

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA,**

**TABORA DISTRICT REGISTRY**

**AT TABORA**

**DC CIVIL APPEAL NO. 14 OF 2020**

*(Originating from Tabora RMS Court Civil Case No. 15/2019)*

**MICHAEL GEORGE MAHANGA & 8 OTHERS.....APPELLANTS**

**VERSUS**

**TABORA MUNICIPAL COUNCIL..... RESPONDENT**

**JUDGMENT**

*Date 02/03/2022 & 01/04/2022*

**BAHATI SALEMA, J.:**

In this appeal, the appellants, Michael George Mahanga and eight others are appealing against the decision of the Resident Magistrate Court for Tabora (Mdoe RM) dated 20th August, 2020 in Civil Case No. 15 of 2020. In the course of hearing, the applicant's counsel Mr. Kilingo Hassan made an oral application for the Attorney General to be joined as co-defendant a prayer that was strongly opposed by the counsel for

the respondent. Finally, the court denied the prayer and struck out the entire suit for being incompetent.

Aggrieved, the appellant appealed to this court couched with three grounds of appeal namely: -

1. *That, the Trial Court grossly erred in law and fact(s) to struck out the plaint after denying the Plaintiff prayer to join Attorney General on the ground of non-joinder of the Attorney General party to the suit, as a necessary while the law is crystal clear that a party can be joine(sic) at any stage of the proceedings as a defendant hence reached at the wrong decision.*
2. *That, the Trial Court grossly erred in law and fact(s) for misconstruction of the amended law that does not do away with laid down procedures for determination of the civil suit as Attorney general is a party like any party to the suit to that effect;*
3. *That, the trial court grossly erred in law and fact(s) for misdirecting itself on the service of the Plaint to solicitor General while there was a prayer before it that could have taken care of the service to Solicitor General after the same to have been granted hence arrived at the wrong conclusion.*

It is on the listed grounds the appellants pray the appeal to be allowed, judgment and proceedings of the trial Court be quashed and set aside and costs of the case be provided.

When the matter was set for hearing; the appellants were represented by Mr. Hassan Kilingo learned counsel whereas the respondent was represented by Mr. Kulaba Dotto learned Municipal Solicitor, both parties agreed to argue the appeal by way of written submissions.

In his submission in support of the appeal, Mr. Kilingo stated that the trial magistrate failed to interpret Order 1 Rule 10(2) of the Civil Procedure Code, Cap. 33 [R.E 2019]. He cited the case of ***21<sup>st</sup> Century Food and Packaging Ltd vs Tanzania Sugar Producers Associations and Ministry of Finance of Tanzania Government and Attorney General Civil Appeal No. 91 of 2003*** CAT at Tanga where it was stated, inter alia, that the joinder of a necessary party to a suit is procedural in nature and, accordingly, the same ought to have been done at the time of trial through the application of Order 1 Rule 10(2).

Mr. Kilingo argued that the Civil Procedure Code, Cap. 33 allows the court to join a necessary party in order to enable the court to effectively adjudicate the case, and that can be done *suo motu* or by application by a party, but the trial magistrate wrongly rejected the

application from the appellant's counsel to join the Attorney General before adjudicating the matter.

He went on to submit that the amendment to the law in the Written Laws (Misc. Amendment) No. 8 Act, 2019 did not repeal Order 1 Rule 10 (2) of the Civil Procedure Code, Cap. 33. He argued further that, the Attorney General is also covered by the Civil Procedure Code, Cap.33 like other parties in civil matters and that the amendment did not do away with laid procedures for determination of civil suit as the Attorney General is a party like any other party to a suit.

As to the last ground of appeal, Mr. Kilingo submitted that, the trial magistrate grossly erred in law and fact for misdirecting himself on the service of the plaint to the Solicitor General while there was a prayer before him that could have taken care of the service if granted. He argued that, if the trial magistrate allowed joinder of the Attorney General, the applicants would amend the plaint and serve the Solicitor General.

Responding, Mr. Dotto Kulaba for the respondent, submitted that the trial Magistrate was correct in interpreting the law on the requirement to join the Attorney General as a necessary party as provided for under section 25(3) of the Written Laws (Miscellaneous

Amendment) Act No. 1 of 2020, which amended section 6 of the Government Proceedings Act Cap 5 of the law. It reads:

*"All suits against the government shall, upon the expiry of the notice period, be brought against the government, Ministry, Local Government authority, executive agency, public corporation, parastatal organization or public company that is alleged to have committed the civil wrong on which the civil suit is based and the Attorney General shall be joined as a necessary party"*

He submitted further that, as per the requirement set out in the above-quoted provision, the suit was bad in law for the non-joinder of the Attorney as a necessary party, an omission which is fatal under the law.

I have passionately considered the submissions from both parties, and the question for my determination is whether the appeal has merit.

It is undisputed that the respondent is a local government, which falls under the Local Government (Urban Authorities Act) Act, Cap. 288 [R.E. 2019], read together with the Government Proceedings Act, Cap. 5 [R.E. 2019], the two laws are crystal clear that no suit may be brought against an urban authority (which the respondent is one) unless a 90-day notice has been issued to the Attorney General. As to the matter at

hand, it was proper for the trial magistrate to strike out the entire suit because the requirements of the law were not complied with.

As to the joinder of Attorney General as a necessary party, the amendments brought about by Act No. 1 of 2020 introduced a procedural requirement to join the Attorney General in all proceedings involving urban authorities. In accordance with the amendment, a litigant seeking to institute civil proceedings against an urban authority is required to serve the relevant authority with a 90 days statutory notice and a copy of which must be served to the Attorney General and the Solicitor General.

Section 6(4) of the Government Proceedings Act, Cap. 5 [R.E 2019] makes it mandatory to notify the Attorney General and failure to join the Attorney General vitiates the proceedings in any suit against a Government entity. Now, at what stage, the Attorney General may be joined in a suit?

Mr. Kilingo argued that, the amendment brought up by Act No. 1 of 2020 did not do away with a procedure of joining parties in a civil suit so since the Attorney General is a party just like any other party he can be added at any time.

In the case of *Jackson Sifael Mtares & Three Others, Criminal Application No. 2 of 2018 (unreported)* the Court cemented on proper interpretation of the current position of law by excerpting from a book of the learned author A.B. Kafaltiya bearing the title "*Interpretation of statutes; 2008 Edition, Universal Law Publishing Co., New Delhi - India*", at page 237 that:-

*"When legislature alters the existing mode of procedure, the litigants can only proceed according to the altered mode."*

The procedure of suing an urban authority is expressly provided by the amendment to the Government Proceedings Act, Cap.6. It is a well-known procedure in our jurisdiction that, a litigant cannot resort to procedures set by the Civil Procedure Code, Cap 33 when the procedures on the same issue are expressly provided in a specific law.

The rationale behind the requirement is to enable the Attorney General and the Solicitor General to consult the relevant authorities and prepare defence or prepare a mode upon which the issue may be settled in an amicable settlement where possible. It is my view that, failure to summon the Attorney General was a denial of right to audience since he is a chief legal advisor of the Government.

That being said and done, I join hands with the counsel for respondent that, the trial magistrate was proper in striking out the suit so that the appellants may comply with the mandatory requirement of section 6 of the Government proceedings Act. For those reasons, I hereby dismiss the appeal for want of merit. No order as to costs.

*Bahati*

**A. BAHATI SALEMA**

**JUDGE**

**01/04/2022**

Judgement delivered under my hand and Seal of the court in Chamber this 1<sup>st</sup> day April, 2022 in the presence of both parties.

*Bahati*

**A. BAHATI SALEMA**

**JUDGE**

**01/04/2022**

Right to appeal is fully explained.

*Bahati*

**A. BAHATI SALEMA**

**JUDGE**

**01/04/2022**

