

IN THE HIGH COURT OF TANZANIA
(DAR ES SALAAM SUB DISTRICT REGISTRY)
AT DAR ES SALAAM
MISC. CIVIL APPLICATION NO. 493 OF 2023

D.B SHAPRIYA.....APPLICANT

VERSUS

TANZANIA REVENUE AUTHORITY(TRA).....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Date of Last Order: 18/09/2023.

Date of Ruling: 29/09/2023.

E.E. KAKOLAKI, J.

This an application for Mareva injunction brought by the applicant under certificate of urgency and in terms of the provisions of section **2(3) of the Judicature and Application of Laws Act**, [Cap. 358 R.E 2019] (the JALA) and **section 95 of the Civil Procedure Court**, [Cap. 33 R.E 2019] (the CPC), pleading this Court to issue her a temporary injunctive order restraining the 1st Respondent, its agents, assignees and or workmen from informing about applicants debts and collect monies from the applicant's customers. Cost of the application and other reliefs as this Court deems fit

to grant are also prayed for. This application is supported by affidavit and supplementary affidavit of **Dipackumar Katok**, applicant's principal officer.

When served with the application the respondents filed their counter affidavit strenuously resisting the merit of this application. Subsequent to that, they issued a Notice of preliminary objection on point of law questioning the jurisdiction of this Court to entertain the matter going thus, **this court has no jurisdiction to determine this suit as per requirements of section 7 of the Tax Revenue Authority Appeals Act [Cap 408 R.E 2019]** (the TRAA) and **section 53(1) of the Tax Administration Act [cap 438 R.E 2019]** (the TAA).

Briefly as garnered from the applicant's affidavit and supplementary affidavit in support of the application, the 1st respondent assessed, established and issued to the applicant an estimated tax liability claims totalling Tshs. 11,050,140,362/= following completion of examination exercise, conducted for the year 2019, 2020 and 2021, in which the applicant responded by filing the objection. After consideration of the said objection, the 1st respondent re-assessed the documentations dully submitted by the applicant and finally on 19/05/2023 issued her with the Tax Demand Notice of outstanding tax liability to the tune of Tshs. 1,228,738,709/= payable in three months, in

which the applicant wrote back requesting for reconsideration on the ground that, her operation had ceased in a period between 18th October, 2016 to 17th June, 2021, following unlawful freezing of her bank accounts by the DPP and 2nd respondent. It appears surprisingly on 31st August, 2023, the 1st respondent via email notified the applicant of her intention to recover the outstanding Tax liabilities by issuing without further notice an Agency Notice to the applicant's customers (third parties) namely North Mara Gold Mining and METC Paulsam Company Limited, in terms of the provisions of section 67 of the TAA, after the applicant had failed to pay Tshs. 580,000,000= as part of the outstanding tax liability, the agency notices which were annexed to the e-mail bearing the same date. It is from that 1st respondent's decision and notice issued to the applicant this application is preferred.

It is a cardinal principle that, *a Court seized with a preliminary objection is first required to determine that objection before going to merits or the substance of the case or application before it as the aim is to save time in a situation where there is a point of law that will dispose of the matter summarily*. See the cases of **Shahida Abdul Hassanali Vs. Mahed M.G. Karji**, Civil Application No. 42 of 1999 and **Bank of Tanzania Vs. Dervan Valambhia**, Civil Application No. 15 of 2002 (both CAT-unreported). At the

hearing of the raised point of preliminary objection applicant was represented by Ms. Salma Abdalah, learned advocate while the Respondents enjoyed the service of Mr. Erasto Ntondokoso, learned State Attorney who was also in company of Mr. Achileus Karumuna, the 1st respondent's principal officer.

It is Mr. Ntondokoso, who rolled the ball first submitting that, the application violates the provisions of section 7 of the TRAA and section 53(1) of the TAA, conferring sole jurisdiction to the Tax Revenue Board (the Board) to determine this application since it is in the civil nature in respect of an action taken by the 1st Respondent in administering revenue law by recovering outstanding tax liability vide Agency notice under section 67(1) of the TAA providing that, where a tax payer fails to pay tax on time, the Commissioner General may serve the 3rd party who owes money to that payer a notice in writing requiring that person to pay the owed money to the Commissioner General. Therefore, by issuing Agency notice to the third-party debtor who is North Mara, the 1st Respondent executed his statutory powers vested on her by revenue laws of our land. To fortify his argument the Court of Appeal decisions in **Commissioner General, Tanzania Revenue Authority Vs. New Musoma Textiles Limited**, Civil Appeal No. 119 of 2019 at page 4,

Bryson Bwire Mbonde Vs. Tanzania Revenue Authority, Civil Appeal No.88 of 2018 pages 9 and 12 and **Tanzania Revenue Authority vs. Tango Transport company limited, civil appeal no.84 of 2009** at page 4 were referred all providing that, matters of civil nature arising out of revenue laws has their special forum established by the law to entertain them and that, the High Court has no jurisdiction to entertain those matters. He finalized his submission by arguing that, any attempt by this Court to entertain this application is tantamount to travelling outside its jurisdiction as it will be handling a dispute from revenue laws, which its jurisdiction is solely rested on the Board. He thus prayed the Court to strike out of this application with costs for want of jurisdiction.

In her reply Ms. Abdallah having prayed to adopt both affidavit and supplementary affidavit to form party of her submission, she invited this Court to overrule the objection raised. She reasoned that, this is an application for mareva injunction under section 2(3) of the JALA and section 95 of the CPC which is not arising from the 1st Respondent's decision in issuing agency notice. She contended that, the provisions of section 53 of the TAA as relied on by the respondents cannot be read in isolation with the provisions of sections 50, 51 and 52 of the TAA, for which neither TRAA nor

TAA provides for procedure to be adopted by the party seeking to apply for reliefs under mareva injunction or any provision requiring the party to go to the board for the said relief. And added that, under such situation the principle of harmonization of laws must apply. In her views therefore, the provisions of section 7 of the TRAA are irrelevant in the circumstances of this matter, thus this court is a proper forum to entertain the application as there is no provision requiring the applicant to go to the board. She finalised her submission by praying the Court to overrule the raised preliminary objection and allow the application to be heard on merit.

In rejoinder submission Mr. Tondokoso apart from reiterating his submission in chief argued that, the first respondent's act of issuing agency notice to third parties to settle applicant's outstanding tax liabilities falls under the definition of the term decision as provided under section 50(1) of the TAA.

Having visited the affidavit, supplementary affidavit and counter affidavit in support and against the application and accorded the deserving weight the rivalry submissions by the parties, it is now an opportunity for this Court to consider and determine the issues pending for determination which are going thus:

- 1. Whether the notice of intention to issue Agency notice to third-party (applicant's customers) and the Notice itself issued by Commissioner General for TRA amounts to tax decision.*
- 2. Whether this application is arising from the 1st Respondent's decision of issuing agency notice.*
- 3. Whether this court has jurisdiction to entertain the matter.*

To starting with, the 1st issue is whether the issue of notice of intention to serve agency notice to appellant's customers by the Commissioner General of TRA amounts to tax decision. From both parties' submission as well as the deposed facts in both affidavit and supplementary affidavit by the applicant, I note parties' dispute arose out of 1st respondent's act of 31.08.2023 as per annexure as DBS6 and DBS7 of paragraphs 4 and 5 of the Applicant's supplementary affidavit, when served the applicant by way of email with a notice of intention to apply enforcement recovery measures for overdue tax liability by servicing Agency notice to third parties (applicant's customers) namely **North Mara Gold Mining** and **METC Paulsam Company Limited**, in compliance with the provisions of section 67 of TAA. The provisions of section 67(1) of TAA reads:

67.-(1) Where a taxpayer fails to pay tax on time, the Commissioner General may serve on the third party debtor who owes money to that taxpayer a notice in writing requiring that person to pay the money to the Commissioner General.

It is also discerned from applicant's averments in paragraphs 4,5,6 and 7 of the affidavit that, upon being served with the estimated tax liability she exercised her statutory right of objection in terms of the provisions of section 51(1) of TAA, in which after re-assessment of submitted documents and issue of corrected assessment, the applicant further requested for reconsideration and waiver of tax liabilities between 2019 to 2021, on the ground that her accounts were frozen by the state organs. Nevertheless, applicant did not reveal the outcome of the said request before she was served with the notice of intention to issue Agency notice which copies were annexed to the notice submitted her via email as stated in paragraph 7 of the affidavit and paragraphs 4 and 5 to the supplementary affidavit, the act which no doubt resulted bred this application by the applicant, in which Mr. Tondokoso accuses to have infringed the provisions of section 53(1) of TAA. Much as the applicant is aggrieved with the 1st respondent's decision of issuing agency notice in which the 1st respondent believes has a right to exercise under the TAA, I have no difficulties in arriving to the findings that

there is pure tax dispute existing between the applicant and 1st respondent.

In a situation akin to the present matter, in the case of **Tanzania Revenue Authority Vs. Kotra Company Limited**, Civil Appeal No. 12 of 2009 (CAT-unreported) the Court of Appeal held that:

"In our considered opinion, this denial of liability to pay the assessed taxes and the assertion that liability exists, is a tax dispute between the two parties, pure and simple."

While I am in agreement with Ms. Abdallah's proposition that, the provisions of section 53(1) of TAA cannot be read in isolation of other provisions of the law in determination of the issue as to whether Commissioner Generals' issuance of agency notice amounts to tax decision, I am of the settled view that, the provisions of section 50(4)(a), (b) and (c) of the TAA provides an answer to the above issue by listing down information or documents under which conclusive evidence can be drawn that a tax decision has been made and the same is correct. For purposes of clarity I find it imperative to reproduce the contents of the said section 50(4)(a) to (c) of TAA which reads thus:

(4) For purposes of this Act, the following informations or documents shall be considered as conclusive evidence that a tax decision has been made and the decision is correct-

(a) in the case of self-assessment, the tax return that causes the assessment or a document under the hand of the Commissioner General purporting to be a copy of the tax return;

(b) in the case of other assessments, the notice of assessment or a document under the hand of the Commissioner General purporting to be a copy of the notice; and

*(c) **in the case of any other tax decision, a written notice of the decision under the hand of the Commissioner General or a document under the hand of the Commissioner General purporting to be a memorandum of the decision.** (Emphasis supplied)*

From the above exposition of the law tax decision is considered to have been made when assessment, document of assessment, notice of assessment or document purporting to be a copy of notice, is issued under hands of the Commissioner General for TRA as stipulated under subsection (4)(a) and (b) of the Act or **a written notice of the decision under Commissioner Generals hand or document purporting to be memorandum of the decision** is issued. In this matter what was communicated to the applicant on 31/05/2023 by e-mail undoubtedly was the Notice of intention to issue Agency notice accompanied with two Agency notices, duly signed by officer of the 1st respondent. In view of that fact, it is to the satisfaction of this

Court that, the Agency notice issued to the applicant by the 1st respondent amounts to **tax decision** by the Commissioner General within the precincts of section 50(4) (c) of TAA as it was a written notice or memorandum of decision issued to the applicant, resulting from applicant's default to pay tax in time. The first issue is therefore found in affirmative.

Next for determination is the 2nd issue as to whether this application is arising from the 1st Respondent's decision of issuing Agency notice. I think this issue need not detain this Court much as it is already found when determining the 1st issue that, the 1st respondent's act of issuing notice of intention to serve agency notice to applicant's customers for them to settle her tax liability, the decision which no doubt aggrieved her, hence filing of this application with intent to restrain the 1st respondent from so acting. To hold otherwise as Ms. Abdallah seem to impress upon this Court, with due respect to her would be going contrary to the applicant's prayer in the chamber summons which reads:

2. That this Honourable Court may be pleased to issue a temporary injunctive order restraining the Respondent, its agent, assignees, and or workmen from informing about

applicant's debts and collect monies from the applicant's customers.

It is apparent from the above prayer that, the applicant is seeking to restrain the 1st respondent from effecting her decision of informing applicant's customers about her debts and collection of monies from them. In other words the application is seeking to restrain the 1st respondent from effecting the Agency notice. I therefore find the 2nd issue is answered in affirmative as this application arises from the notice of intention to issue agency notice and its annexure served to the applicant by email.

The 3rd and last issue is whether this court has jurisdiction to entertain the matter at hand. It is true and I agree with Ms. Abdallah's proposition that under our tax laws there is no specific provisions providing for procedure as to how and where an application for mareva injunction should be filed. However, that does not mean that tax revenues laws do not provide for the forum, procedures and reliefs sought by the applicant arising from tax decision made by the Commissioner General of TRA under section 50(1) of TAA for issuing agency notice to the third parties (applicant's customers/debtors) in which the applicant is seeking to restrain its implementation. The revenue laws such as TAA and TRAA in the present

matter, I find provides an alternative procedure for resolution and determination of appellant's grievances sought to be addressed in this application. I find solace in that finding from the Court of Appeal decision in the case of **Kotra Company Limited** (supra) when interpreting similar revenue laws, the TRA Act and TRAA where the Court had this to say:

*"It is clear from the above statutory provisions, therefore that the **TRA Act and the Act provide an alternative procedure for the resolution and determination of all disputes in relation to any act or omission by the Commissioner – General** in the discharge of his powers and functions under the revenue laws."* (Emphasis supplied)

The law under section 51(1) of TAA is clear that any party aggrieved by such tax decision under section 50(1) of the TAA, may file his objection to the Commissioner General and if dissatisfied with his decision further appeal to the Tax Revenue Appeal Board (the Board) as provided for under section 53(1) of the TAA. To bring into picture the above deliberation the provisions of sections 50(1), 51(1) and 53(1) of the TAA are hereby reproduced:

Section 50(1) of the Act reads:

50.- (1) The Commissioner General may, subject to subsection (2), make any tax decision including assessment or other

decision or omission on a matter left to the discretion, judgement, direction, opinion, approval, consent, satisfaction or determination of the Commissioner General under a tax law that directly affects a person.

Section 51(1) of the TAA provides:

51.-(1) A person who is aggrieved by a tax decision made by the Commissioner General may object the decision by filing an objection to the Commissioner General within thirty days from the date of service of the tax decision.

And section 53(1) is stating that:

53.-(1) A person who is aggrieved by an objection decision or other decision or omission of the Commissioner General under this Part may appeal to the Board in accordance with the provisions of the Tax Revenue Appeals Act.

As provided under section 53(1) of the TAA, any party aggrieved with the decision of the Commissioner General under section 50(1) of the TAA when appealing to the Board has to abide to the provisions of the TRAA. The said Board under section 7 of the TRAA is conferred with exclusively jurisdiction to entertain all proceedings of civil nature in respect of disputes arising from revenue laws. Section 7 of TRAA provides:

7. The Board shall 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.

On the sole jurisdiction of the Board and Tax Revenues Appeal Tribunal the Court of Appeal in the case of **Bryson Bwire Mbonde** (supra) when deliberating on applicability of the provisions of sections 7, 7A and 12 of TRAA had the following observation to make:

“Our understanding of these provisions is that all proceedings of civil nature arising out of disputes from revenue laws administered by the respondent ought to be dealt with by the Board.”

Similar stance was taken by the Court of Appeal in the case of **Kotra Company Limited** (supra) when discussing as to whether the High Court was crowned with jurisdiction to entertain the respondent’s suit founded on tax dispute. The Court had the following observation to make:

“...there is no dispute that the Act sets up the Board and Tribunal and vests the former with sole jurisdiction in all proceedings of a civil nature in respect of disputes arising from the revenue laws administered by the appellant.”

I take note that this application is preferred under section 2(3) of JALA and section 95 of the CPC, conferring this Court with inherent powers to entertain any matter of civil nature in which no specific jurisdiction is provided for by the statute as the settled law is that court's jurisdiction in our land is purely statutory. See the cases of **Shyam Thanki and Others Vs. New Palace Hotel** (1971) EA 199 and **Commissioner General of Tanzania Revenue Authority Vs. JSC Atomredmetzoloto (ARMZ)**, Consolidated Civil Appeal Nos. 78 and 79 of 2018 (all CAT unreported). The sub issue for determination here is whether this Court is crowned with jurisdiction to entertain this application founded on the dispute over tax revenue administration as submitted by Ms. Abdallah? In my opinion the answer is found in the provisions of section 7(1) of the CPC which provides thus:

7.-(1) Subject to this Act the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Justice G.P Singh in his book **Principles of Statutory Interpretation**, 8th Ed (2001) at page 581 as quoted in the case of **Kotra Company Limited** (supra) on jurisdiction of the Court observed thus:

"There is a strong presumption that civil courts have jurisdiction to decide all questions of civil nature. The exclusion of jurisdiction of civil courts is not to be readily inferred and such exclusion must either be explicitly expressed or clearly implied."

In this matter as alluded to above in **Bryson Bwire Mbonde** (supra) and **Kotra Company Limited** (supra), the jurisdiction to entertain dispute over tax decision made by the 1st respondent herein is solely vested on the Board as a special forum for entertaining dispute of civil nature arising from administration of revenue laws. In the case of **Attorney General Vs. Lohay Akonaay and Another** [1995] TLR 80 on the jurisdiction this Court to entertain disputes on matters whose jurisdiction is solely vested in special forums had this to say:

"...courts would not normally entertain a matter for which a special forum has been established unless the aggrieved party can satisfy the court that no appropriate remedy is available in the special forum..."

See also the cases of **Tango Transport case (supra)** and **New Musoma Textile Ltd case (supra)** where the Court of Appeal observed that, *court would not entertain a matter for which a special forum has been established*

by law, unless the aggrieved party can satisfy that no appropriate remedy is available in that special forum.

In the present matter Ms. Abdallah does not dispute that the jurisdiction to entertain *tax decision* disputes arising from either denial for consideration of tax assessment or any other request by the applicant or any decision by the Commissioner General including issuance of agency notice to the third party is crowned on special forum which is the Board. Glancing at the applicant's affidavit and supplementary affidavit, it is not deposed anywhere to the Courts satisfaction that, the said decision of issuance of agency notice was referred by her to the Board and the sought remedies denied as the Board under section 17(1)(b) of the TAA is vested with powers to issue the remedies sought by the applicant in the present application either by reconciliation or mediation or arbitration including issue of injunctive or declaratory orders. Section 17(1)(b) of TAA reads:

17.-(1) The Board and the Tribunal shall respectively have the power—

(a) N/A.

(b) to resolve any complaint or appeal by mediation, conciliation or arbitration;

Since the revenue laws provides for remedies sought by the applicant in this application and given the fact that, she has failed to prove to this Court that, no appropriate remedy could be obtained from the Board and/or Tribunal, the forums whose decisions on final appeal lies to the Court of Appeal, I find the argument by Ms. Abdallah that, there is no specific procedures in the revenue laws for applying for mareva injunction with due respect to her is not only misplaced but also unfounded in law, as mareva injunction before this Court in tax decision disputes by the Commissioner General cannot be used to circumvent the clear and mandatory procedures governing disputes arising from revenue laws. In view of the above the third issue is answered in negative in that, this Court has no jurisdiction to entertain the application beforehand.

For the stated reasons, I find merit in the preliminary objection raised by the respondent and sustain it as truly this Court lacks jurisdiction to entertain the application before it. The application is therefore dismissed with costs for want of competence.

It is so ordered.

Dated at Dar es Salaam this 29th September, 2023.

E. E. KAKOLAKI

JUDGE

29/09/2023.

The Ruling has been delivered at Dar es Salaam today 29th day of September, 2023 in the presence of Ms. Salma Abdallah, advocate for the applicant, Mr. Salehe Manoro, Ms. Lilian Mirumbe and Mr. Dathan Mafuru, all learned State Attorneys for the 1st and 2nd respondents, and Mr. Oscar Msaki, Court clerk.

E. E. KAKOLAKI

JUDGE

29/09/2023.

