

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM.**

CIVIL APPEAL NO. 106 OF 2008

(CORAM: MUNUO, J.A. KIMARO, J.A. And LUANDA, J.A.)

BAGAMOYO DISTRICT COUNCIL..... APPELLANT

VERSUS

A/S NOREMCO CONSTRUCTION1st RESPONDENT

M/S NCC AARSELEEF JV TANZANIA.....2nd RESPONDENT

**(Appeal from the decision of the High Court of Tanzania
(Land Division) at Dar es Salaam)**

(Longway J.)

Dated 25th day of November, 2005

in

Land Case No. 23 of 2004

JUDGEMENT OF THE COURT

24th June, & 23rd July, 2009

LUANDA, J. A:

This appeal arises from a decision of the High Court (Land Division)
in Land Case no. 23 of 2004.

Briefly the historical background giving rise to the appeal is to this effect. Initially the above named appellant instituted a suit in the aforementioned Court against the 1st respondent for recovery of Tsh 225,426,800.00 being an outstanding levy on hard rock and gravel excavated by the 1st respondent at Bagamoyo District and sold to third parties at high profit. The 1st respondent disputed the claim and prayed for leave to file a third party notice. The prayer was granted. The 2nd respondent was joined in the proceedings.

The High Court (Land Division) heard the case. At the end of the day, it dismissed the suit and ordered each party to bear its costs. Aggrieved by that decision, the appellant has preferred this appeal.

In the course of hearing the appeal, Mr. Nyika learned counsel for the 2nd respondent sought leave of the Court to raise an objection to an appeal. He cited rule 106 (b) of the Court of Appeal Rules, 1979 (hence forth the Rules). The rule reads:-

106. At the hearing of the appeal –

(b) a respondent shall not without leave of the Court raise any objection to the competence of the appeal which might have been raised by application under Rule 82.

From the clear wording of the above cited rule, the respondent, with leave of the Court may raise an objection at the stage of hearing of the appeal otherwise the same are taken prior to the hearing of the appeal. This is an exception to the general rule. Mr. Nyika intimated to us that he wished to raise the question of jurisdiction.

In **Michael Leseni Kweka V John Eliafe** Civil Appeal No. 51/1997 the Court held that matters of jurisdiction may be raised at any stage as they go to the root of justice. Since the question of jurisdiction goes to the root of justice, we allowed him to address us on that question.

It is the submission of Mr. Nyika that the dispute brought in the High Court (Land Division) has nothing to do with land. The basis of the claim is levy. He cited Section 3 of the Land Disputes Act, Cap. 216 which he said should be read together with section 167 of the Land Act, Cap 113. He submitted that the gravel and aggregates taken falls under the Mining Act,

Cap. 123. He referred to Section 4 of the aforementioned Act. It is his view that since the High Court (Land Division) was exclusively established to deal with land matters, the aforementioned Court had no jurisdiction to deal with levy matters. He thus prayed the Court to declare the proceedings conducted in the Land Division of the High Court a nullity.

Responding, Mr. Ringia learned advocate for the appellant submitted that by virtue of Section 37 (e) of the Land Dispute Act, Cap.216 R.E. 2002 the High Court (Land Division) had jurisdiction. Mr. Ringia said the phrase

“in all other proceedings relating to land ...”

as contained in the said Section salvage the situation. He accordingly urged us to dismiss the objection.

Dr. Kapinga, learned counsel for the 1st respondent briefly said a line should be drawn as to what type of cases should be filed in the Land Division of the High Court and those to be filed in other divisions or general registry of the High Court.

Since the issue of jurisdiction is a question of law, we think it is quite proper to reproduce the sections cited by learned counsel to see whether or not the arguments put across are meritorious or otherwise

Section 3 of the Land Dispute Act, Cap 216 R.E. 2002 provides:

3 (1) Subject to Section 167 of the Land Act, 1999 and Section 62 of the Village Land Act, 1999 every **dispute or complaint concerning land** shall be instituted in the Court having jurisdiction to determine land disputes in a given area.

(Emphasis supplied)

(2) The Court of jurisdiction under subsection (1) include -

- (a) The village Land council
- (b) The District Land and Housing Tribunal
- (c) The High Court (Land Division)
- (d) The Court of Appeal of Tanzania

And Section 167 of the Land Act, Cap. 113 reads:-

167 (1) The following Courts are hereby vested with exclusive jurisdiction, subject to the provisions of this Part, to hear and determine all manner of disputes, actions and **proceedings concerning land**, that is to say –

- a) The Court of Appeal;
- b) The Land Division in accordance with law for the time being in force for establishing Courts divisions.
- c) The District Land and Housing Tribunals
- d) Ward Tribunals
- e) Village Land council. (underscore ours)

Whereas Section 37 (e) of the Land Disputes Act, Cap 216 R.E. 2002 provides:-

37. Subject to the provision of this Act, the High Court (Land Division) established shall have and exercise original jurisdiction.

(e) In all such other **proceedings relating to land** under any written law in respect of which

jurisdiction is not limited to any particular Court or tribunal. (Emphasis supplied)

The wording of the above cited laws is very clear that the task of interpretation can hardly be said to arise. The totality of the above is that special courts have been established specifically to deal with disputes or complaints concerning land matters only. And it is those Courts and no others which have exclusive jurisdiction on matters pertaining to land, hence the Latin maxim – ***Expressio unius, exclusio alterius est*** ie. Expression of one thing excludes the other. Hence, ordinary Courts have no jurisdiction on matters which have nothing to do with land.

As regards to Section 37 (e) of the Land Dispute Act, Cap 216 as submitted by Mr. Ringia, again the phrase “such other proceedings relating to land” is crystal clear that the subject matter of the dispute has to do with land.

As earlier said the appellant is claiming a sum of money from the 1st respondent being Council levy in respect of gravel and aggregates

excavated at Bagamoyo District. This is contained in paragraph 3 to the plaint. We reproduce the said paragraph for ease reference:

3. That the plaintiff's claim against the defendant is for the sum of Tanzanian shillings 225,426,800.00 being an outstanding Council levy on hard rock and gravel due excavated at Bagamoyo District and sold by the Defendant (1st Respondent) at huge profit to third parties.

We have seen that the High Court (Land Division) is only clothed with exclusive jurisdiction over land matters. The question we ask ourselves is whether a claim for an outstanding levy is a dispute or complaint concerning land. In view of the above discussion, the answer is emphatic no. The subject matter of the dispute (*lis contestatio*) has nothing to do with land. It follows, therefore, that the High Court (Land Division) had no jurisdiction to adjudicate the dispute. We agree with Mr. Nyika that the High Court (Land Division) had no jurisdiction to deal with levy matters. His objection has merits.

Exercising our revisional powers as provided under section 4 (2) of the Appellate Jurisdiction Act, 1979 as amended, we hereby declare a nullity and set aside the proceedings and decision of the High Court (Land Division). We do so with costs to the 2nd respondent.

It is so ordered.

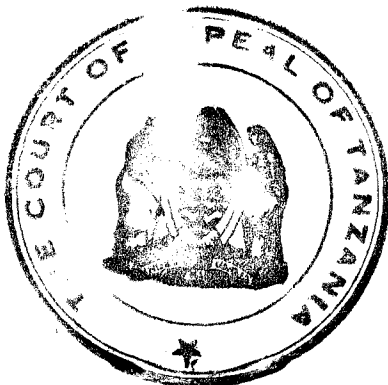
DATED at DAR ES SALAAM this 15th day of July, 2009.

E.N. MUNUO
JUSTICE OF APPEAL

N.P. KIMARO
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

I certify that that is a true copy of the original.




P.A. LYIMO
DEPUTY REGISTRAR