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

**CIVIL CASE NO.36 OF 2001**

**ENGEN PETROLEUM (T) LIMITED ..... PLAINTIFF**

**Versus**

**TANZANIA REVENUE AUTHORITY ..... DEFENDANT**

# RULING

**CHIPETA, J.:**

The applicant **Company** in this suit, ***Engen Petroleum (T) Limited,*** is suing the defendant/respondent, ***Tanzania Revenue Authority,*** for, **inter alia**, a declaration that the defendant's act of demanding payment of Shs.35,372,903 as ***Value Added Tax*** is unreasonable and illegal.

After filing the suit, the applicant filed an application, which is the subject-matter of this Ruling, for a temporary injunction restraining the respondent by itself, its agents, servants and/or workmen from attaching the money in its account it ***Stanbic Bank (T) Limited*** "on the pretext of recovering VAT" pending the final determination of the main suit. By an order of this court, the parties learned advocates filed written submissions.

I have carefully considered the written submissions. Following decisions in the cases of (to name but a few) ***Giiella v. Cassman Brown Co. (1973) E.A. 339, CPC International v. Zainabu Grain Millers, (C.A.T. Civil Appeal no.49 of 1995),*** and ***Attilio v. Mbowe, (1969) H.C.D. n.284,*** it is now well settled that in order for an application for a temporary injunction to succeed, the applicant must show that there is a **prima facie** case with a probability of success and that if the application is not granted, the applicant might suffer irreparable loss which would not adequately be compensated by an award of damages.

In the instant case, the first question is whether the applicant has shown a ***prima facie*** case with a probability of success in the main suit. The pleadings disclose that the respondent has demanded from the plaintiff payment of ***Value Added Tax*** and was apparently in the process of attaching the applicant's ***Bank Account*** to collect the sum due. The applicant claims that it is not liable to pay such tax by reason of its ***Certificate of Incentives*** issued by the ***Tanzania investment Centre on 2nd March, 1998***. The respondent's argument is that the Certificate relied upon by the applicant did not include exemption from payment of ***Value Added Tax.***

In other words, the matter is about collection of ***Value Added Tax***. Without in any way trying to prejudge the issue in dispute, the Certificate relied on by the applicant was issued in accordance with the ***Financial Laws (Miscellaneous Amendments) Act, 1997***. The Certificate makes no reference to **VAT** which is regulated by a different Act altogether. As my learned sister ***Judge, Bubeshi, J.*** pointed out in the case of ***AGIP (T) Ltd. V. Commissioner For Value Added Tax and Another, High Court (Dar es Salaam) Civil Case No.472 of 1999:***

> ***"Import duty is different from Value Added Tax. In terms of section 3(1)-of the Value Added Tax Act No.24 of 1997 which came into effect on 1st July, 1998, VAT shall be charged on supply of goods or services made after 1/7/98. There is no mention of Value Added Tax (in the letter of exemption). VAT is indeed an animal of its own creation – the Value Added Tax Act".***

That is the situation in the instant case. The ***Certificate of Incentives*** issued to the applicant has no mention of **VAT**. That being the position, I think that it would be overzealous to hold that the applicant has shown a prima facie case with a probability of success.

As to the question of irreparable loss, I do not think that there can be envisaged such loss to the applicant as would not be compensated by an award of damages.

It is also not impertinent to add here that in addition to the principles enunciated above, when temporary injunctions are sought to be made against public authorities charged with the duty of collecting public revenue, such application must not be lightly granted by the courts. While the courts are duty-bound to protect the innocent public against abuse of power by tax authorities, the courts must not be oblivious of public policy. My ***learned brother Judge, Katiti, J.*** expressed a similar view, if not even more candidly, in the case of ***Mufindi Tea Co. Limited v. Tanzania Revenue Authority, (Dar es Salaam Miscellaneous Civil Cause No. 139 of 1999*** – as yet unreported) in which he said:

> ***"Tax collection, even if mistaken, being a statutory duty, mandated to be done by the respondent differences emerging from differing interpretations, I cannot see any wrong, that would attract a temporary injunction. I am also of the view, that, where the issue of public revenue is involved, the Court of Law should be extremely circumspect, to interfere unduly, with the collection of the same, as so doing might not only be disastrous to essential services being rendered by the Government, but too, might effect the security (of the) State".***

Regarding the question of balance of inconvenience, I think that that should be determined by considering the nature of the injury anticipated to be caused. In the instant case, as I have pointed out above, the applicant cannot be said to be likely to suffer irreparable injury since the injury can adequately be compensated by an award of damages and/or costs, for neither of the parties can be said to be, if I may use the expression, a man of straw. The sum of money involved is by no means colossal.

For these reasons, this application fails and so is hereby dismissed with costs.

**B. D. CHIPETA**
**JUDGE**