

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(TABORA DISTRICT REGISTRY)

AT TABORA

LAND APPEAL NO. 21 OF 2022

HAMISI MUSA APPELLANT

VERSUS

LIMBU IGUKULA 1ST RESPONDENT

SHELA VILLAGE COUNCIL 2ND RESPONDENT

Date of Last Order: 07.06.2023

Date of Ruling: 26.06.2023

RULING

KADILU, J.

The appellant under legal representation of Mr. Ally Maganga learned Advocate, filed this appeal against the respondents. The first respondent was represented by Mr. Kashindye Lucas Advocate, whereas the second respondent has never appeared in court since the appeal was filed. Before the date of hearing the appeal, the court observed that Shela Village Council was sued in the District Land and Housing Tribunal without joining the Local Government Authority and the Attorney General. It was further observed by the court that the appeal was filed out of time as the impugned judgment was delivered in June 2021 and the present appeal was filed in October, 2022. Thus, the court invited Advocates for the parties to address it about the two observations.

Mr. Ally informed the court that he was engaged in this case at the appellate stage, but when the dispute was determined in the Tribunal, the

parties were not proper. Mr. Ally explained that under Section 6 of the Government Proceedings Act, when the Government is sued, the Ministry Department and the Attorney General are supposed to be joined. According to him, he could not add the parties at the appellate stage who were not part to the case in the Tribunal. Mr. Ally concluded that the proceedings in the Tribunal were a nullity.

Regarding time limitation, Mr. Ally stated that he sought an extension of time to file this appeal out of time and the same was granted on 20/09/2022, but there was an error as he omitted to attach a copy of the ruling. He however elaborated that the court granted him sixty (60) days from 20/09/2022 within which he could file the appeal. He then filed the present appeal on 30/10/2022 so, it is well within time.

In reply, Mr. Kashindye submitted that the suit was filed in the Tribunal in 2019 when there was no requirement to join the Attorney General, but in 2020 the law was amended and introduced a mandatory requirement to join the Attorney General as a necessary party. According to Mr. Kashindye, being a procedural requirement, the plaintiff was required to seek leave of the court to add the Attorney General and the District Authority. Concerning time limitation, Mr. Kashindye prayed for the court to direct Mr. Ally to attach the said ruling granting him an extension of time.

Mr. Kashindye added that apart from the observation by the court, the suit in the Tribunal offended the provisions of Section 190 (1) and (2) of the

Local Government District Authorities Act as far as the requirement of notice is concerned. The learned Advocate concluded that the omission vitiated the proceedings of the tribunal. He prayed the court to nullify the said proceedings as they were tainted with illegalities.

I appreciate the arguments by Counsel for both parties. Basically, none of them has disputed that the case at the Tribunal was surrounded by some irregularities. Section 6 (3) of the Government Proceedings Act, Cap. 5 as amended by the Written Laws (Misc. Amendments) Act, No. 1 of 2020 stipulates as follows:

"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."

At the same time, Section 26 (3) of the Local Government District Authorities Act provides that the District Executive Director is required to be joined as a party in any suit or matter instituted by or against the Village Council, and for that purpose the Village Council shall have a duty to notify the District Executive Director of any impending suit or intention to institute a suit or matter against the Village Council. In addition, Section 190 (1) (a) of the Local Government District Authorities Act as amended in 2020 provides that no suit shall be commenced against a local government

authority unless a ninety days' notice of intention to sue has been served upon the local government authority and a copy thereof to the Attorney General and the Solicitor General.

The question that requires determination is the effect of these amendments on the instant appeal that was instituted before the amendment came to play, but heard after the amendments came into application. The case of ***Lala Wino v Karatu District Council***, Civil application No. 139 of 2019, gives a clue on what to do in such kind of amendments. In that case it was stated that:


"When new enactment deals with rights of action, unless it is so expressed in the Act, an existing right of action is not taken away, but when it deals with procedure only, unless the contrary is expressed, the enactment applies to all actions, whether commenced before or after the passing of the Act."

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 retrospectively, but if it affects the procedures only, then retrospective operation of the same is allowed. I agree that, the amendments noted above created new procedures to be followed by persons including the appellant. It is a requirement of the law that, there should be a notice to the second respondent and the Attorney General prior to the institution of the suit and, the Attorney General must be joined as a necessary party, short of which the suit becomes vitiated.

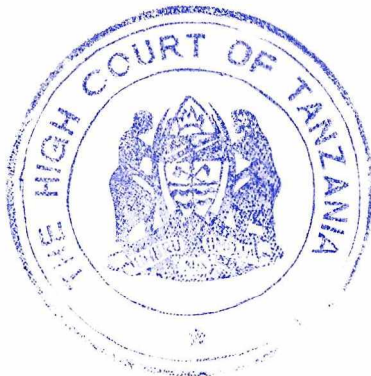
However, under Section 7 of the Government Proceedings Act, it is stipulated that no civil proceedings against the Government may be instituted in any court other than the High Court. For this reason, it is my considered opinion that the District Executive Director and the Attorney General could not be joined when the matter was on progress in the District Land and Housing Tribunal unless the suit was withdrawn and filed in the High Court. Nevertheless, the requirement of notice was not required to be dispensed with. For these reasons, I find this appeal as incompetent before the court for not joining the District Executive Director and for lack of proper notice.


Consequently, I strike out the appeal with leave to refile in this court after compliance with legal procedures discussed above. As these issues were raised by the court *suo moto*, each party shall bear its own costs.

Order accordingly.


KADILU, M.J.,
JUDGE
26/06/2023

Ruling delivered in chamber on the 26th Day of June, 2023 in the presence of Mr. Ally Maganga, Advocate for the appellant.




KADILU, M. J.
JUDGE
26/06/2023.