IN THE HIGH COURT OF UNITED REPUBLIC OF THE TANZANIA
(COMMERCIAL DIVISION)
AT DAR-ES-SALAAM

COMMERCIAL CASE NO.1 OF 2020

EAST COAST OIL AND FATS LTD .....PLAINTIFF

v

TANZANIA BUREA OF STANDARDS.....1st DEFENDANT

TANZANIA REVENUE AUTHORITY.....2nd DEFENDANT

THE HON. ATTORNEY GENERAL.....3rd DEFENDANT

RULING

18/02/2020 & 16/03/2020

NANGELA, J.:

This ruling arises from a claim filed by the Plaintiff, a limited liability company, registered under the laws of the United Republic of Tanzania. The Plaintiff carries out, among others, the business of manufacturing edible oil.

In this suit, the Plaintiff is suing the above three defendants and, the case against them is still pending in its very early pre-trial stages. However, even before the case proceeded to the first Pretrial Conference (PTC), the Defendants came up forcefully armed with preliminary objections, seeking to topple the entire suit and bring its wings to the ground, once and for all. However, for a better appreciation of the story behind such a move, and the nitty-gritty of the entire suit, I find it pertinent to state the facts, albeit briefly.

It all started in 2017 when the Plaintiff imported a consignment of Palm Oil to the country. In compliance with the relevant laws associated with importation of such kind of a product, a sample was taken by the 1st Defendant for testing.

Such testing was necessary because, it helps the 2nd Defendant to determine the percentage rate of import duty to be applied, which could either be 10%, if the consignment was determined to be "**crude palm oil**", or 25 % if it turns out to be "**refined palm oil**".

The testing was carried out. Its results were released and passed as **"Crude Palm Olein".** However, such results were passed with a caveat, that, although passed as **"Crude Palm Olein",** the results obtained did not indicate whether the product was **crude palm olein**, **crude neutralized** or **crude bleached palm olein**. In light of such uncertain observations, the Plaintiff was made, though under protest, to pay duties at a rate of 25%, a rate which is paid for refined palm oil.

In view of the above, the gist of the dispute between the Plaintiff and the Defendants, and, in its precise form and as may be ascertained from the pleadings, is the question whether such imported consignment was "**crude palm olein**", thus attracting duties at a rate of 10% or "**refined palm oil**", and, hence attracting the duties at a rate of 25%. I shall revert to this later on.

The Plaintiff claims that the consignment is for refined palm oil and, hence, claim against the Defendants for a declaration, that, the Plaintiff is entitled to an assessment of import duty on the imported consignment, at the rate of 10%, amounting to **TZS 160,629,189.00.**

The above claim will mean, therefore, that, the Plaintiff is entitled to **a refund of 15% of import duty** paid over and above the applicable tax amounting to **TZS 240,943,785.01** and **TZS 43,369,881.00** of additional VAT totalling **TZS 284, 313,666.01**. The Plaintiff has so averred.

Apart from seeking for such a declaration from this Court, the Plaintiff also implores this Court to condemn the 2nd Defendant to pay interest on the amount due to the Plaintiff at the rate of 25% per annum, as per mercantile custom, from the date the money was paid to the 2nd Defendant, till the date of judgement.

Besides, the Plaintiff seeks to be paid by the Defendants, interest on the decretal amount, at the Court's rate, from the date of judgement of this case, till when the decree is fully satisfied, as well as payment of costs of and incidental to this suit.

Upon filing of the suit, summonses to file Written Statement of Defence (**WSD**) were duly served upon the Defendants, in line with the requirements of Rules 15 and 20 (1) of the High Court

(Commercial Division) Procedure Rules, GN. 250 of 2012 (as amended by GN. 107 of 2019).

On 13th February 2020, the 1st and 3rd Respondents filed their **WSD** and raised, as their objection to the filing of the suit, one preliminary point of law, to wit, that:

"This Court lacks jurisdiction to entertain the case before it."

As for the second Defendant, upon being served with the summons to file its **WSD**, the same filed its **WSD** on 11th February 2020, and, just like the 1st and 3rd Defendants, loaded it with two preliminary objections.

The two points of law raised as objections to the suit by the 2nd Defendant, were as follows, that:

1. This honourable Court has no jurisdiction to determine this dispute in terms of section 7 of the Tax Revenue Appeals Act, Cap.408.
2. The suit is incompetent before this Court due to the Appellant's failure to comply with section 229 of the East African Community Customs Management Act, 2004.

On 18th February 2020, when this case was called up for necessary orders, Ms. Neema Mahunga, learned advocate, appeared for the Plaintiff, while Mr. Yohana Marco, learned State Attorney, from the Solicitor General's Office, appeared for the 1st and 3rd Defendants. The 2nd Defendant was unrepresented.

Ms. Mahunga prayed to be given time to file a reply to the **WSD's** filed by the Defendants. Moreover, noting that there were several Preliminary Objections (**POs**) raised by the Defendants, she prayed that a hearing date for the POs be fixed by the Court.

The prayers were amiably granted, including a prayer by Mr. Yohana Marco, that, the **POs** be consolidated and be argued together.

In view of the above, this Court made the following orders:

1. That, Plaintiff to file its reply to the WSDs on 21st February, 2020.
2. The POs be argued by way of written submissions to be filed in the following order:
    (a) The Defendants to file their written submissions on or before 26th February 2020.

(b) The Plaintiff to file its written Submission on or before 4th March 2020.

(c) Defendants to file their rejoinder submissions (if any) by 6th March, 2020.

(d) Ruling on 16th March 2020 at 11.00 am.

The parties herein dutifully adhered to the above schedule, save that, no rejoinder was filed by the 2nd Defendant. I will now embark on the gist of their submissions in respect of the objections raised in this case.

As noted herein above, there are three objections raised by both Defendants. However, as we agreed to consolidate them, the preliminary objections will only be two:

(a) That, this Court lacks jurisdiction to entertain the suit before it, and;

(b) That, this suit is incompetent due to Appellant's non-compliance with section 229 of the East African Community Customs Management Act, 2004.

In its submissions on the first preliminary objection, the learned State Attorney representing the 1st and 3rd Defendants assailed the suit filed by the Plaintiff in this Court on the ground

that, this is a tax dispute and, that, jurisdiction in such matters is not vested in the Court, but, in the Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal. It was argued that the suit is founded on the Tax Revenue Laws administered by the 2nd Defendant (Tanzania Revenue Authority (TRA)).

To cement his contention, that the matter before this Court is a tax dispute, the learned State Attorney submitted, further, that, the cause of action arose from the import duty assessment done by the Commissioner General of the 2nd Defendant and the Plaintiff is disputing such assessment as being incorrect, imputing it on the acts of the 1st Defendant. To show that the suit was a tax-related one, it was stated further, that, even the prayers contained in the Plaint are prayers that seek to implore the Court to adjust the disputed tax assessment.

It was submitted on behalf of the 1st and 3rd Defendant, that, according to section 4 (1) of the Tax Revenue Appeals Act, Cap. 408 [R.E.2006], the Tax Revenue Appeals Board is thereby established, while section 8 (1) establishes the Tax Revenue Appeals Tribunal.

The learned State Attorney also argued that, section 7 of the Act provides that, the Board shall, subject to section 12, exercise sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority.

To further buttress his submissions, the learned State Attorney referred to this Court the case of **Samson Ng'walida v Commissioner General Tanzania Revenue Authority,** [2012] 1 EA 278.

It was also contended by the learned State Attorney, that, since the inception of the Tax Revenue Appeals Board and the Tribunal, the law and practice has been to oust the ordinary civil courts, save for the Court of Appeal of Tanzania, from exercising jurisdiction over tax disputes. This Court was referred to the Case of **Tanzania Revenue Authority v Tango Transport Company Ltd, Civil Appeal No.84 of 2009.**

In view of the above submissions, the learned State Attorney concluded that, seizing this Court with a matter not in its jurisdiction, is an unnecessary waste of this Court's time and

resources, and, the suit should be dismissed in its entirety and with costs.

For its part, the 2nd Defendant, the TRA, submitting on the 1st ground of objection, and, relying on section 7 of the Tax Revenue Appeals Act, Cap. 408 [R.E.2006] and section 6 of the Tanzania Revenues Authority Act, Cap. 399, made similar observations and arguments as those made by the 1st and 3rd Defendants.

As regards the applicability of section 6 of Cap. 399, the 2nd Defendant submitted, that, according to that section, any person aggrieved by the decision of the 2nd Defendant made under the revenue laws, is at liberty to appeal to the Tax Revenue Appeals Board established under the Tax Revenue Appeals Act, Cap. 408 [R.E.2006].

In addition, the 2nd Defendant stated, that, since the dispute relates to import duties of a product governed by the East African Customs Management Act, 2004, the Act is listed under the first Schedule of the TRA Act as one of the laws administered by the 2nd Defendant.

Apart from such submissions, the 2nd Defendant asserted that, based on the above fact, the dispute between the parties is one that arises from laws administered by the 2nd Defendant and clearly, in terms of section 7 of the Tax Revenue Appeals Act, Cap. 408 [R.E.2006], the only institution vested with original jurisdiction is the Tax Revenue Appeals Board and not this Court.

To assist this Court, the 2nd Defendant referred to and has placed reliance on the following decisions in support of his submissions: **TRA v New Musoma Textile Ltd,** Civil Appeal No.93 of 2009 (unreported); **Sunday Sanga T/A Itumbi Trading Co. v TRA,** Commercial Case No.26 of 2005 (unreported); and **Khofu Mlelwa v Commissioner General of TRA and Commissioner of Customs and Excise,** Civil case No.106 of 2017 (Unreported).

As regards the 2nd ground of objection, the 2nd Defendant submitted that, section 229 (1) and (2) of the East African Customs Management Act, 2004, requires a person aggrieved by the decision of the Commissioner to lodge an application for review with the Commissioner.

It was further argued that, this particular provision, sets out a mandatory procedure, and, by virtue of section 231 of the East African Customs Management Act, 2004, it is only the Tax Revenue Appeals Board that could entertain disputes challenging a decision made by the 2nd Defendant under Section 229 of the Act. As such, it was argued that, failure to observe the established procedure means that, the Plaintiff is barred from validly challenged the decision of the 2nd Defendant before this Court. In view of such submissions, the 2nd Defendant prayed that the suit be dismissed with costs.

In response to the written submissions by the Defendants, as summarized herein above, the Plaintiff conceded that, section 7 of the Tax Revenue Appeals Act, Cap. 408 [R.E.2006], vest original jurisdiction to hear and determine disputes of a civil nature arising from revenue laws administered by the 2nd Defendant, on the Tax Revenue Appeals Board.

However, the Plaintiff submitted, that, section 7 of the Tax Revenue Appeals Act, Cap. 408 [R.E.2006] is very narrow, as it only

covers tax/revenue-related disputes, such as tax assessment by the Commissioner and disputes incidental thereto.

However, from the Plaintiff's understanding and position, the claim filed in this Court by the Plaintiff, is not a tax/ revenue-related dispute, but a dispute based on **negligence** on the part of the 1st Defendant. Moreover, the Plaintiff averred that, its claim for refund is not based on wrong assessment, but **wholly based on annexure 12, which is an admission of negligence** on the part of the first Defendant.

The Plaintiff argues, that, the principal defendant in the suit is the 1st Defendant. Referring to Para 15 of the Plaint, the Plaintiff submitted that, the claim for refund, was in respect of the 1st Defendant and was based on the 1st Defendant's remarks made on annexure 10, and, which remarks, made the 2nd Defendant to assess tax on the higher scale.

To further cement its submissions, the Plaintiff argued that, disputes related to tax disputes, under the Tax Revenue Appeals Act, are essentially between the TRA and tax payers. The 1st Defendant is not a taxpayer nor the Revenue Authority, and, that,

the 3rd Defendant has been impleaded by virtue of its role as a representative of the Government and its agencies in the courts of law, so argued the Plaintiff.

Besides, the Plaintiff submitted that, the 1st Defendant cannot be shielded by section 7 of the Tax Revenue Appeals Act, Cap. 408 [R.E.2006], to avoid its liability in negligent misstatement. To that end, the Plaintiff disregarded all cases relied upon by the Defendants as being irrelevant and utterly distinguishable, and, prayed, that, the objection raised by the 1st and 3rd Defendants be dismissed with costs.

As regards the submissions filed by the 2nd Defendant, the Plaintiff, equally and forcefully, scathed them, arguing, that, the cause of action in this suit does not arise out of the administration of the revenue laws, but rather out of **fraudulent misrepresentation** by the 1st Defendant.

The Plaintiff maintained that the dispute is not about an incorrect assessment, but rather about assessment of tax by the 2nd Respondent based on wrong advise by the 1st Defendant.

As well, the Plaintiff distinguished the cases relied upon by the 2nd Defendant, arguing, that, they were irrelevant to the case at hand because the Plaintiff is not complaining about anything in relation to the administration of the revenue laws, but his complaint is about negligent misstatement made by the 1st Defendant.

It was for such reasons the Plaintiff prayed, that, the two objections by the 2nd Defendant, be dismissed as well, and, the Court be pleased to proceed with the hearing on the merits of the suit filed by the Plaintiff.

On 6th March 2020, the 1st and 3rd Defendants, filed a brief rejoinder submission. While reiterating their earlier written submissions in chief, these Defendants further submitted that, while the Plaintiff submit that the principal defendant in this case is the 1st Defendant, yet, all its claims, as observed in Para 5 of the Plaint, are centered on the Commissioner General of the 2nd Defendant.

From the above submissions of the learned counsel for the parties, three issues may be framed to guide the discussion. These are as hereunder:

(i) Whether the suit before this Court is a non-tax-related case and,

(ii) if the first issue is in the affirmative, whether this Court has jurisdiction to entertain such a suit.

(iii) Whether the Appellant's was required to comply with section 229 of the East African Community Customs Management Act, 2004.

Starting with the first issue, regarding whether the suit before this Court is a non-tax-related case, and, if so, whether this Court has jurisdiction to entertain it, I find it worthy stating, that, the question regarding the jurisdiction of a court, is quite a fundamental issue in any given case.

As it was stated by the Court of Appeal in the case of **Fanuel Mantiri Ng'unda v Herman Ng'unda**, Civil Appeal No.8 of 1995, CAT (unreported), the issue regarding jurisdiction, "*goes to the very root of the authority of the court to adjudicate ....*"

In fact, in a Kenyan case of **Owners of the Motor Vessel "Lillians" v Caltex Oil Kenya Limited [1989] KLR 1,** it was stated that:

"Jurisdiction is everything. Without it a Court has no power to take one more step, where a Court has no jurisdiction

> there would be no basis for a continuation of proceedings pending the evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction".

In this case, the Defendants have raised the issue of jurisdiction, arguing that this Court does not have what I may herein refer to as the "subject matter jurisdiction", to entertain the case filed by the Plaintiff.

In short, the Defendants have argued that, the case before this Court concerns a dispute arising from the application of the revenue laws, and, for that matter, the competent authority, that can exercise jurisdiction over such matters competently, is the Tax Revenue Appeals Board, established under section 7 of the Tax Revenue Appeals Act, Cap. 408 [R.E.2006].

On the other hand, the Plaintiff has strenuously disputed the Defendants' assertions. The Plaintiff regards the Defendants' objections as being baseless. The Plaintiff's ground for such a position is that, the suit at hand, is a non-tax-related-case, and, in particular, one based on **negligent misstatement** and **fraudulent misrepresentation** by the 1st Defendant.

However, in order to be able to ascertain the nature of the case at hand, and whether the kind of issues that it seeks to be adjudicated upon are issues which fall outside or within the jurisdictional scope of this Court, one has to revisit the pleadings filed in this Court, in particular, the Plaint.

This is essential, because, generally, apart from bringing the parties to exact issues, the object of pleadings, which include the plaint filed in court, is to prevent surprises and miscarriage of justice, to help to avoid unnecessary expense and trouble; to save public time, and eradicate irrelevancies. Pleaseding are as well meant to assist the Court. This Court, therefore, is, at this stage of the case, in need of assistance, and, that can only be drawn from the pleadings.

In view of the above, examining the Plaint, it being the statement of the Plaintiff containing grievances which initiate an action in a court of law, will help the court to determine the real nature of the suit before it, and, whether it is the kind of suit for which this Court's powers of adjudicating between the parties, can be exercised.

If looked at carefully, it is clear to me, that, paragraphs 5, 18, and 19 of the Plaint, when looked at together with the prayers made by the Plaintiff, summarize the claim and the demands by the Plaintiff in a manner that tells out the gist of the entire case and against whom is it directed, as a whole.

As it may be ascertained there from, the relevant paragraphs reads as hereunder:

> "5. That, the Plaintiff's claim against the Defendants is for **a declaration that the Plaintiff is entitled to an assessment of import duty on the import at the rate of 10%** amounting to Tsh. 160,629, 189.00 and therefore it is entitled to **a refund of the 15% of import duty it paid over and above the applicable tax** amounting to Tsh. 240,943,785.01 and Tsh. 43,369,881.00 of additional VAT totalling 284, 313,666.01; **the 2nd Defendant pay the Plaintiff interest on the amount due to the Plaintiff at the rate of 25% per annum as per mercantile custom, from the date the money was paid to the 2nd Defendant till the date of judgement;** the Defendants pay interest on the decretal amount at the Court's rate from the date of judgement till when the decree is fully satisfied; the Defendants pay the Plaintiff costs of and incidental thereof."

Paras 18 and 19 of the Plaint reads as follows:

"18. That, the Plaintiff (sic) claim against the Defendants, therefore, its (sic) for an order that the **Plaintiff is entitled to a refund of additional 15% of TShs. 240,943,785.01 of import duty, and TZS 43,369,881.00 of additional VAT, that the Plaintiff paid to the 2nd Defendant.**"

"19. That, **despite demand for refund of the additional amount overpaid, the 2nd Defendant has refused and/or neglected to heed to the same**. Copy of demand letter dated 12th April 2019 is annexed hereto above as Annexure P15." (**Emphasis added**).

It is clear to me, in view of the above, and, as earlier stated herein above, that, the gist of the dispute between the Plaintiff and the Defendants, **in its precise form,** is pegged on the question whether the consignment imported by the Plaintiff was supposed to be assessed by the 2nd Defendant as **'crude palm olein'**, thus attracting duties at a rate of 10% or as **'refined Palm oil'**, and, hence attracting the duties at a rate of 25%.

The above position is, in my view, very clear as from Para 5 of the Plaint, the Plaintiff avers that:

".. the Plaintiff's claim against the Defendants is for **a declaration that the <u>Plaintiff is entitled to an assessment of import duty on the import at the</u>**

> **rate of 10%** ... and ... to **a refund of the 15% of import duty** it paid over and above the applicable tax... and... **the 2nd Defendant** pay the Plaintiff interest on the amount due to the Plaintiff at the rate of 25% per annum as per mercantile custom, from the date **the money was paid to the 2nd Defendant** till the date of judgement;...."

In the above excerpt from the Plaint, it is clear that the Plaintiff's case is basically addressed to the 2nd Defendant and is about tax assessment done by the 2nd Defendant at a rate of 25% for which the Plaintiff, unsatisfied, seeks, from the 2nd Defendant, to be refunded the 15% of the amount paid.

For that matter, the Plaintiff is praying for a declaration of this Court to the effect that, the appropriate rate of assessment of the Plaintiff's consignment should have been the 10% rate which applies to "Crude Palm Olein". Consequently, as it may be ascertained from that paragraph 5 of the Plaint, the claim is directed to the 2nd Defendant.

As for paragraphs 18 and 19, which I have quoted herein above, it is also quite obvious that, the "**15% tax-refund-demands**" made by the Plaintiff, were directed to the 2nd

Defendant, and, not the 1st Defendant as claimed. This points to no other conclusion but one, that is, the case at hand is one falling under the purview of the revenue laws.

This means that, the cases cited by the Defendants herein, are useful and applicable in determining whether this Court can exercise jurisdiction over the matters filed before it by the Plaintiff or not.

From the above look of things, I fail to agree with the Plaintiff, that, the case at hand, is not a revenue-related case, but one concerning a "**Claim of Negligent Misstatement**" and "**Fraudulent Misrepresentation**" on the part of the 1st Defendant, as a proper party to the case and, that, the rest of Defendants were just joined as necessary parties. I think this is a weak argument not sustained by the facts disclosed in the pleadings.

In particular, nowhere in the Plaint has the Plaintiff raised a claim of negligence and set out its particulars. As a matter of law, it is trite that when a claim regarding negligence is made, apart from

such facts being pleaded, the Plaintiff must also give specific particulars of such negligence.

In other words, as it was stated in the **Nigerian case of Bububakar & Another v Joseph & Another (SC 10/20020 [2008]9 (06 June 2008):**

> "He who pleads **negligence should not only plead the act of negligence, but should also give specific particulars** .... In a case of negligence the facts which gave rise to the negligence must be **comprehensively and delicately pleaded.** The facts must be pleaded in minute details almost to the letters of the alphabet. Nothing should be left unpleaded. The Statement of Claim should give a very clear picture ..." (Emphasis added).

As it may be noted from the Plaint, nothing is detailed or particularized therein, as facts constituting negligence on the part of the Defendants in the manner that would warrant this Court make a finding that the case at hand is one based on negligence, as the Plaintiff's written submissions seems to suggest. In view of this, the Plaintiff's submissions, that, the case at hand is one based on negligent misstatement on the part of the 1st Defendant, does not stand and is hereby disregarded.

As pointed out, the Plaintiff submitted also that, the case at hand, is about fraudulent misrepresentation on the part of the 1st Defendant. I think this is also a confused state of affair on the part of the Plaintiff. I hold so, because, there is a clear indication that, either the Plaintiff does not know what exactly he wants to pursue, as its rights, or the Plaintiff does not know how and where to pursue what it considers to be its rights.

As it is for the claims involving negligence, of which the particulars of such negligence must be clearly pleaded, where there is an allegation of fraudulent acts or misrepresentation, such allegations, as well, must be clearly pleaded and particularized.

The above requirement, is not my own invention. According to Order VI rule 4 of the Civil Procedure Code, Cap. 33 [R.E, 2002], the law is very clear. It provides as follows:

> "In all cases in which the party pleading relies on **any misrepresentation, fraud,** breach of trust, willful default, or undue influence and in **all other cases in which particulars may be necessary to substantiate any allegation, such particulars** (with dates and items if necessary) **shall be stated** in the pleading."

As it may be noted herein above, the law requires, where reliance is being placed on acts of misrepresentation or fraud or any of such cases in which particulars may be necessary to substantiate any allegation, such particulars must be pleaded.

The above noted requirement is not unique to our jurisdiction. It is one that has been emphasized all over by Courts of law even in other jurisdictions. Such a requirement, for instance, was emphasized by the Supreme Court of Canada, in the case of **Douglas Junkin et al v Bedard et al, [1958] SCR 56, at 59**, a case which I find to be persuasive.

In that decision, Mr. Justice Cartwright, J., citing other earlier decisions of the Court, stated as hereunder:

> "... it has been held that, a party relying upon allegations of fraud, **must plead them with precision** .... In Graham Sanson & Co. v Ramsay, Masten, J., as he then was, speaking for the majority of the Appellate Division, said at p. 79:
>
> > '...*fraud is not to be alleged generally, but the* ***particular matters constituting the fraud must be specifically alleged****. These Rules should be taken to apply to every misrepresentation, whether innocent or fraudulent.'...* " (Emphasis added).

A similar observation was also made by the New South Wales Court of Appeal, in the case of **Nadinic v Drinkwater [2017] NSWCA 114, at para 45.** In this case, the New South Wales Court of Appeal was categorically emphatic, that, an allegation of fraud, in the sense of deliberate falsehood or reckless indifference to the truth, must be pleaded specifically and particularized.

Furthermore, in the case of **B.A. Morohunfola v Kwara State College of Technology, SC 170/1987 (delivered on the 6th day of July 1990)**, the Supreme Court of Nigeria, Belgore, J.S.C., was on the view that:

> "even though a party is to plead facts only and not the evidence by which those facts are to be proved, **matters such as fraud ... are special matters which must be specifically pleaded** because they are material facts". (Emphasis added).

I am fully and well persuaded by the above cited cases, and, I find that, the position they support do equally apply to our jurisdiction, in terms of Order VI rule 4 of the Civil Procedure Code, Cap.33 [R.E. 2002], as cited herein above.

In view of such a finding, and, in relation to this case at hand, as I venture to determine whether it is about fraudulent

misrepresentation, and, not one in relation to the applicability of revenue laws, referring to what the Plaint filed in this Court discloses, is indispensable and quite instructive.

In my view, looking at the Plaintiff's plaint, I find that it does not specifically disclose a concrete plea regarding fraudulent misrepresentation on the part of the 1st Defendant or any of them, and, more to say, the Plaint does not give out the particulars of such fraudulent misrepresentation, as one would have expected.

It is on the basis of such a finding I proceed to hold, that, the Plaintiff's submissions that the case at hand is based on a fraudulent misrepresentation on the part of the 1st Defendant, and, therefore, not a case falling under the purview of revenue disputes, is misconceived, misguided and destined to fail.

In my view, and as earlier stated, the case at hand falls within the purview of revenue laws, and, the all cases relied upon by the Defendants, including one from this Division of the Court, are relevant and worth following.

In particular, all such cases have held that, this Court cannot exercise jurisdiction over a tax-related-dispute because, exercise of

jurisdiction in such matters, with the exception of the Court of Appeal, is not vested in this Court but in the Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal.

Essentially, even if one was to argue that tax matters fall within the scope of what may be defined as "commercial transactions" under the Rules of Procedure governing this Court, and, therefore, that, the Court should exercise its jurisdiction over a case filed before it in relation to such matters, still, that argument would fail. The reason for that is pretty clear.

It is trite, that, where there is an accessible specific forum, which is statutorily established, fully functional, dedicated and mandated to adjudicate claims by aggrieved persons based on the statute that creates such a dedicated adjudicatory forum, unless otherwise stated in the same statute, Courts should not usurp the jurisdiction of such an adjudicatory body. Such forums are mostly specialized and, depending on their specialty competence-based.

Besides, aggrieved litigants cannot, an should in no way be allowed to sideline such adjudicatory bodies. What the Court will do is to decline the matter filed before it on the basis of lack of

"subject matter jurisdiction", and, direct such aggrieved litigants to seek remedy for their grievances in the appropriate forum, should they wish.

Put differently, an aggrieved person whose case falls under the purview of specialised laws overseen by specialised tribunals or other administrative bodies vested with specific subject matter jurisdiction, such as competition law, or tax/revenue laws, cannot, and should not be allowed to detour from the adjudicatory trajectory and machineries established under such laws, to file a matter in this Court.

It is on the basis of this fact, and, the entire discussion made herein, I find, therefore, that, because there is in place the Tax Revenues Appeal Board and its appellate Tribunal, and, since the case before me has manifested all characteristics of a tax or revenue-related dispute, hence, falling within the ambit of the Tax Revenues Appeal Board, this Court lacks jurisdiction to entertain it.

In view of that, the first issues framed herein, is responded to affirmatively. In view of the findings made in regard to the first issue, the second issue is answered in the negative, meaning that,

the first objection raised by the Defendants is upheld as this Court lacks jurisdiction to entertain the case filed by the Plaintiff.

Having responded to the first and second issues raised herein, and, having upheld the first objection, I see no reasons why I should consider the second objection or the third issue, which is connected with that second preliminary objection. Doing so would be an unnecessary exercise because the answer is obvious. It is sufficient to state, therefore, that, should the Plaintiff be interested to pursue what may have been considered as its rights under the law, the Plaintiff should do so in an appropriate forum, but not in this Court.

In the upshot, the suit filed by the Plaintiff is hereby dismissed in its entirety and with costs to the Defendants.

It is so ordered.

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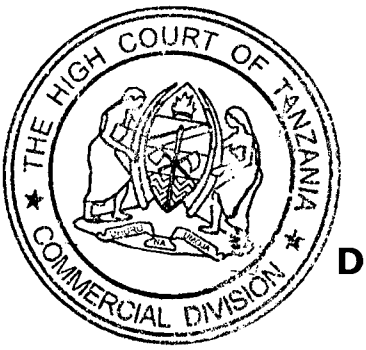
DEO JOHN NANGELA
JUDGE,

High Court of Tanzania (Commercial Division)
16 / 03 /2020

Ruling delivered on this 16th day of March 2020, in the presence of the Ms Catherine Solomom, Advocate, holding brief for Dr. Lamwai, for the Plaintiff, and in the absence of the Defendants' counsel.



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High Court of Tanzania (Commercial Division)