

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

AT SHINYANGA

MISC. CIVIL APPLICATION NO. 26 OF 2021
(Arising from H/Court MSc. Civil Application No 4 of 2020)

ATTORNEY GENERALAPPLICANT

VERSUS

VUMILIA PRODUCERS AND

SHOPPING CENTERE LTD.....1ST RESPONDENT

ANDERSON D MSUMBA.....2ND RESPONDENT

RULING

10th May & 3rd June 2022

MKWIZU, J.

This is an application by the Hon. Attorney General seeking to be joined as a second respondent in Misc. Application No. 4 of 2020. The application is made under section 17 (1) (a) and (2) (a) and (b) of the Office of the Attorney General (Discharge of Duties) Act, [Cap 268 R.E 2019]. It is supported by an affidavit sworn by George Michael Kalenda, State Attorney employed in the office of the Solicitor General which found support from the second respondent. The application was orally opposed by the 1st respondents counsel who chose to counter the points of law orally before the court.

Mr. Georgy Kalenda assisted by Musa Mpogole all State Attorneys represented the Applicant during the hearing of the application, Mr. Paul

Kaunda learned counsel was for the 1st respondent while the second respondent appeared in person, without legal representation.

Submitting for the application, the learned State Attorney first prayed to adopt his affidavit in support of the application as part of his submissions. He in clarification gave six reasons to support the applicant's prayer to be joined as a defendant in Misc. Civil Application No 4 of 2020, **One**, that, second respondent is a public servant under Cap 298 RE 2019 and was performing his duties as a Town Council Director, now Municipal Council. **Two**, that the respondent is a public servant and that the actions on which the dispute lies arose while discharging his public duties as directed to him by the minister for Land and Human settlement as deposed in paragraph 12 of the affidavits, executing his duties for the interest of the government. **Three**, from the information from the second respondent and the perusal done in Misc. Civil Application No 4 of 2020, applicant realized that the dispute involves public property of which the Government has interest. **Four**, that, Applicant is the guardian of the public interest under the provisions of section 10 read together with section 16 (4) of the Government Proceedings Act. **Five**, that Second respondent was not a party in Misc. Civil cause No 1 of 2018 in which he is condemned for disrespecting its order and **six** that, if not joined as a party in Misc. Civil Application No 4 of 2020, applicant will be denied the rights to protect public interest vested on the public property involved in the matter. He supported his application by the decisions of **The Attorney General v Mary Peter Otaru & 2 Others**, Misc. Civil Application No. 32 of 2020 and **Attorney General V. National Housing Corporation & 3 Others**, Civil Appeal No 432/17 of 2017, (All unreported). And lastly urged the court to allow the application.

Mr. Kaunda for the 1st respondent did oppose the application. Arguing on points of law he said, according to section 17 (1)(a) and (b), (2) (a) and (b) and (3) of the Office of Attorney General Discharge of Duties Act,(Cap 268 RE 2019), the Attorney General is joined in the matter where there is Public interest or Public property which is subject to any civil case before the court of law but to be joined, the Attorney General must satisfy the Court on the available Public interest or public properties to be protected which should not be argumentative with sufficient reason why he is to be joined as a party.

Mr. Kaunda's contention was that the reasons given by the applicant are not sufficient to warrant the grant of the application. He said, the assertion that the suit property is a public property is not backed up by evidence and applicant has failed to show substantive public interest on the subject matter and have adduced no sufficient reasons why he should be joined as a party.

Submitting on the two cases cited by the learned State Attorney, Mr. Kaunda said, they are all distinguishable as in both cases, the provisions of section 17 above were cumulatively complied with. He added that, in **AG V National Housing corporation's** case, the issue whether NHC is a public property was unquestionable while in the case of **AG V Mary Peter Otare**, there was a clear demonstration that OCCID and OCD in a case for false imprisonment, were working for the Public. He on that reason prayed for the dismissal of the application with costs.

Second respondent's submissions are in support of the application. He said he is currently working as a Kahama Municipal Council Director and was before that working for Kahama Town Council executing his duties as

a director and that the property in question is a public property. He essentially urged the court to allow the application.

The learned State Attorney's rejoinder submissions are a reiteration of their submissions in chief that the suit property is a public property involving public interests as deposed in paragraphs 7 to 11 of the affidavit and that they have managed to show reason to support the application.

I have objectively considered the affidavit in support of the application and the rival submission by the parties. I will begin by examining the law and what the applicant is expected of in this application. The relevant law as cited by the parties is section 17 (1) (a) The Office of the Attorney General (Discharge of Duties) Act [CAP. 268 R.E. 2019] which states: -

*"17.-(1) Notwithstanding the provisions of any written law to the contrary, the Attorney General **shall through the Solicitor-General have the right to audience in proceedings of any suit, appeal or petition in court or inquiry on administrative body which the Attorney General considers-***

(a) to be public interest or involves public property; or

(b) to involve the legislative, the judiciary or an independent department or agency of the Government.

(2) In the exercise of the powers vested in the Attorney General with regards to the provisions of subsection (1), Solicitor-General shall-

(a) notify any court, tribunal or any other administrative body of the intention to be joined to the suit, inquiry or administrative proceedings; and

*(b) **satisfy the court, tribunal or any other administrative body of the public interest or public property involved**, and comply with any direction of the court, tribunal or any such other administrative body on the nature of pleadings or measures to be taken for purposes of giving effect to the effective discharge of the duties of the Office of the Attorney General.*

(3) Where a suit, inquiry or any other proceeding is pending before the court, tribunal or any other administrative body to which the Solicitor-General does not have a right of audience, it shall be sufficient for the Solicitor-General to file a certificate of the intention of the Attorney General to be joined and the court, tribunal or any such administrative body shall immediately forward the record of the proceedings to the nearest court, tribunal or administrative body for purposes of enabling the Solicitor-General to appear.”(emphasis added)

As rightly observed by Mr. Kaunda, counsel for the 1st respondent, to qualify for the said audience, the Solicitor General is required to establish the public interest, public properties involved on the matter and reasons to be joined in the suit. This court will thus focus on whether the applicant has demonstrated that interest to qualify for the requested audience in Misc. Civil Application No. 4 of 2020.

Briefly, the facts as deposed by the learned State Attorney in the affidavit in support of the application are that 1st respondent had through Misc. Civil cause No. 1 of 2018 filed Judicial Review proceedings before this court complaining of an illegal revocation of her Certificate of Title No. 60201, Plot No. 234 Block" A" located at Kahama Urban by the Minister of Lands and Human Settlement Development. The Misc. Civil Cause No 1 of 2018 against the Minister responsible and the Attorney General ended up being dismissed without disturbing the status of the Right of Occupancy in question. Meaning that though lost the application, 1st respondent remained the Holder of the certificate of Title in question.

It seems there were no actions taken by the parties further after the said decision. What irritated the 1st respondent, is the public tender in respect of suit plot advertised by the 2nd respondent in disregard of the Court order maintaining the status quo. This led to the filling of Misc. Civil Application No. 4 of 2020 for courts contempt against the 2nd respondent in person. It is this application that the applicant seeks to be joined as a party. The prayers in the chamber's summons are drafted thus:

- 1. That this Honourable Court be pleased to arrest the Respondent for disrespecting the Judicial Order of maintenance of status quo*
- 2. That this Honourable Court be pleased to summon the Respondent to appear before this honourable court to explain why appropriate sanctions should not be taken against him in light of his disapproving conduct*
- 3. Costs of this application be provided for.*

The learned State Attorney's has in both, his affidavit in support of the application and his submissions, shown how the landed property,

subject of the advertised tender No. LGA/155/2018/2019/NC/03 by the 2nd respondent is related to the Government maintaining that there is public interest on it which the Attorney General craves leave to protect. He also contends that 2nd respondent got into the matter while performing his duties as a Town Council Director. These facts remained uncontroverted.

I have evaluated both, this application *vis a vis* Misc. civil Application No 4 of 2020. Though, the prayers in the Misc. Civil Application No. 4 of 2020 are for Court contempt, the order subject matter of the court contempt proceedings is the status quo maintained over the ownership of the landed property against the Applicant. The Government interest on the said landed property is demonstrated by the 1st respondent's own complaint over revocation of her right of Occupancy by the Minister responsible in Civil Cause No. 1 of 2018 as well as the interference of the peaceful enjoyment of the suit property by the 2nd Respondent -Town Council Director who is currently using the landed property in question as a source of income for the Kahama Municipal Council as deposed in paragraphs 8 and 9 of the applicant's affidavit that, I quote for convenience:

*"8. That the 2nd respondent under his capacity as a Town Council Director Kahama the Defunct Kahama Town Council advertised a Public Tender No. LGA/155/2018/2019/NC/03 inviting bidders to bid for the Frames " Vizimba" for Plot No 234, Block A located at Kahama Urban Area **as one source of Local revenue of the Government for the Kahama Town Council***


9. That, the Public Tender No. LGA/155/2018/2019/NC/03 advertised by the 2nd Respondent was positively taken by the

bidder and the 2nd respondent is collecting levy for Kahama Town Council” (Bold is mine)

According to the above averment, Kahama Municipal Council, a local Government Authority is the current incharge of the suit premises. Meaning that the landed property which is the main subject of the Court order in question is held by the government authority. This alone, confirms the claimed public interest involved on the matter. And since, the order was issued against the applicant in the absence of the 2nd respondent, then involvement of the applicant is, in my view, necessary not only for the protection of the public interests pointed out, but also for an effective and complete adjudication of all legal issues relating to the complaint by the 1st respondent.

As a result, the application is allowed. No order as to costs

Dated at Shinyanga this 3rd day of June 2022


E.Y. MKWIZU
JUDGE
3/6/2022