

IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)

LAND CASE NO. 30 OF 2011

JUMA MOHAMED KIBANDA & 25 OTHERS..... PLAINTIFF
VERSUS
TANROADS DEFENDANT

R U L I N G

A.F. Ngwala, J.

In this suit the Defendant has raised two Preliminary Objections on Points of Law as follows:-

- 1. That the suit is bad in law for suing a wrong defendant with no suable legal capacity on compensation matter;*
- 2. That the suit is incompetent for lack of 90 days notice to sue which violates provisions of Section 6(2) of the Government Proceedings Act, Cap 5 R.E. 2002.*

These Preliminary Objections were argued by way of Written Submissions; pursuant to the Order of the Court. Mr Kenan Komba, the Learned Counsel for the Defendant submitted in support of the 1st Preliminary Objection that Section 3(6) (b) of the Executive Agencies Act, No. 30 of 1997 [Cap. 245 R.E. 2002] as amended by the Finance Act No. 18 of 2002 makes it clear that an Executive Agency can only be sued in its name in contract. He further cited Rule 2.1(b) of the Tanzania Roads Agency (TANROADS) Establishment Order, G.N. 293 of 2000 which provides that TANROADS (the Defendant) can only be sued in contract.

In support of his submissions Mr. Komba cited as authority decided cases by this Court, to wit Total Tanzania Ltd vs. TANROADS, Land Case No. 31 of 2006 and Judge (Rtd) Dan Mapigano & 19 others Vs. TANROADS, Land Case No. 27 of 2006. In these cases Rugazia, J. applied the provisions of Section 3(6) (b) and (C) of the Executive Agencies Act, 1997 to struck out the Plaintiff's suits for being incompetent as they sued a non suable Agency.

In the second limb of the Preliminary Objection Mr. Komba submitted that the Plaintiff did not meet the mandatory requirement of the Government Proceedings Act of giving 90 days notice prior to institution of a suit against the government.

In reply Mr. Kadogo learned advocate for the Plaintiff submitted that the Defendant in this suit was properly sued by the Plaintiff's in that the Plaintiff's are claiming for compensation emanating from the contract. He insisted that there was a contractual relationship between the Plaintiff and the Defendant which gives obligation to the Defendant to compensate for the areas taken but the Defendant breached the contract by paying inadequate compensation.

In regard to the second limb of the objections, Mr. Kadogo submitted that since the Defendant has the capacity to sue or to be sued, this suit is therefore rightly before this Court and therefore no need to issue a 90 days notice because the government is not involved as a party.

the Defendant, the Executive Agency of the government for payment of balance of compensation payment of damages, interests and costs of the suit. The question before me is whether these claims arise out of a contractual relationship between the Plaintiff's and the Defendant. For purposes of clarity let me reproduce here under the provisions of Section 3(c) (b) and (c) of the Executive Agencies Act.

" (6) Not Withstanding any other law, an Executive Agency shall

.....

(a)

(b) Be capable of suing and being sued in its own name

only in contract; and in that respect all laws applicable to legal proceedings other than the Government Proceedings Act, shall apply to legal proceedings to which the Agency is a party;

(c) In all matters relating to contract, not be competent to sue or be sued in its own name; however any legal proceedings which, but for this paragraph would have been instituted by or against the executive agency, may only be instituted by or against the Government in accordance with the Government Proceedings Act."

In view of the above provisions, the construction of the same is simply to mean that an Executive Agency cannot sue or be sued unless in contracts. If it happens that the suit relates to contract, the Executive Agency cannot sue or be sued on its name, but the proceedings should be in accordance with the Government proceedings Act. This is to mean that the Attorney General has to be sued as a necessary party on behalf of the Government, and the statutory 90 days notice should be issued.


arise from the contractual relationship. It arose from compensation claims arising from the Defendant's intended demolition of the Plaintiff's premises to pave way for a Road Project which is a Government Project. For the above reason I agree with Mr. Komba for the Defendant that this suit is incompetent for being in contravention with the provisions of Section 3(6) of the Executive Agencies Act. The suit does not arise out of contractual relationship or obligation and further that a suit was not brought in accordance with the provisions of Section 3(6) (c) of the Executive Agencies Act. Following the reasoning of my learned brother Rugazia,J, in the cited cases of **Total Tanzania Ltd Vs. TANROADS** and **Judge (RTD) Dan Mapigano & Others Vs TANROADS**. In the former case, he had this to say:-

"..... I entirely agree with the defendant that issuance of a demolition notice is not based on contract so that defendant should not have been sued. In the face of the requirements of Section 3(6) (b) it is evident that the Plaintiff was wrong to sue the Plaintiff in its own name for a matter which was not based on contract. The proper party to sue should have been the Government as by law provided so I find and hold that the suit is incompetent...."

For all of the foregoing observations, I do not have to dwell my time on the second Preliminary Objection since the government was not in actual sense made a party to this suit.

In the upshot I uphold the first Preliminary Objection and proceed to strike out this suit with costs.

DATED at DAR ES SALAAM this 26th day of June, 2012.


A.F. Ngwala,
JUDGE
25/06/2012.

Delivered in Court this 25th day of June, 2012,

A.F. Ngwala,
JUDGE
25/06/2012

25/6/2012.

Coram : A.F. Ngwala, J.
Plaintiff : Mr. Kadogo
Defendants : Mr. Muhanga

Court: Ruling delivered in the presence of the above parties and their respective advocates.

Court: Right of Appeal to the Court of Appeal of Tanzania explained.

A.F. Ngwala,
JUDGE,
25/6/2012.