

IN THE HIGH COURT OF TANZANIA

AT MOSHI

MISC CIVIL APPLICATION NO. 89 OF 1994

(c/f Misc. Civil Application No. 245 of 1991)

IN THE MATTER OF AN APPLICATION BY

M/S MOSHI TEXTILES LIMITED FOR ORDERS OF CERTIORARI

A N D

IN THE MATTER OF THE RELUCTANCE/REFUSAL OF MOSHI

MUNICIPAL COUNCIL TO PROCESS A BUSINESS LICENCE APPLICATION

B E T W E E N

M/S MOSHI TEXTILES LIMITED APPLICANT

A N D

MOSHI MUNICIPAL COUNCIL RESPONDENT

J U D G E M E N T

BEFORE: E. N. MUNUO, J:

Way back in July 1992, the applicant Moshi Textiles Ltd. engaged Mr. Maruma learned advocate to bring the present application for orders of certiorari and mandamus seeking to nullify the property tax levied on the Moshi Textiles factory premises. The applicant also prayed for an order of mandamus to compel the respondent not ^{to} link the property tax, that is, making its payment a condition for issuing a business licence to the applicant.

In the affidavit deposed in support of the application, the Mill Manager of Moshi Textiles Co. Ltd. deposed that the respondent Municipality demanded from the applicant sh 9,948/95 property tax inclusive of penalty for delay. Later the property tax was revised and increased to sh 904,428/- which the applicant complains is not proportionate to productivity and is therefore likely to cripple the factory. The applicant paid the tax ^{after bein} _{ened} threat_{ened} that the factory's business licence would be withheld if the property tax was not paid. Hence the action for orders of certiorari and mandamus against the respondent.

Mr. Jonathan learned advocate represented the respondent. Either side submitted in writing.

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Mr. A. Maruma learned advocate for the applicant submitted that notice of levied property tax was not served on the applicant as provided for under Section 11 of the Urban Authorities (Rating) Act No 2 of 1983. He stated that notice published in the UHURU newspaper was not served on the applicant. The court notes that the notice, Annexure R3 was published in the Daily News of Friday , 2nd October 1987 at Page 3; it was not published in the UHURU.

It is the contention of Mr. Maruma that the notice lacks a date for lodging objections as required by the provisions of Section 11(1) (b) of Act No 2 of 1983; it also has no date to show when the Tribunal will sit to determine the objections under Section 11(1)(c) of Act No 2 of 1983. He further contended that under Section 11(2) of Act No 2/83, the respondent should have served a notice by post on the applicant stating

- (i) that the valuation Roll has been published;
- (ii) the times for inspecting the Valuation Roll; and
- (iii) the date on or before which objections should be lodged pursuant to Section 11(2) of the Urban Authorities (Rating) Act No 2 of 1983.

It is the contention of the applicant's advocate that by not serving the statutory notice on the applicant, the respondent was condemned unheard. He urged the court to revoke the property tax and the valuation thereof - so that property tax can^{be} levied according to the provisions of the Urban Authorities (Rating) Act No 2 of 1983. He also blamed the respondent for failing to publish its intention to create property tax for under Section 81 of the Local Government (Urban Authorities) Act No 8 of 1982 the intention to create a particular tax has to be published. Section 81 of Act No 8 of 1982 States:

"81.(1) Subject to the following provisions of this section, where, ^{an} urban authority proposes to make any by laws it shall, at least two weeks before the meeting of the authority, at which it is proposed to consider the bylaws give notice to the inhabitants of the area of its jurisdiction of its intention, in such manner as may most probably bring the notice to the attention of all persons likely to be affected by the bylaws indicating the precise purport of the by laws proposed, and calling upon all interested persons within the area to lodge any objections or representations in writing with the authority within such time as may be prescribed."

Government Notice No 777 of 30.10.87 Annexure R2 published the respondent's intention to levy property tax by enacting the Moshi Town Council (Property Rate) By laws, 1987.

Mr. Maruma further contended that the statutory notice for the material property tax was not published and or served on the applicant by post. He also stated that the date for lodging objections was also not publicized so the application could not have objected to the tax under the circumstances. It is the applicant's case that the property tax in question was arbitrarily levied so it is unlawful and it ought to be revoked.

Starting in the prayer for an order for mandamus, Mr. Jonathan learned advocate for the respondent correctly pointed out that the licencing Authority for the business licence of the applicant is the Regional Trading Officer and not the respondent. In that respect issuing an order for mandamus against the respondent not to link the property tax with the business licence of the applicant would not serve any purpose.

The respondent's advocate observed that orders for certiorari and mandamus are discretionary so the court issues such orders only when the applicant has no other remedy. He cited the cases of Morris Onyango versus the Senior Investigating Officer, Customs Department, Mbeya 1980 TLR Rg. 150 and Alfred Lakaru versus Town Director, Arusha 1980 TLR Pg 326 wherein it was held that the court issues orders for certiorari and mandamus only when there are no other remedies provided by the law. Mr. Jonathan submitted Section 22 of the Business Licensing Act, 1972 should have solved the applicant's property tax complainant if he had bothered to use it. Section 22 of the Business Licensing Act, 1972 states:

"22. Any person aggrieved by:

- (a) Any refusal by a licensing authority to grant a business licence.....
May appeal against such refusal to the Minister."

The respondent's advocate filed Annexures R₁, R₂, R₃ and R₄ to show that the respondent complied with the provisions of Act 2 of 1983, the Urban Authorities (Rating) Act in terms of publishing the intention to levy property tax, the notice on property owners liable to pay the tax and the notice on those intending to object to the tax. He prayed that the application be dismissed with costs for want of merit.

The issues in this application are:..

- a) whether the property tax in dispute should be abolished; and
- b) whether an order for mandamus should be issued against the respondent.

Beginning with the issue of an order for mandamus I have already noted earlier on that the Business Licence of the applicant is under the charge of the Regional Trade Officer, Kilimanjaro and not the respondent. That being the position there is no ground for issuing an order for mandamus against the respondent. Issue (b) is therefore resolved negatively.

As for the prayer for an order of certiorari to quash the property tax, the respondent filed Annextures R₁ to R₄ to show that the respondent complied with the provisions of Section 11 of Act No 2/83. Annextures R₂ is the Government Notice No. 777 of 1987 which created the property tax under the Moshi Town Council (Property Rate) By-Laws, 1987. Notice of Inspection of the Valuation Roll was published in the Daily News of the 2.10.87 at Pg 3 as follows:

".. the Valuation Roll for Moshi Town Council has been deposited at the Headquarters of the Moshi Town Council..... and Valuation Tribunal will sit for the purposes of determining objections to the Valuation Roll at a date to be announced later but not being earlier than the 31 October 1987..... Any person may within twenty eight days from the date of publication of this notice inspect the Valuation during the normal working hours of the Council and may lodge any objections in writing and in the prescribed form to the Town Director, Moshi Town Council..."

The Notice of Inspection of the Valuation Roll, Annexture R₃ therefore complied with the provisions of Section 11(1)(c) and 11(2) of the Urban Authorities Rating Act No 2 of 1983. Property owners who were dissatisfied with property tax levied on their property could inspect the Valuation Roll and lodge objections to the Town Director within 28 days of the publication of the notice, that is the 2.10.87. The notice in the Daily News, Annexture R₃ was sufficient notice to property owners including the applicant because the paper is widely circulated and read in urban centres. A demand note dated the 5.12.88,

Annexure R₁ was served (by one L. Shayo, a Municipal Inspector) on the applicant by Affixing the Demand Note on the notice board of the applicant.

In the light of the above the application is devoid of merit. The application is accordingly dismissed with costs.

It is so ordered.

E. N. MUNUO

JUDGE

16.9.98

At Moshi this 16.9.98

Applicant: Mrs. Minde for Mr. A. Maruma

Respondent: absent but duly notified.

E. N. MUNUO

JUDGE

16.9.98