IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM MAIN REGISTRY)
AT DAR ES SALAAM

MISCELLANEOUS CIVIL APPLICATION NO. 57 OF 2020

IN THE MATTER OF AN APPLICATION FOR EXTENSION OF TIME TO FILE AN APPLICATION FOR LEAVE TO APPLY FOR PREROGATIVE ORDERS OF CERTIORARI AND MANDAMUS

BETWEEN

MIRAMBO LIMITED ..... APPLICANT

AND

1. **COMMISSIONER GENERAL, TANZANIA REVENUE AUTHORITY ..... 1ST RESPONDENT**
2. **ATTORNEY GENERAL OF THE UNITED REPUBLIC OF TANZANIA ..... 2ND RESPONDENT**

Date of Last Oder: 23/03/2021
Date of Ruling: 30/04/2021

RULING

FELESHI, J.K.:

This is an application for an extension of time to file an application for leave to file an application for prerogative orders of *certiorari* and *mandamus* out of time; an order that the costs of the application abide to the outcome of the intended application and/or for the application of the aforesaid orders; and, for any other order(s) the Court may deem fit and just to grant.

The applicant filed this application by way of chamber summons under section 14(1) of the Law of Limitation Act, Cap. 89 [R.E.2019] and

Rule 17 of the Law Reform (Fatal Accidents and Miscellaneous Provisions) (Judicial Review Procedure and Fees) Rules, vide G.N. No. 324 of 2014 and the same is supported by an affidavit affirmed by one Bikash Subba, the applicant's Principal officer and Company Secretary.

Mr. Bikash Subba asserted that, in 2017, the applicant herein entered into negotiations with Vodacom Group Limited for purchase of shares held by the applicant in Vodacom Tanzania Public Limited Company. That, in the course of negotiations, some issues and communications were determined with some agreements signed towards the intended deal. For that matter, on 28/08/2019, the 1st respondent issued a Tax Clearance Certificate paving way for the applicant and Vodacom Group Limited to proceed with settlement processes for completion of share transfer in compliance with the Capital Markets and Securities Authorities (CMSA) with the same scheduled to be completed by 23/09/2019.

In the course thus, two private rulings were entered, that is, 1st and 2nd private rulings. However, on 21/09/2019 that is, two days before the scheduled deadline, the applicant received a notice of revocation of the latter entered 2nd private ruling vide 1st respondent's letter dated

20/09/2019. Efforts to review that revocation were made whereas to-date, the 1st respondent has not acted on the applicant's notices of objection and application for administrative review of the revoked 2nd private ruling.

According to the deponent, the cause of delay in making an application for the intended leave to seek prerogative remedies before this Court was caused by the unattended steps taken by the applicant that is, the notices of objection she lodged within 30 days from the date of service of the 1st respondent's decision followed by her application for administrative review.

That, from the date of filing of the notices of objection, that is, on 18/10/2019 up to 09/05/2020, the applicant has been waiting for the 1st respondent's determination on the preferred notices of objection and his further application for administrative review whereas to-date, she not received any response. She further sought intervention of the 2nd respondent vide her two letters addressed to him which to-date have also not been acted upon.

The deponent further stated that, the applicant's grievances have bases also from the evident illegalities and improprieties remediable

through judicial review. The deponent added that, the reluctance by the 1st respondent to determine her notices of objection against the revocation of 2nd private ruling and issuance of agency notice adversely affected the applicant's operational, economic and welfare, hence, the present application.

On 4th January, 2021, Mr. Ayoub Gervas Sanga – learned State Attorney raised two points of preliminary objection to wit, that: -

1. The application is bad and untenable in law for failure to exhaust available remedy.
2. The application is incompetent in law for being brought under wrong provisions.

On 27th day of January, 2021, Mr. Sanga added another point of preliminary objection to wit that, **this Honourable Court has no jurisdiction to entertain the matter.**

On 09/02/2021 Mr. Deodatus Nyoni, learned Principal State Attorney assisted by Ms. Rehema Mtulya, learned State Attorney opted and as such withdrew the 1st preliminary objection in the 1st limb and this Court scheduled a simultaneous hearing of both the raised two sets of

preliminary objection and merits of the application. The parties complied with the schedule, hence, this ruling.

Furthermore, in the course of hearing, Mr. Gabriel Malata, learned Solicitor General abandoned the remained 2nd preliminary point of objection preferred in the 1st limb, thus remaining with the 2nd limb of preliminary objection containing a single objection on jurisdiction of the court.

Addressing the preliminary objection on jurisdiction, the learned Solicitor General submitted that, this Court lacks jurisdiction as the matter is a tax dispute leading into issuance of private ruling in accordance with section 2(3) of the Tax Administration Act No. 10 of 2015, [Cap. 438]. To that effect, the learned Solicitor General referred the Court to the decision in **Commissioner General Tanzania Revenue Authority v. JSC Atomredmetzoloto (ARMZ),** Consolidated Civil Appeals Nos. 78 and 79 of 2018, (Dodoma Registry) (Unreported) where the Court of Appeal underscored at page 20 that: -

> *"After the CGTRA's determination of the objection, if a tax payer is aggrieved, he may appeal to the Board within the prescribed period in terms of the provisions of section 16 of the*

TRAA. Moreover, while section 7 of the TRAA vests the Board with sole original jurisdiction in all proceedings of civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority ...".

Further reference was made to the case of **Vodacom Tanzania Public Limited Company v. the Commissioner General (TRA), the Honourable Attorney General of the United Republic of Tanzania,** Miscellaneous Civil Cause No. 33 of 2020, (Main Registry), (Unreported) where this Court underscored at page 16 to the effect that: -

"In this matter, the applicant was aggrieved with the decision of the Commissioner General of TRA. As properly submitted by the respondent, under section 7 of the Tax Revenue Appeals Act, the remedy available to the applicant was to appeal to the Tax Revenue Appeal Board. If further aggrieved, under the provisions of section 53(3) of the Tax Administration Act, Cap. 438 (R.E. 2019) and section 16(4) of the Tax Revenue Appeals Act, Cap. 408 (R.E. 2006) (sic) the applicant could appeal to the Tax Appeal Tribunal. This means that the relief(s) as reliefs and remedies available under the Tax Revenue Appeals Act are

statutory as reliefs and remedies that are available under the Law Reform (Fatal Accidents and Misc. Provisions) (Judicial Review Procedure and Fees) Rules, 2014".

The learned Solicitor General added in his submission regarding mandate of the Commissioner General with reference to the provisions of section 72 of the Finance Act 2020 that amended section 52 of the Income Tax Act, [Cap. 332 R.E, 2019] by adding subsection 10 and 11 that: -

"(10) The Commissioner General shall determine an objection to a tax decision within six months from the date of admission of the notice of objection.

(11) Where the Commissioner General fails to determine the objection within the time prescribed under subsection (10), the tax assessment or tax decision shall be treated as confirmed and the objector shall have the right to appeal to the Board in accordance with the Tax Revenue Appeals Act".

The learned Solicitor General argued that, failure to respond to the applicant's notices of objection by the 1st respondent means that she

disallowed the objection. He argued that, such provision was a procedural requirement that can act retrospectively.

He stressed that, dealing with this matter amounts to entertaining a matter beyond jurisdiction in matters which their jurisdiction is vested in specific forums. The learned Solicitor General cited **Tanzania Revenue Authority v. Tango Transport Company Ltd,** Civil Appeal No. 84 of 2009 (Arusha Registry), (Unreported) where the Court held to that effect.

Mr. Malata maintained in his submission that, tax issues are not subject to judicial review and are not subjected to ordinary courts apart from appeals to the Court of Appeal. He argued that, for invocation of judicial review, there must be final decision subject for judicial review as held by the Court of Appeal in the case of **Sanai Murumbe and Another v. Muhere Chacha,** [1990] T.L.R 54.

In response, Erasmo Nyika, learned counsel for the applicant submitted that, it is only the High Court that is vested with jurisdiction to grant leave and the aforementioned prerogative orders. The applicant's counsel argued that, what is at stake is not a tax matter, rather, a challenge against misuse of public powers conferred unto the 1st

respondent. Revocation of private ruling, immediate issuance of agency notice and usurpation of Tshs. 146,118,017,395/= from the applicant without an assessment or a tax liability calculated confirmed against the applicant was contrary to the governing laws amounting to illegalities remediable by way of an application for judicial review.

Furthermore, it was argued that the 1st respondent's indecisiveness on applicant's complaints as well as the surfaced illegalities prompted the present application which, if granted, will ultimately address the abuse of legal mandates vested into the respondents. Reference was made to **Abadiah Selehe v. Dodoma Wine Co Ltd** [1990] T.L.R 113 where the High Court held that: -

> *"... As a general rule the court will refuse to issue the order if there is another convenient and feasible remedy within the reach of the applicant".*

Regarding exhaustion of available statutory remedies, the applicant's counsel referred this Court to a decision of the erstwhile East African Court of Appeal in the case of **Shah Vershi and Co. Ltd v. The Transport Licensing Board** [1971] E.A 289 where the Court had the following: -

"Ordinarily, the High Court will decline to interfere until the aggrieved party has exhausted his statutory remedy.... But this is a rule of policy, convenience and discretion rather than a rule of law. In other words, the existence of a right of appeal is a factor to be taken into account: it does not bar the remedy (of certiorari) especially where the alternative is not speedy effective and adequate...".

It is in view of the above the applicant's counsel implored this Court to overrule the preliminary point of objection with costs for being baseless and misconceived as there is no appropriate alternative remedy in the complained of respondents' unlawful and procedural impropriety.

In rejoinder, notably, the learned Solicitor General maintained that the contested issue is on tax falling beyond jurisdiction of this Court as restricted under section 7 of the Tax Revenue Appeals Act, [Cap. 408].

Now, having gone through the Court record, the following are the deliberations of this Court as to the issue of jurisdiction of this Court raised by the respondents.

As well introduced by this Court at the outset, the sought for leave for extension of time aims at paving way to an application for leave to file an application in the High Court for prerogative remedies of *mandamus* and *certiorari* in remedial for the reluctance manifested by the 1st respondent in determining the preferred notices of objection and application for administrative review against the 1st respondent's decision to revoke the 2nd private ruling and issuance of agency notice which adversely affected the applicant's operations, economic interests and welfare.

Notably, from the rival submissions, parties went into the details and or merits of the very "application for leave" which is not before this Court. As such, such arguments will surface during the very application if at all this Court grants leave for extension of time. As correctly submitted by the learned Solicitor General and amply undisputed by the learned applicant's counsel, it is trite rule that jurisdiction is a creature of statutes.

In the same lineage, tax issues as stand other disciplines with special forums, have their own mechanisms in handling disputes for the sake of speedy disposal of any controversies with some clauses addressing various grievances within such mechanisms and beyond through ordinary courts.

In the present matter, the applicant has been clear in her submission that her grievances are centred on three aspects: **one,** revocation of the second private ruling contrary to section 11(3) and (4) of the Tax Administration Act, 2015; **two,** issuance of agency notice; and **three,** usurpation of Tshs. 146,118,017,395/= from the applicant without assessment or calculation of tax liability confirmed against the applicant alleged to be contrary to the laws hence amounting into illegalities.

The claimed applicant's cause of delay has been argued to be the inaction by the 1st respondent to her complaints over the tainted decision to revoke the 2nd private ruling made in her favour and the further inaction by the 2nd respondent to her aforesaid complaints.

Whereas the learned Solicitor General submitted that the complained of inactions and acts amounting to illegalities by 1st respondent, if any, squarely fall under tax regime, and ought to be dealt with under section 7 of the Tax Revenue Appels Act (supra) and section 52(10) & (11) of the Income Tax Act (supra), the applicant's counsel strongly argued that the complained of acts are not tax matters but rather constitute misuse of public powers by the 1st respondent which are remediable by way of judicial review.

Mindful of the submissions and authorities cited above to the Court for its guidance, this Court tends to agree with the applicant's counsel and holds a view that where this Court is seized with a matter premised on judicial review and not original tax dispute or appeal proceedings governed by the provisions pointed out to this Court by the learned Solicitor General, the provisions of Article 107A (2) & 108 of the Constitution of the United Republic of Tanzania of 1977 (as amended), Cap.2 [R.E.2002] read together with section 17(2) of the Law Reform (Fatal Accident and Miscellaneous Provisions) Act, Cap.310 [R.E.2019] adequately confer jurisdiction to this Court to make determination on merit in relation to sought judicial review reliefs after hearing the parties where the alternative is not accessible or speedy effective and or adequate and the Court can actually even consider other compelling situations warranting it to issue just and commensurate orders.

In view of the foregoing, it is certain that our legal framework through section 52(10) & (11) of the Income Tax Act (supra) and section 7 of the Tax Revenue Appeals Act (supra) should not be construed to bar this Court from acting on matters which do not amount to trials and appeals or where this Court is justified to exercise its wide-ranged jurisdiction under

the Constitution to curb impunity and malpractice committed by administrative bodies and tribunals, the malpractice or illegalities which, if not promptly acted upon before expiration of six months are capable of causing gross loss of income, office abuses and, or further illegalities.

Likewise, the failure by the 2nd respondent to give legal opinion to the 1st respondent or any administrative body or tribunal the opinion which, in terms of Article 59(3) of the Constitution (supra) read together with section 23 of the Office of the Attorney General (Discharge of Duties) Act, Cap.268 R.E.2019, remain the legal position of the Government on the matter unless it is otherwise revised by a court of competent jurisdiction, the Cabinet or otherwise recalled by him, cannot bar this Court from exercising its aforesaid jurisdiction.

The position above thus befits the instant matter and not the decision in **Vodacom Tanzania Public Limited Company v. the Commissioner General (TRA), the Honourable Attorney General of the United Republic of Tanzania (supra)** which was on application for leave to file an application for prerogative orders basing on a disputed taxable aspect that had already invited the exercise of jurisdiction of tax legal regime and the Court of Appeal. For that matter, it is this Court's view that the

principle of *Generalia specialibus non derogant* cannot equally apply in a wholesale approach in different situations. It was for that ground, this Court in the immediately cited case above underlined at page 19 that *"the Court could entertain this application only if, the Applicant did admit that disputed amount was valid but the Respondent has taken over and more the right amount."*

In view of the foregoing, the Court subscribes to the decisions in **Abadiah Selehe v. Dodoma Wine Co Ltd and Shah Vershi (supra)** and **Co. Ltd v. The Transport Licensing Board (supra)** cited to this Court by the applicant's counsel that, where the need arises and on case-by-case basis, this Court may always exercise its jurisdiction and inquire into complained of acts amounting into illegalities.

Therefore, where allegations of illegalities and abuse of administrative powers are mounted against any specific administrative body or tribunal vested with legal mandate to dispense justice as it has been alleged in the instant application, a resort by the aggrieved party to this Court in deserving matters for judicial review is inevitable for it to hear and determine the complained of illegalities or abuse of powers by the administrative body or tribunal on merit. In the circumstances and for the

discussion held above, the raised preliminary objection on jurisdiction of the Court lacks merits in law. Consequently, the same is hereby overruled.

Having determined the issue of jurisdiction, resort is now made to merits of the application. Regarding extension of time, the applicant's counsel submitted that, the applicant honestly took steps through notices of objection and seeking administrative review regarding her grievances but with the 1st respondent failing to play her role as she completely ignored and never replied. He said, the attempts by the applicant to engage the 2nd respondent have also turned futile.

According to the applicant's counsel, the respondents' conducts regarding revocation of the 2nd private ruling by the 1st respondent and issuance of agency notice were tainted with illegalities which are remediable by way of judicial review. He added, the blatant failure by the respondents to act on her grievances led into her delay to file the intended application thus necessitating her to file the instant application for extension of time.

The counsel further argued that, the above marks sufficient reason for extension of time as required as held by the Court of Appeal of Tanzania decision in the case of **Insignia Limited v. Commissioner**

General, Tanzania Revenue Authority, Civil Application No. 2 of 2007, (Dar es Salaam), (Unreported) that cited with approval the case of **Shanti v. Hindocha and Others,** [1973] E.A 207 where the Courts held that, though "sufficient reason" is not defined, the same should revolve around reasons capable of warranting grant of the sought extension of time.

Besides, extension of time can be granted when there are illegalities on the decision made as held by the Court of Appeal in the case of **Principal Secretary, Ministry of Defence and National Service v. D. P. Valambhia** [1992] T.L.R 185. Basing on the two sets (cause of the delay and the alleged illegalities), the applicants' counsel urged for the application to be granted as the same will not prejudice the respondents.

In reply, the learned Solicitor General for the respondents when submitting against merits of the application raised a preliminary objection styled **"the application for extension of time is unattainable in law as the applicant is driving two horses at a time contrary to the law"**

The objection by the Solicitor General was that, on 29/01/2021 and 12/02/2021, the applicant initiated an appeal process to the Tax Revenue

Appeal Board by filing a notice of appeal and statement of appeal regarding appeals number 48 and 50 of 2021 challenging the decision of the 1st respondent in issuing an agency notice and 1st respondent's notice of revocation of the private ruling. In the circumstances, he argued such move amounts to an abuse of the court process as held by the Court of Appeal in **Serengeti Breweries Limited v. Hector Sequiraa,** Civil Application No. 395/18 of 2019, (Dar es Salaam Registry), (Unreported).

The Solicitor General argued that, the complained of revocation of the second private ruling by the 1st respondent was in the hands of the applicant by the time of filing the objection. He argued that, the matter is a tax dispute of which the applicant has to channel it through the Tax Revenue Appeals Board. Mr. Malata argued that, the given reasons are insufficient arguing that, the applicant is the own cause of the delay.

Mr. Malata further argued that, the applicant has failed to account for each day of the delay as set forth by the Court of Appeal in the case of **Lyamuya Construction Company Ltd. v. Board of Registered Trustees of Young Women's Christian Association of Tanzania,** Civil Application No. 2 of 2010, (Unreported). He argued that, the respondents

did not author the alleged cause of delay at any rate, rather, the said delay was solely orchestrated by the applicant.

Regarding illegality, Mr. Malata argued that, everything in the present matter was done in compliance with the law and that nothing went astray the laws. From the above, the learned Solicitor General urged for the application for extension of time to be refused, consequently, with costs.

In rejoinder, the applicant's counsel submitted that, the referred to preferred appeals are on substantive issues and not on legality of the processes. In other words, the grievances in the preferred avenues are distinctly different from each other. Besides, the allegations set forth by way of an objection are on points of fact requiring proof through evidence.

Regarding merits of the application, the applicant's counsel reiterated his submission in chief stressing that, the applicant did not at any point author the delay adding that, the prayer for extension of time has basis from the delay caused by the respondents and that on top of the delay, the decisions made by the 1st respondent had been tainted with illegalities.

This Court will start with the issue raised by the learned Solicitor General that, the applicant has initiated appeal processes amid the present

application for extension of time. On that issue, this Court is of the firm view that such an argument is misconceived, for if that has been the case considering the fact that the present application was the first to be filed and the fact that a notice of appeal is not an appeal, thus, it is the said latter move that has to be challenged, if any, and not the present application which as such, was preferred first.

In other words, if at all the argument is that the applicant has invoked two sets of remedies simultaneously over the same grievances, if any, then, it is the later preferred option that has to be challenged or argued to be stayed regard also be paid on the court levels. After all, that argument has been resisted by the applicant's counsel arguing that the two sets of judicial proceedings vary in terms of the sought for remedies.

Regarding the very application for extension of time, it has been to the satisfaction of this Court that, the applicant has demonstrated sufficient cause for the delay in filing the present application. To this Court, a meaningful account on time spent in waiting for a response from the respondents on letters dated 23rd September,2019 and on 18th October, 2019 which were duly served to the 1st respondent and from her letters dated 12th June, 2020 and 20th October, 2020 which were also duly served

to the 2nd respondents, and all letters being not acted upon by both respondents, is a cumulative account of days of delay and takes care of day-to-day account of the delay referred to by the learned Solicitor General.

It would thus be absurd to require the applicant to state the reasons as to why the respondents delayed to respond or rather act to what s/he ought to do especially where there is evidence that they never responded to the applicant's formally lodged grievances.

To this Court, the delay was out of control of the applicant having demonstrated the steps taken as made clear through the affidavit affirmed by Bikash Subba. In **Yusufu Same and Hawa Dada v. Hadija Yusufu,** Civil Appeal No. 1/2002, (Dar es Salaam Registry) (Unreported), the High Court observed at page 9 which this Court subscribes to that: -

> *"It should be observed that the term 'sufficient cause' should not be interpreted narrowly but should be given a wide interpretation to encompass all reasons or causes which are outside the applicant's power to control or influence resulting in delay in taking any necessary step".*

In view of the above, considering the alleged illegalities; the steps taken by the applicant; and, the fact that the response on part of the respondents was solely within their powers without any room for the applicant to influence or curb their highest order of irresponsibility demonstrated above, this Court finds the present application is meritorious.

It is from the above discussion in unison, the leave sought for extension of time to lodge an application for leave to file an application for prerogative orders of *certiorari* and *mandamus* is hereby granted with statutory extension starting to run from the date of this Ruling. In the circumstances of the matter, parties are ordered to shoulder for their costs.

It is so ordered.

DATED at DAR ES SALAAM this 30th day of April, 2021

HIGH COURT OF TANZANIA

E.M. FELESHI
PRINCIPAL JUDGE (J.K.)

COURT:

Ruling delivered this 30th day of April, 2021 in presence of Messrs Yohanes Konda and Noel Sanga, learned advocates for the applicant and Mr. Ayoub Sanga, learned State Attorney for the Respondents.

M.J. CHABA
SENIOR DEPUTY REGISTRAR
30/04/2021