

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM DISTRICT REGISTRY)

AT DAR ES SALAAM

CIVIL APPEAL NO. 150 OF 2022

*(Appeal against the whole Judgement and Decree of the Honorable District Court of Kinondoni
at Kinondoni by Jacob RM dated December, 2020 in Civil Case No. 100 of 2019.*

TPB BANK PLC APPELLANT

VERSUS

UMOJA WA MADEREVA WA MABASI TANZANIA RESPONDENT

JUDGMENT

31st March & 14th April, 2023.

MWANGA, J.

The appellant, **TPB BANK PLC** instituted an appeal against Judgment and Decree issued by Kinondoni District Court in Civil Case No. 100 of 2019 whereby the respondent's claim succeeded at the trial court. In its order, the trial magistrate held that:-

"The defendant shall pay the plaintiff Tshs. 4, 200,000/= as specific damages and where as general damages which lies to the court's discretion to grant shall be 20,000,000/= which shall cover

the inconveniences that came with the loss of their funds and being rendered unable to operate their account”.

It is important to stress out that before filing this appeal, the appellant was caught out of time, hence he filed application for extension of time to file an appeal out of time through Miscellaneous Civil Application No. 77 of 2022. The same was granted on 10th August, 2022 on ground of illegality. For easy of refence, Hon. Dr. Mango, J. had this to say:-

“The Government Proceedings Act, requires the plaintiff to issue 90 days’ notice of intention to sue and serve the same to the Attorney General and Solicitor General. Unfortunately, the plaintiff in Civil Case No. 100 of 2021 did not issue such notice. In addition, all cases against and for the government institutions should be lodged before the High Court as per dictates of section 6(4) of the Government Proceedings Act. Civil Case No. 100 of 2021 was determined by the Resident Magistrate Court of Dar es salaam at Kisutu which basically does not have jurisdiction to entertain cases instituted against and by Government institutions”.

As a result of the above, the appellant preferred this appeal containing four grounds as follows: -

1. That the learned trial Magistrate erred in law and fact to determine the matter involving the government entity while the plaintiff in the trial court has not submitted to the relevant government entity a ninety days' notice of intention to sue the government.
2. That the learned trial Magistrate erred in law and fact to determine the matter with none joinder of the Attorney General as a necessary party.
3. That the learned trial Magistrate erred in law and fact to determine the matter while the trial court had no jurisdiction to determine the suit.
4. That the learned trial Magistrate erred in law and fact to analyze evidence and reached into erroneous decision.

The brief facts relating to this appeal as gathered from the available records and submission of the parties are that; the respondent had earlier on sued the appellant (Tanzania Postal Bank, Ubungo Branch) for allegations of breach of banker-customer relations. Later on, the plaint was amended and inserted a new name of the appellant **TPB BANK PLC** where also additional claims of allegation of negligence on the part of the appellant was added. That, the appellant being the banker for the respondent acted

negligently during the change of signatories in the respondents' account who effected several transactions resulting to loss of money from the said account. The alleged negligence was based on the premise that the new signatory was not given mandate by the respondent.

On the basis of such claim, the respondent prayed for, among things, special damages at the tune of Tshs. 112,000,000/= and general damages of Tshs. 50,000,000/=. On the other hand, the appellant denied the claims in toto. It was her response that, the change of signatories was initiated by the respondent herself.

Parties argued the appeal by way of written submission. The appellant submission was drawn and filed by Epaphro Mwego, learned State Attorney while the respondent submission was drawn and filed by John Seka, the learned Advocate.

Let me start with the third ground of appeal for obvious reason. If this ground is argued in the affirmative, it may dispose of the matters as a whole. The leaned State Attorney raised fundamental issue of jurisdiction of the trial court to entertain matter. It was his submission that, the respondent did not comply with the provision of Section 6(2) of the Government Proceedings Act, [Cap. 5 R.E] 2019 as there shall be no suit instituted against the

government entity unless the claimant had previously submitted a ninety days' notice of intention to sue to such entity and save a copy of such notice to the Attorney General and the Solicitor General. He also asserted that, the law under Sections 6(3) and 6 (5) of the Government Proceedings Act requires that all suits against the Government shall be brought against the Attorney General as a necessary party. Furthermore, the law under Section 6 (4) and 7 of the said Act vests jurisdiction to try suits involving the government to the High Court within the area where the claim arose.

The counsel cited the case of **Gladys Metili vs TPB Bank PLC & Others**, Land Case No. 2 of 2020, High Court of Tanzania, District Registry of Arusha, At Arusha (unreported) where the court held that, it is a common knowledge that the government of Tanzania is the majority shareholder in TPB Bank PLC, hence the provision of the Government Proceedings Act applies and failure to observe such provisions renders the suit incompetent for failure to issue 90 days' notice and non-joinder of the Attorney General as a necessary party.

When providing for the background of the creature of the appellant, the counsel stated that appellant came into being by the Act of parliament, The Tanzania Postal Bank Act (Repeal and Transitional Provisions) Act, 2015, Act

No. 18 of 2015 which repealed the Tanzania Postal Bank Act, 1991 and provided for incorporation of the Bank to be known as TPB Bank Limited where the Government of the United Republic of Tanzania is the majority shareholder of 83.44% of all shares. According to the counsel, the appellant is the government entity where the respondent was supposed to issue a 90 days' notice of intention to sue, join the Attorney General as a necessary party and institute the matter at the High Court as the forum with competent jurisdiction under the law.

Above all, the counsel was of the view that, the issuance of 90 days' notice and to join the Attorney General in suits against the government is mandatory requirements and non-joinder of the same vitiate the proceedings. In support of his argument the counsel referred the case of Mbeya **City Council Vs Romuald Anfred Materu and 2 Others**, Consolidate Land Appeal No. 59 and 66 of 2020, High Court of Tanzania, Mbeya District Registry (Unreported) and the case of **Fatuma Hamisi Sultani Vs TPB Bank PLC & 2 Others**, Land Case No. 88 of 2020, High Court of Tanzania, Land Division, at Dar es Salaam, (Unreported).

Per contra, Mr. John Seka who appeared on behalf of the respondent resisted the arguments of the learned State Attorney. It was his submission

that, the suit was filed in 2019 and its subsequent refiling on 19.02.2020 where there was no requirement of the present respondent to comply with Section 6(2) (3) (4) and 7 of the Government Proceedings Act because the appellant was not a **government Ministry; Department or officer** in terms of Section 6(2) of the GPA. The counsel also added that, the fact that the present appellant did not raise this issue during the trial court the 2020 amendments to the GPA cannot affect the suit of the respondent for the reasons that the appellant; although partially owned by the Government; was not covered by the GPA as it existed independently and with its own legal capacity to sue and be sued as a company incorporated under the Companies Act, Cap 212.

The counsel cited the cases of **Commissioner General [TRA] versus CRJE Estate Limited [2022] TZCA 614** and the case of **Lala Wino versus Karatu District Council [2019] TZCA 46** where it was held that when an amendment of the law intends to affect a substantive accrued right of a litigant that law is deemed not to act retrospectively. It will only be deemed to act retrospectively, if that intention is indicated in the amending act. The counsel also asserted that, cases of **Glady Metili Vs TPB Bank PLC; Mbeya City Council Vs Romuald Andrea Materu** and **Fatuma**

Hamisi Sultan Vs TPB Bank PLC & 20Others as cited by the appellant are inapplicable and distinguishable in the circumstances.

In further support of his case, the counsel cited the case of **Commissioner General [TRA] Vs CRJE Estate Limited** (Supra) where the court laid down at page 18 and 19 of the judgment that a law affecting substantive rights does not operate retrospectively unless it is express in the amended law. That was also the position in **Municipality of Mombasa vs. Nyali Ltd** (1963) E.A. 371 which was referred in **Bidco Oil and Soap Ltd Vs Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 89 of 2009 (unreported).

I have gone through the detailed submission of the parties on this ground of appeal. It is all about retrospective application of the procedural laws in cases where there is an amendment. It is well settled law 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.

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 imposed two major procedural changes.

One, a person who want to sue the government shall issue a 90 days' notice of intention to sue and serve the same to the Attorney General and Solicitor General. **Two**, the Attorney General shall be joined in all suits against the government. **Three**, all suits against the government must be filed in the High Court.

I am mindful that the suit against the appellant was filed before the District Court of Kinondoni at Kinondoni on 2nd April, 2019. Subsequently, the hearing of the suit commenced on 2nd June, 2020 while the Written Laws (Miscellaneous) Amendment Act came into force on 21st February, 2020.

Furthermore, pleadings were marked complete and the 1st PTC was conducted on 23rd March, 2020. The matter was then forwarded for mediation upon which on 1st April, 2020 the mediation was marked failed. The issues were framed on 20th May, 2020 and the hearing of witnesses commenced on 2nd June, 2020. All these incidents occurred when the amendment in Written Laws (Miscellaneous Amendment) Act No.1 of 2020 was already enforce.

It is undoubtly maintainable that, the insurance of notice to the Attorney General or joining the Attorney General as a necessary party and as such, lodging the suit involving the government at the high court is nothing but

purely procedural matters. Therefore, Written Laws (Miscellaneous Amendment) Act No.1 of 2020 had a retrospective effect. According to the authority in Mbeya **City Council v. Romuald Anfrea Materu and 2 Others**, (supra) the court had this observation:

"As correctly submitted by the appellant's Attorney and Supported by the other parties is that the amendment involves procedural aspect which acts retrospective. The case of Benbros Motors Tanganyika Ltd Vs Ramantal 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 allowed like in this case."

From the above observation, I am inclined to hold that there were no substantive rights of the parties that were affected. In the case of **Bidco Oil and Soap Ltd Vs Commissioner General, Tanzania Revenue Authority** (supra) similar observation was registered to the effect that: -

"Whether or not legislation operates retrospectively depends on the intention of the enacting body as manifested by the legislation. In seeking to ascertain the intention behind the legislation the courts are guided by certain rules of construction. One of these

rules is that if the legislation affects substantive rights, it would not be construed to have retrospective operation unless a clear intention to that effect is manifested; whereas if it affects procedure only, prima facie it operates retrospectively unless there is a good reason to the contrary"

The learned counsel for the respondent was unable to show substantive rights which are affected by such amendment. As I have highlighted above, the amendments of the written laws (Miscellaneous Amendment) Act No. 1 of 2020 which was enforce on the 21st February, 2020 came into force when the suit was at its early stages. In the circumstances, the respondent has said nothing as to why such miscellaneous amendment was not complied with. This ground alone, disposed the whole appeal.

In light of the above, I entertain no doubt that the proceedings were conducted at the trial court without prerequisite jurisdiction. Therefore, that being said and done, I allow the appeal and declare that the proceedings in Civil Case No. 100 of 2019 are a nullity. The same is hereby quashed and set aside. In the circumstances, I issue no order to costs.

Order Accordingly.



H. R. MWANGA

JUDGE

14/04/2023

COURT: Judgment delivered in Chambers this 14th day of April, 2023 in the presence of Advocate Pius Malisa for the appellant and advocate John Seka for the respondent.



H. R. MWANGA

JUDGE

14/04/2023