

**IN THE COURT OF APPEAL OF TANZANIA
AT TABORA**

(CORAM: MBAROUK, J.A., LUANDA, J.A. And MZIRAY, J.A.)

CIVIL REVISION NO. 10 OF 2016

YUSUPH HARUNI ADAMUPLAINTIFF/DECREE HOLDER

VERSUS

- 1. COUNTRY REPRESENTATIVE UNHCR
TANZANIA.....1ST DEFENDANT/JUDGEMENT DEBTOR**
- 2. HEAD OF FIELD OFFICE
UNHCR KASULU
FIELD OFFICE.....2ND DEFENDANT/JUDGMENT DEBTOR**

**(Arising from the Revisional order of the High Court
of Tanzania at Tabora)**

(Rumanyika, J.)

**Dated 15th August, 2016
in
Civil Revision No. 11 of 2016**

RULING OF THE COURT

18th & 25th October, 2016

MBAROUK, J.A.:

The genesis of these revisional proceedings arose from the directive of the Chief Justice dated 5-09-2016 to the Registrar Court of Appeal to the effect that revision *suo motu* be opened in respect of the decision in Civil Revision No. 11

of 2016 of the High Court of Tanzania at Tabora dated 15th August, 2016. Earlier on, the Hon. Chief Justice had received a letter from the Attorney General which requested him to see whether Civil Revision can be opened in connection with the above mentioned case. That prompted the Registrar of the Court of Appeal to cause list this Civil Revision No. 10 of 2016 in terms of section 4(3) of the Appellate Jurisdiction Act in the session of the Court of Appeal sitting at Tabora.

In essence, the matter originated in Kasulu when the Defendants/Judgment Debtors advertised for sale some of the used items of the UNHCR at Kasulu Field Office, including motor vehicles. In response to the advertisement, the Plaintiff/Decree Holder after inspecting several vehicles, tendered to purchase two vehicles namely DFP 2835 Scania with chassis No. YS2P6X 4000128142 for Tshs. 22,250,000/- and DFP 2836 trailer, drawbar with chassis No. ZAHDZLAAH 00970623 for Tshs. 11,000,000/-.

The plaintiff paid for the two vehicles and the defendants issued the motor vehicle registration cards together with the two motor vehicles to the Plaintiff. The Plaintiff rejected to receive the said motor vehicles for the reason that they were damaged beyond repair.

After several unfruitful discussions and negotiations between the parties, the plaintiff decided to file Civil Case No. 13 of 2014 at the Kasulu District Court claiming for compensation of Tshs. 97,000/- (Ninety seven Thousand shillings) for loss of business, Tshs. 20,370,000/- (Twenty million, three hundred and seventy thousands shillings) as costs incurred on making follow up of the vehicle and Tshs. 20,000,000/- (Twenty million shillings) as general damages arising from contractual obligation on the sale of the said motor vehicles.

The Defendants did not enter appearance to defend themselves in Civil Case No. 13 of 2014, instead they informed the trial District Court through the Ministry of Foreign Affairs

vide a letter with Ref. No. LA. 291/657/01/69 dated 8th October, 2014 addressed to the District Magistrate In-charge of Kasulu District Court on the status of the Defendants' being UN institutions and the procedure to be followed to solve the said Dispute. Despite that information, the trial court proceeded to hear the matter ex-parte and entered a default judgment against the defendants. Thereafter, the Plaintiff attached three motor vehicles of the Defendants namely TOYOTA LAND CRUISER with Registration No. DFP 6740, ACTDRAS BENZ with Registration No. DFP 3462 ACTDROS BENZ with Registration No. DFP 3463 which were advertised for sale on 14th July, 2016.

Following the attempt to sale the said three motor vehicles, the matter came to the attention of the Attorney General who decided to lodge a complaint before the High Court of Tanzania Tabora Registry where that Court decided to revise the matter *suo motu* and confirmed the decision of the trial District Court Kasulu. That decision of the High Court Tabora (Rumanyika, J.) prompted the District Court Kasulu to

issue a summons and called the parties to proceed with the execution. That is what transpired in the courts below which has led to these revisional proceedings.

When this Revision was called on for hearing, the Plaintiff/Decree Holder was represented by Mr. Mussa Kassim, the learned advocate. Whereas the defendants/Judgment Debtors were absent. We started the proceedings by inviting Mr. Paunsiano Lukosi, the learned Principal State Attorney to address the Court on the matter at hand. Without any hesitation, Mr. Lukosi willingly accepted the offer given to him by the Court and started by submitting that according to section 13 and Third Schedule of the **Diplomatic and Consular Immunities and Privileges Act** [CAP. 356 R.E. 2002] a list of International Organizations to which Tanzania has accepted to enjoy immunities and privileges have been set out in Part I of the Fourth Schedule. He said, under the Third Schedule, the **United Nations High Commission for Refugees (UNHCR)** is listed No. 37 as among the UN Organizations to enjoy the immunities set out in the Fourth

Schedule. He added that, under item 1 of Part I of the Fourth Schedule, it has been stated that **Immunities from suit and legal process** are among the Immunities and privileges conferred upon organizations like the **UNHCR** listed in the Third Schedule in Tanzania. Mr. Lukosi further submitted that, in addition to that, there are other conventions which Tanzania has ratified like the **Charter of the United Nations** where in Article 105 of that **Charter** it has been clearly stated that the UN Organizations shall enjoy privileges and immunities in the territory of each of its members.

Apart from the UN Charter, Mr. Lukosi also cited Article VII of **UNHCR Co-operation Agreement** signed between the UNHCR and the United Republic of Tanzania on 10th July, 1991 on which Tanzania agreed that privileges and immunities shall apply to UNHCR, its properties, funds and experts as per **Conventions on Privileges and Immunities of the United Nations** (CPIUN) to which Tanzania became a party on 29th October, 1962. In concretizing his argument, Mr. Lukosi cited the decision of this Court in the case of

Humphrey Construction Ltd v. Pan African Postal Union (PAPU), Civil Revision No. 1 of 2007 (unreported), where this Court held that PAPU is an organization specified in the Third Schedule (Item No. 27) and therefore entitled to the **Immunity from suit and Legal process**. He further contended that according to the decision in **Humphrey case** (supra), the Court stated that the term **legal process** has not been defined in the Act, but the Court was of the view that the term "**Legal process**" includes all proceedings in a legal action before a court.

Mr. Lukosi added another decision of this Court to strengthen his argument and cited **East African Development Bank v. Blueline Enterprises Limited**, Civil Appeal No. 110 of 2009 (unreported), where the Court quoted the words of Emmanuegla Illand and Isabella Pingel-Lennuza, who are both Professors of Law at the University of Paris XII which in part stated that:-

*"the immunity from the jurisdiction of states has become relative, **whereas that of international organizations has remained absolute**".*

[Emphasis added].

He also said that, according to section 20 of Article I of the **Convention on Privileges and Immunities of the United Nations**, there is no way those immunities and privileges can be waived except by the Secretary-General if in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations. However, Mr. Lukosi said, in the instant case such immunity of **UNHCR** is yet to be waived by the UN Secretary-General.

He ended by submitting that, the decisions in the case of **Humphrey** (supra) and **The East African Development Bank** (supra) that UN Organizations enjoy immunity from suit and legal process is still valid and that is the position of this Court to date.

When Mr. Lukosi was asked by the Court to address on the possible remedy to those individuals who are aggrieved by such organizations, he said, such an individual may resort to arbitration and cited the **United Nations Commission on International Trade, Arbitration Rules, 2013** as the one to apply.

On his part, Mr. Mussa Kassim, learned advocate who appeared on behalf of the Plaintiff/Decree Holder submitted that, he fully recognize that the UN Organizations to have such immunity on legal process, however, he humbly urged us to weigh between the rights of the individuals and those of the UN Organizations, because there is a need for individual rights to be preserved. He said, this Court has the power to interfere where those immunities are abused by UN Organizations. He further added that, as found in this case, the Plaintiff is deprived of his individual rights, hence there should be a remedy to fill in the gap of those individuals who are deprived of their rights.

Mr. Mussa was of the view that, the office of the Attorney General should find ways to help citizens of this country to find appropriate remedy to those encountered by situations as the Plaintiff in this case who do not know where to send their grievances.

Mr. Mussa added that the provisions of the **United Nations Commission on International Trade Law** (UNCITAL) concerning the remedy to go to an arbitration to an individual who is aggrieved is not possible, as his client is not a state. He urged the Court to find that there is a serious lacuna as to the rights of individuals aggrieved by the acts of the UN Institutions as they are barred from taking legal action. He then urged us to distinguish the **East African Development Bank** (EADB) case (supra) with this case as in **EADB** case (supra) there is a statute which has been enacted and that statute gives a remedy to those who are aggrieved. However, in this case Mr. Musa said, there is no statute enacted yet which gives a remedy to an individual aggrieved by the act done by a UN Organization.

All in all, Mr. Musa further urged the Court that immunity of UN Organizations should be waived and this Court to declare that, such immunity should not be used to breach the rights of individuals. He therefore prayed for the Court to uphold the decision of the District Court Kasulu in Civil Case No. 13 of 2014 and preserve the rights of his client given to him by Kasulu District Court.

As pointed earlier, that this Court has invoked the revisional powers conferred upon it under section 4(3) of the Appellate Jurisdiction Act and called upon Civil Revision No. 11 of 2016 of the High Court of Tanzania Tabora so as to examine the regularity of the record of proceedings for the purpose of satisfying ourselves as to the correctness, legality or propriety of the findings made or order made thereat. In doing so, we have thoroughly gone through both records of proceedings i.e. of the High Court and that of the trial District Court and reached to a conclusion that the Defendants/Judgment Debtors were the UN Organizations specified/listed in the Third Schedule (Item No. 37) of the

Diplomatic and Consular Immunities and Privileges Act

[Cap. 358 R.E. 2002] (the Act). We have also found that the respondents as they are listed therein, they are entitled to immunities and privileges as stated in the Fourth Schedule in Part I of the Act. Whereas according to Item I of the Fourth Schedule in Part I of the Act, it has been specifically stated that among the immunities and privileges to be enjoyed by the International Organizations which include the respondents in this case, is the **Immunity from suit and legal process**. However, the Act has not defined the meaning of the term **Legal Process**, but this Court in the case of **Humphrey Construction Ltd** (supra) defined it as follows:-

"Legal Process" has not been defined in the Act but in our view, it includes all proceedings in a legal action before a Court."

On the issue of the immunity from legal action, Professor MMag, Dr. A. Rainish and Dr. George Kodek of Vienna University in their seminar paper titled as "**Immunity**

of International organizations and Alternative Remedies against the United Nations,” had the following to say on the issue of immunity of International organizations:-

"International Organizations are exempted from the jurisdiction of domestic judicial and administrative authorities and therefore are not subject to suits, claims or enforcement proceedings in such domestic fora, including, in particular, those of the member states of the organization concerned.

The exemption from domestic jurisdiction extends to all official functions of the organization concerned and for organization in the United Nation system immunity is absolute." [Emphasis added].

We are of the opinion that, the words quoted above tally with the position made by our law i.e. **Diplomatic and**

Consular Immunities and Privileges Act [CAP. 356 R.E. 2002]. In essence, International Organizations which include the defendants in this case are entitled to immunities and privileges which include immunity from suit and legal process as a whole.

The paper written by Prof. MMag and others cited herein above, has gone further and stated as follows:-

"While the charter in its Article 105 merely contains a general call for organization to enjoy the privileges and immunities necessary for the fulfillment of its purposes and for the details to set out in a convention, the details as set out in the CPIUN, section 2, require absolute immunity to be granted. In fact, the requirement of immunity "from every form of legal process" encompasses all enforcement measures imposable by a judicial as well as administrative or legislative

authority, as is made clear by section 3 of the CPIUN, and as recently recalled in a Note Verbale to a Member State objecting to the seizure pursuant to a court order of motor vehicles belonging to UNICEF.” [Emphasis added].

Those words from Prof. MMag do emphasize immunity of UN Organizations from "*every form of legal process*" which encompasses enforcement measures.

As to whether there has been waiver of such immunity, the record in this matter shows there is none. According to section 20 of Article v, section of the **Convention on the Privileges and Immunities of the United Nations, 1946, (CPIUN)** it is only the Secretary General of the United Nations who have the right and the duty to waive the immunity. The said provision states as follows:

"SECTION 20. Privileges and immunities are granted to officials in the interests of the United

*Nations and not the personal benefit of the individuals themselves. **The Secretary-General shall have the right and the duty to waive the immunity would impede the course of justice and can be waived without prejudice to interests of the United Nations.*** “[Emphasis added].

Having extensively examined our laws on the **Diplomatic and Consular Immunities and Privileges Act**, the **Convention on Privileges and Immunities of the United Nations**, and even the contribution from prominent scholars in the field of International law, we have reached a decision that the defendants in this case are entitled to enjoy the immunity from suit and legal process and since no waiver has been granted by the UN Secretary-General, we are constrained to invoke our revisional powers conferred upon us under section 4(3) of the Appellate Jurisdiction Act by quashing and setting aside the proceedings and orders of both, the High Court of Tanzania

Tabora in Civil Revision No. 11 of 2016 as well as those in Civil Case No. 13 of 2014 of District Court of Kasulu.

However, this Court has gone further by examining what is a possible remedy for the Plaintiff/Decree Holder, who is aggrieved against the UN Organization which is immune from legal process. Again our small research has led us to the valuable contribution made by Prof. MMag and his colleagues in their paper cited earlier in this Ruling, where they have opened our eyes to the solution concerning the remedy to those aggrieved. In that paper, Prof. MMag and his colleagues stated as follows:

"Immunities from judicial and administrative jurisdiction is not an obstacle to the United Nations voluntarily agreeing to participate in an amicable settlement procedure such as negotiation, mediation or conciliation. In fact this is done from time to time, negotiation being chosen for

pragmatic reasons as the first and usually effective modality.

The relationship of amicable settlement procedures to alternative remedies such as arbitration is illustrated by the standard arbitration clause inserted in procurement contracts concluded with private sector entities. Of course, amicable settlements are distinguishable from arbitration and other alternative remedies by the decisive third-party role and the finality and binding force of the later”.

However, as it appears in this case, the plaintiff/decreed holder is barred from taking legal action against the defendants/judgment debtors, therefore we resort to section 29 of Article VIII of the **Convention on the Privileges and Immunities of the United Nations, 1946** which states as follows:-

*"The United Nations shall make provisions
for appropriate modes of settlements:-*

*(a) Disputes arising out of contracts or other
disputes of private law character to which
the United Nations is a party.*

That means, the United Nations is always willing to go to settlement to those aggrieved and barred from taking legal action against its organizations. According to Prof. MMag and his colleagues, they suggest that for claims for personal injuries, including tort claims arising from acts within the Headquarters of the UN in New York or arising from accidents involving vehicles operated by UN personnel; claims related to the conduct of UN peace keeping operations; claims related to the conduct of operational activities for development; and certain other claim each organization to provide or arrange alternative modes and procedure for the settlement of disputes or claims of a private law character involving the organization.

All in all, we think, as a whole, the **Convention on the Privileges and Immunities of the United Nations, 1946** encourages amicable settlement procedures to be followed. For that reasons, after we have quashed and set aside the proceedings and orders of the two lower courts, we advise the parties to find ways and means to agree on the applicable mode to reach to a settlement through the Ministry of Foreign Affairs. It is so ordered.

DATED at **TABORA** this 22nd day of October, 2016.

M. S. MBAROUK
JUSTICE OF APPEAL

B.M. LUANDA
JUSTICE OF APPEAL

R.E.S. MZIRAY
JUSITCE OF APPEAL

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


E.F. FUSSE
DEPUTY REGISTRAR
COURT OF APPEAL