

IN THE COURT OF APPEAL OF TANZANIA

AT MBEYA

(CORAM: MWANDAMBO, J.A., KITUSI, J.A., And MGONYA, J.A.)

CIVIL APPEAL NO. 381 OF 2020

GAPCO TANZANIA LIMITED APPELLANT

VERSUS

RAMZAN D. WALJI OMPANY LTD RESPONDENT

AND

ATTORNEY GENERAL INTERESTED PARTY

**(Appeal from the Judgment and Decree of the High Court of Tanzania,
at Mbeya)**

(Karua, J.)

dated the 22nd day of May, 2015

in

Land Case No. 1 of 2010

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RULING OF THE COURT

11th & 15th December, 2023.

KITUSI, J.A.:

The dispute between the appellant and the respondent, contractual in nature, was determined by the High Court Karua, J (as he then was) dismissing the suit by the appellant but granting several reliefs to the respondent which it had raised by way of counterclaim. At the bottom of

the dispute there was what looks like a tripartite relationship which we need to set out here.

Rungwe District Council owns a property on Plot No. 1B and 1C within Tukuyu township, and that property has underground tanks for petroleum storage. On the other hand, the appellant installed, on the premises, equipment for dispensation of petroleum products. Sometimes in July 2009, Rungwe District Council leased the premises to the appellant. In February, 2004 the appellant entered into a license agreement with the respondent licensing it to operate a petroleum service station by using the premises and equipment, under conditions stipulated in the license agreement.

Subsequently, the appellant instituted the suit (Land Case No. 1 of 2010) from which this appeal arises, alleging breach of the license agreement by the respondent. The appeal is still pending determination of this Court.

Vide Civil Application No. 719/06 of 2022 the Attorney General applied and obtained leave of this Court to be joined in the appeal as an interested party. On 8th December, 2023 the appeal was called on for

hearing. Mr. Libent Rwazo, learned advocate entered appearance for the appellant as Mr. Mika Mbise, learned advocate represented the respondent. The interested party was represented by three learned State Attorneys Ms. Jacqueline Kinyasi, Mr. Joseph Tibaijuka and Mr. Kumbukeni Kondo. We were set to hear the parties address the appeal, but that was too optimistic because we did not proceed.

Instead of addressing the appeal, Ms. Kinyasi prayed for leave to the interested party to present points or grounds for consideration by the Court because, she said, the memorandum of appeal filed by the appellant does not raise any point challenging the validity of the order of the trial High Court handing over the entire premises back to the respondent, which happens to be the Attorney General's interest in the matter. She made this prayer under rule 4 (2) and 113 of the Tanzania Court of Appeal Rules, 2009 (the Rules). Mr. Rwazo did not object, but Mr. Mbise was a bit uncomfortable with the prayer. He submitted that, since the interested party has not filed and served the respondent with any document other than the list of authorities, an order granting the Attorney General leave to raise grounds for determination will take the said respondent by surprise.

Mr. Mbise countered Ms. Kinyasi's contention that the High Court handed over the entire premises to the respondent, and qualified that the court's order is within the license. When we drew the learned counsel's attention to rule 109, of the Rules which requires service of the record of appeal on the interested party, he oscillated a bit. He suggested filing of additional grounds of appeal by the appellant bearing the grounds addressing the Attorney General's interest but, midway, he intimated the possibility of the Attorney General pursuing its interest through other avenues. In the end, the learned counsel made it clear that he was not against the interested party being heard, but cautioned that we should act within the law.

Ms. Kinyasi made a short rejoinder submitting that there is no rule which provides for what an interested party may do upon being joined. She prayed that we should proceed to consider her prayer by invoking rule 4(2) of the Rules.

We appreciate the arguments by counsel on this seemingly simple, but mind engaging, prayer which is not covered by the Rules. Rule 113(3) is restrictive and not of any assistance, in our view. It provides:

"(3) The Court shall not allow an appeal or cross-appeal on any ground not specified or implicit in the memorandum of appeal or notice of cross-appeal, without affording the respondent, or any person who in relation to that ground should have been made a respondent or the appellant, as the case may be, an opportunity of being heard on that ground."

Rule 109(1) takes us closer home;

"(1) When an appeal is called on for hearing or at any earlier time on the application of any interested person, the Court may direct that the record of appeal, or any notice of cross-appeal, be served on any party to the appeal who has not been served with it, or on any other person not already a party to the appeal and may, for the purposes of such service, adjourn the hearing upon such terms as are just, and may give such judgment and make such order as might have been given or made if the parties served with such record or notice had been parties originally."

However, none of these rules provide for how a person who has been joined as an interested party in an appeal, may raise points for consideration by the Court. Should that be a hindrance when, as in this

case, the parties have finally agreed that the Attorney General should be heard? In **Independent Power Tanzania Limited v. Standard Chartered Bank (Hong Kong) Limited**, Civil Revision No. 1 of 2009 (unreported), the Court discussed at length the right to be heard as a principle of natural justice. It is common under that principle that no court should make orders adversely affecting a person before giving him a fair hearing. The Court was grappling with the issue whether the Provisional Liquidator of a Company had a right to be heard while he was not mentioned and provided with right of audience under section 248 (2) (a) of the Companies Act. The Court concluded that a party who may be adversely affected by a decision must be heard. We respectfully take the same view in this case.

We have also had a glimpse of the pleadings in Miscellaneous Civil Application No. 719/06 of 2022 in which the order granting the Attorney General leave to join as an interested party was made. In that application with a 17-paragraph affidavit, there is more than sufficient disclosure as to what interest the Attorney General intends to pursue. Therefore, it is not entirely true that the respondent is totally unaware of what the interested party wishes to bring up for consideration by the Court.

However, we will not give the interested party a blank cheque to raise and argue points, including post judgment events, which Mr. Mbise warned against. We will give directions as per section 17 (2) (a) and (b) of the Office of the Attorney General (Discharge of Duties) Act, Cap 208 which provides:

"(2) In the exercise of the powers vested in the Attorney General with regard to the provisions of subsection (1), the Solicitor – General shall:-

- (a) notify any court, tribunal or any other administrative body of the intention to be joined to the suit, inquiry or administrative proceedings; and*
- (b) satisfy the court, tribunal or any other administrative body of the public interest or public property involved, and comply with any direction of the court, tribunal or any such other administrative body on the nature of pleadings or measures to be taken for purposes of giving effect to the effective discharge of the duties of the Office of the Attorney General."*

In view of that position, we direct the interested party to present points of interest which, when argued, will enable the Court to determine whether the judgment and orders of the High Court in relation to the

interests in the disputed premises can be assailed. This should be complied within 60 days of the delivery of this ruling and immediately served on the other parties.

Meanwhile hearing of this appeal stands adjourned to a date to be fixed by the Registrar. Order accordingly.

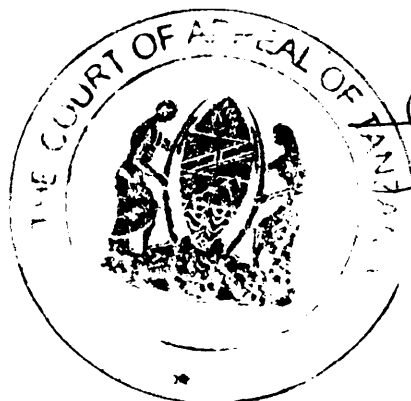
DATED at **MBEYA** this 15th day of December, 2023.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

I. P. KITUSI
JUSTICE OF APPEAL

L. E. MGONYA
JUSTICE OF APPEAL

The Ruling delivered this 15th day of December, 2023 in the presence of Mr. Joseph Tibaijuka, learned State Attorney for the 2nd Respondent also holding brief for Mr. Libert Lwazo , learned Advocate for the Appellant and Mr. Mika Mbise for 2nd respondent, is hereby certified as a true copy of the original.




S. P. MWAISEJE
DEPUTY REGISTRAR
COURT OF APPEAL