

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)**

**IN THE DISTRICT REGISTRY OF MUSOMA
AT MUSOMA**

LAND CASE APPEAL No. 113 OF 2021

*(Arising from the District Land and Housing Tribunal for Mara at Musoma in Land
Application No. 196 of 2018)*

1. BWIRE NYAMWERO
2. ROSE LAURENT MAGOTI } ----- **APPELLANTS**

Versus

1. NATIONAL MICROFINANCE BANK PLC
**2. SMALL INDUSTRIES DEVELOPMENT
ORGANISATION (SIDO)**
**3. SUBIA GENERAL SUPPLIES AND TRIBUNAL
BROKERS LTD**
**4. NUTMEG AUCTIONEERS AND PROPERTY
MANAGERS CO. LTD**
5. ANNA NICHORAUS KYAMBA } ----- **RESPONDENTS**

JUDGMENT

15.03.2022 & 15.03.2022

Mtulya, F.H., J.:

On 21st September 2018, Mr. Bwire Nyamwero (the first appellant) and Ms. Rose Laurent Magoti (the second appellant) filed a suit against **Small Industries Development Organisation (SIDO)** and four (4) other persons before the **District Land and Housing Tribunal for Mara at Musoma** (the tribunal) in **Land Application No. 196 of 2018** (the application). Two years later, specifically on 21st February 2020, the Parliament sat in Dodoma and enacted the

Written Laws (Miscellaneous Amendments) Act No. 1 of 2020

(the Amending Act) to amend section 6 of the **Government Proceedings Act** [Cap. 5 R.E. 2019] (the Act). The amending section was inserted in section 25 of the Amending Act to read as follows:

*All suits against the Government shall, upon expiry of the notice period be brought against the Government, Ministry, Government department, local government authority, executive cogency, 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.***

(Emphasis supplied)

The section provides further that non-joinder of the Attorney General as provided in the Amending Act shall vitiate the proceedings of any suit brought before any deciding machinery or forum. The new insertion in section 6 of the Act was appreciated by previous enactment in section 7 of the Act which provides that no civil proceedings against the Government may be instituted in any court other than the High Court.

Following the amendment of section 6 of the Act, the tribunal in the application on 2nd day of November 2021, summoned the parties for hearing. However, one of the learned minds in the tribunal was well aware of the enactment and when he was invited to take the

floor of the tribunal to produce materials in the application, he quickly notified the tribunal on the new enactment, as reflected at page 1 of the proceedings of the tribunal on 2nd of November 2021:

Namwakilisha Mdaiwa Na. 1 na 4. Shauri linakuja kwa kusikilizwa kwa kuwa mdaiwa Na. 2 ni Serikali, Mahakama hiii haina mamlaka kwa mujibu wa Sheria Na. 1/2020.

This prayer was protested by the first appellant contending that: *Mahakama hii ina mamlaka isitoshe shauri hili limechukua muda mrefu.* Following the two (2) contesting arguments, the learned chairman decided to strike out the application in favour of the new enactment and reasoned that:

kwa mujibu wa Sheria Na. 1/2021 (the written laws) Amendment Act, 2020 Baraza hili linakosa mamlaka ya kuendelea kwa kuwa mdaiwa Na.2 ni taasisis ya Serikali.

The decision and reason of the tribunal aggrieved the two (2) appellants hence prepared the present appeal in this court registered as **Land Case Appeal No. 113 of 2021** (the appeal) and listed a total of five (5) complaints against the decision of the tribunal in the application. However, today when the appeal was scheduled for hearing and after production of materials of both parties, the appellants and respondents' learned counsels in Mr.

Turoke Kitiya, Mr. Gwakisa Gervas, and Ms. Maula Tweve, it was valid that the parties are at horns for only one issue, that: *whether suits filed before enactment of section 25 in the Amendment Act are affected by the new provision inserted in section 6 of the Act.*

In brief, the appellants submitted that they filed the application since 21st day of September 2018 and their substantive right to sue was intervened and curtailed by the tribunal in the application by recognising the provision retrospectively, and in any case SIDO was not a government institution in 2018.

The respondents on their part submitted that the appellants were not curtailed their substantive right as they have direct access of this court to enjoy their substantive rights, and in any case the law had just changed the procedural requirements only. In order to bolster their arguments the respondents have cited two (2) decisions of the Court of Appeal in **Lala Wino v. Karatu District Council**, Civil application No. 132/02/2018 and **Felix Masha & Another v. Exim Bank Tanzania Limited**, Civil Reference No. 12 of 2017.

I have perused the two (2) precedents of the Court of Appeal and found that there is commonly cited statement from the Eastern Africa Court of Appeal decisions in **Makorongo v. Consigilo (2005) 1 EA 247** and **Municipal of Mombasa v. Nyali Limited [1963] EA 371**. I have decided to cite the whole text found at page 374 in the

case of **Municipal of Mombasa v. Nyali Limited** (supra) for purposes of appreciating the present appeal:

Whether or not legislation operates retrospectively depends on the intention of enacting body as manifested by legislation. In seeking to ascertain the intention behind the legislation the courts are guided by certain rules of construction. One of these rules is that, if the legislation affects substantive rights, it will not be construed to have retrospective operation unless a clear information to that effect is manifested; whereas if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary

(Emphasis supplied).

This text has been followed by several other precedents of this court and Court of Appeal since 1963 (see: **Benbros Motors Tanganyika Ltd. v. Ramanlal Haribhai Patel** [1967] HCD 435; **Director of public prosecutions v. Jackson Sifael Mtares & Three Others**, Criminal Application No. 2 of 2018; and **Joseph Khenani v. Nkasi District Council**, Civil Appeal No. 126 of 2019). In such circumstances and in the presence of a bundle of precedents from our superior court, I do not think, if this court will fault the course in favour of the appellants.

I understand the applicant had distinguished this suit and other suits where government institutions are sued by stating that in the present appeal there are both private and government institutions, which may be distinguished in favour of other institutions in the suit. However, I did not find that directive either in the enactment of section 6 & 7 of the Act or any other texts in the cited precedents. In absence of a clear law, this court will not grant any order unless there are plausible explanations. Similarly, the law did not shoulder responsibilities on who to invite the Attorney General, when a Government institution is sued.

The law provides that when government institution is sued, the Attorney General shall be a necessary party. To my understanding it is upon a party who is suing to opt which parties to invite in a dispute. Once a disputant invites a government institution in a suit without joining the Attorney General as a necessary party, the suit shall fault for want of the Attorney General as enacted in section 6 (4) of the Act as enacted via section 25 of the Amending Act.

I am aware that the appellants sued SIDO before the enactment and recognition as a government institution, but the current law in section 6 of the Act is certain and settled on its application, as I explained in this judgment. I will need not to repeat the same subject. In short the current protest was registered in this

court by the appellants without good cause. I have therefore decided to dismiss this appeal without any order to costs. The reasons in declining to order for costs is very obvious. The two (2) present appellants are lay persons unaware of the new enactment by the Parliament in our State and in any case, the dispute was not resolved to its finality on merit.

Ordered accordingly.

Right of appeal explained.

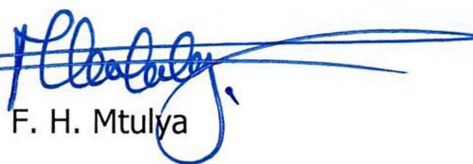


F. H. Mtulya

Judge

15.03.2022

This Judgment was delivered in chambers under the seal of the court in the presence of the appellants, Mr. Bwire Nyawero & Rose Laurent Magoti and in the presence of Mr. Thomas Patrick Mgima for the second respondent & Mr. Shabani Ally for the third respondent and in the presence of learned minds Mr. Kitiya Turoke, Mr. Gwakisa Gervas and Ms. Maula Tweve.



F. H. Mtulya

Judge

15.03.2022

