

**IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION**

AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 332 OF 2019

**JOHN LIGOMBA AND 18 OTHERS.....APPLICANTS
VERSUS
PRESIDENTIAL TRUST FUND (P.T.F).....RESPONDENT**

RULING

Date of last order: 22/06/2021

Date of Ruling: 28/06/2021

M. Mnyukwa, J

Upon being served with a copy of an application for revision by the applicant one Happiness Nyabunya, Principal State Attorney on behalf of the respondent Presidential Trust Fund (PTF) filed a Notice of opposition, a counter affidavit along with a notice of preliminary objection on the grounds that the application for revision is untenable and bad in law for suing non existing party. With leave of this court the preliminary objection was argued orally.

Submitting on the objection the respondent argued that the applicant is using non-existing entity withdrawn and removed from the Registrar's book. It was also submitted that the applicant pre-empted preliminary objection by filing another application to join Registration Insolvency and Trusteeship Agency (RITA) as a second respondent. It was their submission that since RITA is a government entity, it was wrong under the government proceedings to sue the government agency without Attorney General being

a party to the proceedings. They prayed before this court that since the applicant suing non-existing party and the applicant failed to sue the proper party. The application should be struck out with costs.

In reply the learned counsel for applicant partly conceded with the submission of the respondent that Attorney General should be joined as a party to the case. However, he prayed the matter to be struck out with the leave to refile a proper application. He argued that, they were not aware about withdraw of the PTF from the Registrar's book and that they had experienced the same problem to find the respondent as submitted by the learned state attorney. The counsel submitted further that they became aware with the same through Government Gazette No ISSN 08566323 issued on 8th February, 2019.

It was their submission that since under Rule 44(3) (a) of the GN No. 106 of 2007, this court is given power to make an order on its own motion to join any person as a party in the proceedings, they crave leave to this court to exercise its discretionary power on its own motion to order the joining of Attorney General in this application.

In rejoinder. The respondent reiterated what he had submitted in chief and insisted that since the applicant conceded the fact it was necessary to join the Attorney General in the suit, the application should be struck out with costs.

After considering the submissions from both parties I agree with the respondent that in all suits against the Government, the Attorney General shall be joined as a necessary party. This is provided for under the Written

Law (Miscellaneous Amendments) Act No 1 of 2020 under section 25(3) which amended section 6 of the Government Proceedings Act, Cap 5 R.E 2019. The section provides that

“ 25(3) All suits against the Government shall upon 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 wrongs on which the suit is based, and the Attorney General shall be joined as a necessary party.”

“25(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)” (emphasis mine)

On the basis of the above it is clear that since the applicant has conceded to the preliminary objection raised by the respondent that failure to join the Attorney General shall vitiate the proceedings of any suit brought against the Government, then I accordingly uphold the preliminary objection and strike out the application with leave to refile a proper application before this court within seven (7) days from the date of the order if the applicants still wishes to pursue the matter.

No order to costs.




M. Mnyukwa

JUDGE

28/06/2021

Ruling delivered in the presence of Gasper Tluway, advocate of the applicants of which some of the applicants' were present namely: John Ligomba, Nsajigwa Kapinda, Denis Kasigwa and Happiness Nyabunya, Principal State Attorney for respondent.



M. Mnyukwa

JUDGE

28/06/2021