IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

MUSOMA DISTRICT REGISTRY

AT MUSOMA

LAND APPEAL NO. 100 OF 2021
(Arising from the decision of the District Land and Housing Tribunal for Mara at Musoma in Land Application No. 60 of 2020)
BETWEEN

OCHUNG OGADA.....APPELLANT

AND

KIEMBE VILLAGE COUNCIL.....1ST RESPONDENT

SAGUDA PALIGA.....2ND RESPONDENT

JUDGMENT

A.A. MBAGWA, J.:

This is an appeal against the order the District Land and Housing Tribunal for Mara at Musoma striking out the application on the ground that it had no jurisdiction to try it.

The appellant, Ochung Ogada sued the respondents in the District Land and Housing Tribunal for Mara at Musoma via Land Application No. 60 of 2018 which however was wrongly typed as Land Application No. 60 of 2020. The appellant claimed that the 1st respondent Kiembe Village Council unlawfully

sold his land i.e., the suit premises to the 2nd respondent, Saguda Paliga. However, after the partied had given their evidence and before judgment, the Tribunal Chairman (Kitungulu E) made an order striking out the matter on the ground that the Tribunal had no longer powers to preside over the case following the changes brought in via Written Laws (Miscellaneous Amendments) Act No. 1 of 2020. The Tribunal Chairman stated that according to the said law, in all cases involving the village councils, Attorney General should be joined as such, the District Land and Housing Tribunal ceased to have jurisdiction over the case as matters involving the Attorney General are to be tried by the High Court.

The order of the Tribunal did not amuse the appellant. He thus preferred the present appeal armed with the following grounds of appeal;

1. That the trial Tribunal erred in law for failure to determine that the Written Laws (Miscellaneous Amendments) Act, No. 1 of 2020 does not state that those cases which were filed in the trial tribunal before its amendments must be dismissed due to the fact of retrospective (sic) of the proceedings by joining the Attorney General.

2. That the trial tribunal erred in law for failure to give reasons for the trial tribunal to act retrospectively on the proceedings of this case which was filed before enactment of the Act.
3. That the trial tribunal erred in law for failure to determine that the respondent have the legal duty to notify the Attorney General if it thinks s (sic) necessary to join him according to Government Proceedings Act
4. That the trial tribunal erred in law for failure to notice that it will not be in the interest of justice to dismiss the entire application just because of non-joinder of the Attorney General.

When the matter was scheduled for hearing, Mr. Emmanuel Gervas, learned advocate appeared for the appellant whilst the 1st respondent appeared through its chairman one Loketi Mauna Lukiko and the 2nd respondent was present in person.

Mr. Emmanuel Gervas prayed and was allowed to argue the appeal generally.

Submitting in support of the appeal, the appellant's counsel argued that the Tribunal erred in law for its failure to comprehend that the law namely, Act

No. 1 of 2020 was not intended to cater for cases instituted before its enactment. He stated that the matter at hand i.e., Land Application No. 60 of 2018 was instituted in the District Land and Housing Tribunal for Mara before the enactment. He clarified that the appellant commenced the matter as per the law which was in force at the material time to wit, section 190 of the Local Government Authorities [Cap. 287 R.E. 2019] which only required appellant to issue a thirty-day notice to the 1st respondent. He stressed that the appellant complied with the prerequisites.

The counsel lamented that, in the course of hearing the suit, the trial Chairman wrongly struck out the matter on the ground that it was in contravention of Act No. 1 of 2020, a law which came into force after the institution of the suit. The counsel expounded that the said Act amended section 6(3) of the Government Proceedings Act to the effect that before instituting the case against the government there should be issued a notice of ninety days and all suits should be instituted in the High Court of Tanzania. He continued that the Act also amended the interpretation of the word government to include local government such as village council etc. Mr. Gervas submitted that the said amendment came into effect at the time when the case had been instituted and parties had given their evidence.

The counsel proceeded that the crucial question was whether the amendments affect the suits instituted before its commencement. The counsel, while citing sections 14 and 15 of the Interpretation of Laws Act [Cap 1. R.E. 2019], strongly submitted that the amendments do not affect the present suit.

The counsel continued that institution of the case is a substantive right as per the decision in **DPP vs Iddi Hassan Chumu and another**, Criminal Appeal No. 430 of 2019, CAT at Arusha where it was held that institution of a case is substantive right which cannot be affected by retrospective application of law. The learned counsel also cited the case of **Evans G. Minja and 6 other vs Bodi ya Wadhamini wa Shirika la Hifadhi ya Taifa (TANAPA),** Labour Revision No. 37 of 2020, HC at Moshi to bolster his argument.

The appellant's counsel concluded that since the case was instituted before the amendments, there was no need to strike out the suit. He consequently prayed the court to allow the appeal for the interest of justice. He also prayed for costs of the appeal.

Both respondents, on their part, indicated that they were in full support of the appeal.

I have keenly gone through the submissions by the parties. Without much ado, the question for determination is whether the amendments brought in via Written Laws (Miscellaneous Amendments) Act No. 1 of 2020 applies to this instant appeal which was instituted way back 2018 before the enactment came into force.

At the outset, I wish to expressly part company with the learned appellant's counsel on his position that section section 25 of the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020 provides for substantive rights. With due respect to the learned appellant's counsel, the provision is purely procedural law as it governs how the proceedings against the government should be instituted. It is a general principle of law that procedural laws apply retrospectively except where such procedure affects substantive rights of the parties. See the case **DPP vs Iddi Hassan Chumu and another (supra) and Yew Bon Tew Alias Yong Boon Tew v. Kenderaan Bas Mara** [1983] 1 AC 553 at p. 558 and **Municipality of Mombasa v. Nyali Ltd**. [1963] E.A. 371.

This being the case therefore the next issue to be considered is whether the said amendments affect substantive rights. When confronted with akin issue in **Joseph Khenani vs Nkasi District Council**, Civil Appeal No. 126 of 2019, CAT at Mbeya, the Court of Appeal had the following to say; ***'In the case at hand, it is apparent that the appellant filed the complaint before the CMA when it was quite in order to do so without exhausting the remedies provided for in the Public Service Act. That was the law then. The requirement to exhaust all remedies under the Public Service Act came later; when the matter the subject of this appeal was already in the CMA. Was the enactment meant to apply retrospectively? We have serious doubt, for, Parliament did not state so in clear terms. Was the requirement purely procedural? We equally have serious doubts. Having deliberated on the matter at some considerable length, we think to hold that the appellant ought to have withdrawn his matter before the CMA with a view to complying with section of section 32A of the Public Service will be too much an overstatement and will, in our considered view, leave justice crying. The appellant will certainly be prejudiced. We were confronted with an akin***

predicament in Raymond Costa (supra). In that case, we hesitated to hold that a procedural amendment to the law applied retrospective because that course of action would occasion injustice on the adversary party'

The Court went further and clarified that a procedural amendment whose retrospective application would occasion injustice to the parties should not be allowed. See also **Raymond Costa v. Mantrac Tanzania Limited,** Civil Application No. 42/08 of 2018.

At the expense of making this judgment lengthy, I find it apposite to reproduce the relevant provisions of section 25 of the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020;

25. The principal Act is amended in section 6, by- (a) deleting subsection (3) and substituting for it the following-

"(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 civil 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).";* and**

(b) renumbering subsections (4), (5) and (6) as subsections (5), (6) and (7) respectively.

From the foregoing, there is no gainsaying that the amendment is procedural as it governs how to institute a suit against the government. However, in my view, the provision affects substantive rights of the appellant in the sense that by applying the provision retrospectively in the instant case, the appellant would be subjected to other cumbersome requirements such as ninety-day notice, filing fee and other costs for service of summons and bringing witnesses. In light of the reasoning of the court in **Joseph Khenani (supra)**, retrospective application is untenable as it would occasion injustice to the appellant.

In view of the foregoing deliberations, I find this appeal meritorious. As such, I hold that the trial Chairman was wrong to apply the amendment

retrospectively at expense of the appellant and more so, taking into account that both parties had given their evidence. Consequently, I direct the case file to be remitted to the trial Tribunal for it to conclude the case on merits. Each party should bear its own costs.

It is so ordered

The right of appeal is explained.

A.A. Mbagwa

JUDGE

04/10/2022

Court: The judgment has been delivered in the presence of the Nathaniel Mude (SA) for the 1st respondent, Emmanuel Gervas for the appellant, the appellant and 2nd respondent this 4th day of October, 2022.

A.A. Mbagwa

JUDGE

04/10/2022