

**IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB-REGISTRY)**

AT DAR ES SALAAM

CIVIL CASE NO. 197 OF 2022

BOARD OF TRUSTEES OF

NATIONAL SOCIAL SECURITY FUNDPLAINTIFF

VERSUS

MULTSTRUCT TANZANIA LIMITED..... DEFENDANT

RULING

08th February & 22nd April, 2024

BWEGOGGE, J.:

The plaintiff herein commenced civil proceedings against the defendant under summary procedure for breach of its statutory obligation to remit its members' contributions. The plaintiff claims a total of TZS 660,074,324.80/= being the outstanding principal members' contributions plus the accumulated penalties.

Upon filling the written statement of defence, the defendant herein advanced a notice of preliminary objection on points of law as thus:

1. The suit is bad in law for contravening section 10 of the Government Proceedings Act, [Cap 5 R.E 2019].

The plaintiff was represented by Mr. Geoffrey Paul Ngwembe, learned State Attorney, while the defendant was represented by Mr. Franco Mahena, learned advocate. The preliminary objection herein was argued by written submissions. The substance of the submissions made by counsel herein follows hereunder.

Mr. Mahena, in substantiating the point of the preliminary objection raised herein, submitted that section 10 of the Government Proceedings Act [Cap. 5 R.E 2019] makes it mandatory for all civil proceedings by or against the Government to be instituted by or against the Attorney General. That the suit at hand is bad in law for non-joinder of the Attorney General who is a necessary party. That the Written Laws (Miscellaneous Amendment) Act, No. 1 of 2020 amended Section 6 (3) and (4) and Section 16 of the Government Proceedings Act [Cap. 5 R.E 2019] to make it mandatory for the Attorney General to be joined in all suits by or against the government. Hence, since the plaintiff is a public corporation, the joining of the Attorney General in this suit was mandatory. That the above-mentioned amendment expanded the definition of the word "government" to include the government ministry,

local government, independent department, executive agency, public corporation, and parastatal organization or public company. The case of **The Board of Trustees of the National Social Security Fund vs. M/S Mara Security Guard & Patrol Services**; Civil Case No. 1 of 2020, HC (unreported) was cited to buttress the point.

Further, the counsel submitted that although section 53(2)(a) of the National Social Security Fund Act recognizes the plaintiff as a legal person capable of suing and being sued in its own name, still that legal personality does not take away the legal requirement of joining the Attorney General in the Civil Proceedings by or against the Government. The counsel asserted that under section 6(4) of the Government Proceedings Act as amended by section 25 of the Written Laws Misc. Amendment Act, No. 01 of 2020, the non-joinder of the Attorney General vitiates the proceedings. Hence, the counsel prayed this court to sustain the objection and struck out the suit herein with costs.

In reply, Mr. Ngwembe submitted that the power of the Attorney General to join in a case is not limited to the time of institution of a case. That the provision of section 6A (1) of the GPA provides that the Attorney General may intervene in any suit or matter instituted by or against the ministries, local government authorities, independent departments, and other

government institutions like the National Social Security Fund. Thus, since the plaintiff herein is a government institution, the Attorney General, through the Solicitor General, has the right to intervene in the proceedings at any stage of the case.

Further, the counsel contended that the defendant's counsel misconstrued the literal meaning of the provisions of section 6 (3) and (4) of the Government Proceedings Act, as amended; as the same refers to the suits against the government and not suits by the government. That the suit at hand is a suit instituted by the government institution and not against a government institution. Hence, the provisions of section 6(3) and (4) do not apply to this matter. The cases **Aggreko International Projects Limited vs Commissioner General, Tanzania Revenue Authority** (Civil Appeal No.456 of 2021) [2023] TZCA 17606; **Republic vs. Mwesiga Geoffrey & Another**, Criminal Appeal No. 355 of 2014, [2015] TZCA 264; and **Prime Catch Exports Limited and 4 Others v. Diamond Trust Bank Limited**, Civil Appeal No. 273 of 2019, [2022] TZCA 613 were cited to bolster the point that in statutory interpretation of the provision of the law, the first principle to be applied is a literal rule.

In the same vein, the counsel contended that the case cited by the defence counsel [**M/S Mara Security Guard & Patrol Services**(*supra*)] is distinguishable from the circumstances of this as in the respective case this court applied the purposive approach in its interpretation. Thus, this court ought to apply plain interpretation which allows the court to presume that the legislature says what it means and means what it says.

In particular, the counsel directed the mind of this court to the case of **Republic vs. Mwesiga Geoffrey & Another** (*supra*) in which the Apex Court held:

".....with the familiar canon of statutory construction of plain language, when the words of a statute are unambiguous, judicial inquiry is complete because the courts must presume that the legislature says in a statute what it means and means in a statute what it says there. As such there is no need for interpolations, lest we stary into the exclusive preserves of the legislature under the cloak of overzealous interpretation."

Conclusively, the counsel contended that in the case of **M/S Mara Security Guard & Patrol Services** (*supra*) cited by the defence counsel to substantiate his objection, this court misled itself on two grounds: **First**, by

construing that the provisions of section 6(3) and (4) of the Government Proceedings Act apply to cases instituted by the government. **Secondly,** failing to apply literal rule while the law is unambiguous. Thus, the counsel opined that this is a suit by the government not against the government; hence, non-joinder of the Attorney General cannot vitiate the court proceedings.

Now, the question for determination is whether the preliminary objection on the point of law advanced by the defendant herein is merited.

The contention made by the defence counsel is not nebulous in this jurisdiction. In the case of **The Board of Trustees of the National Social Security Fund vs. M/S Mara Security Guard & Patrol Services** (supra), when the issue of like nature was raised, my learned brother, Hon Justice Mtulya, opined thus;

"The precedent in GAPCO Tanzania Limited vs. Tanzania Railways Corporation (supra), on page 3 of the ruling, had already held that:

'...the argument that having separate legal personality capable of suing and being sued, falls out of section 6 (3) of the Act, is a misconception. All the government institutions are affected by the provision, regardless of their legal personalities.'

Further, my learned brother opined:

*On the other hand, the precedent in **Said Shemliwa v. The Board of Trustees of National Social Security Fund** (supra), on page 4 of the Ruling, had replied to the question whether the plaintiff is a public corporation and interpreted that:*

'NSSF is a public corporation established by an Act of Parliament and its employees are public servants.'

And, he conclusively asserted that;

"On the other hand, the provision in section 10 of the Act, which remains intact without any amendment, provides that:

'...civil proceedings by or against the Government shall be instituted by or against the Attorney General.'

The purpose of requiring all government institutions to notify and join the Attorney General, as a necessary party, is well displayed during the conversations debating the enactment of the Amending Act that:

'...the amendments are intended to make better procedural requirements regarding notices of cases by or against the Government. The objective of the amendment is to make provisions for better management of cases for and against the Government (See: Hansard Report, 14th Session in First Sitting of the Parliament, 28th January 2020).'

Admittedly, I find no cogent ground to differ from the opinion made by my learned brother above. I would purchase his opinion wholesale.

The applicant's counsel contended that the wording under the provisions of section 6(3) and (4) and 16 of the Government Proceedings Act as provided in the amendment Act, specifically entails suits against the government and not suits by the government. That this suit is instituted by the government institution, not against the government institution; hence, sections 6(3) and (4) of the amendment Act don't apply herein. I find this submission misleading for the reason that the trial judge in the case of **The Board of Trustees of the National Social Security Fund vs. M/S Mara Security Guard & Patrol Services** (supra) had considered the provision of section 10 of the Government Proceedings Act in reaching the conclusion that the civil proceedings by or against the government should be instituted by or against the Attorney General. Unarguably, the provision of section 10 of the Government Proceedings Act in no uncertain terms provides viz:

"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"
[Emphasis mine].

The above revisited provision which imposes the requirement to join the Attorney General in the suit doesn't make any exception whether the suit is commenced by and, or against the government as the plaintiff's counsel purports to suggest. To hold otherwise would be diverting from the literal meaning of the law which the same counsel forcefully advocated to be employed in the interpretation of the law. Moreso, the Apex Court when faced with contention of like nature in the case of **Attorney General vs. Raksha Gadhvi & Others** (Civil Application 147 of 2022) [2024] TZCA 10; held that the Attorney General not being a party to the proceedings in which the government entity was the plaintiff in contravention of the law (the Government Proceedings Act as amended by the Act No. 1 of 2020) amounted to illegality in the decision sought to be challenged and, or denial of the right to be heard.

Thus, based on the reasons I endeavoured to give herein above, I am of the settled view that notwithstanding the fact that the plaintiff herein is the government entity, the same was obliged to comply with the legal requirement to join the Attorney General in the suit. In the same vein, I would opine that the presence of the state attorney representing the government entity doesn't do away with the requirement to join the Attorney

General in the proceedings; otherwise, the proceedings would be vitiated for noncompliance with the provisions of section of 10 of the Government Proceedings Act.

Given the foregoing, I find the preliminary objection on the point of law advanced by the defendant meritorious. I would sustain the objection. The suit herein is found incompetent for non-joinder of the Attorney General. Consequently, the suit herein is hereby struck out.

So ordered.

DATED at **DAR ES SALAAM** this 22nd day of April, 2024.



O.F. BWEGOGI
JUDGE