

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA DISTRICT REGISTRY

AT ARUSHA

LAND APPEAL NO. 116 OF 2022

(Appeal from the Decision of the Assistant Registrar of Titles Arusha Region, Juliana Ngonyani dated 9th day of June 2022 intending to change the ownership of the in-plot No. 146/3 Block "GG" Olorien. Under Certificate of Title No. 14258 Arusha Municipality from Tropical African Trails Limited to Wilderness Trails Limited)

BETWEEN

TROPICAL AFRICA TRAILS LIMITED..... APPLICANT

VERSUS

ASSISTANT REGISTRAR OF TITLES ARUSHA.....RESPONDENT

WILDERNESS TRAILS LIMITED..... NECESSARY PARTY

08/05/2023 & 14/06/2023

RULING

MWASEBA, J.

This is the ruling in respect of the preliminary objection raised by the learned counsel for the 1st respondent on the following points of law:

- 1. That, the appeal is bad in law for contravening Section 6 (4) of the Government Proceedings Act, Cap 6, R.E 2019 as amended by*



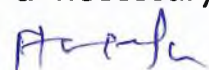
Section 25 (a) of the Written Laws (Miscellaneous Amendments)

Act No. 1 of 2020.

2. That, the appeal is bad in law for appealing against the wrong party.

During the hearing of the raised preliminary objection, Ms. Zamaradi Johanness learned State Attorney appeared for the 1st respondent, Mr. Kapimpiti Mgalula, learned Advocate appeared for the 2nd respondent, whereas Mr. Ngereka Miraji, Learned Counsel appeared for the applicant. With the consent of the parties and leave of the court, the hearing was done by way of written submissions.

Submitting in respect of the 1st point of preliminary objection, Ms. Zamaradi submitted that, the first respondent is a government institution in the Ministry of Lands, Housing and Human Settlements Development. Therefore, before instituting a suit against him **Section 6 (3) and (4) of Government Proceedings Act**, Cap 5, R.E 2019 as amended by **The Written Laws (Miscellaneous Amendments) Act**, No. 1 of 2020 must be adhered to. She submitted further that as per the cited laws, all the suits against the government must include the Attorney General as a necessary party. Thus, this appeal is incompetent for being instituted without joining Attorney General as a necessary party. She



referred this court to several cases including the case of **Hemed Omary Lweishanga vs Tanzania Electric Supply Co. Limited**, Misc. Land Application No. 83 of 2017 (HC at Mwanza, Unreported).

It was her further submission that, a term suit also includes appeals originating from the office of the registrar as long as they determine the right of the parties before the court. She argued further that, no law excludes an Attorney General to be included in an appeal from the Assistant Registrar of Titles, thus failure to do it, it is a defect that vitiates the whole proceedings. She referred this court to the case of **Burafex Limited (Formerly known as Ametaa Limited) vs The Registrar of Titles**, Civil Appeal No. 235 of 2019 (HC, Unreported). So, she prayed for the PO to be sustained and the appeal to be struck out with costs.

Contesting the raised points of preliminary objection, Mr. Miraji, the learned counsel for the applicant submitted that, this appeal originated from the decision of the Assistant Registrar of Title as per **Section 102 (1) of the Land Registration Act**, Cap 334 R.E 2019. He submitted further that the law is very clear as to when the Attorney General will join or be joined as a necessary party. He added that **Section 102 (4)** of cap 334 gave the 1st respondent a chance to name a person he thinks

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needs to be heard on the appeal, but until now he did not do so. The same was provided under **Section 6A (1) of the Government Proceedings Act** which allows the Attorney General to intervene in any suit or matter instituted by or against the Government.

He submitted further that the 1st respondent was supposed to notify the Attorney General who would decide if he would appear or not, but it was not the duty of the applicant. He distinguished the cited case of **Burafex Limited (Formerly known as Ameta Limited)** (supra) as in that case it was decided based on **Section 6 (1) (2) (3) and (4)** without considering **the Written Laws (Miscellaneous Amendments)** (Act No. 4) 2019 which introduced **Section 6A (1) of The Government Proceedings Act**. So, he argued that failure to join the Attorney general is not fatal as he is allowed to be joined at any stage of the case. He prayed for the raised preliminary objection to be overruled with costs.

In a brief rejoinder, Ms. Zamaradi reiterated what has already been submitted earlier in their submission in chief and added that counsel for the applicant wanted to mislead the court and pre-empt the preliminary objection which is not allowed by the law. She maintains her prayer for



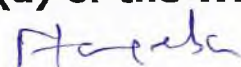
the appeal to be struck out after the raised preliminary objection are sustained.

Having heard the rival submissions from the learned counsels of both parties that support and oppose the raised preliminary objection, the issue which will be determined by this court is whether the raised preliminary objection has merit or not.

The counsel for the 1st respondent herein raised a preliminary objection that the appeal is incompetent for failure to join the Attorney General as a necessary party and prayed for the appeal to be struck out with costs. On the other hand, while opposing the raised preliminary objection the counsel the appellant submitted that as the law allows the Attorney general to join in a case at any time, there is no need to strike out the appeal, but the 1st respondent could have filed an application so that he can be joined as a necessary party on the respondent's side.

In determining the raised preliminary objection, it is better to look at the provisions of the law for the court to satisfy itself whether the Attorney General needs to be joined by the appellant or he can join at any time even if he was not joined at first.

Section 6 (3) of the Government Proceedings Act, Cap 5 R. E
2019 as amended by the Provision of **Section 25 (a) of the Written**



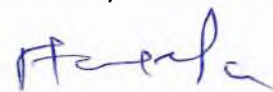
Laws (Miscellaneous Amendments) Act No. 1 of 2020 provides that:

*"The principal Act is amended in section 6, by (a) deleting subsection (3) and substituting for it the following- "(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, an 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.**"(emphasis added)*

As per the Black's Law Dictionary, 9th Edition a term "Suit" means *Any proceeding by a party or parties against another in a court of law.*

Guided by the cited provision of the law and the definition of the suit, it is crystal clear that all suit includes an appeal which involve a government institution, the Attorney General must be included as a necessary party as required by the law which used the term shall.

On his side while opposing the raised preliminary objection, Mr. Miraji was of the view that the laws are not supposed to be read in isolation since as per **Section 6A (3)** of Cap 5 R.E 2019, it was the 1st



respondent who were supposed to notify Attorney General of the impending suit filed against him. The cited provisions read as follows:

*"Notwithstanding the provisions of any written law, a ministry, local government authority, independent department or other government institution **shall have a duty to notify the Attorney General of any impending suit** or intention to institute a suit or matter against the Authority."* (Emphasis is mine).

However, when Section **6 (3) of the Government proceedings Act**, was amended by **Section 25 (a) of the Written Laws (Miscellaneous Amendments) Act**, No. 1 of 2020, makes it mandatory for the Attorney General to be joined as a necessary party. Therefore, I concur with the learned counsel for the 1st respondent that the appellant was supposed to join Attorney General as a necessary party in compliance to **Section 6 of the Government proceedings Act**. As it was held in the case of **Burafex Limited (formerly known as) Ametaa Limited vs Registrar of Titles**, (supra) that:

"...non-joinder of the Attorney General in terms of Section 6 (3) of GPA will cause the government not to be represented by his Chief Legal Adviser and so vitiates the proceedings."



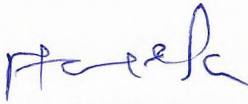
See also the case of **Hussein Abdallah and Another vs Pravin Shah and Another**, Land Case No. 7 of 2021 (HC at Mwanza, reported at Tanzlii).

For the reasons alluded to herein, this court finds merit on the raised points of Pos and the same are sustained. Consequently, the appeal is hereby struck out with no order as to costs.

It is so ordered.

DATED at **ARUSHA** this 14th day of June 2023.




N.R. MWASEBA

JUDGE