

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
IN THE DISTRICT REGISTRY OF SHINYANGA
AT SHINYANGA

MISCELLANEOUS LAND APPLICATION NO. 38 OF 2020

(Arising from Land Case No. 2 of 2020 of High Court of Tanzania Shinyanga Registry)

AL ADAWI COMPANY LIMITED PLAINTIFF
VERSUS

TIB DEVELOPMENT BANK LIMITED.....1ST DEFENDANT

YONO AUCTION MART.....2ND DEFENDANT

NGULUMI INVESTMENT COMPANY LIMITED.....3RD DEFENDANT

RULING

Date of the last Order: -17/06/2020

Date of the Ruling: -5/8/2020

E.Y.MKWIZU, J.

In the year 2004 and 2005, applicant took a loan from the 1st respondent for a purchase of a ginnery factory situated at Plot No. 8 Lalago, Maswa, Shinyanga Region and implementation of the business. In the year 2010, applicant could not service his loan due to what was ascribed as global economic and financial crisis which was communicated to the 1st respondent in view of approving a loan restructuring proposal so as to allow applicant time to adjust to the market changes. The respondent approved the proposal

and the amount of 26,796,787.67 per month was to be paid to service the said loan.

Disappointed on how the loan facility was treated, on 13th July 2020, applicant wrote to the 1st respondent to complain over the said loan treatment as well as to propose the new terms and modality of repayment of the loan. The affidavit in support of the application reveals that, instead of reacting to the applicant's grievance , and without prior notice to the applicant, 1st respondent through the services of the 2nd respondent wrongly, unlawfully and fraudulently sold by action to the 3rd Respondent the applicant's ginnery factory and are currently on the process of evicting the applicant.

Aggrieved by the respondent's action, applicant sought a redress in the High Court where he filed a land case. Scared of being evicted on 21/7/2020 filed this application for interim orders that;

1. The respondents, their agents, assignees, servants, workmen or any other person acting under their instruction be restrained from evicting. Alienating or otherwise disturbing the applicant in any manner

whatsoever in her ginnery factory located at Plot No. 8 Lalago, Maswa district, Shinyanga region pending the hearing and determination of the main suit.

2. Costs of the application be provided for
3. Any other order this honourable court shall deem fit and justifiable to grant under the circumstances of this matter.

The chamber application was supported by the affidavit sworn by Abdul Hilal Hilali the applicant's company managing Director on 19th July, 2020.

On 28/7/2020, respondents filed a notice of preliminary objection to wit:

"The application is unmaintainable in law for being preferred in contravention of the mandatory provisions of section 6 (3) of the Government proceedings Act (Cap 5 R.E 2019) as amended by the written laws (Miscellaneous Amendments) Act, 2020"

When the matter came for hearing on 29/7/2020, Mr. Benson Hosea learned State Attorney appeared for the 1st respondent, Mr. Joseph Kiyumbi learned

advocate was for the applicant, 3rd respondent appeared in person while the 2nd respondent made no appearance and since he was duly served, the application proceeded ex-parte against him.

Applicant's counsel, Mr. Kiyumbi readily conceded to the preliminary objection. He said, in view of the amendment made on February, 2020, the 1st respondent which is a Public Company falls within the category stipulated under section 6 (3) of the Government Proceedings Act and that the Attorney General ought to be joined as a necessary party and that he was not joined. He was however quick to add that, the defect is curable by amendment. He employed the court to invoke the provisions of section 3 A of the Civil Procedure Code, Cap 33 (R.E 2019) to allow the amendment on the application. Applicant's counsel contended that, after all the Attorney General is just a necessary party who appears to defend the 1st respondent. He cited the case of **Yakob Magoiga Gichere V. Penina Yusuph**, civil Appeal No. 55 of 2017 CAT (Unreported) page 13. And **National bank of Commerce Limited V. Millo Construction Co limited and 2 others**, Misc. Commercial application No. 102 of 2015 H/C (unreported)

In rejoinder, Mr. Hosea for the 1st respondent submitted that the application is incompetent and therefore it cannot be served by amendment. He added that, absence of the Attorney General in the application vitiates the proceedings under section 6 (4) of the Government proceedings Act. He urged the court to strike out the application. On his part, 3rd respondent supported the submission by the learned State Attorney.

Section 6 (3) of the Government Proceedings Act reads:

*"S.6 (3) 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 suit is based, and **the Attorney General shall be joined as a necessary party.***

(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 added)

The provisions quoted above is coached in a mandatory term that, in suing the Government, Ministry, government department, local government authority, executive agency, public corporation, parastatal organization or public company that is alleged to have committed a civil wrong the Attorney General should be joined as a necessary party.

It is an obvious fact that, Attorney General was not made a party to the application at hand. The issue for my determination is on what should be the consequences. Applicant counsel agrees to that effect. His point of divergence is on the effect of non-joinder of the Attorney General. He suggested that, applicant should be allowed to amend the chamber summons to add the Attorney General. He beseeched the court to invoke the provisions of section 3 A of the civil procedure Code Cap 33 R.E 2019. On his party, the learned State Attorney, Mr. Hosea invited the court to consider the provisions of section 6 (4) of the Government Proceedings Act which provides specifically that non joinder of the Attorney General in any proceedings vitiate the proceedings.

Indeed, non-joinder of the Attorney General under the circumstances of this case is fatal, it renders the application incompetent liable to be struck out . This is the las as provided for under sub section 4 of section 6 of the Government Proceedings Act. I am therefore constrained to strike out the application as I hereby do. Should the applicant wish, she may file a fresh application joining the Attorney General as a party.

Costs to fall the event.

It is so ordered.

Dated at Shinyanga, this 5th day of August, 2020


E.Y. MKWIZU
JUDGE
5/08/2020

Court: Right of appeal explained.



E.Y. MKWIZU
JUDGE
5/8/2020