

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

ARUSHA SUB- REGISTRY

AT ARUSHA

LAND APPLICATION NO. 56 OF 2022

OLDEANI COFFEE ESTATE LIMITED APPLICANT

VERSUS

THE REGISTRAR OF TITLES RESPONDENT

RULING

27th February & 20th April 2023

KAMUZORA, J.

The Applicant herein brought this application praying for this court to order the Respondent to file Memorandum of Satisfaction and make an entry in the register. The application was made by way of a chamber application under section 38 of the Chattels Transfer Act Cap. 210 R.E 2019 and supported by an affidavit deposed by Hemant Kumar C. Patel, the director of the Applicant. The application was strongly opposed by the Respondent through counter affidavit deposed by Juliana Ngonyani, the Assistant Registrar of Titles. The Respondent also filed a notice of preliminary objection on point of law that,

"This application is incompetent and bad in law for contravening section 6(3) (4) and section 10 of the Government Proceeding Act

[Cap 6 R.E 2019] 287 as amended by section 25 of the Written Laws (Miscellaneous Amendment) Act No.1 of 2020.

As a matter of legal representation, the Applicant enjoyed the service of Mr. Kinabo, learned advocate while the Respondent was dully represented by Mr. Msalama, learned State Attorney.

Submitting in support of the preliminary objection, Mr. Msalama argued that, this application was filed against the Registrar of titles, the government. That, the law requires the Attorney General (AG) to be joined as a party in any suit against the government. That, this application was brought without joining the AG hence contravened the provision of section 6(3)(4) read with section 10 of the Government Proceedings Act Cap 5 R.E 2019 as amended by section 25 of the Written Law Miscellaneous Amendment Act No 1 of 2020. That, under section 6(3) of the Act, no suit against the government shall be filed before the lapse of 90 days' notice. That, the application is bad in law for failure to issue a 90 days' notice to the Respondent and the AG as requires under section 6(3).

Mr. Mkama further submitted that under section 6(4) and section 10, suits against the government shall be instituted against the AG thus, non-joinder of the AG renders the application incompetent. To cement on this, he cited the case of **Burafex Ltd Vs. Registrar of Titles**, Civil

Appeal No. 235 of 2019 HC at DSM, **MSK Refinery Ltd Vs. TIB Development Bank**, Misc. Civil Application No 307 of 2020. Basing on his submission the Respondent's counsel prays that the application be struck out with costs.

In reply submission, Mr. Kinabo consented that under section 6(3) of the Government Proceedings Act, the AG is supposed to be joined as a party to the suit. Mr. Kinabo however submitted that, the application before this court is not a suit as directed in the provision. That, it is an application requesting the High Court to exercise the statutory discretion under section 38 of the Chattels Transfer Act. That, the current application intends for compliance of the statutory requirement and it is not a civil suit hence the Applicant had no obligation to issue a 90 days' notice or joint the AG. That, in the circumstance of this application the AG was the one who could have applied to be joined as per section 6A of the Government Proceedings Act. That, the provision allows the AG to intervene in any proceedings and the provision distinguishes between suit and any other matter. He insisted that the current application falls under any other matter and not a suit.

Mr. Kinabo also submitted that after this application was filed the AG was informed but failed to intervene and pray to be joined in the

application but filed a preliminary objection and counter affidavit. The Applicants counsel prays for the PO to be dismissed and the application be heard on merit.

In a brief rejoinder Mr. Msalama argued that the term suit means the proceeding of a civil nature and it includes a petition, application, appeal, review and revision. That, all matters of a civil nature are provided under the CPC which governs all civil disputes. That, since the current matter is of a civil nature, it falls under category of suit hence well covered by the Government Proceedings Act.

On the issue that the Applicant is not required to join the AG or issue the 90 days' notice, Mr. Msalama insisted that under section 6(4) as amended by Act No 1 of 2020, non-joinder of the AG to any civil suit vitiates the proceedings of any suit. On the claim that the AG was responsible to pray to be joined as a party, he submitted that the above provision gives the responsibility to a party filing a suit in court to join the AG. He added that section 6A was amended by section 22 of the Written Laws Misc. Amendment Act No. 11 of 2019 and made it mandatory to join the AG in any suit. He further insisted that the issuance of 90 days' notice is relevant to this matter as well.

Having heard the submissions from the counsel for the parties, the issue that needs to be determined by this court is whether this application is competent. The allegation on incompetency of this application is based on the Applicant's failure to comply to the provisions of sections 6 (3) (4) and 10 of the Government Proceeding Act Cap 6 R.E 2019. The said provision reads: -

"(3) All suits against the Government shall, after the expiry of the notice be brought against the Attorney-General, and a copy of the plaint shall be served upon the Solicitor General, Government Ministry, Department or Officer that is alleged to have committed the civil wrong on which the civil suit is based.

(4) All suits against the Government shall be instituted in the High Court by delivering a claim in the Registry of the High Court within the area where the claim arose.

And section 10 of the same Act states that,

"10. Subject to the provisions of any other written law, civil proceedings by or against the Government shall be instituted by or against the Attorney-General:

Provided that, the Minister may, by order published in the Gazette, direct that any particular civil proceedings or class of civil proceedings be instituted by any officer designated in the order instead of by the Attorney-General.

The wordings of the above provisions explicitly require a person who intends to sue the Government to first issue a statutory notice to

the relevant Government authority or institution and to join the Attorney General as a party to the suit. It was however the claim by the Applicant that the matter before this court is an application and not a suit thus the above provisions are irrelevant and if so, the AG was responsible to make interference by applying to be joined as a party to the application.

It is true that the above provision mention suit as well submitted by the counsel for the Applicant. The argument here is on the definition of the term suit. Whether suit include applications like the present one. The Court of Appeal of Tanzania in the case of the **Honourable Attorney General Vs. Reverend Christopher Mtikila**, Civil Appeal No. 20 of 2007 (unreported) defined the term suit as follows: -

"any proceedings of a civil nature in a court of law involving two or more parties on a dispute or claim which needs to be adjudicated upon, to determine or declare the rights of the disputing parties."

Back to the matter at hand, this application is of a civil nature involving parties and in need to determine rights of the parties hence, a suit within the ambit of the above decision. This court was faced with similar situation in the case of **Burafex Limited as Ametaa Limited Vs Registrar of Titles**, Civil Appeal No 235 of 2019 HC at DSM (Unreported) where an issue arose as to whether the term suit involves appeals originating from the decision of the Registrar of Tittles. Being

guided by the Court of Appeal decision in **Honourable Attorney General Vs. Reverend Christopher Mtikila (supra)** my brother Mlyambina J, held that: -

"... a suit is a proceeding of a civil in nature in various forms such as a petition, Application, Appeal, Review, Revision or as referred in the Civil Procedure Code (supra) filed in the court of law between two or more parties for the determination of rights and duties of such persons."

Being guided by the Court of Appeal decision and subscribing to the holding of this court in the above cited case I am of the settled mind that the present application falls under the category of a suit hence must comply with the law just like any other civil suit.

That being said, it is my conclusion that the Applicant was under obligation to comply to the requirement under the Government Proceedings Act by issuing a statutory notice to sue the Government and joining of the AG as a party to the suit. I do not agree with the suggestion by the counsel for the Applicant that the AG was responsible for applying to be joined as a party to this application because that is not the intention of the law. Based on the definition of a suit referred above, section 6A of the Government Proceedings Act referred by the counsel for the Applicant is irrelevant to this application. The law

imposes mandatory obligation to a party filing a suit to join the AG. Section 10 of the Act states that all civil proceedings by or against the Government shall be instituted by or against the Attorney General and section 6 (5) of the Act requires the AG to be sued or be joined as a party in proceedings against the Government. Since the present application was brought against Registrar of Tittles, the government department, it was necessary for the AG to be joined as a party to the application.

For the reasons stated above, the Preliminary objection raised by the Respondent is sustained. I find this application incompetent before this court and it is hereby struck out with costs.

DATED at **ARUSHA** this day of 20th April 2023.



A handwritten signature in blue ink, appearing to read "D.C. Kamuzora", is written over a circular stamp.

D.C. KAMUZORA

JUDGE