

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

LAND REVISION NO.13 OF 2021

GLORIA EDMUND KILEO.....APPLICANT

VERSUS

DEPOSIT INSURANCE BOARD

(As liquidator of Efatha Bank)1ST RESPONDENT

MARK AUCTIONEERS & COURT

BROKERS LIMITED.....2ND RESPONDENT

ALAWI RAJABU KASSIM.....3RD RESPONDENT

ANNA LESLIE KILEO.....4TH RESPONDENT

KILEO MSONGORYU EDMUND.....5TH RESPONDENT

Date of Last Order: 24.02.2022

Date of Ruling: 04.04.2022

RULING

V.L. MAKANI, J

This is the ruling in respect of preliminary objections raised by the 3rd respondent that:

The applicant's application is defective for not adhering to the mandatory procedures stipulated under the Government proceedings Act, Cap 5 RE 2019

The raised preliminary objection was argued by way of oral submissions. Mr. Emmanuel Mbuga, Advocate represented the 3rd respondent while Mr. Amin Mshana represented the applicant.

Arguing the point of preliminary objection, Mr. Mbuga said that the 1st respondent is a Parastatal Organisation and therefore the Attorney General is supposed to be joined. That under section 6 (3) of the Government Proceedings Act as revised by Act No.1 of 2020 it provides that once a government department and parastatal organisation is sued, then notice should be issued and the Attorney General has to be party to the suit. He said that the said law does not define what is a parastatal organisation but in **Attorney General vs. The Trustee of TANAPA & Others, Civil Revision No. 1 Of 2021 (HC-Mbeya)** (unreported), government parastatal is defined to mean anybody corporate established by or under any written law apart from the Companies Act. He said the 1st respondent was established under section 37 (1) of the Banking and Financial institutions Act, 2006. Thus, it falls under government parastatals. Counsel also referred to the case of **Anthony Bronkhorst vs. Deposit Insurance Board, Civil Case No.4 Of 2020 (HC-Mwanza)** (unreported) where the court said the respondent was a government institution therefore suing it must follow the amendments. He said since the Attorney General is not party to this application therefore the mandatory requirement of the law has not

been adhered to. He thus prayed for the application to be struck out with costs.

In reply, Mr. Mshana said that the preliminary objection has no merit. He said the submissions by Mr. Mbuga are based on suits that were filed in original courts after the promulgation of the law requiring the Attorney General to be joined in every suit, that is, suits filed under bodies or departments under the Government (Written laws Misc. Amendment Act No.1 of 2020) which under section 25 amended section 3 of the Government Proceedings Act. That the basis of objection is section 34 of the Government proceeding Act which states that if the Attorney General is not joined in the suit the proceedings are vitiated. That section 26 of the Act No.1 of 2020 is where the government bodies are mentioned and what is before this court is not a suit but an application for revision which has to be filed within 60 days.

Mr. Mshan said application for revision based on Land Application No.370 of 2017 of the District Land and Housing Tribunal for Kinondoni (the **Tribunal**). He said the original suit was against Efatha Bank which was taken over in 2018 by Deposit Insurance (the 1st

respondent). That the interpretation to encompass applications which were filed long ago would create a lot of absurdity. He said that would create a conflict between the Limitation Act and the amendment Act 1/2020 (60 days application of revision viz a viz notice to sue the government which is 90 days). That the court is called upon to look at issues retrospectivity.

Mr. Mshana went on saying that the general rule of interpretation is that the principal legislation do not have retrospective effect but for subsidiary legislation which is procedural. He said that, being substantive legislation the Act No.1/2020 cannot be made to act retrospectively. He said that apart from case law there is section 10(2) of interpretation Act CAP 1 RE 2019. He insisted that the Act cannot cover suits prior to its coming into operation. Counsel relied on the case of **BIDCO Oil & Soap Limited vs. Commissioner General TRA, Civil Appeal No.89/2009** in which it was decided that principal legislation has no retrospective effect unless duly stated in the statute itself.

Counsel further argued that there is no dispute that in the Tribunal the 1st respondent Efatha Bank then Deposit Insurance was

represented by the learned Counsel Living Kimaro. So, they had knowledge of what transpired in the Tribunal. He said when this application was filed, Mr. Kimaro was engaged and therefore the 1st respondent had knowledge. That they even instructed Mr. Living Kimaro to withdraw from the conduct of this matter. So, they knew that they ought to have engaged the Attorney General. He said that if there is no advocate for the 1st respondent it is their problem. That it is not the business of the court to call respondents to defend their case. He said if the 1st respondent is aware that there are proceedings against them then they have to seek representation from Solicitor General because of Misc. Act No.4/2019 where section 22 introduced section 6A which amended Government Proceedings Act Section 5 which states that the Solicitor General has the right to intervene in any suit instituted against government ministries and institutions. That according to the proviso to section 6A (2) when the Solicitor General intervenes then 90 days' notice ceases. He prayed for the preliminary objection to be dismissed for lack of merit.

In rejoinder, Mr. Mbuga reiterated his main submissions and added that revision was instituted on 16/04/2021 which the said Act No.1/2020 was already in operation so retrospectivity does not apply.

He said that the amendment is on procedural law and that there are no rights in the procedures that goes with the Government proceedings Act. That all procedural laws go with retrospectivity. He relied on the case of **Lala Wino vs. Karatu District Council, Civil Application No.132/02/2018**. He insisted that the term suit covers all proceedings, and the Government Proceedings Act recognises all civil proceedings That section 6A (3) covers the application of this nature.

On the issue of time, he said that the law gives room to seek extension of time so there is no absurdity. He said that according to section 6A the powers to intervene are vested in Attorney General and not the applicant and no leave was sought to call the Attorney General. That the section does not remove the mandatory procedure to issue notice and the Attorney General to be a party. He prayed for the application to be struck out with costs.

The main issue for consideration is whether the preliminary objection raised by the 3rd respondent has merit.

It is not in dispute that this application emanates from the Tribunal in Land Application No.370 of 2017. It is also not in dispute that the same parties in the present application were the parties at the Tribunal. Further it is not in dispute that the 1st defendant at the Tribunal was initially Efatha Bank but later Deposit Insurance took over as the Liquidator. The Attorney General was not joined as a party at the Tribunal. Indeed, there is a requirement to join the Attorney General in the suit against the government or in the cases with public interest which as Counsel have revealed is under the Written Laws (Miscellaneous Amendments) Act No. 1 of 2020, GN No. 8 Vol. 101 dated 21/02/2020. The issue is whether the issue of joinder of parties and specifically the Attorney General can be raised at this stage in the present application for revision.

I have given a due consideration of this matter and as said above, this application emanates from the Tribunal in Land Application No. 370 of 2017. The parties at the Tribunal read the same as the present parties. Now, is this court vested with powers to remove or join parties at this stage. In my considered view, this is not procedurally feasible because revision is based on inspection of records and if there is an error material on the merit of the matter, then the court may

give directions where necessary and for the interest of justice. In that respect, anything that emanates from the original record has to remain the same. Further, the substantive application is not founded on the issue of joinder of parties, as such this issue cannot therefore be entertained at this stage. In any case, one wonders why the 3rd respondent who was also party and present at the Tribunal did not raise this preliminary objection. His silence is presumed to mean that he acquiesced to the procedures at the Tribunal. And in any case the suit was not struck out on account of any objection raised by the defendants but for want of appearance of one of the respondents which the applicant in this present application has raised as the subject point to be considered by this court. At present and for proper management of the application of the revision the parties at the Tribunal has to remain the same for purposes of inspecting the records of the Tribunal and as such the matter of parties or misjoinder thereof cannot be determined at the preliminary stage. The cases cited by Mr. Mbuga are distinguishable because the circumstances in the case of **Attorney General vs. The Trustee of TANAPA & Others** (supra) **and the present application** are not the same; and in the case of **Anthony Bronkhorst** (supra) the issue of joinder was tackled in the original suit and not in an application for revision.

On the strength of the above analysis, I am of the settled mind that the preliminary point of objection raised by the 3rd respondent is without merit and it is hereby dismissed. Costs shall be in the cause.

It is so ordered

V.L. Makani
V.L. MAKANI
JUDGE
04/04/2022

The seal of the High Court of Tanzania, Land Division, is circular. It features a central emblem with a shield, a scale of justice, and a book, flanked by two figures. The text "THE HIGH COURT OF TANZANIA" is written around the top inner edge, and "LAND DIVISION" is written around the bottom inner edge. Two small stars are positioned on the left and right sides of the inner circle.