

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
IN THE SUB-REGISTRY OF MWANZA  
AT MWANZA**

**LAND REVISION NO. 14 OF 2022**  
*(Originating from Land Application No. 156 of 2018)*

**SIMON GAPI.....APPLICANT**

**VERSUS**

**ILEMELA MUNICIPAL COUNCIL.....1<sup>ST</sup> RESPONDENT**

**THE SEVENTH DAY ADVENTIST CHURCH OF TANZANIA.....2<sup>ND</sup> RESPONDENT**

**RULING**

*20<sup>th</sup> September & 06 October, 2023.*

***Kilekamajenga, J.***

The District Land and Housing Tribunal for Mwanza sought directives from this court in respect of section 6 of the Government Proceedings Act, Cap. 5 RE 2019 which was amended by Written Laws Miscellaneous Amendment No. 1 of 2020 which required all cases where the government, any government agency or department is a party to be filed in the High Court. When this matter was pending before the District Land and Housing Tribunal and the above amendment came into operation, the trial tribunal sought directive before final determination of the case.

In compliance with the law and affording the parties the right to be heard, this court invited the parties to address on the above issue. The learned advocate, Mr. Innocent Bernard for the applicant informed the court that, Written Laws



Miscellaneous Amendment No. 1 of 2020 came into operation when this matter was pending in the trial tribunal. In his view, the amendment does affect the case which was already pending in the tribunal because the amendment is a substantive law and not procedural law to require retrospective application. Even the amendment did not specify whether the cases which were already in court could be affected. He invited the court to consider the case of **Benbros Motors Tanganyika Limited v. Ramanlal Aribhai Patel** (1967) HCD 435 where the court stated that substantive law does not apply retrospectively unless it is so provided. Fortifying further on his point, Mr. Bernard, also referred to the case of **Municipality of Mombasa v. Nyari LTD** (1963) EA 371-374. He implored the court to order the trial chairman conclude this matter and each party should carry own costs of this application.

In reply, the learned State Attorney for the first respondent, Mr. Patrick Muhere, supported the position stated by the applicant's counsel as the amendment did not specify whether it was intended to affect the already filed cases. Mr. Muhere urged the court to depart from the position of the law taken in the case of **Bwire Nyamwero and another v. National Microfinance Bank PLC and others**, Land Case Appeal No. 113 of 2021. In his view, the amendment being a substantive law should not act retrospectively and therefore all the already filed cases should be concluded even in the absence of the Attorney General.

The learned advocate, Mr. Elias Hezron for the second respondent had a different view; the amendment touched procedural law due to the following reasons: **First**, the amended law itself i.e. the Government Proceedings Act is purely a procedural law. **Second**, the amended provision of law i.e. section 6 of the Government Proceedings Act provides the procedures on how to sue the government; therefore a procedural law. Furthermore, this court has already provided interpretation on this issue and decided that the amendment is part of procedural law and not substantive law. Mr. Hezron cemented his argument with the cases of **Bwire Nyamwero v. NMB PLC and others** (*supra*); **Salome Semwenda v. Musoma Municipal Council**, Land Appeal No. 99 of 2021. The counsel prayed for the nullification of the proceedings of the trial tribunal and any interested party may file a fresh case before a competent court.

When rejoining, Mr. Bernard maintained his submission in chief that, the Government Proceedings Act has both substantive and procedural aspects. He urged the court not to nullify the proceedings because this court has been simply invited to provide guidance on the above amendment.

In this matter, before venturing into the deep discussion, I find it apposite to portray the amendment introduced in the Government Proceedings Act in 2020.

**Section 25 of the Written Laws (Miscellaneous Amendment) Act No. 1**

**of 2020** amended section 6 of the Government Proceedings Act and introduced subsection (3) and (4) which reads as follows:

*(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 organisation 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).*

It is very clear from the above provisions of the law that the law introduced a mandatory procedural requirement for the Attorney General to be joined as a necessary party in all civil suits where the government and its allied departments or organs are involved. Non-compliance with the above provision of the law vitiates the proceedings. The major contested issue is whether the above amendment touched procedural aspect of the law as opposed to substantive law. This court, in a number of cases has interpreted the amendment to be procedural law. These cases include the cases of **Mbeya City Council v. Romuald Andrea Materu, Luth Limboka Mwesi and Stephano Robert Mandowa**, Consolidated Land Appeal No. 59 and 66 of 2020, HC at Mbeya (unreported); **Zadock Maende Elphace v. Bunda Town Council**, Misc. Land Appeal No. 108 of 2021, HC at Musoma (unreported); **Bwire Nyamwero and another v. National Microfinance Bank PLC and four others** (*supra*) and

**Salome Semwenda v. Musoma Municipal Council** (supra). On this aspect, I therefore subscribe to the views given by Mr. Hezron who remained emphatic that the amendment affected the procedural part of the law. I further emphasise, both the law and the amended section of the Government Proceedings Act are on the procedures of suing the government or its agencies. It was therefore illogical to argue that the amendment is on substantive law.

In the matter at hand, the case was filed in 2018, when the case was still pending in the trial tribunal the above amendment came into operation. The contested question is whether or not the amendment affected the case. A variety number of authorities exist on this position of the law. Mr. Bernard for the applicant referred the court to the case of **Bonbros Motors Tanganyika** (supra) which I wish to consider. In that case, the court decided among other things:

*"When a new enactment deals with rights of action, unless it is so expressed in the Act; an existing right of action is not taken away, **but when it deals with procedure only, unless the contrary is expressed, the enactment applies to all actions, whether commenced before or after the passing of the Act.**" (Emphasis added).*

The above stance was later adopted in the case of **Municipality of Mombasa v. Nyali Limited** [1963] EA 371 that:

*"Whether or not legislation operates retrospectively depends on the intention of the 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 intention that effect is manifested; whereas if it affects procedure only, prima facie it operates retrospectively unless there is good reason to the contrary.** But in the last resort it is the intention behind the legislation which has to be ascertained and a rule of construction is only one of the factors to which regard must be had in order to ascertain that intention."* (Emphasis added).

See, also the cases of **Director of Public Prosecutions v. Jackson Sifael Mtares & Three Others**, Criminal Application No. 2 of 2018 (unreported); **Makorongo v. Consiglio** [2005] 1 EA 247.

The Court of Appeal was confronted with a similar case in the case of **Lala Wino v. Karatu District Council**, Civil Application No. 132/02 of 2018. In that case, the Court of Appeal was moved to interpret whether the **Written Laws (Miscellaneous Amendment) (No. 3) Act, 2018** which amended section 47(1) of the Land Disputes Courts Act had retrospective effect. The Court stated that:

*"...in the premises, I am of the view that the amendment of section 47(1) of Cap. 216 (supra) is retrospective on two grounds: first, it pertains to the*

*procedure governing the exercise of the right of appeal to this Court in respect of a land matter arising from original exercise of the jurisdiction of the High Court; and secondly, the amendment contains no express stipulation limiting the ostensible retroactivity of that new provision.”*

In the light of the above stance, there is no doubt, the amendment was part of procedural law. Also, as highlighted above, the amendment affected the already filed cases. In my view, if the Attorney General is joined, according to the amendment, the case will be filed in the High Court and the parties will still be afforded the right to be heard. As the trial tribunal sought directive of this court, I hereby direct the following; the above amendment was part of procedural law hence dictates retrospective application to the extent of affecting the already filed cases unless there are further reasons to depart from the above position of the law. Therefore, the trial tribunal should allow the parties to withdraw the case in order for them to follow the new procedures of suing the government and its agencies. Each party should bear own costs. Order accordingly.

**DATED** at **Mwanza** this 06<sup>th</sup> day of October, 2023.



**Ntemi N. Kilekamajenga.**

**JUDGE**

**06/10/2023**





**Court:**

Ruling delivered this 06<sup>th</sup> October 2023 in the presence of the learned State Attorney, Ms. Janeth Constantine for the first respondent, the applicant and his counsel, Mr. Innocent Kisigiro but in the absence of the second respondent. Right of appeal explained.

**Ntemi N. Kilekamajenga.**  
**JUDGE**  
**06/10/2023**

