

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(LAND DIVISION)

IN THE DISTRICT REGISTRY OF TANGA

AT TANGA

LAND CASE APPEAL No. 22 OF 2021

*(Originating from the District Land and Housing Tribunal for Lushoto at Lushoto in
Land Application No. 5 of 2018)*

HASHIM SALEHE KIHAIYO ----- APPELLANT

[The Administrator of the Estates of the late
Salehe Kihahiyo]

Versus

1. SERIKALI YA KIJJI MNG'ARO

2. MIC TANZANIA LIMITED

---- RESPONDENTS

JUDGMENT

28.07.2021 & 28.07.2021

F.H. Mtulya, J.:

An appeal was registered in this court seeking interpretation of section 22 of the **Government Proceedings Act** [Cap. 5, R.E. 2019] (the Act) after enactment of section 25 in the **Written Laws (Misc. Amendment) Act No. 1 of 2020** (the Amending Act). The ground of appeal was drafted, in brief, in the following words: *the trial tribunal failed to interpret section 22 of the **Government Proceedings Act** [Cap. 5, R.E. 2019] thereby reaching into an erroneous ruling.* The Ruling of the **District Land and Housing Tribunal for Lushoto at**

Lushoto (the Tribunal) in **Land Application No. 5 of 2018** (the Application), at page 4, stated that:

...hakuna ubishani kwamba sheria imerekebishwa kupitia the Written Laws (Miscellaneous Amendments) Act 2020. Kufuatia marekebisho haya ni matakwa ya sheria kwamba mara tu mtu anapoishtaki Serikali ya Mtaa inabidi amuunganishe Mwanasheria Mkuu wa Serikali...

At the conclusion of the hearing of the Application, the Tribunal dismissed the prosecution for want of the law in section 25 of the Amending Act which requires joining of Attorney General as a necessary party in any civil proceedings brought under section 3 of the Act and where the Government has interest on the subject matter. According to the tribunal, even if the Application was registered in the Tribunal on 20th July 2017, the amendment under the Amending Act had to be applied retrospectively.

The present dispute was registered as **Land Case Appeal No. 22** of this court. Noting that similar ground of appeal was determined successfully in this court in the precedents of various parties in different land disputes registered in this court, namely: **Land Cases Appeal No. 19, 20, and 21 of 2021**, Mr. Henry Njowoka for the Appellant decided to have a brief submission. In his submission, Mr. Njowoka submitted that the Tribunal had jurisdiction to determine the

dispute as per decision in **Theodory Joseph Kamote & Another v. Serikali ya Kijiji Cha Irete**, Land Case Appeal No. 21, which held that amendment in section 6 of the Act via section 25 of the Amending Act does not affect suits which were registered in the Tribunal prior to the amendment. His submission was supported by learned State Attorney Mr. Rashid Mohamed for the First Respondent. According to Mr. Rashid, the Application was filed on 9th May 2018 whereas the amendment in the Act was inserted in 2020.

I have consulted the decision of this court in **Theodory Joseph Kamote & Another v. Serikali ya Kijiji Cha Irete** (supra) and learned that the dispute on the interpretation has already been settled that the amendment in 2020 affecting section 6 of the Act do affect suits filed before 2020 and since the precedent is from the court of record, this court cannot depart from its previous decision, unless there are good reasons to do so. There are no good reasons in the present appeal to persuade this court to alter the precedent.

In the final analysis, I have decided to prefer certainty and predictability of decisions emanating from this court. I therefore allow the appeal without costs as the learned minds supported the appeal. As this court is mandated to ensure proper application of the laws, I have decided to quash the decision of the Tribunal in the Application in favour of section 22 of the Act and order the Application to proceed

in the Tribunal from where it had ended as the Tribunal has the jurisdiction to determine the Application.



It is so ordered.

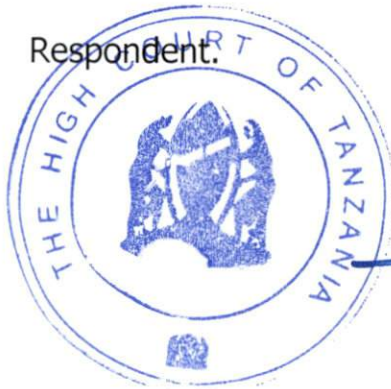
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F. H. Mtulya

Judge

28.07.2021

This judgment was delivered in Chambers under the seal of this court in the presence of learned counsel, Mr. Henry Njowoka for the Appellant and Mr. Rashid Mohamed, learned state Attorney for the Respondent.



A handwritten signature in blue ink, appearing to read "F. H. Mtulya", with a long horizontal flourish extending to the right.

F. H. Mtulya

Judge

28.07.2021