

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**(DODOMA DISTRICT REGISTRY)**

**AT DODOMA**

**LAND APPEAL NO. 7 OF 2021**

*(Originating from the decision of the District Land and Housing Tribunal for Dodoma  
at Dodoma in Land Application No.321 of 2019)*

**KHUZEMA KURBANI.....APPELLANT**

**VERSUS**

**YUSUFALLY JIVANJI ISMAIL..... 1<sup>st</sup> RESPONDENT**

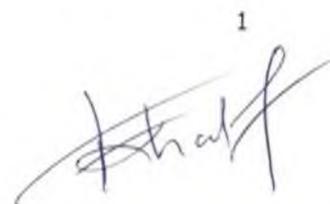
**CITY DIRECTOR DODOMA CITY COUNCIL.....2<sup>nd</sup> RESPONDENT**

**JUDGMENT**

*6/6/2023 & 30/8/2023*

**KHALFAN, J.**

The Appellant, Khuzema Kurbani, unsuccessfully sued the Respondents, Yusuf Ally Jivanji Ismail and the City Director Dodoma City Council in the District Land and Housing Tribunal for Dodoma at Dodoma, *inter alia*, for a declaration that he is the lawful tenant to the 2<sup>nd</sup> Respondent. Aggrieved with the trial tribunal's decision, the Appellant has come to this Court by way of an appeal. The Appellant's Memorandum of Appeal contains two (2) grounds of appeal.

1  


On the 27<sup>th</sup> day of April, 2023 when the appeal was called for hearing, the Appellant was represented by Mr. Juma Mwakimatu; learned advocate whilst the 1<sup>st</sup> Respondent was represented by Ms. Jane Nkya, learned advocate and Ms. Hellen Njowoka, learned state attorney, represented the 2<sup>nd</sup> Respondent. The parties agreed that the appeal be disposed by way of written submissions.

On the 1<sup>st</sup> ground of appeal, the Appellant submitted that the trial tribunal had no jurisdiction to entertain the matter following the enactment of the Written Laws (Miscellaneous Amendment) Act, Act No. 1 of 2020 which amended several provisions of the laws covered in different statutes, section 6(2), 6(3) and 6(4) of the Government Proceedings Act [Cap 5 R.E 2019] inclusive. That, section 6(3) of the Government Proceedings Act [Cap 5 R.E 2019] was amended by addition of the words: government departments, ministry, local government authority, executive agency, public corporation, parastatal organization or public company; all to mean Government.

That, section 6(4) of Government Proceedings Act [Cap 5 R.E 2019], was amended to the effect that the Attorney General must be joined as party when suing the government and that failure to do so does vitiate the proceedings. Further to that, section 6(2) of the Government



Proceedings Act [Cap 5 R.E 2019] requires one to issue ninety (90) days' notice before suing the government.

The Appellant thus submitted that the 2<sup>nd</sup> Respondent (City Director Dodoma City Council) fell under the description of government under section 6(3) of the Government Proceedings Act [Cap 5 R.E 2019] hence a need for compulsory adherence to section 6 of the Government Proceedings Act [Cap 5 R.E 2019].

The Appellant added that although the Written Laws (Miscellaneous Amendment) Act, Act No. 1 of 2020 came into force when Land Application No.321 of 2019 was in progress before the trial tribunal, the same were to be observed since the law in Tanzania is that procedural laws operate retrospectively unlike substantive laws. To fortify his argument, the Appellant referred the Court the case of **Lala Wino v. Karatu District Council** (CAT) Civil Application No. 132/02/2018, Arusha Registry (unreported) wherein page 7 of the ruling the Court of Appeal held:

*"In the premises, I am of the firm view that the amendment of section 47(1) of Cap 216 (supra) is retrospective on two grounds: first, it pertains to the procedure governing the exercise of the right of appeal to this Court in respect of a land matter arising*



*from the original exercise of the jurisdiction of the High Court. Secondly, the amendment contains no express stipulation limiting the ostensible retroactivity of that new provision.”*

On the 2<sup>nd</sup> ground of appeal, as raised in alternative to the 1<sup>st</sup> ground of appeal, the Appellant submitted that the trial tribunal misdirected itself in holding that the 2<sup>nd</sup> Respondent had no obligation towards the Appellant in observing the subsisting tenancy agreement. The Appellant argued that he was the lawful tenant of the 2<sup>nd</sup> Respondent as per the lease agreement executed between him and the 2<sup>nd</sup> Respondent. And that the 1<sup>st</sup> Respondent was the caretaker to the Appellant’s leased business premise as per the caretaker agreement executed between the him and 1<sup>st</sup> Respondent when the Appellant had to take care of his wife who was suffering from cancer. The Appellant submitted that without his knowledge, the 2<sup>nd</sup> Respondent re-leased the premises to the 1<sup>st</sup> Respondent while he had been throughout paying rent and observing the lease agreement.

The Appellant thus argued that the act of the 2<sup>nd</sup> Respondent to re-lease the premise without his involvement was unlawful and contrary to law since it was a clear breach of the lease agreement being it a contract. That, the parties’ thereto lease agreements are bound by the provisions

A handwritten signature in blue ink, appearing to be 'A. Hall', is written over the page number.

therein. To back up his point, the Appellant referred the Court to the case of Mohamed Abood as the attorney of **Walid Abood Salehe v. D.F.S Express Lines LTD** (CAT) Civil Appeal No. 282 of 2019, Dar es Salaam Registry (unreported) wherein, on page 13, the Court of Appeal in determining whether there was breach of the lease agreement in respect to the parties therein it held that:

*"The signing of such agreement signified that the parties agreed to be bound by its terms and conditions which is in line with a cardinal principle of the law of contract that parties are bound by the terms and conditions of the agreements they enter on their own free will."*

The Appellant prayed the Court to allow the appeal, quash and set the decision of trial tribunal while ordering a re-trial of the matter.

In reply, the 1<sup>st</sup> Respondent contested the appeal. In respect to the 1<sup>st</sup> ground, he submitted that Land Application 321/2019 had begun to be heard (that was since 13/2/2020) before the amendment of the law had been published and that for the interest of justice, the case could not be transferred to the High Court since the trial tribunal was seized with jurisdiction over the same. To back up his point, the 1<sup>st</sup> Respondent

A handwritten signature in blue ink, appearing to be 'A. H. H. H.', is written over the page number.

referred the Court to section 22 of the Government Proceedings Act [Cap 5 R.E 2019] which provides that:

*Except as is otherwise in this Act expressly provided, the provisions of this Act shall not affect proceedings which have been instituted before the commencement of this Act.*

Relying on the above section 22, the Respondent submitted that the argument by the Appellant that the amendment which applies retrospectively was baseless. The 1<sup>st</sup> Respondent prayed the Court to dismiss the 1<sup>st</sup> ground of appeal since it lacks merit.

With regard to the 2<sup>nd</sup> ground of appeal, the 1<sup>st</sup> Respondent replied that the trial tribunal was right to hold that the 2<sup>nd</sup> Respondent had no obligation towards the Appellant in observing the subsisting tenancy agreement because the Appellant was supposed to inform the 2<sup>nd</sup> Respondent of his willingness to renew the lease agreement, the act which was part of the terms in the lease agreement.

The 1<sup>st</sup> Respondent further argued that as per the evidence tendered in the trial tribunal, the Appellant had received all his machines which were used in the photo studio from the 1<sup>st</sup> Respondent and when the said machines arrived in Dar-es-Salaam, the Appellant sent his driver



to receive them whereby the driver was issued with receipts thereof, an act which signified that the Appellant was no longer going to continue being the 2<sup>nd</sup> Respondent tenant. That the 1<sup>st</sup> Respondent legally applied for tenancy from the 2<sup>nd</sup> Respondent and he was accordingly granted. The 1<sup>st</sup> Respondent prayed the Court to dismiss the 2<sup>nd</sup> ground of appeal as well; as it lacks merits.

The 2<sup>nd</sup> Respondent also contested the appeal. In response to the 1<sup>st</sup> ground of appeal, the 2<sup>nd</sup> Respondent submitted as the 1<sup>st</sup> Respondent that when the Written Laws (Miscellaneous Amendments) Act, Act No.1 of 2020 was enacted, Land Application No.321/2019 was already in progress before the trial tribunal. Thus, pursuant to section 22 of the Government Proceedings Act [Cap 5 R.E 2019] this law could not affect the proceeding in Land Application No. 321/2019. The 2<sup>nd</sup> Respondent submitted that the trial tribunal was therefore seized with the jurisdiction over the matter.

Regarding the 2<sup>nd</sup> ground of appeal, the 2<sup>nd</sup> Respondent submitted that, the 2<sup>nd</sup> Respondent and the Appellant had been in a tenancy agreement which ended in the year, 2015. That, the Appellant never renewed the agreement. Hence, the 2<sup>nd</sup> Respondent had no obligation towards the Appellant in observing the subsisting tenancy agreement.



That, being the legal owner of the premises, during his routine visit, the 2<sup>nd</sup> Respondent found the 1<sup>st</sup> Respondent in operations of the business within his premises. That, upon such discovery the 2<sup>nd</sup> Respondent decided to execute a new tenancy agreement with the new tenant (the 1<sup>st</sup> Respondent).

The 2<sup>nd</sup> Respondent argued that he had no obligation to involve the Appellant when making his decision since there was no subsisting relationship between them. The 2<sup>nd</sup> Respondent submitted that he had not therefore breached any agreement by handing over the suit premise to be operated by the 1<sup>st</sup> Respondent. The 2<sup>nd</sup> Respondent prayed the Court to dismiss the appeal.

Having considered the parties' written submissions for and against the appeal in the Court through the service of their learned advocates, the Court has had regard to their submissions and easily finds that the trial tribunal had no jurisdiction to adjudicate Land Application No. 321 of 2019 before it. This is due to advent of the procedural law on institutions of suits against the government brought by the Written Laws (Miscellaneous Amendments) Act, Act No.1 of 2020 which came into operation on the 14<sup>th</sup> day of February, 2020.

A handwritten signature in blue ink, appearing to read 'H. H. H.', is located in the bottom right corner of the page.

The word "Government" as defined in the provisions of section 16 (4) of the Government Proceedings Act [Cap 5 R.E 2019] introduced by the Written Laws (Miscellaneous Amendment) Act, Act No. 1 of 2020, include a government ministry, local government authority, independent department, executive agency, to name a few. Section 6(3) of the Government Proceedings Act [Cap 5 R.E 2019] as amended by the Written Laws (Miscellaneous Amendment) Act, Act No. 1 of 2020, mandatorily provides that all suits against the government shall upon the expiry of the notice period be brought against the government, ministry, government department, local department, local government authority, executive agency, public corporation, parastatal organisation 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.

Section 6(2) of the Government Proceedings Act [Cap 5 R.E 2019] provides that no suit against the government shall be instituted unless the claimant has issued a ninety (90) days' notice of his intention to sue the government. Section 6(4) of the Government Proceedings Act [Cap 5 R.E 2019] as amended by the Written Laws (Miscellaneous Amendment) Act, Act No. 1 of 2020, is explicit that non- joinder of the Attorney General shall vitiate the proceedings of any suit brought in terms of section 6(3)

A handwritten signature in blue ink, appearing to be 'A. Khalid', is written over the page number.

of the Act. Section 7 of the Government Proceedings Act [Cap 5 R.E 2019] requires all suits against the Government to be instituted in the High Court of the United Republic of Tanzania. Further, section 10 of the Government Proceedings Act [Cap 5 R.E 2019] imperatively requires civil proceedings by or against the Government to be instituted by or against the Attorney General.

Undisputed, the above provisions of the law provide the procedure for civil suits against the government. What is disputed between the parties here is the retrospectivity application of the above provisions in the instant matter. Guided by the decision of the Court of Appeal in the case of **Lala Wino** (*supra*) the Court is of the considered reasoning that the procedure for suing the 2<sup>nd</sup> Respondent in the instant case, being it the government, is governed by the Government Proceedings Act [Cap 5 R.E 2019] and the trial tribunal erred in law when it failed to guide itself accordingly on adjudicating the same.

From the record of the trial tribunal, Land Application No. 321 of 2019 which was filed on the 13<sup>th</sup> day of November, 2019; the hearing of the Applicant case began on the 13<sup>th</sup> day of February, 2020. The defence case began on the 27<sup>th</sup> day of April, 2020 and the judgment was delivered on the 27<sup>th</sup> day of October, 2020. Basing on the provisions of the

A handwritten signature in blue ink, appearing to read 'Khalif', is located in the bottom right corner of the page.

Government Proceedings Act [Cap 5 R.E 2019] as explained herein earlier, the Court needs not to re-emphasize that the trial tribunal acted without jurisdiction to entertain and conclude the instant case. The argument by the Respondents that the amendments of the provisions of the Government Proceedings Act [Cap 5 R.E 2019] cannot apply retrospectively in the instant case, basing on section 22 of the same, is in the Court's opinion misconceived as rightly argued by the Appellant.

When all is said and done by the parties, the Court is of the considered position that non-compliance to sections 6 and 7 of the Government Proceedings Act [Cap 5 R.E 2019] in the instant case is a fundamental procedure irregularity which cannot be cured under section 6(4) of the Government Proceedings Act [Cap 5 R.E 2019]. The same vitiates the trial tribunal's proceedings, judgement, decree and orders thereof as they are hereby declared a nullity.

Consequently, the Court is constrained to invoke its revisionary powers under section 43 (1) (b) of the Land Disputes Courts Act [Cap 216 R.E 2019] hence, the entire proceedings, judgment, decree and orders of the trial tribunal are hereby quashed and set aside accordingly. That being the case, any person with an interest in the suit premises, including the parties hereof, may file a suit in a court of competent jurisdiction in

A handwritten signature in blue ink, appearing to read 'Khalid', is located in the bottom right corner of the page.

accordance with the law. In the circumstances, the parties shall bear their own costs.

It is so ordered.

**Dated at Dodoma** this 30<sup>th</sup> day of August, 2023.



  
F. R. KHALFAN  
**JUDGE**