

**IN THE HIGH COURT OF TANZANIA
(LAND DIVISION)
AT DAR ES SALAAM**

MISC. LAND CASE APPLICATION NO.973 OF 2017

DR. PROSPER NDESOKIA1ST APPLICANT

**COMMERCE INTERNATIONAL (AFRICA)
LIMITED.....2ND APPLICANT**

VERSUS

**COMMISSIONER GENERAL, TANZANIA REVENUE
AUTHORITY.....1ST RESPONDENT**

**YONO AUCTION MART& COMPANY
LIMITED.....2ND RESPONDENT**

RULING

Date of Last Order: 31.05.2018

Date of Ruling: 13.07.2018

S.A.N WAMBURA, J:

This ruling is in respect of the preliminary objection on a point of law raised by Mr. Nyakunga learned counsel for the 1st respondent who is in the **Commissioner General, Tanzania Revenue Authority** to the effect that:-

- 1. The court has no jurisdiction to entertain this matter.*
- 2. The applicant has no locus stand against the 1st respondent.*

The court thus granted leave for hearing of the preliminary objections to proceed by way of written submissions. I thank both parties for adhering to the schedule.

In supporting of the 1st ground of objection, Mr. Nyakunga averred that this dispute arose from the decision of the 1st respondent to enforce recovery measures under the Section 64 of the Tax Administration Act No. 10 of 2015, to recover Tshs. 539,282,968 being Tax due to Majembe Auction Mart Limited. That in doing so Yono Auction Mart was instructed to attach houses located at Plot No. 250, Mbezi Beach, and Plot No. 155 Mikocheni both located in Kinondoni Municipality, Dar es salaam.

The learned counsel referred to Section 53(1) of the Tax Administration Act, No. 10 of 2015. He therefore contended that this court has no jurisdiction to determine the application at hand.

Responding to the same, Mr. Nyika submitted that the application at hand is not a tax matter nor dispute arising from

revenue laws administered by the Tanzania Revenue Authority therefore it does not fall under nor is it limited to the jurisdiction of the Tax Appeals Board. He stated that this application is a land matter in which the applicants' properties are about to be sold by the respondents without any cause.

He averred that this court has jurisdiction to determine the application as provided under Section 167 of the Land Act Cap. 133 R.E. 2002 and Section 37 of the Land Disputes Courts Act Cap. 216 R.E.2002.

On the second ground of objection, Mr. Nyakunga was of the view that the applicants have no locus standi to sue the 1st respondent because the 1st respondent has never dealt with plots number 226 Block C Mikocheni and Plot No. 258 Mbezi Beach area.

Replying to the same, Mr. Nyika contended that applicants have locus to sue the 1st respondent because the respondents intended to attach and sale the applicants properties and not the properties mentioned in the warrant of distress.

Upon reading the submissions from learned counsel for the parties, and having considered the relevant law, the main issue for determination is whether the objections raised by the learned counsel for the respondent are meritorious.

Upon perusal of the application at hand, I would agree with Mr. Nyika that this is a land matter in which the applicants' properties are about to be sold by the respondents. That it is a dispute concerning land whose jurisdiction is vested upon this court under Section 167 of the Land Act Cap. 133 RE.E. 2002 and Section 37 of the Land Disputes Courts Act Cap. 216 R.E. 2002.


However as the applicant concedes that matter is in respect of execution of the Tax Tribunals Order then I believe it was proper to first appeal to the Board as provided for under sections 7 and 12 of the Tax Revenue Appeals.

Applicants maintain that this cause is for challenging the distant of its goods because it had settled its tax liabilities. The same could thus be resolved at the tribunal and not at this Court because it is all in respect of tax and there is no dispute in respect

of ownership of the said landed properties as conceded by the applicants.

In the circumstances, I uphold the 1st ground of preliminary objection that this is not purely a dispute on land ownership but originates from execution of a decision done by another tribunal which has jurisdiction to resolve the same. This Court thus has no jurisdiction at this juncture to entertain the same. This is because the applicant still has an avenue for the remedy sought at the said tribunal.

I thus uphold this ground and have no reason to determine the 2nd ground herein raised. The application and the main suit are herein struck out. Costs follow the event.


S.A.N. WAMBURA
JUDGE
13.07.2018