

A Secondly, in dealing with this matter in *Ngalai's* case (1) the Court took the view that article 83(4) of the Constitution is applicable to election petition cases by virtue of section 5(1) of the Appellate Jurisdiction Act 1979. That provision says:

B 5(1) In civil proceedings, except where any other written law for the time being in force provides otherwise, an appeal shall lie to the Court of Appeal ...

C The remaining part of the sub-section is not applicable. The Court construed article 83(4) of the Constitution as being one such written law referred to in this sub-section. The Court said:

D ... it is apparent that the provisions of section 5 of the Appellate Jurisdiction Act 1979 do not apply to all cases. Exceptions are recognized where there is a written law providing for a contrary position. *There is no doubt in our minds that sub-article (4) of article 83 of the Constitution is such a written law.* It provides clearly for a right of appeal against any decision of the High Court in election petition cases. [emphasis supplied]

E This would appear to suggest that article 83(4) of the Constitution derives its authority from section 5(1) of the Appellate Jurisdiction Act. In other words, it means that one has to look to section 5(1) of the Act as the basis for applying article 83(4) of the Constitution. F Counsel for both sides submitted, and rightly in our view, that this approach is wrong in as much as it tends to equate the Constitution with, or subordinate it to, ordinary legislation. The correct position is that the Constitution is the basic law from which section 5(1) of the Appellate Jurisdiction Act derives its existence. Article 117(4) of the Constitution says:

H (4) A law enacted in accordance with the provisions of this Constitution by Parliament ... may make provisions stipulating procedure for lodging appeals in the Court of Appeal, the time and grounds for lodging the appeals, and the manner in which such appeals shall be dealt with.

I It is under this provision of the Constitution that section 5(1) of the Appellate Jurisdiction Act was enacted to make provision relating

A to appeals to the Court of Appeal. We think that it would be wrong to construe that sub-section as the basis for invoking article 83(4), a provision of the very basic law which creates the sub-section. Thus we are of the view that where an appeal from the decision of the High Court lies to the Court of Appeal under article 83(4) of Constitution B the appeal is to be filed solely in reliance of that provision and it would be unnecessary, indeed wrong, to make any reference to section 5(1) of the Appellate Jurisdiction Act. However, as we have made it C abundantly clear, the interlocutory decision in the present case did not come within the scope of article 83(4) of the Constitution and therefore the appeal from it is governed by the provisions of section 5(1) of the Appellate Jurisdiction Act.

D Having determined the question which was referred to the Full Bench we now send the matter back to the Full Court for the appeal to be dealt with in the usual manner.

ATTORNEY GENERAL v. DIOCESE OF NJOMBE

F HIGH COURT OF TANZANIA
AT SONGEA
(Manento, J.)

G CIVIL CASE No. 2 OF 1998

H *Courts – Jurisdiction – Jurisdiction of Courts in suits by the Government – Whether a suit by the Government may be instituted in a Court other than the High Court – Section 7A of the Government Proceedings Act 1967 and section 13 of the Civil Procedure Code 1966.*

I *Government Proceedings – Suits by the Government – Government files a suit for recovery of TZS. 8 million in the High Court – Whether the suit is*

A *properly before the High Court – Section 7A of the Government Proceedings Act 1967, section 13 of the Civil Procedure Code 1966.*

This was a suit, by the Government, for recovery of TZS. 8 million from the defendant.

B A preliminary issue was raised as to whether the suit should not have been filed in a Subordinate Court where the limit of pecuniary jurisdiction was TZS. 10 million and section 13 of the Civil Procedure Code (1966) requires every suit to be instituted in the lowest Court having jurisdiction. For the Government, it was argued that the suit was properly filed because section 6 of the Government Proceedings Act requires all suits against the Government to be filed in the High Court.

C **Held:** (i) Under section 6 of the Government Proceedings Act 1967 all “suits against the government” must be instituted in the High Court, not all suit by the Government; if Parliament wanted all suits in which the Government is a party to be filed in the High Court, it could expressly say so;

D (ii) As the value of the subject matter in this suit is within the pecuniary limits of the jurisdiction of Subordinate Courts it is improperly before the High Court.

E **Suit is struck out**

Statutory provisions referred to:

- (1) Civil Procedure Code 1966, section 13
- F (2) Government Proceedings Act 1967 Number 16 of 1967, Sections 6 and 7A
- (3) Government Proceedings (Amendment) Act 1994 Number 30 of 1994, section 2(4)

G *Mr Manyanda* State Attorney, for the Plaintiff

Mr Mwingira for the Defendant

H **RULING**

(Dated 23 April 2002)

I **Manento, J:** The Attorney General has instituted civil proceedings against the respondent for the recovery of TZS. 8 million being a

A fair and reasonable compensation for extensive damages done to a motor vehicle, registration STH. 5038 Toyota Land Cruiser VX, which arose out of the negligent conduct of a driver employed by the defendant. In their amended written statement of defence, the defendants raised a preliminary point of law, in that the High Court has no jurisdiction to hear this case as per section 13 of the Civil Procedure Code 1966, as the value of the claim is in the competence of the Subordinate Court as per the Magistrate’s Courts Act 1984. B

C Mr Mwingira, learned counsel for the defendant, submitted in Court that under the Civil Procedure Code 1966, section 13, every suit must be instituted in the Court of the lowest grade competent to try it and on this case, it is the District Court whose pecuniary jurisdiction is provided as being ten million shillings by the Magistrate’s Courts Act 1984. He submitted that the plaint should be struck out from this registry. D

E In reply to that submission, Mr Manyanda, learned State Attorney, submitted that under the Government Proceedings (Amendment) Act Number 30 of 1994, amending section 6 of the Principal Act, by its section 2(4), all suits against the Government must be instituted in the High Court. Alternatively, he submitted that though the learned state attorney is appearing, the interested party is the local government and not the Attorney General himself. Besides that, he had submitted earlier that the High Court has unlimited jurisdiction to try any civil case unless it is expressly barred, and section 13 of the Civil Procedure Code 1966 is not a bar to this Court to try this case. For the use of the words “suits against the Government” as seen in section 2(4) of Act 30 of 1994, the learned state attorney further said that even though the Parliament did not expressly say that all proceedings for and against the Government should be instituted in the High Court, yet it can legally be implied to mean so. F G H

I It is not in dispute that the Subordinate Court has jurisdiction to try cases whose estimated value is ten million shillings. The suit before this Court is for a claim of eight million shillings. Therefore,

- A according to Mr Mwingira, learned counsel, this suit should have been filed in the Subordinate Court, which is the District Court or Court of a Resident Magistrate. Secondly, that the use of the words "suits against the Government" means that suits in which the Government is the defendant. I think Mr Mwingira is right in this point. If the Parliament wanted all suits in which the Government is a party to be filed in the High Court, it could expressly state so.

- C Besides that general support to what Mr Mwingira learned counsel has submitted, yet the law itself, the Government Proceedings (Amendment) Act Number 40 of 1974 in its general section 7A provided that:

- D Subject to section 6, section 7 and other provisions of this Act, all civil proceedings by or against the government shall be instituted and proceeded with in accordance with such procedure as would apply in like proceedings between private persons.

- E This section talks of both situations where the Government is the plaintiff, in which case the proceedings are "by" the Government, and when they are "against" the government. The procedure to be followed is like proceedings between private persons. When the Parliament talked about proceedings against the Government, as shown in the section 2(4) of Act Number 30 of 1994, it is because it has clearly stated that no civil suit should be instituted against the Government without the knowledge of the Attorney General. Thus a mandatory 90 days' notice was imposed instead of the previous consent of the Minister formerly needed by Act Number 16 of 1967. On the other hand, the Government did not want to tie itself with the requirement to give notice to the party it wanted to sue.

- H The limit of the pecuniary jurisdiction of the subordinate courts has since been enhanced to TZS. 100 000 000. See: section 40(2)(b) of the Magistrates' Courts Act 1984 as amended by the Written Laws Miscellaneous Amendments) (Number 3) Act 2002 Number 25 of 2002

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A Under section 7A of Act 40 of 1974, the procedure to be followed being that of private persons is that provided by section 13 of the Civil Procedure Code 1966, that all civil proceedings should be instituted in the Court of the lowest grade competent to try it. Thus the Court of the lowest grade for the government to institute this suit is the District Court or Court of a Resident Magistrate. B

C The learned State Attorney made a contradictory submission when he said that though they (State Attorney) instituted these proceedings, yet the beneficiaries are the local government. I say contradictory submission because the plaint speaks the opposite. The heading of the suit is titled *Attorney General v. Diocese of Njombe*. That the plaintiff is the Chief Legal Advisor to the Government of the United Republic of Tanzania who can sue and be sued on behalf of the latter under the provisions of the Government Proceedings Act 1967. Here it is the government which is suing and is capable of being sued and that is why it is stated in the Government Proceedings Act 1967, proceedings for or against the government. Therefore, the second limb of the submissions, like the first part of the submissions, has no base to anchor on. D E

F Having said all that, I am of the considered opinion that when the proceedings are by the government, they are to be instituted in a Court of the lowest grade whereas where the proceedings are against the government, they must be instituted in the High Court. Thus the suit before this Court is improperly before it for lack of jurisdiction and it is struck out. The plaintiff may institute it in a Court of the lowest grade, that is to say the district/resident magistrate's Court. G It is so ordered.

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