

**IN THE HIGH COURT OF TANZANIA  
AT MTWARA**

**MISC. CIVIL APPEAL NO. 9 OF 2006  
(ARISING FROM THE RULING OF MTWARA RM'S  
COURT IN CIVIL CASE NO.6 OF 2006)**

**BETWEEN**

**MOHAMED MUSSA JUMA ..... APPELLANT**

**VERSUS**

**COMMISSIONER GENERAL .....,..... RESPONDENT  
(TRA)**

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**DATE OF LAST ORDER – 19<sup>th</sup> June, 2007**

**DATE OF JUDGMENT - 04<sup>th</sup> July, 2007**

**JUDGMENT**

**MJEMMAS, J.**

This is an appeal from the Ruling of District Court of Mtwara (Before M.C. Mteite – RM) in Civil Case No.6 of 2006 whereby the appellant/plaintiff sued the respondent/defendant and prayed for various reliefs including declaration that the respondent/defendant's act of seizing and selling the plaintiff's motor vehicle was unreasonable, unjust and hence null and void; payment of general damages to the tune of TShs.50,000,000/= and that the motor vehicle be returned to him or its value be refunded.

At the first hearing of the case the respondent/defendant raised Preliminary Objection on the ground that the trial court had no jurisdiction to hear the matter by virtue of Section 7 of the Tax Revenue Appeals Act, 2000 read together with section 5A of the Tanzania Revenue Authority Act, 1995 as amended and section 173 of the East African Customs and Transfer Tax Management Act (Rev) 1970.

The trial court upheld the Preliminary Objection so the appellant/plaintiff instituted the present appeal challenging the decision of the trial court.

At the hearing of this appeal, the appellant appeared unrepresented and he relied on his grounds of appeal as set out in the Memorandum of Appeal, namely;

- (1) That, the learned resident magistrate erred when he held that the appellant's suit before him follow (sic) under the Revenue Laws while the pleadings filed in court speaks otherwise.
- (2) That, subject to the foregoing had the learned Resident Magistrate carefully studied the background of the case, he would have found that the motor vehicle which were delt (sic) with by the Respondent under Revenue Laws, is not that of the appellant.

- (3) That, all in the trial court mishandled the suit before it thus arriving at wrong decision.

The appeal was resisted by Mr. Primi, learned advocate who appeared on behalf of the respondent. The learned Counsel challenged ground one of appeal as incorrect position of the law. The learned advocate submitted that paragraphs eight (8) and seven (7) of the plaint show that the vehicle was dealt with under custom laws, for instance the notice of seizure of the motor vehicle was issued under the East African Tax Transfer Management Act, 1970 and that the motor vehicle was deposited under custom laws. He also referred this court to Annex E attached under paragraph 15 of the plaint which gives a detailed history of the dispute. According to the learned Counsel the pleadings show that the matter falls under custom laws so the trial court was correct in dismissing the case because it had no jurisdiction to entertain the matter.

On ground number two of the appeal, the learned counsel submitted that the motor vehicle in question was that of the appellant and that it was dealt with under custom laws. He further argued that the appellant had knowledge of the sale of his motor vehicle because of notice which was

sent to him on 2<sup>nd</sup> June, 2005 and notice issued in Uhuru Newspaper of 18<sup>th</sup> October, 2004. The notice referred to seizure no.0058796 dated 21/7/2003 regarding property of Mohamed Mussa of P.O. Box 540 Mtwara, owner of Motor Vehicle with chassis no. YN 679003981, engine no.4Y0145772 Toyota Hilux Double Cabin with registering number NFH 283 GP. The learned Counsel conceded that the registration number of the vehicle was incorrectly or mistakenly written NFH 283 GP instead of NFH 285 GP. He alluded that the mistake was communicated to the appellant at the material time. According to the learned Counsel what is important is the chassis and engine numbers of the motor vehicle.

On ground number three of the memorandum of appeal the learned Counsel submitted that the trial court acted correctly in dismissing the case because it lacked jurisdiction to entertain it under section 7 of the Tax Revenue Appeals Act, 2000.

After hearing the parties, going through the pleadings and the Ruling of the District Court I have arrived at the conclusion that the Honourable Magistrate was correct in dismissing the plaint. In otherwords, I am unable to agree

with the appellant that the suit which was before the District Court did not relate to revenue laws. The gist or essence of the appellant's case is reflected in the following paragraphs of his plaint:

Para 3: "That the plaintiff's claim against the defendant is for the declaration and an order that the defendant's act of seizing and selling the plaintiff's motor vehicle with Reg. No.NFH.285 GP TOYOTA Hilux D/C PICKUP Engine No.4Y0145772 Chassis No.YN.679003981 [hereinafter referred to as the motor vehicle] was unreasonable, irrelevant and unjust.

Para 5: "That the plaintiff who is X – police after receiving his terminal benefits on 15<sup>th</sup> October, 2002 purchased the motor vehicle from the then owner one FANNY VIRET at USA dollars 2800/= [A copy of sell agreement and registration card are annexed hereto and marked 'A' collectively to form part of this plaint]

Para 6: "That, the plaintiff's effort to register the M/V in his name at the defendant's office proved difficult as the defendant informed the plaintiff that he must apply and obtain clearance certificate from Interpol"

Para 7: "That consequently the M/V was deposited in customs warehouse at Mtwara Port pending the customs formalities, among others obtaining clearance certificate from Interpol. A copy of the notice of goods deposited in customs warehouse to that effect is annexed hereto and marked 'B' forming part of this plaint."

Para 12: "That it came to the plaintiff's knowledge that the M/V was sold by the defendant received a clearance certificate from Interpol without proper notice to the plaintiff."

Para 15: "That, the plaintiff (sic!) has refused and or neglected to settle this matter amicably out of court as is evidenced by exchange of correspondences. Copies of which are annexed hereto marked 'E' forming part of this plaint."

From annex 'E' one gets the details or the whole picture of the plaintiff's claim or case. In his letter dated 17<sup>th</sup> May, 2005 he states in part, I quote para seven and nine:

"Taking into account the foregoing it is not irrelevant to say that there was no notice or proper notice of seizure and condemnation of sale of my motor vehicle as mandatorily required by law; and further that it is true that the same is sold it was sold (sic) without any proper formalities and thus I was denied the constitutional right of being heard ....."

Para 9: "Under the circumstances, and since I have not refused any where the liability of paying government tax I humbly pray that your good office be pleased to order and direct release of my motor vehicle and be restored to me forthwith under the provisions of section 163 of the customs (Management and tariff) Act as amended several times."

The said letter was answered by the Respondent through letter with Ref. TRA/CE/C/0.10/1 of 2<sup>nd</sup> June, 2005. The said letter explained in detail the circumstances under which motor vehicle with Reg. No.NFH 285 GP was temporarily imported into the country, how and why it was impounded and sold. The said letter advised the appellant that:

“In the above premise therefore, you advised to proceed with the process of claiming for excess proceeds realized during the auction of your vehicle, which would be refunded as per prevailing customs Laws and regulations, and that restoration of the vehicle to you is time barred under the same section 159 of the Customs Management Act, Rev.1970”

From the foregoing there is no doubt that the dispute between the parties and specifically the appellant's case is in relation to a motor vehicle (which he claims ownership) which was sold by the respondent in order to recover government taxes arising from importation of the said motor vehicle into the country. The appellant is disputing the decision or act of the respondent to sell the said motor vehicle in order to recover government taxes, now can that be said as the appellant alleges, not falling under Revenue laws?

Section 5A of the Tanzania Revenue Authority Act, 1995 as amended by the Tax Revenue Appeals Act (Act No.15 of 2000) provides:

“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 function conferred upon him under the law set out in the first schedule to this Act, may appeal to the Board in accordance with the provisions of the Tax Revenue Appeals Act.”

Section 7 of the Tax Revenue Appeals Act, 2000 provides;

“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.”

As stated earlier, since the act or decision in which the appellant is complaining against as reflected in his plaint was taken or made under Revenue laws as specified in the First Schedule to the Tanzania Revenue Authority Act, 1995 I hold or find that ground one of his memorandum of appeal has no merit. That is to say his suit/case falls under the revenue laws discussed above and if he wishes to challenge any decision taken under those laws he must follow the procedure laid down or shown in those laws.



The second and third grounds of appeal could be dealt with together. Looking at the plaint and specifically paragraphs three (3) twelve (12) and the one dealing with reliefs sought, it is clear that grounds number two (2) and three (3) of the appeal have no merit and they are contradictory. If the motor vehicle that was dealt with by the respondent under revenue laws was not that of the appellant why then should he claim its value to be returned and declaration that the seizure and sale of the plaintiff's motor vehicle was unreasonable, unjust and therefore null and void? What is clear and conceded by the respondent was that there was a mistake which occurred in referring to the registration number of the said motor vehicle as NFH 283 GP instead of NFH 285 GP in the notice which appeared in Uhuru Newspaper of 18<sup>th</sup> October, 2004 (concerning auctioning of the said motor vehicle) and in the Notice of Seizure. However, the respondent was of the opinion that the mistake was not fatal because other particulars were correct i.e engine number, chassis number and the name of the appellant. According to the respondent the information concerning the mistake was duly communicated to the appellant. I agree with the learned counsel for the respondent that the mistake was not fatal so long as the

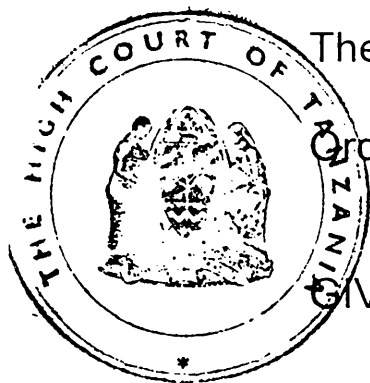
other descriptions were clear as to which motor vehicle was being sold i.e that which “belonged” to the appellant.

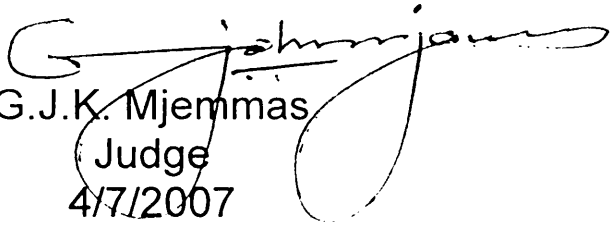
I find nothing from the record to show that the trial court mishandled the case and thus arrived at the wrong decision. Once it has been established that the matter or suit related to decisions or acts taken pursuant to Revenue Laws then the ordinary courts have no jurisdiction to entertain the matter. That is the position of the law as it was also held by **The Honourable Mr. Justice H.R. Nsekela (As he then was) in MOHSIN SOMJI Vs. COMMISSIONER FOR CUSTOMS AND EXCISE and ANOTHER, Commercial Case No.287 of 2001 (Dar es Salaam, unreported).**

The appeal is therefore dismissed with costs.

Ordered accordingly.

GIVEN IN MTWARA THIS 4<sup>th</sup> day of July, 2007.



  
G.J.K. Mjemmas  
Judge  
4/7/2007