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CRITICAL ANALYSIS OF THE EFFECTIVENESS OF THE LEGAL PROCEDURES GOVERNING PROCEEDINGS AGAINST THE GOVERNMENT: LAW AND PRACTICE IN TANZANIA

By

DR. FRANCISCO MWIZAMHOLYA¹, BERTHA MICHAEL KIMOLO²

[2nd Year LLM Student, St. Augustine University, Mwanza, Tanzania]



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Corresponding author

**DR. FRANCISCO
MWIZAMHOLYA**

Abstract

Proceedings against the Government occupy a distinctive position in Tanzania's legal system because a person seeking to enforce a claim against the State is required to comply with procedural requirements that do not ordinarily apply in the same manner to private litigants. This article critically examines the effectiveness of these procedures, with particular attention to the requirement of giving notice before instituting civil proceedings against the Government under the Government Proceedings Act, Cap. 5 R.E. 2023. The article considers whether the existing procedural framework strikes a proper balance between the protection of governmental interests and the right of an individual to seek judicial redress. It further examines the manner in which courts have interpreted procedural requirements and the extent to which strict compliance may affect the determination of disputes on their merits. The article argues that although procedural requirements may serve legitimate administrative purposes, their strict application may, in particular circumstances, create barriers to access to justice where claims are defeated on procedural grounds without consideration of their substantive merits. The article therefore examines the relationship between the Government Proceedings Act and constitutional principles, particularly equality before the law and the requirement that courts administer justice without undue regard to technicalities. It concludes by proposing reforms aimed at reducing unnecessary procedural barriers while preserving legitimate governmental interests in the orderly administration of public affairs.

KEYWORDS: Government Proceedings, Access to Justice, Procedural Requirements, Ninety-Day Notice, Government Proceedings Act, Tanzania, Substantive Justice.

GENERAL OVERVIEW

The ability of an individual to seek a remedy against the Government is an important aspect of the rule of law. In a legal system founded on the principle that public authorities are subject to law, the Government cannot be placed entirely beyond the reach of the courts when its actions cause a legally recognized injury. At the same time, proceedings involving the Government have traditionally been subject to special procedural rules. These rules are intended, among other things, to give public authorities an opportunity to consider claims before litigation is commenced and to protect the orderly functioning of government institutions. In Tanzania, proceedings against the Government are principally

regulated by the Government Proceedings Act, Cap. 5 R.E. 2023. The Act establishes procedures that distinguish claims against the Government from ordinary civil proceedings between private parties. Among the requirements attracting particular attention is the statutory notice requirement applicable before civil proceedings are instituted against the Government. Section 6(2) requires a person intending to institute such proceedings to serve notice of the intention to sue within the period prescribed by the law.ⁱ

The existence of special procedures for proceedings against the Government is not, in itself, unusual. The difficulty arises when procedural requirements are applied in a manner that prevents a legitimate dispute from being heard on its merits. A claimant may have a substantive grievance against a public authority but



nevertheless fail to obtain judicial determination because of failure to comply with a procedural requirement. The question is therefore whether procedural rules intended to regulate litigation against the Government continue to serve their legitimate purpose without becoming an unnecessary obstacle to access to justice.ⁱⁱ

This question must also be considered in light of the Constitution of the United Republic of Tanzania, 1977. Article 13(1) recognizes the principle of equality before the law, while Article 107A(2)(e) requires courts to administer justice without being unduly constrained by technicalities. These constitutional principles raise an important issue concerning the relationship between statutory procedural requirements and the broader objective of substantive justice. The courts are consequently required to interpret and apply procedural rules within the constitutional framework governing the administration of justice.ⁱⁱⁱ

The development of Tanzanian jurisprudence demonstrates that the relationship between procedural requirements and access to justice has not always been straightforward. In *Kukutia Ole Pumbun and Another v Attorney General*, the Court of Appeal considered the implications of procedural restrictions in proceedings against the Government. The case remains relevant to the broader discussion of whether procedural rules should operate in a manner that places the State in a substantially different position from an ordinary litigant. The issue is particularly important because non-compliance with procedural requirements may result in proceedings being rejected before the substantive dispute is considered. This may have serious consequences for a person seeking compensation, enforcement of a legal right or another judicial remedy against the Government. The problem is therefore not merely technical. It concerns the practical ability of an individual to obtain a judicial remedy where the alleged wrong has been committed by a public authority.^{iv}

This article examines the effectiveness of the legal procedures governing proceedings against the Government in Tanzania. It focuses on the statutory framework, constitutional principles and judicial practice relating to such proceedings. It also considers practical difficulties associated with procedural compliance and the consequences of strict procedural enforcement. The article finally considers possible reforms that could improve the operation of the existing framework while maintaining legitimate safeguards for public administration.

THE LEGAL FRAMEWORK GOVERNING PROCEEDINGS AGAINST THE GOVERNMENT IN TANZANIA

Proceedings against the Government in Tanzania are governed by a combination of constitutional principles, statutory provisions and judicial practice. The Government Proceedings Act, Cap. 5 R.E. 2023 occupies a central position in this framework, but it does not operate in isolation. Its provisions have to be understood alongside the Constitution of the United Republic of Tanzania, 1977 and the general rules of civil procedure. The interaction between these sources of law is important because the special procedures

applicable to Government litigation must be applied consistently with the broader principles governing the administration of justice.

Constitutional Framework

The Constitution provides the broader legal foundation within which proceedings against the Government are conducted. Article 13(1) provides that all persons are equal before the law and are entitled to equal protection of the law. This provision is important when considering special procedural rules applicable to claims against the State. Although the Government may have legitimate administrative interests that justify certain procedural arrangements, those arrangements should not be understood as placing the State completely outside the ordinary demands of legality and judicial accountability.^v

The constitutional position is further reinforced by Article 107A, which recognizes the Judiciary as the authority with final responsibility for adjudication of disputes in Tanzania. Article 107A(2)(e) specifically directs the courts to administer justice without being unduly constrained by technicalities. The provision does not mean that procedural rules can simply be disregarded. Rather, it raises the question of whether a procedural requirement should, in a particular case, be applied in a manner that defeats the substantive determination of a dispute.^{vi} This constitutional setting becomes especially relevant where proceedings against the Government are challenged on procedural grounds. A court faced with such a matter is required to consider the statutory provision governing the procedure, but the interpretation and application of that provision cannot be divorced from the constitutional responsibility to administer justice. The issue is therefore one of maintaining an appropriate relationship between procedural discipline and substantive justice.^{vii}

The Government Proceedings Act Cap 5 R.E 2023.

The principal statute governing civil proceedings against the Government is the Government Proceedings Act, Cap. 5 R.E. 2023. The legislation establishes special rules concerning the manner in which claims against the Government are initiated, prosecuted and enforced. The rationale for such procedures may be understood from the special position occupied by the State as a litigant. Government litigation may involve public resources, public institutions and decisions taken in the discharge of public functions. A mechanism that allows the relevant authorities to receive and consider a claim before litigation may therefore have practical administrative value.^{viii}

One of the most significant requirements is contained in section 6(2), which provides for notice before civil proceedings are instituted against the Government. The notice requirement is intended to give the Government prior knowledge of the intended claim. In principle, such notice may allow the relevant authority to investigate the complaint, obtain the necessary legal advice and determine whether the matter can be resolved without commencing judicial proceedings. The difficulty lies in the legal consequences attached to non-compliance. Where a procedural requirement operates as a condition affecting the competence of proceedings, failure to comply may result in a claimant losing the opportunity to

have the substantive dispute determined. This is where a distinction must be drawn between a procedure that facilitates orderly administration and one that operates primarily as a barrier to adjudication.^{ix}

The statutory framework has also developed through legislative amendments. The history of the Government Proceedings Act demonstrates that the procedures governing claims against the Government have not remained static. Earlier provisions impose requirements that attracted considerable criticism, including the former requirement for ministerial consent before proceedings could be instituted. The removal or modification of such requirements reflects the continuing effort to reconcile the special position of Government with the rights of individuals seeking judicial remedies. The historical development is significant because it demonstrates that procedural rules concerning Government litigation are not beyond legislative reconsideration. Where experience shows that a particular procedure unnecessarily restricts access to courts, Parliament may reconsider its operation while retaining those safeguards that are genuinely necessary for public administration.^x

Civil Procedure Code Cap 33 R.E 2023

The Civil Procedure Code, Cap. 33 R.E. 2023 provides the general procedural framework for civil litigation in Tanzania. However, proceedings against the Government remain subject to the special provisions of the Government Proceedings Act. The relationship between the two statutes means that an individual who seeks to sue the Government must comply not only with the ordinary requirements applicable to civil proceedings but also with the additional requirements created by the special legislation. This distinction is important in practice. A litigant may have a cause of action that would ordinarily be capable of being brought before a court, yet the claim may encounter an additional procedural obstacle because the defendant is the Government. The resulting situation creates a practical difference between private litigation and Government litigation. The central question is whether that difference remains justified by the interests that the special procedures are intended to protect.^{xi}

The special position of the Government should not, however, be confused with immunity from legal accountability. The purpose of the Government Proceedings Act is to regulate the manner in which proceedings are brought against the State rather than to place governmental conduct beyond judicial scrutiny. This distinction is important in a constitutional system based on the rule of law. A procedural framework that regulates litigation can be justified; a framework that effectively prevents legitimate claims from receiving judicial consideration raises a different legal concern.

PROCEDURAL REQUIREMENTS AND ACCESS TO JUSTICE IN PROCEEDINGS AGAINST THE GOVERNMENT

The effectiveness of procedures governing proceedings against the Government depends not only on the wording of the law but also

on how those procedures operate in practice. The Government Proceedings Act imposes special procedural requirements which a claimant must satisfy before the substantive dispute can be determined.^{xii} The ninety-day notice requirement under section 6 (2) is particularly significant in this respect.

The Ninety-Day Notice Requirement

The notice requirement serves a legitimate administrative purpose. It gives the Government an opportunity to receive the claim, investigate the complaint and consider the matter before litigation is commenced. However, difficulties arise where failure to comply with the requirement prevents the court from examining the substantive claim. In such circumstances, a rule intended to regulate proceedings may also become a barrier to access to justice.^{xiii}

The issue has historical significance in Tanzania. Earlier legislation required ministerial consent before proceedings could be brought against the Government, a requirement that attracted criticism because the claimant's access to court could depend upon the consent of a Government representative. The development of the law, including the changes reflected in the present statutory framework, shows the continuing tension between protecting Government interests and preserving judicial remedies for individuals.^{xiv} In *Kukutia Ole Pumbun and Another v Attorney General*, the Court of Appeal considered the restrictive nature of procedural requirements applicable to proceedings against the Government. The case remains relevant to the broader question of whether procedural protection accorded to the State should be allowed to operate in a manner that undermines effective access to judicial remedies.^{xv}

Procedural Compliance and Preliminary Objections

Non-compliance with procedural requirements may expose proceedings against the Government to preliminary objections. Such objections have an important role where proceedings are legally incompetent, but strict procedural enforcement may also result in a claim being terminated before its substantive issues are considered. The research proposal identifies incompetence, prematurity and preliminary objections as recurring concerns in proceedings against the Government.^{xvi} This problem may be particularly difficult for litigants who have limited knowledge of civil procedure or lack access to legal assistance. A claimant may have a genuine grievance but still fail to obtain a determination because of procedural requirements that were not properly understood or complied with. The effectiveness of the framework should therefore be considered from the perspective of both legal certainty and practical accessibility.

Equality Before the Law and Substantive Justice

Article 13(1) of the Constitution guarantees equality before the law. This principle is relevant to proceedings against the Government because the State, unlike an ordinary individual, possesses considerable institutional and legal resources. Special procedures may be justified by the nature of Government administration, but they should not unnecessarily restrict an individual's ability to seek judicial redress. Article 107A(2)(e)

further requires courts to administer justice without being unduly constrained by technicalities. This provision does not abolish procedural rules. Rather, it emphasizes that procedure should serve the administration of justice and should not, without sufficient justification, prevent the determination of substantive disputes.^{xvii}

The central issue is therefore one of balance. The Government requires reasonable procedural protection to investigate and respond to claims, but individuals must also retain a meaningful opportunity to have legitimate grievances determined by the courts. Excessive procedural barriers, particularly where they result in dismissal without consideration of the merits, may weaken the practical realization of access to justice.^{xviii}

Practical Difficulties and the Need for Reform

The effectiveness of the existing framework is also affected by practical difficulties such as delay, procedural technicalities, limited legal awareness and the consequences of non-compliance. These difficulties demonstrate that access to justice involves more than the formal right to institute proceedings. A claimant must also be able to understand and comply with the procedures necessary to bring the dispute before the court. A more effective framework should therefore preserve procedures that serve legitimate governmental interests while reducing unnecessary technical barriers. The objective should be to ensure that procedural rules facilitate orderly Government litigation without unnecessarily preventing courts from determining genuine disputes on their merits.^{xix}

PRACTICAL CHALLENGES IN PROCEEDINGS AGAINST THE GOVERNMENT

Despite the existence of a statutory framework, several practical difficulties affect proceedings against the Government in Tanzania. One major concern is procedural non-compliance. Failure to satisfy statutory requirements may render proceedings incompetent or expose them to preliminary objections before the substantive dispute is heard.

Delay is another concern. Where a claimant is required to comply with additional procedures before approaching the court, the resolution of the dispute may take longer than an ordinary civil claim. This may be particularly problematic where the claimant is seeking compensation or another remedy for an alleged wrong committed by a public authority.

Limited awareness of procedural requirements may also affect access to justice. Litigants who are unfamiliar with the Government Proceedings Act and civil procedure may find it difficult to identify the appropriate procedure or comply with statutory requirements within the prescribed period. The problem is more significant for persons who cannot easily obtain professional legal assistance.

A further challenge arises from the tension between procedural requirements and substantive justice. Where a legitimate claim is dismissed because of a procedural defect, the court may never

determine whether the Government was legally responsible for the alleged wrong. This raises concerns in light of the constitutional requirement that justice should not be administered with undue regard to technicalities.

REFORM PROSPECTS

Reform should focus on maintaining legitimate protection for Government while reducing unnecessary barriers to judicial determination. The statutory notice requirement should be examined to determine whether its operation, particularly the consequences of non-compliance, remains proportionate to the administrative purpose it serves.

There is also a need for clearer procedural guidance for litigants and legal practitioners. Greater clarity regarding the requirements for instituting proceedings against the Government could reduce avoidable procedural errors and preliminary objections. Courts should likewise continue to interpret procedural provisions consistently with the constitutional principles of equality before the law and substantive justice.

Ultimately, the objective should not be to remove all special procedures applicable to Government litigation. Rather, the legal framework should ensure that such procedures facilitate orderly public administration without unnecessarily preventing individuals from obtaining judicial determination of legitimate claims.

END NOTES

- ⁱ Government Proceedings Act, Cap. 5 R.E. 2023, Section 6(2).
- ⁱⁱ Ibid.
- ⁱⁱⁱ Constitution of the United Republic of Tanzania, 1977, Article 13(1) and 107A(2)(e).
- ^{iv} Kukutia Ole Pumbun and Another v Attorney General [1993] TLR 159 (CA).
- ^v Constitution of the United Republic of Tanzania, 1977, Article 13(1).
- ^{vi} Constitution of the United Republic of Tanzania, 1977, Article 107A(2)(e).
- ^{vii} Ibid.
- ^{viii} Government Proceedings Act, Cap. 5 R.E. 2023.
- ^{ix} Ibid, Section 6(2).
- ^x Kukutia Ole Pumbun and Another v Attorney General [1993] TLR 159 (CA).
- ^{xi} Civil Procedure Code, Cap. 33 R.E. 2023.
- ^{xii} Government Proceedings Act, Cap. 5 R.E. 2023.
- ^{xiii} Ibid.
- ^{xiv} Written Laws (Miscellaneous Amendment), Act no 1 of 2020.
- ^{xv} Ibid.
- ^{xvi} Ibid.
- ^{xvii} Ibid.
- ^{xviii} Ibid, Article 13(1).
- ^{xix} Ibid.