

TANZANIA / JUDGMENT

KIROTET RULING

COURT
TANZLII

DECIDED
27 June 2024

Source: media.tanzlii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF TANZANIA (MWANZA SUB-REGISTRY) AT MWANZA CIVIL CASE NO. 4
OF 2024 KIROTET OLE SIARA.....PLAINTIFF VERSUS IBRAHIM
CHARLES.....1ST DEFENDANT MWITA
MOSES.....2ND DEFENDANT PETRO FREDRICK
KIMATHI.....3RD DEFENDANT FARIDU MZAMIU
MATOVU.....4TH DEFENDANT ALPHAYO ELIASHISHA
KIMARO.....5TH DEFENDANT MWANZA CITY
COUNCIL.....6TH DEFENDANT

RULING

21st and 27th June, 2024 KAMANA, J. This ruling determines whether a non-joinder of the Attorney General in a suit involving the Government is bad in law when there is a ninety-day notice issued to the Attorney General. Briefly, Mr. Kirotet Ole Siara has instituted a suit against the defendants including the 6th defendant Mwanza City Council which is a government institution. The suit was objected to by the Council as being bad in law for non-joinder of the Attorney General as a necessary party. 1 Submitting in support of the preliminary objection, Ms. Sabina Yongo, learned state attorney, prefaced by asserting that the suit is bad in law for non-joinder of the Attorney General. She augmented her assertion by contending that according to section 6(3) of the Government Proceedings Act, Cap. 5 [RE.2019] as amended, the Attorney General must be joined in any suit against the Government. She argued that a non-joinder of the Attorney General in the circumstances contemplated under section 6(3) vitiates the proceedings as per section 6(4) of the Act. The learned state attorney implored this Court to follow the position taken by this Court in the case of Kilempu Kinoka Laizer v. Hai District Council and Another, Land Case No. 21 of 2014 in which the suit was struck out for non-joinder of the Attorney General. Fortified by the position taken by this Court in the cited case, Ms. Yongo beseeched this Court to strike out the suit with costs. Responding, Mr. Machere Mkaruka, learned counsel for the plaintiff dismissed the objection as baseless. He contended that the plaintiff has fulfilled a pre-condition to sue the Government by issuing a statutory notice of 90 days that was received by the Attorney General on 9th August, 2023. Based on that, the learned counsel argued that non-joinder of the Attorney General is not fatal as this Court under Order I 2 Rule 10(2) of the Civil Procedure Code, Cap. 33 [RE.2019] has the power to order the joinder of any person as a necessary party to a suit. In this regard, the learned counsel invited this Court to follow the

position taken by the Court of appeal in the case of Mexons Investment Ltd v. CRDB Bank PLC, Civil Appeal No. 222 of 2018 in which it was stressed that the Court has powers independent from the parties to add any person as a necessary party to the suit. He distinguished the case of Kilempu Kinoka Laizer (Supra) on the reason that in the said case, no statutory notice of 90 days was issued to the Attorney General. Mr. Mkaruka urged this Court to dismiss the objection with costs and grant his client leave to amend the plaint to include the Attorney General. Rejoining, Ms. Yongo held the view that issuance of the statutory notice of 90 days to the Attorney General and non-joinder of the Attorney General are two separate conditions that are not intertwined. Concerning Order I Rule 10(2), the learned state attorney opined that the Order is inapplicable to this case's circumstances as no party was wrongfully joined in the suit. She went on to contend that praying this Court to order the joinder the Attorney General or to permit the plaintiff to amend the plaint to include the Attorney General amounts to pre-empting the preliminary objection raised by the 6th defendant. She 3 distinguished the case of Mexons Investment Ltd (Supra) as not applicable to the circumstances of this case as in the said case no preliminary objection was raised. I have given a thorough thought to the arguments advanced by the legal minds before me. Before I determine the controversy, I think it is relevant to reproduce the provisions of section 6(3) and (4) of the Government Proceedings Act as the objection revolves around it. The provisions read: '(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 organization 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).' From the wording of section 6(3), the Attorney General is a necessary party that must be joined in any suit against the Government. 4 Further, the provisions of section 6(3) are crystal clear that in the absence of the Attorney General as a necessary party, the proceedings in a suit against the Government are vitiated. Both subsections have been couched in mandatory terms. The provisions were designed to ensure that in every suit against the Government, the Attorney General, the Government's chief legal advisor, is joined as the necessary party. In that context, any proceedings against the Government in which the Attorney General is not a party stand vitiated unless the Attorney General opts to exercise his right under section 6A of the Government Proceedings Act. According to section 6A of the Government Proceedings Act, the Attorney General has the right to intervene in any suit by or against the Government. In my opinion, the provisions of section 6A do not override the provisions of section 6(3). They only give the Attorney General the right to intervene which is his domain. That being the case, the absence of the Attorney General as a necessary party, at least in my view, so far as section 6(3) is concerned affects the jurisdiction of this Court in the sense that the suit becomes incompetent as the proceedings are vitiated in light of section 6(4). I agree with Mr. Mkaruka that the case of Kilempu Kinoka Laizer (Supra) is distinguishable from this case as in the said case, the plaintiff 5 did not issue a 90-day notice to the Attorney General while in

this case, the notice was issued. However, it should be noted, as rightly put by Ms. Yongo that the 90-day notice is a separate requirement from the joinder of the Attorney General as the necessary party. Needless to say, the 90-day notice is issued to the Attorney General as the government's chief legal advisor to inform him of the nature of the dispute so that he can advise the government on the way forward including settling the dispute. The joinder of the Attorney General as a necessary party is there to ensure that the government's chief legal advisor is part of the proceedings and is afforded the right to be heard. It is worth noting that the Attorney General is a necessary party by operation of the law as opposed to other parties whose necessity is determined by the facts of the given case. In that case, the case of Mexons Investment Ltd (Supra) as cited by Mr. Mkaruka is not helpful in the circumstances of this case. The cited case was about a necessary party known as Mogas. Mogas was taken to be a necessary party due to the facts of the case. However, in this case, the Attorney General is a necessary party by operation of the law. As regards the prayer that the Court should use its power to join the Attorney General or permit the plaintiff to amend the plaint to add the Attorney General as a necessary party, I hasten to state that since the Attorney General is a necessary party by operation of the law, his absence makes this suit incompetent before the Court. Given that, I hesitate to grant the prayers in the incompetent suit. The suit is struck out with costs. DATED at MWANZA this 27th day of June, 2024. KS KAMANA JUDGE 7

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE	https://media.tanzlii.org/media/judgment/315140/source_file/ebf5696832c2341f/KIROTET-RULING.pdf
CASE PAGE	https://chat.esheria.ai/case-law/tanzania/kirotet-ole-siara-joinderofparties-tanzlii-2024--6a3ea5243b1caa9129819ab8

Prepared on 14 October 2026 · Esheria