

IN THE HIGH COURT OF TANZANIA

At DAR ES SALAAM
CIVIL CASE NUMBER 26 OF 2011

ZEBIDA BENSOM MUGASA....

PLAINTIFF

VS

**THE COMMISSIONER OF CUSTOMS
AND EXCISE.....**

DEFENDANT

Date of Ruling: 19-10-2011

RULING

JUMA, J:

This is a ruling on a preliminary objection raised by the Legal Services Department of the Tanzania Revenue Authority for the Defendant. The notice of intention to raise the objection is contained the first paragraph of the Written Statement of Defence which the Defendant filed on 20th May 2011 consisting of the following ground:

- i) The honourable court has no jurisdiction to entertain the suit in terms of section 7 of the Tax Revenue Appeals Act, Chapter 408 [R.E. 2006] and section 6 of the Tanzania Revenue Authority Act, Chapter 399 [R.E. 2006]. The Defendant shall therefore pray for the dismissal of the suit with costs.*

The hearing proceeded by way of written submissions. Defendant's submissions supporting the preliminary objection were filed on 12th July 2011. Plaintiff's replying submissions were drawn and filed by Magesa & Co. Advocates on 26th July 2011.

Defendant submitted that the Tax Revenue Appeals Board is a quasi-judicial body enjoying exclusive mandatory jurisdiction over disputes arising from tax laws. The Defendant submitted further that section 7 of the **Tax Revenue Appeals Act** which confers exclusive mandatory jurisdiction to the Board is cemented by section 7-(1) of the **Civil Procedure Code, Cap 33** which obliges courts to try all suits of civil nature except where jurisdiction of any specific suit is either expressly or impliedly barred. According to the Defendants, disputes of civil nature originating from laws that are administered by the Tanzania Revenue Authority are by virtue of section 7 of the **Tax Revenue Appeals Act** expressly barred from being determined by ordinary courts. Finally, Defendant strengthened their submissions by drawing the support from several cases. The Defendant has relied on the case of **Mr. Mohsin Somji vs. Commissioner for Customs and Excise and another; Commercial Case No. 287 of 2001** where Nsekela, J. held that it is the Tax Revenue Appeals Board that is vested with exclusive jurisdiction over disputes arising from tax laws.

In the replying submissions on behalf of the Plaintiff, Magesa & Co. Advocates does not deny that section 7 of the **Tax Revenue Appeals Act** gives original jurisdiction to the Tax Revenues Appeals Board in all proceedings of a civil nature over disputes arising from revenue laws administered by the Tanzania Revenue Authority. Section 7 states,

7.-The Board shall, subject to section 12 have sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority.

According to the learned firm of Advocates, the Plaintiff's suit is not so much about how the Commissioner exercised his powers, but it is about seeking to recover his car which the Commissioner had wrongly ordered to be auctioned. Further, the learned Advocates submitted that the Plaintiff's gravamen or the substantial cause of the action is tortuous but not about the revenue laws administered by the Tanzania Revenue Authority.

I have given considerable weight to the arguments of the Counsel. Two main issues call for my determination. First is whether this court lacks jurisdiction to entertain Civil Case Number 26 of 2011 because it is the Tax Revenue Appeals Board which is established under section 7 of the **Tax Revenue Appeals Act**, but not this court that has sole original jurisdiction to deal with all disputes arising from implementation of tax laws that are administered by the Tanzania Revenue Authority. The second issue is whether the Plaintiff's cause of action against the Defendant is tortuous and does not arise from administration of revenue laws by the Tanzania Revenue Authority.

I will begin with a consideration of the second issue regarding whether the Civil Case Number 26 of 2011 subject of the preliminary point of objection is tortuous. The main aim of tort is to compensate the victim for harm suffered as a result of the breach of a duty fixed

by law. Law of tort has developed to manifest distinct causes of action or branches of the law of tort. Foremost branch of the law of tort is the tort of negligence. To prove for example negligence, plaintiff must in his Complaint indicate for example a duty of care which the Defendant owed him, breach of that duty and damages proximately caused by the breach.

With due respect, the contention by the Plaintiff that his cause of action is tortious is not supported by what he pleaded in his own Complaint read together with its attachments. I have perused the Complaint which clearly shows that the dispute between the Plaintiff and the Defendant arises from implementation by the Defendant of revenue laws. In paragraph 5, the Plaintiff discloses that she is employed by Kinondoni Municipal Council as a teacher. She imported a vehicle and wanted to pay to the Defendant an assessed customs charges. According to the sixth paragraph of the Complaint, she failed to pay the customs charges because the name of the importer had been changed. In eighth and ninth paragraph the Plaintiff pleads on how the Defendant changed the name of the importer from that of the Plaintiff to that of Mwalimu B. Mugasa Makoka. And in tenth and eleventh paragraphs, the Plaintiff is aggrieved that the Defendant advertised that the vehicle belonging to Mwalimu B. Mugasa Makoka was to be auctioned and there was no way the Plaintiff could respond to the advertisement which did not mention her name.

In my opinion, what is pleaded in the Complaint is about payment of customs charges, assessment of customs charges and the name of

importer or consignee of the imported vehicle. Ninth paragraph of the Complaint, read together with attachment “D” support my opinion that the civil case before me is about the implementation of revenue laws. The second, third, fifth and sixth paragraphs of attachment “D”- which is a letter dated 10th December 2010 which Defendant sent to Magesa & Co. Advocates, states:

Napenda kukuarifu kwamba gari husika Toyota Land Cruiser Prado lenye namba ya fremu ZVJ95-0027027 baada ya kushushwa kutoka kwenye meli iliyoleta, lilihifadhiwa katika ICD ya AMI ambako ilikaa zaidi ya muda unaoruhusiwa kisheria na hivyo kukabidhiwa kwa idara hii na waendeshaaji wa AMI ICD. [2nd paragraph]

Waendeshaaji wa AMI ICD walitukabidhi gari hilo likiwa na utambulisho kamili wa namba za fremu ZVJ95-0027027 na Bill of Lading 05X009864 isipokuwa jina la mwenye gari lilisomeka kwenye karatasi ya makabidhiano (W.S.E. Na. AMI/11/2010) ni Mwalimu B. Mugasa Makoka wa S.L.P. 90374 Dar es Salaam. [3rd paragraph]

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Hata hivyo, Mugasa Zebaida Benson wa S.L.P. 90374 Dar es Salaam ambaye aliwasilisha kadhia Idara ya Forodha tarehe 05 Januari, 2010 na kupata makadirio ya kodi tarehe 05 Januari, 2010 alishindwa kulipa kodi mpaka gari hilo likanadiwa na kuuzwa tarehe 05 Agosti, 2010. [5th paragraph]

Kulingana na maelezo hapo juu, tunakuarifu umshauri mteja wako kwamba gari hilo limeuzwa baada ya kukaa bandarini na AMI ICD kwa muda wa siku 267 bila kulipiwa kodi na kuondolewa forodhani kama sheria inavyoagiza. [6th paragraph]

The sixth paragraph of the letter clearly informed the Plaintiff that the disputed vehicle had over-stayed in the storage and was sold in

compliance with applicable revenue laws. It is my finding therefore that; in so far as the second issue is concerned the cause of action pleaded in the Plaint is about the implementation of revenue laws but not so much about the tortuous action of the Defendant.

Upon my finding and holding that the dispute between the Plaintiff and the Defendant is not tortuous, but arises from the implementation of revenue laws; the issue whether this court has jurisdiction to entertain a dispute arising from implementation of revenue laws should not detain me much long. I have considered the rival submissions and cited authorities.

I am in full agreement with the interpretation of section 7 of the **Tax Revenue Appeals Act** as conferring exclusive mandatory jurisdiction to the Tax Revenue Appeals Board. This Board is a specific forum that has been designated by the **Tax Revenue Appeals Act** for the vindication of civil disputes arising from revenue laws administered by the Tanzania Revenue authority. There is no room for the Plaintiff to escape the mandatory language employed by section 7 with regard to “sole” original jurisdiction of the Board to hear and determine disputes arising from the implementation of revenue laws. It is my finding here that by filing this Civil Case Number 26 of 2011 in this Court instead of lodging the same before the Tax Revenue Appeals Board, the Plaintiff chose a wrong forum to redress her civil dispute arising from implementation of revenue laws.

From the foregoing, it is my finding that the preliminary point of objection has merit because this court has no jurisdiction to entertain this suit which arises from the implementation of revenue laws. Civil Case Number 26 of 2011 is hereby dismissed and the Defendant is awarded the costs.

It is ordered accordingly.



I.H. Juma

JUDGE

19-10-2011

DELIVERED IN PRESENCE OF: Magesa, Advocate (for the Plaintiff)



I.H. Juma

JUDGE

19-10-2011

