

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: OTHMAN, C.J., MJASIRI, J.A. And JUMA, J.A.)

CIVIL APPEAL NO. 84 OF 2009

TANZANIA REVENUE AUTHORITY.....APPELLANT

VERSUS

TANGO TRANSPORT COMPANY LTD..... RESPONDENT

**(Appeal from a judgment and decree of the High Court of Tanzania
at Arusha)**

(Mushi, J.)

dated the 5th day of December, 2003

in

Civil Case No. 38 of 2000

JUDGMENT OF THE COURT

24th & 27th October, 2016

OTHMAN, C.J.:

The appellant, Tanzania Revenue Authority (T.R.A.) is aggrieved by the judgment and decree of the High Court (Mushi, J.), entered in favour of the respondent, Tango Transport Company Ltd.

At the hearing of the appeal on 24/10/2016 Mr. Akonaay O'hhay-Sang'ka, learned Advocate represented the appellant and Mr. Kalolo Bundala, learned Advocate represented the respondent.

Before determining the merits or otherwise of the appeal it is essential that a brief account of the background be narrated.

The respondent company (plaintiff), which operated a transport business in Arusha sued the appellant (2nd defendant) and two others at the High Court for general damages, restoration on the value of its properties, a Scania lorry (Reg. No. TZ 94444) and a trailer (Reg. No. Tz. 92238), interest and costs arising out of the sale at a public auction on 18/8/2000 of the vehicles prompted by a warrant of distress (Exhibit D.1) for Tz. Shs. 8,219,538/= that was issued under section 109(1) of the Income Tax Act, Act No. 33 of 1973 on 16/02/1999 by the Commissioner of Income Tax.

In its judgment, the High Court held that the respondent had no existing tax liability payable to T.R.A. at the time of effecting the warrant of distress and its vehicles were not lawfully distrained and sold. It awarded the respondent Tz. Shs. 110,000,000/= as the replacement value of the vehicles, USD 2,704,000 as loss of business, Tz. Shs. 200,000,000/= as general damages, interest and costs of the suit.

Having closely examined the record and after full consideration of the parties' oral and written submissions, we are of the settled view that the fate of the appeal can be appropriately determined on ground one of the appellant's memorandum of appeal.

It states:

The learned High Court Judge erred in law in entertaining the suit based on the tax liability without satisfying himself as to whether the Respondent had exhausted the legal remedies available under the Tax Laws and Regulations.

Mr. Bundala admitted that much as at the High Court no objection was taken by T.R.A. on the trial court's jurisdiction to entertain and determine the suit, a question of jurisdiction can be taken at any stage of the proceedings, even on appeal as held by the Court in **Michael Leseni Kweka v. John Eliafe**, Civil Appeal No. 51 of 1997 and **Mr. Reginald Abraham Mengi and Mrs Mercy Anna Mengi v. The Loans and Advances Realization Trust**, Civil Appeal No. 45 of 2001 (All COA, unreported).

Mr. Bundala's essential submission was that the High Court had wrongly assumed jurisdiction to determine the suit, which was a tax dispute arising from a tax assessment and triable by the Tax Appeals Board or Tax Appeals Tribunal established under sections 88-90 of the Income Tax Act. That the suit involved the respondent's tax liability was evident from paragraphs 6 and 7 of its amended plaint. Moreover, the suit had also challenged the warrant of distress issued by T.R.A. under section 109(1) of

the Income Tax Act, 1973 and the Income Tax (Distrain) Rules, 1975 (G.N. No 7 of 1975). That under sections 89(1), 89B and 90(1) of the Income Tax Act, the authority and specific forums for determining tax disputes were respectively, the National Tax Appeals Board, the Zonal Tax Appeals Board and the Tax Appeals Tribunal. As the remedies available under the Income Tax Act were not first exhausted by the respondent, the High Court was barred from exercising jurisdiction. He relied on **Tanzania Revenue Authority v. Kotra Company Ltd**, Civil Appeal No. 12 of 2009 and **Tanzania Revenue Authority v. New Musoma Textiles Ltd**; Civil Appeal No. 93 of 2009 (All COA, unreported) where the Court stated that it would not entertain a matter for which a special forum has been established by law, unless the aggrieved party can satisfy it that no appropriate remedy is available in that special forum.

That apart, Mr. Bundala submitted that it was also not open to the respondent to file a suit in court as sections 108 and 109 of that Act only permitted T.R.A. to file a suit for the recovery of a tax liability and did not grant that right to a taxpayer to challenge an income tax assessment by T.R.A. by way of a suit. The respondent led no evidence to satisfy the trial court that there was no appropriate remedy available under the Income Tax Act. He should have first instituted his claim before the special forums

under that Act, and only upon exhaustion of the remedies available therein, he could have turned next to the civil court. He invited the Court to allow the appeal, with costs.

Resisting, Mr. O'hhay-Sang'ka conceded that the question of jurisdiction was the most "bitting" on this appeal. However, he strenuously submitted that at this appeal stage the question of jurisdiction cannot be entertained given that T.R.A. neither raised it at the High Court and nor was it objected to in its written statement of defence or that of the other co-defendants.

Mr. Ohhay-Sang'ka went on to submit that the High Court's jurisdiction, which a court should jealously guard and not lightly oust, had not been specifically ousted by the Income Tax Act. He relied on **Gosbert Mujumuzi v. Dihimulali Matende** [1969] H.C.D. 138 and **Mtenga v. University of Dar es Salaam** [1971] H.C.D. 247.

He contended that the suit was not a pure tax dispute. Centrally, the suit was for damages arising out of the unlawfully issuance of a warrant of distress, a hoax document, by T.R.A. which occasioned loss of use of the respondent's distrained vehicles. The Income Tax Act did not completely oust the jurisdiction of the High Court to try a dispute which involved the award of damages for unlawful distrain by T.R.A. The suit could also not

have been determined under the Income Tax Act as it had no provisions granting the respondent a right to damages. The Income Tax Act did not bar or oust the civil court's jurisdiction to deal with non-tax matters or the warrant of distress executed outside the law, one and a half years after its invalid issuance. The authorities cited by T.R.A., he submitted, were decided before the coming into effect of the Tax Revenue Appeals Act, Cap. 408, which came into effect on 01/07/2001 (G.N. No. 126 of 29/06/2001).

We now advert to the merits of ground one of the memorandum of appeal.

'Jurisdiction' is defined in **Halsbury's Laws of England**, Vol. 10, para. 314 to mean:

"the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decision. The limits of this authority are imposed by the statute; charter or commission under which the court is constituted, and may be extended or restrained by similar means. A limitation may be either as to the kind and nature of the claim, or as to the area which jurisdiction

extended, or it may partake of both these characteristics (Emphasis added)"

Principally, objection to the jurisdiction of a court is a threshold question that ought to be raised and taken up at the earliest opportunity, in order to save time, costs and avoid an eventual nullity of the proceedings in the event the objection is sustained.

The law is well settled and Mr. Bundala is perfectly correct that a question of jurisdiction can be belatedly raised and canvassed even on appeal by the parties or the court *suo moto*, as it goes to the root of the trial (See, **Michael Leseni Kweka; Kotra Company Ltd; New Musoma Textiles Ltd. cases**, *supra*). Jurisdiction is the bedrock on which the court's authority and competence to entertain and decide matters rests.

That said, section 7(1) of the Civil Procedure Code, Cap. 33 R.E. 2002 ought to be our main starting point in resolving the "bitting" issue of jurisdiction. It provides:

"The courts shall (subject to the provisions herein contained have jurisdiction to try all suits of civil nature excepting suit of which their cognizance is either expressly or impliedly barred" (Emphasis added).

Section 7(1) of our Civil Procedure Code is an import of section 9 of the Indian Civil Procedure Code, 1908. In **The General Manager, of Telecommunications, Thiruvanaathapuram Department v Jacob and Ors.** [2003] INSC 196, the Supreme Court of India explained the scope of that section this way:

*"It is well settled that the court has jurisdiction to try all suits of a civil nature and the exclusive of jurisdiction of the civil court is not to be lightly interfered. Such exclusion must be either explicitly expressed. Govindbhai Ratnabhai & Ors. [1968] INSC 202; AIR 1969 SC 439 (para.7). This court observed that it is necessary to bear in mind the important principle of construction which is that if a statute excluded the ordinary jurisdiction of a civil court it must do so either by express terms or by the use of such terms as would necessarily lead to the inference of such exclusion. This principle was reiterated in Dewaji v Ganpatalal [1968] INSC 179; AIR SC 560. It is also well settled that a provision of law ousting the jurisdiction of a civil court must be strictly constrained and onus lies on the party seeking"(See also, **Anisminic v Foreign Compensation Commission** [1962] A.C. 147, 170, HL).*

The respondent's amended plaint filed on 8/09/2000 averred in paragraphs:

- "6. *That on or about the 18th of August, 2000 the first Defendant purported to sell the Plaintiff's lorry by public auction claiming that **the Plaintiff has defaulted and/or refused to pay outstanding tax to the Income Tax Department of the Second Defendant. The Plaintiff was never served with any notice indicating the amount claimed by the Second Defendant and/or reason as to why his motor vehicle has to be sold to recover an unspecified tax.***
7. *The plaintiff avers **that whatever further assessments that might have been made by the second named defendant the same did not include withholding tax amounting to a substantial sum.***
8.
*It is averred that at the said auction **the managing director of the plaintiff appeared,** on being alerted by independent source, and **offered to pay the tax being claimed** and even went as far as bidding for the said motor lorry and the said trailer" (Emphasis added).*

In its written statement of defence, T.R.A. disputed the claim on the ground that it lawfully sold the respondent's vehicles following a warrant of

distress it had issued in order to recover Government revenue which was long overdue from the respondent.

On a careful analysis of the pleadings, in our respectful view the real questions in controversy that arose in the suit included the following issues. What was the respondent's taxable income? Whether or not it had any tax liability, for which years and at what amount? Whether the tax liability, if any, included accumulated tax and for which years? Whether the warrant of distress was properly issued, served and executed by TRA or its agents. Whether T.R.A. was entitled to write-off any tax balance due from the respondent from the balance of the proceeds of the sale of the vehicles? Whether or not the respondent had taken any objection to T.R.A.'s assessment of its tax liability.

In our respectful view, the primary case spelt out by the substance of the pleadings was fundamentally a tax dispute founded on the warrant of distress, an instrument or order issued under section 109(1) of the Income Tax Act and The Income Tax (Distrain) Rules, 1975 to recover a tax liability from the respondent by means of distress levied upon a warrant. The allegation of or claim for damages in the respondent's amended plaint was only attendant. It was to say the least, fully dependent on a prior determination of the respondent's correct taxable income, assessment and

liability for the periods 1989, 1996 and 1997, including T.R.A's entitlement to the collection of and recovery of any due and unpaid tax by distress upon the respondent's goods or chattels under section 109(1) of the Income Tax Act and the Income Tax (Distraint) Rules, 1975.

Sub-section 1 of section 109 provides:

"109(1) In any case in which tax is recoverable in the manner provided by section 108 the commissioner may, instead of suing for such tax, recover the same by distress, and for that purpose may by order under his hand authorize any public officer or an officer of a court to execute such distress upon the goods and chattels of the person from whom such tax is recoverable and such officer may, at the cost of the person from whom such tax is recoverable employ such servants or agents as he may think necessary to assist him in the execution of the distress:....."

That the High Court eclipsed its authority by entertaining and determining chief issues on tax assessment and liability that were legally outside its competence is also plainly corroborated by the issues it framed, namely, whether the respondent had an existing tax liability payable to T.R.A. at the time of the distress and how much? and whether the respondent's vehicles were lawfully distrained? With respect, these live issue were plainly and manifestly taxation in nature.

We fully agree with Mr. Bundala that the dispute instituted in court by respondent's original plaint on 22/8/2000, which was subsequently amended was first and foremost to have been justiciable by The Tax Appeals Board or Zonal Tax Appeals Board or the Tax Appeals Tribunal, respectively, under section 89(1) (a), 89B, and 93(1) (a) of PART XV OBJECTIONS, APPEALS AND RELIEF FOR MISTAKE of the Income Tax Act. Those forums were complete in that they had own statutory rules of procedure (The Income Tax (Appeals Boards) Rules, (G.N. No. 218 of 1975) and The Income Tax (Appeals Tribunal) Rules, (G.N. No. 217 of 1975).

Furthermore, under section 91(1) of the Income Tax Act the respondent was entitled and free to take up an objection against a tax assessment by T.R.A. In our respectful view, these constituted specific forums for the adjudication of any tax dispute or liability (See, **Korta Company Ltd and New Musoma Textiles Ltd.** cases (*supra*). These legal avenues had to be first exhausted by the respondent, whose assistance he neither sought nor attempted to seek before recourse to a civil Court and if warranted.

All considered, with respect, the High Court by entertaining and determining the tax dispute between the parties travelled beyond its

jurisdiction, which was expressly ousted by the specific forums established under the Income Tax Act. It erroneously crowned itself with jurisdiction that it did not possess in entertaining and determining the suit, which was fundamentally a tax dispute.

Accordingly, we are constrained to and hereby invoke our revisional powers under section 4(2) of the Appellate Jurisdiction Act, Cap. 141 R.E. 2002 to declare a nullity, quash and set aside the entire proceedings, judgment and decree of the High Court. To meet the justice of the case, we make no orders as to costs.

The appeal is hereby allowed.

DATED at **ARUSHA** this 26th day of October, 2016.

M. C. OTHMAN
CHIEF JUSTICE

S. MJASIRI
JUSTICE OF APPEAL

I. JUMA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



A handwritten signature in blue ink, appearing to read "J. R. Kahyoza", is written over the printed name and title.

J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL