

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

**IN THE DISTRICT REGISTRY OF MUSOMA**

**AT MUSOMA**

**CIVIL CASE No. 11 OF 2022**

**WEMA BONIFACE MGENDI**

**@ WEMA BONIPHASI MGENDI ..... PLAINTIFF**

***Versus***

<b>1. E. 6768 CPL. MUHOJA</b>	<b>}</b>	<b>.....DEFENDANTS</b>
<b>2. ASP. MAYASA OMARY SEIF</b>		
<b>3. INSPECTOR GENERAL OF POLICE</b>		
<b>4. ATTORNEY GENERAL</b>		

**RULING**

**25.08.2022 & 25.08.2022**

**Mtulya, J.:**

Mr. Wema Boniface Mgendi @ Wema Boniphasi Mgendi (the plaintiff) alleges that police officers numbered E. 6768 Cpl Muhoja (the first defendant) and ASP Mayasa Omary Seif (the second defendant), being employees and officers of **Inspector General of Police** (the third defendant), on 18<sup>th</sup> May 2019, have subjected the plaintiff to torture, inhuman and degrading punishment to cause shock, pain, physical and psychological sufferings.

Following the cited sufferings, the plaintiff approached this court and preferred **Civil Case No. 11 of 2022** (the case) for a compensation

of a total sum of Tanzania Shillings Three Hundred Million Six Hundred Fifty Nine Thousand and four Hundred (Tshs. 300,659,400).

However, when the suit was scheduled in this court for necessary orders on 27<sup>th</sup> July 2022, the Attorney General, who was invited in the case as necessary party per requirement of the law in section 6 (5) of the **Government Proceedings Act** [Cap 5. R. E. 2019] (the Act) registered a point of law resisting the mandate of this court in entertaining the case which declined the requirement of the law under section 6 (2) of the Act on ninety (90) days statutory notice of intention to sue the Government or Government institutions.

Today morning the suit was called for the point of law hearing. However, Ms. Joan Ndosi, learned counsel for the plaintiff prayed to withdraw the suit under the provision of order XXIII Rule 1 (1) of the **Civil Procedure Code** [Cap.33 R. E. 2022] (the Code). The prayer was protested by Mr. Kitiya Turoke assisted by Ms. Neema Mwaipyana, learned State Attorneys, who appeared for the Attorney General, contending that once a point of law has been registered, it has to be determined to the finality and the case cannot be withdrawn at the pleasure of the plaintiff. With available remedies, Mr. Kitiya submitted

that Ms. Ndosi has impliedly conceded the point and the case should suffer a strike out order.

I have perused the record of present case and found that no ninety (90) days notice of intention to sue the Government or Government institutions to specify the basis of claim against the Government or Government institutions, was copied or served to the Attorney General. In that case, it is obvious that there is a breach of the law enacted in section 6 (2) of the Act, and this court cannot be detained on the subject. The present case has to suffer the strike out order for want of the law in section 6 (2) of the Act.

I am aware that Ms. Ndosi prayed for a withdrawal order in the case and invited Order XXIII Rule (1) of the Code. However, her prayer does not find any support of the Code or practice of this court or Court Appeal. The cited order is applicable when there is no any point of objection raised to resist a suit. Once a point has been raised, it has to be determined before raising any other matters. There is a bunch of precedents of this court and the Court on the subject (see: **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai**, Civil Appeal No. 179 of 2016; **Meet Singh Bhachu v. Gurmit Singh Bhachu**,

Civil Application No. 144/2 of 2018; **Shahida Abdul Hassanali Kassam v. Mahedi Mohamed Gulamali Kanji**, Civil Application No. 42 of 1999; **Tanzania Spring Industries & Autoparts Ltd v. The Attorney General & 2 Others**, Civil Appeal No. 89 of 1998; **Method Kimomogoro v. Registered Trustees of TANAPA**, Civil Application No. 1 of 2005; **Godfrey Nzowa v. Seleman Kova & Tanzania Building Agency**, Civil Appeal No. 3 of 2014; **Mary John Mitchel v. Sylvester Magembe Cheyo & Others**, Civil Application No. 161 of 2008; and **Yazidi Kassim t/a Yazidi Auto Electric Repairs v. The Attorney General**, Civil Application No. 552/04 of 2018).

The course is favoured because the practice has shown that the raised points of law may go to the root of the matter and end disputes between parties in our courts (see: **R.S.A. Limited v. HansPaul Automechs Limited & Govinderajan Senthil Kumai** (supra); and **Director of Public Prosecution v. Labda Jumaa Bakari**, Criminal Appeal No. 45 of 2021).

Having said so, I decline the prayer of Ms. Ndosu and accordingly strike out the case for want of proper application of the law enacted in section 6 (2) of the Act. I am aware that this Ruling is not a bar to the plaintiff, if so wish, to lodge another fresh and proper case, subject to

the law of limitation enacted in the **Law of Limitation Act** [Cap. 89 R.E 2019]. I award no costs in the present case. I considered the nature of the complaint and noted that the plaintiff enjoys legal assistance of the **Legal and Human Right Centre**, Arusha Branch office.

It is so ordered.



  
F. H. Mtulya

**Judge**

25.08.2022

This ruling was delivered in chambers under the seal of this court in the presence of the plaintiff, Mr. Wema Boniface Mgendi @ Wema Boniphasi Mgendi and his learned Counsel Ms. Joan Ndosi and in the presence of Mr. Kitiya Turoke and Ms. Neema Mwaipyana, learned Sate Attorneys for the third and fourth defendants

  
F. H. Mtulya

**Judge**

25.08.2022