages in the tune of 7,000,000/= per judgment dated 30th July 2020.

The appellant in his memorandum of appeal raised four grounds of appeal challenging the findings of the trial Tribunal as follows; **one**, the DLHT failed to analyse evidence leading to unfair and unjust decision, **two**, the DLHT erred by holding that the appellant arbitrarily resurveyed the applicants land without due process of law, **three**, the DLHT erred to hold that the appellant conducted survey without abolishing the pre-existing survey plan hence reaching to erroneous decision and **lastly** the trial Tribunal erred to award general damages.

The cross appeal as filed by the 2nd and 3rd respondents was also premised in four grounds of appeal as may simply be paraphrased that; -



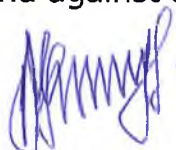
One, the trial Tribunal grossly and seriously erred both in law and fact to pronounce contradictory judgment against the appellant and the 2nd and 3rd respondents.

Two, the trial Tribunal grossly and seriously erred both in fact and law to allow the application in favour of the 1st respondent without considering the remaining bigger portion of the 3rd respondent's interests which were not in dispute

Three, the trial Tribunal erred to allow the application in favour of the 1st respondent who did not describe the size of small portion which projected into the 3rd respondent's interest which were not disputed.

Four, the DLHT grossly erred to nullify the whole survey in the 3rd respondents plot No. 451 Block C without ordering survey of the same to free a small portion of the 1st respondent's unsurveyed land.

The appeal was called for hearing where by the parties suggested the same to be heard by written submission, the suggestion was blessed by the Court. In the written submission, the appellant was represented by Modest Siwavula learned State Attorney and the 2nd and 3rd respondents were enjoying the service of James Berdon Kyando while the 1st respondent was represented by Amani Simon Mwakolo both learned Advocates. Both sides submitted for and against the appeal guided by the



grounds of appeal, for reasons which will be apparent in due course I will not dwell to consider the grounds of appeal and the relevant submissions.

After having in mind the rival submission by the parties guided by the grounds of appeal, the Court engaged to start determining the appeal on merit. In the Course of determining the appeal I recalled that the case involve Mbeya City Council as the appellant. The fact that it involved the city council I found it necessary to consider whether the suit complied to the amendments of the Government Proceedings Act Cap 6 R. E 2020 as made in February 2020. I reminded myself that the Application before the District Land and Housing Tribunal was filed around July 2017 and the decision of the Tribunal was pronounced on 30th July 2020. I had doubt whether the suit was competent before the trial Tribunal after the amendment of the Government Proceedings Act through section 25 of the Written Laws (Miscellaneous Amendment) Act No. 1 of 2020 which amended section 6 of the said Act by imposing two major procedural changes. **One** it was an obligatory procedure to join the Attorney General in all civil suits against the government and non-joinder of the same vitiates proceedings and **two** all civil suits against the government must be filed to the High Court.



Today I invited the parties to address the Court on whether the trial Tribunal had legal justification to continue with the suit without adhering to the said legal changes. Mr. Modest Siwavula assisted by Jibu Mbua and Hija Chande all learned State Attorneys appeared for the appellant. From the outset they declared their stance that the trial Tribunal did not comply to the existing legal regime relevant to suits against the government. They were of the view that Written Laws (Miscellaneous Amendment) Act came into force on 21st February 2020 in which its section 25 amended section 6 of the Government Proceedings Act Cap 5 R. E 2019 by declaring that all suits against the government the Attorney General must be joined as a necessary party. Non-joinder of the Attorney General vitiates proceedings and again the changes directed that all suits against the government must be filed before the High Court and no other court.

It was his further submission that from 21st day of February 2020 when the amendment was done the District Land and Housing Tribunal had no jurisdiction to hear the Application No. 130 of 2017 which is the subject of the present appeal. Because the said legal changes are procedural by nature, they had retrospective effect. On the issue of retrospective effect, he cited the case of **Lala Wino vs Karatu District Council**, Civil Application No. 132/02/2018 Court of Appeal of Tanzania (unreported)



that procedural amendment applies even to pending cases because the changes, start to be operational even to pending cases. Therefore, the trial Tribunal had no jurisdiction to continue to determine the application, he prayed the Court to quash the decision of the Tribunal and the appeal to be allowed with costs.

Mr. Aman Mwakolo who appeared for the first respondent Romuald Andrew Matteru supported the position submitted by the appellant's attorneys that the trial Tribunal had no jurisdiction to entertain the Application No. 130 of 2017 from the time Written Laws (Miscellaneous Amendment) Act No. 1 of 2020 came into force. He prayed the Court to nullify proceedings and judgment of the Tribunal for want of jurisdiction. He prayed the same to be done without costs.

Ms. Edina Mwamlima learned advocate who represented the 2nd and 3rd respondents or appellants in Land Appeal No. 66 of 2020 submitted in favour of her clients. She supported the arguments of the appellant's attorney and the first respondent Counsel that the Tribunal lacked jurisdiction after the amendments of the Government Proceedings Act through the Written Laws (Miscellaneous Amendment) Act No. 1 of 2020. She prayed the decision of the DLHT to be nullified without costs.



Having in mind the submission of the parties about the issue of jurisdiction I wish to revisit Written Laws (Miscellaneous Amendment) Act No. 1 of 2020 which under section 25 amends section 6 (3) and (4) of the Government Proceedings Act to read; -

(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 is alleged to have committed the civil wrong on which the civil suit is based, and the Attorney General shall be joined as a necessary party.

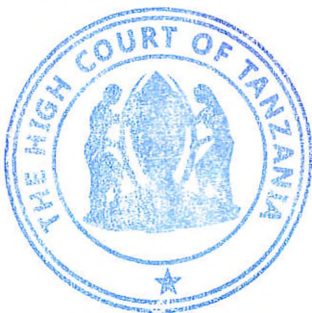
(4) Non-joinder of the Attorney General as prescribed under subsection (3) shall vitiate the proceedings of any suit brought in terms of subsection (3)."

The above provision imposes an obligatory procedure that the Attorney General must be joined in every civil suit against the government and non-joinder of the Attorney General vitiates the proceedings of any suit against the government. As correctly submitted by the appellant's attorneys and supported by the other parties is that the amendment involves procedural aspect which acts retrospective. The case of **Benbros Motors Tanganyika Ltd versus Ramanlal Haribal Patel** (1967) HCD No. 435 is relevant to give a clue on what to do in such amendments. It is well settled that, if the enacted law or amendment affects the substantive rights like the right of action, then it will not operate retrospective, but if it affects the procedures only, then retrospective operation of the same is

allowed like in this case. The effect to the suit at hand is retrospective therefore from the time the amendment came into force that is 21st February 2020 the trial Tribunal lacked jurisdiction to continue with the hearing and determination of Application No. 130 of 2017, the appellant ought to start afresh to claim his rights guided by the new regime of suits against the government in regard to section 6 and section 7 of the Government Proceedings Act.

To that end, I agree with the parties that the proper remedy is to quash proceedings and judgment and to set aside orders met by the Tribunal without jurisdiction as I hereby do. Both appeals are allowed, because the appeals have been determined basing on the legal issue raised ***suo motu*** by the Court each party will bear his or her own costs. Order accordingly.

Dated at Mbeya this 13th September 2022.




D. P. Ngunyale
Judge