

A We therefore allow the appeal and quash the conviction for armed robbery for which the appellant was ultimately convicted of and substitute thereof a conviction for the offence of assault occasioning actual bodily harm contrary to section 241 of the Penal Code. The sentence
B of thirty years imprisonment is quashed and set aside. The offence of assault occasioning actual bodily harm attracts a maximum sentence of five years imprisonment. The appellant was convicted by the District Court on the 20 June 2000 and by now he has served close to four
C years. We are of the view that this period is sufficient punishment for the offence he committed.

We therefore reduce the sentence to such term as will result to his immediate release unless otherwise held for some other lawful
D cause. The compensation order against him is also quashed and set aside.

E

**SION GABRIEL JONES v. MINISTER OF HOME
AFFAIRS AND TWO OTHERS**

F

**HIGH COURT OF TANZANIA
AT ARUSHA
(Shangwa, J)**

G

MISCELLANEOUS CIVIL CAUSE No. 13/2002

H

Constitutional Law – Basic Rights and Duties – Petition for enforcement of basic right – Petition against the Government – Whether Notice to Government is necessary before instituting Petition – Basic Rights and Duties Enforcement Act 1994 and section 6(2) of the Government Proceedings Act 1967.

I In a petition brought under the Basic Rights and Duties Enforcement Act 1994, the respondents raised preliminary points of objection one of which was that the Petition

was bad in law as it contravened the provisions of section 6(2) of the Government Proceedings Act requiring the issuance of a ninety days' notice to the Government. **A**

Held: There is no provision under the Basic Rights and Duties Enforcement Act 1994 which requires a petitioner to submit to the Government any notice before institution of the petition. **B**

Objection dismissed

Statutory provisions referred to:

- (1) Tanzania Court of Appeal Rules 1979, rules 15 and 76(6) **C**
- (2) Constitution of the United Republic of Tanzania, article 30(3)
- (3) Basic Rights and Duties Enforcement Act 1994, sections 4 and 5
- (4) Executive Agencies Act 1997, section 3(6)(b) **D**
- (5) Government Proceedings Act 1967, section 6(2)

Mr Merinyo, for the Petitioner

Mr Mzikila, for the Respondents **E**

RULING

(Delivered 30 March 2004) **F**

Shangwa, J.: This is preliminary objection raised by the first, second and third respondents against the petition filed by Sion Gabriel Jones in the matter of the Constitution of the United Republic of Tanzania 1977, as amended, and in the matter of the Basic Rights and Duties Enforcement Act 1994, and in the matter of the Tanzania Citizenship Act 1995 and in the matter of the Immigration Act 1995, read together with the Tanzania Citizenship Regulations 1997 (G.N. 658 of 26 September 1997) and the Immigration Regulations 1997 (G.N. 657 of 26 September 1997). **G**

The respondent raised two grounds of objection involving two points of law. The first point is that the petition is bad in law as it **H**

A contravenes the provisions of section 6(2) of the Government Proceedings Act 1967, as amended by Act Number 30 of 1994. The second one is that the petitioner has no *locus* to sue on behalf of Clive Michael Jones.

B In his written submission for the respondents, learned State Attorney, Mr Mzikila, submitted on the first point that before one sues the Government, he has to issue a notice of not less than ninety days. He referred the court to the provisions of section 6(2) of the Government Proceedings Act 1967, as amended by Act Number 30 of 1994, which provides as follows:

D No suit against the Government shall be instituted, and heard unless the claimant previously submits to the Government Minister, Department or Officer concerned a notice of not less than ninety days of his intention to sue the Government, and he shall send a copy of his claim to the Attorney General.

E He contended that the petitioner was supposed to comply with the said provision before filing her suit. He stated that according to what is provided in a **Concise Law Dictionary** (5 ed), a suit is any legal proceeding of a civil kind brought by one person against another. He referred the court to Miscellaneous Civil Cause Number 81 of 2002, High Court of Tanzania, Dar es Salaam Main Registry (unreported).

F On the second point Mr Mzikila submitted that the petitioner has no *locus standi* to sue on behalf of Clive Michael Jones and she has no cause of action against the respondents because the one who was refused a dependant's pass to stay with his family is Clive Michael Jones.

H In his reply, learned counsel for the petitioner, Mr Merinyo, submitted on the first point that the State Attorney, for the respondents, misconceived the nature of the matter between the petitioner and the respondents. He contended that this matter is not a suit so as to be governed by the provisions of the Government Proceeding Act 1967, as amended, and those of the Civil Procedure Code 1966. He said it is a petition

A brought under the Basic Rights and Duties Enforcement Act 1994 in which it is alleged that the petitioner's basic rights under the Constitution have been or are being or are in danger of being violated. Also he contended that had this been a suit, he would have presented a complaint instead of an application made by petition. On the second point, Mr Merinyo submitted that the reliefs sought in the petition are applied for by the petitioner on her own behalf and not on behalf of her husband, and that therefore she has *locus* to proceed against the respondents in search of her constitutional right of social equality between men and women.

D In my considered view the petition brought by Sion Gabriel Jones wife of Clive Michael Jones is not bad in law. It is good in law. Sion Gabriel Jones who is the petitioner was not in law obliged to submit to a Government Minister, or any officer concerned, a Notice of Intention to file a petition in the High Court for the relief sought by her prior to filing the same. She was not so obliged because there is no provision under the Basic Rights and Duties Enforcement Act 1994 which requires a petitioner to submit to the Government Minister, Department or officer concerned, any notice before institution of the petition. A notice of this kind is required by law only where a person intends to file a suit against the Government in respect of any actionable civil wrong as stipulated under section 6(2) of the Government Proceedings Act 1967, as amended by Act Number 30 of 1994.

G I agree with the learned State Attorney that the meaning of a suit as given in the **Concise Law Dictionary** (5 ed) is "any legal proceeding of a civil kind brought by one person against another" which meaning was quoted and followed by the late Kyando, J., in High Court, Dar es Salaam Main Registry, Miscellaneous Civil Cause Number 81 of 2002 (unreported) whereby he held that a civil proceeding by way of a petition is a suit. It is important to note, however, that the proceedings between the parties in that case were ordinary in nature. It is important to note also that the proceedings in that case were lodged as a petition under section 3(6)(b) of the Executive Agencies Act 1997 instead

- A of being lodged as a suit under the said Act. The proceedings in this case are special. They involve matters pertaining to basic legal rights which are alleged to have been contravened by the respondents and of whose redress the petitioner is seeking from this court. There is
- B a special procedure under our law through which such redress can be sought from this court. It is not by way of institution of a suit by presentation of a plaint. It is by way of application made by petition as the law provides under sections 4 and 5 of the Basic Rights and
- C Duties Enforcement Act 1994. An application made by petition is not a suit. So, there lies the distinction.

- I am of the considered view that fetching and stretching the word petition to mean a suit in this particular case will lead into unwarrantable
- D importation of the requirement of submitting a prior notice of intention to sue the Government laid down under section 6(2) of the Government Proceedings Act 1967 as amended by Act Number 30 of 1994, into the Basic Rights and Duties Enforcement Act 1994, wherein such a
- E requirement is not provided for upon lodging a petition to the High Court for redress in cases where one's constitutional right or legal right under any law has, or is being, or is likely to be, contravened. I find therefore that the first point of preliminary objection raised
- F by the respondents was indeed misconceived.

- On the second point of preliminary objection, I am of the opinion that the petitioner has *locus standi* in the matter. She is not petitioning on behalf of her husband, Clive Michael Jones. She is petitioning
- G on her own behalf as a Tanzanian woman who is married to a non citizen for enforcement of her basic right in the High Court, relying on article 30(3) of the Constitution of the United Republic of Tanzania 1977. Quoting from paragraph 13 of her petition, she is praying
- H among other things for, "a declaration that the Citizenship Act Number 6 and Immigration Act Number 7 both of 1995 are unconstitutional so far as they segregate women's rights to have their husbands stay in the country depending on them as women do in case they are foreigners".
- I From the above quotation, it can be found that the second point of preliminary objection raised by the respondents that the petitioner

has no *locus standi* in the matter is as well misconceived. For these reasons, I hereby dismiss both points of preliminary objection with costs to be taxed in the main cause.

**TANZANIA UNION OF INDUSTRIAL AND
COMMERCIAL WORKERS (TUICO) at MBEYA
CEMENT COMPANY LTD v. MBEYA CEMENT
COMPANY LTD AND NATIONAL INSURANCE
CORPORATION (T) LIMITED**

**HIGH COURT OF TANZANIA
AT DAR ES SALAAM
(Massati, J.)**

CIVIL CASE No. 315 OF 2000

Labour law – Suit instituted by a trade union branch of TUICO which is not a legal entity – Whether union branch has locus standi – Whether union branch can represent dead, retrenched or retired members.

Contract law – Privity of Contract – Action is based on trust deed – Whether plaintiff can sue on trust deed to which he is not a party – Whether trust rules applicable.

Arbitration – Parties agree to submit matter to arbitration – Whether court bound to refer matter to arbitration in case of dispute – Whether submission of a suit to arbitration can be taken and decided as a preliminary objection.

Civil Practice and Procedure – Written submissions – Annexures attached to written submissions – Whether documents constituting evidence of facts may be attached to written submissions.

The plaintiff, a branch of TUICO trade union at Mbeya Cement Company Ltd filed a suit against the defendants jointly for, among other reliefs, a specific performance of