

**IN THE HIGH COURT OF TANZANIA
(COMMERCIAL DIVISION)
AT DAR ES SALAAM**

COMMERCIAL CASE NO. 26 OF 2005

**SUNDAY SANGA T/A
ITUMBI TRADING COMPANY.....PLAINTIFF
VERSUS
TANZANIA REVENUE AUTHORITY.....DEFENDANT**

Date for Final Submissions: 6/6/2005

Date of Ruling: 8/7/2005

R U L I N G

MASSATI, J:

The Plaintiff's motor vehicle make FUSO MITSUBISHI LORRY registration No. TZQ 2784 was impounded by the Commissioner of Customs on 16/12/2002 for conveying uncustomed goods. It was taken to Tunduma Customs Station. It is also not disputed that the Plaintiff paid the tax liability in February, 2003 and the customs warehouse rent in May, 2004 and February, 2005.

On the release of the motor vehicle the Plaintiff found that his vehicle was damaged. He came to this Court to claim damages on the basis of detinue and also challenged the very seizure of the vehicle. When the Defendant was served he filed a defence on 16/5/2005. In that Written Statement of Defence the Defendant has raised a preliminary objection to the effect that in terms of s. 7 of the Tax Revenue Appeals Act 2000 and s. 5A of the Tanzania Revenue Authority Act. 1995 as amended by Act. No.

15/2000; this Court has no jurisdiction to determine the matter. On 25/5/2005, I ordered that the said preliminary objection be argued in writing.

As ordered, the Defendant filed his submission on 30/5/2005. The Plaintiff was to file his by 6/6/2005. However on 2/6/2005 the Plaintiff filed an application for leave to amend the plaint so as to remove the allegation of illegal impounding of the vehicle. And on 6/6/2005 he filed his written submission.

Mr. Kidaya for the Defendant submitted that since the Plaintiff's vehicle was seized under the East African Customs and Transfer Management Act. (Revised) 1970, which is one of the revenue laws administered by the Tanzania Revenue Authority Act, the Board, has exclusive original jurisdiction in such matters under s. 7 of the Tax Revenue Appeals Act. 2000. He cited a number of decisions including ATTORNEY GENERAL V. LOHAAY AKONAAY AND JOSEPH LOHAAY [1995] TLR. 80 a decision of the Court of Appeal and DIMON TANZANIA LTD VS. COMMISSIONER GENERAL & OTHERS Misc. Civil Cause No. 107 of 2002, NJAKE OIL COMPNAY LIMITED VS. TRA Commercial Case No. 72 of 2004 to support his view. He therefore prayed that the suit be dismissed with costs.

The Plaintiff who was represented by M/S HEKIMA Advocate first reminded the Court of the pending application for leave to amend his plaint. He submitted that this course of action was permissible under O. VI rule 17 of the Civil Procedure Code 1966. Quite unnecessarily also in my view the learned Counsel cited the decision of the Court of Appeal in KLM ROYAL

DUTCH AIRLINES V. JOSE XAVIER PEREIRA [1994] TLR 230 for the obvious proposition that a party can apply to amend the basis of cause of action. I said this was uncalled for here because the Court has not amended the basis of the cause of action in this case to warrant the quoted reproach. While on this same argument and trying to justify why he ought first to be allowed to amend his claim the learned Counsel submitted that the claim for damages for detinue (loss of damages for retaining the vehicle) is rooted on the law of tort, and damage to the vehicle has nothing to do with revenue laws. On the premises, the learned Counsel insisted that he should first be allowed to amend his claim before the Court tackles the preliminary objection.

In the alternative the learned Counsel for the Plaintiff submitted that the issue of loss of business and damages on the motor vehicle is not covered as a dispute arising from revenue laws as anticipated under s. 7 of the Tax Revenue Appeals Act, 2000. He said the claim is a tort and the Commissioner General of TRA does not administer common law or even statutory law of torts. He said the claim is not on the assessment or calculation of any tax, duty levy or charge. He submitted that the enforcement of revenue laws ended with the payment of penalty and warehouse rent. He said after that the Plaintiff was supposed to have collected his motor vehicle in as sound, a condition as it was immediately before it was seized. Since the Defendant continued to retain the vehicle that amounted to the tort of trespass to property action able in ordinary Civil Courts.

The learned Counsel for the Plaintiff further submitted that s. 5 of The Tanzania Revenue Authority Act 1995 does not apply since there is no decision made by the Commissioner with which the Plaintiff is aggrieved. Lastly the learned Counsel submitted that the Court should not dismiss the suit on a mere technicality. For this he wanted the Court to draw inspiration from the decision of the Court of Appeal in the JUDGE IN CHARGE HIGH COURT OF ARUSHA & THE ATTORNEY GENERAL VS N – I – N MUNUO NG’UNI Civil Appeal No. 45 of 1998 (Unreported). He therefore prayed for the dismissal of the preliminary objection, so that the Court could then allow the Plaintiff to amend his plaint, since “*there is already a pending application on the same*”.

I think, it is the law, that where there is a preliminary objection against a party’s pleading (s) and the objection is on course for hearing, it is not proper to allow the party against whom the objection is raised either to amend or even to withdraw the matter, for that would amount to preempting the preliminary objection. I am supported on this my view by the decision of the Court of Appeal in IVAN MRKOBRAĐ, TANINGRA CONTRACTORS LTD VS PIUS RUGAMBO & FABIAN AMOSI for MROSO J.A. in Civil Application No. 96 of 2000 (Unreported).

I am thus of the firm view that the Plaintiff’s application for amendment of the plaint, (although the law permits it to be made at any stage) is inappropriate since it is made in the wake of and with a view to defeating a preliminary objection raised by the Defendant. It amounts to an abuse of the process. I will thus accordingly strike out that application for

now. So I will consider the merits of the preliminary objection as it stands at present.

I think, there is no dispute that under s. 7 of the Tax Revenue Appeals Act, 2000, the Tax Revenue Appeals Board:

“Shall subject to s. 12 have sole original jurisdiction to all proceedings of a civil nature in respect of disputes arising for revenue laws administered by the Tanzania Revenue Authority”.

I have no doubt in my mind that the present suit is a proceeding of civil nature. S. 5A of the Tanzania Revenue Authority Act 1995 as amended (now s. 6 of Cap 399 of the RE. 2002) defines the revenue laws administered by the Tanzania Revenue Authority against which an appeal to the Tax Revenue Appeals Board, may be preferred. They are listed down in the first schedule to the Act. Item 3 is the East African Customs Management Act (incorporated into Cap. 403 of the RE 2002). Cap 403 incorporates the provisions of Act No. 10 of 1970 of the Acts of the Community. By virtue of this Act, The East African Customs and Transfer tax Management (Cap 27) of the laws of the community is therefore one of the revenue laws administered by the Tanzania Revenue Authority.

Section 5A of the Tanzania revenue Authority Act (or s. 6 of Cap. 355) may have been framed widely and perhaps permissively:-

“Any person who is aggrieved by the decision of the Commissioner General in relation to any act or omission in the course of the

discharge of any functions conferred upon him under the law set out in the First Schedule to this Act, may appeal to the Board in accordance with the provision of the Tax Revenue Appeals Act”.

However s. 7 of the Tax Revenue Appeals Act 2000 is not that loose. It confers sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority to the Tax Revenue Appeals Board, and under s. 11 of the Act, appeals from the Board are exclusively the purview of the Tax Revenue Appeals Tribunal, which has sole jurisdiction.

From the combined wording of the provisions of the two statutes it is my understanding, as this Court has, on numerous occasions held, that the intention of the legislation; is to vest the jurisdiction in civil matters relating or arising from the administration of revenue laws into the Board, the Tribunal and thereafter to the Court of Appeal. And as rightly submitted by Mr. Kidaya, learned Counsel for the Defendant, and on the authority of ATTORNEY GENERAL VS. LOOHAY AKONAAY & ANOTHER case (cited above) civil Courts would not normally entertain a matter on which a special forum has been established. And s. 7 of the Civil Procedure Code 1966 also bars Civil Courts from trying suits of which their recognizance is either expressly or impliedly barred. The jurisdiction of the Courts in respect of disputes arising out of revenue laws is not only expressly barred by the combined effect of s. 5A of the Tanzania Revenue Authority Act and s. 7 and 11 of the Tax Revenue Appeals Act but also impliedly by the fact that although subordinate Courts had jurisdiction to entertain civil disputes in such matter as provided in s. 164 of the East African Customs

Management Act; after the enactment of the Tax Revenue Appeals Act 2000, Civil Courts were left with jurisdiction only to entertain and conclude matters which were pending on the date of the commencement of the business of the Board by virtue of s. 35 of the Act, which I take to be the final nail to the coffin of jurisdiction of the Civil Courts.

The argument by the learned Counsel for the Plaintiff that there is no decision on which the Plaintiff is aggrieved is defeated by the wide wording of s. 5A (s.6) to include any act or omission in the court of the discharge of any function conferred upon the Commissioner. And more so, because, the Plaintiff alleges that his vehicle was damaged in the course of its retention by the Commissioner while exercising or consequent upon his discharge of the functions conferred upon him by the East African Customs and Transfer Act (Act 10 of 1970) of the Community.

Having said so, I am constrained to have to uphold the Defendant's preliminary objection, and hold that this Court has no jurisdiction to determine the present suit. The same is thus accordingly dismissed with costs.

Order accordingly.

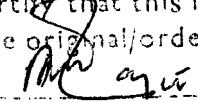
S.A. MASSATI

JUDGE

8/7/2005

1,802 words

I Certify that this is a true and correct
of the original/order Judgement Rulling

Sign 
Registrar Commercial Court Dsm.

Date 15/7/05