

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

**(CORAM: JUMA, C.J., NDIKA, J.A., And KWARIKO, J.A.)**

**CIVIL APPEAL NO. 229 OF 2019**

**KHOFU MLEWA ..... APPELLANT**

**VERSUS**

**COMMISSIONER GENERAL OF T.R.A. .... FIRST RESPONDENT**

**COMMISSIONER FOR CUSTOMS AND EXCISE ..... SECOND RESPONDENT**

**(Appeal from the Ruling of the High Court of Tanzania at Dar es Salaam,  
District Registry)  
(Mlyambina, J.)**

**dated the 6<sup>th</sup> day of November, 2018**

**in**

**Civil Case No. 106 of 2017**

**.....**

**JUDGMENT OF THE COURT**

12<sup>th</sup> & 26<sup>th</sup> February, 2021

**NDIKA, J.A.:**

The sticking question in this appeal is whether the High Court of Tanzania has jurisdiction to adjudicate a claim against the respondents for compensation for the sale of certain uncustomed goods, which had been seized from the appellant, a taxpayer.

The appellant, Khofu Mlewa, is a businesswoman based in Dar es Salaam. While the first respondent is the Chief Executive Officer of the Tanzania Revenue Authority ("the TRA"), a revenue collection agent of the Government established under the Tanzania Revenue Authority Act, Cap. 399 R.E. 2006

(now R.E. 2019) ("the TRAA"), the second respondent is a revenue commissioner responsible for Customs and Excise Duties.

Briefly, the present dispute arose as follows: the appellant was found in 2014 in possession of certain uncustomed goods, which were then seized and deposited in a customs warehouse. After consultations and several correspondences between the parties, the appellant admitted in 2015 to have committed an offence contrary to section 200 (d) (iii) of the East African Community Customs Management Act, 2004 ("the EACCMA"). Acting on the aforesaid admission, the second respondent compounded the offence pursuant to section 219 (1) of the EACCMA. On that basis, the applicant was ordered to pay duties and penalties amounting to TZS. 48,326,824.71 before the goods could be released to her.

The appellant on 25<sup>th</sup> January, 2016 paid the aforesaid sum as invoiced by the second respondent. According to her, upon presenting proof of payment and a release order to the Customs Warehouse officials, she learnt, rather surprisingly, that the said goods had been sold by the second respondent on 20<sup>th</sup> January, 2016. Her demand for the goods having not been heeded by the second respondent, she instituted a suit the subject of this appeal on 13<sup>th</sup> June, 2017 for judgment and decree for payment of TZS. 264,400,000.00 as the

value of the goods. She also claimed interests on the aforesaid sum of money as well as on a loan of TZS. 50,000,000.00 she had taken to pay the duties and penalties.

In their joint written statement of defence, the respondents blamed the appellant for failing to pay the duties and penalties in time in compliance with the compounding order. It was further averred that, as a consequence, the second respondent advertised the goods for auction as overstayed imports and eventually sold them off on 20<sup>th</sup> January, 2016. On the following day, the appellant showed up, collected the order and went ahead to pay the invoiced duties and penalties while being aware that the goods had already been sold.

As part of their defence, the respondents objected to the jurisdiction of the High Court contending that the said court had no jurisdiction to determine the dispute as per section 7 of the Tax Revenue Appeals Act, Cap. 408 R.E. 2006 (now Cap. 408 2019) ("the Act"), which stipulates as follows:

*"The Board shall have the sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority."*

Having heard the parties, the High Court sustained the preliminary objection as it found that the dispute before it was a civil action to be litigated

before the Tax Revenue Appeals Board (“the Board”) established under section 4 (1) of the Act. As consequence, the court “dismissed” the suit with costs for want of jurisdiction.

Aggrieved, the appellant has appealed to this Court on one ground that:

*“the trial court seriously erred in law by holding that [it] has no jurisdiction to entertain Civil Case No. 106 of 2017.”*

At the hearing of the appeal, Mr. Zidadi Mikidadi, learned counsel, stood for the appellant whereas the respondent had the joint services of Ms. Consolatha Andrew, Mr. Hospis Maswanyia, Mr. Cherubin Chuwa and Mr. Athuman Mruma, learned State Attorneys.

In his oral and written submissions, Mr. Mikidadi’s major premise was that the dispute before the trial court arose from the second respondent’s exercise of his powers under section 219 (1) of the EACCMA to compound the offence committed by the appellant for her possession of uncustomed goods contrary to section 200 (d) (iii) of that law. Citing section 219 (3) (e) of the EACCMA stipulating that a compounding order under section 219 (1) *“shall be final and shall not be subject to appeal and may be enforced in the same manner as a decree or order of the High Court”*, he firmly contended that the

Board had no jurisdiction to hear and determine a civil matter arising from such a compounding order. He sought support from the decision in **the Commissioner General (TRA) v. Mohamed Ali-Salim & Anor**, Civil Appeal No. 80 of 2018 (unreported) where this Court held that in terms of section 219 (3) (e) of the EACCMA, the Board is not vested with jurisdiction to entertain any appeal against a compounding order and that such an order can only be challenged by way of judicial review in the High Court. Counsel placed further reliance on two decisions of the Board in which the Board held that it had no jurisdiction to inquire into any compounding order as it arises from the exercise of the punitive powers of the Commissioner for Customs: **Rungwe Freight (T) Limited v. Commissioner General** [2005] 2 TTLR 86; and **John C. Mwemezi v. Commissioner General** [2002] 1 TTLR 106.

Mr. Mikidadi argued further that while the appellant was contented with the compounding order and opted out of challenging it by way of judicial review, she justifiably instituted the claim in the High Court for compensation for loss of the goods. It was his contention that the said action was justiciable in terms of section 221 (1) of the EACCMA, which allows the Commissioner for Customs to be sued in tort. The said provision states that:

*"Where under this Act any proceedings may be brought by or against the Commissioner, the*

*Commissioner may sue or be sued in the name of the Commissioner and may for all purposes be described by that name; and, notwithstanding that any such action may lie in tort, the Commissioner shall be responsible for the acts and defaults of any officer as if such officer were his or her servant or agent.”*

Mr. Mikidadi maintained that the claim in the High Court does not fall under section 7 of the Act primarily on the ground that it arose from the compounding of a criminal offence under the EACCMA.

In rebuttal, Ms. Andrew fervently supported the High Court’s decision. She submitted that section 7 of the Act expressly vests the Board with sole original jurisdiction over all proceedings of a civil nature arising from the administration of revenue laws by the respondents. She also referred to section 6 of the TRAA that required any person aggrieved by the decision of the first respondent in relation to any act or omission in the course of the discharge of any function conferred upon him under the laws set out in the First Schedule to the TRAA to appeal to the Board in accordance with the provisions of the Act. Referring to section 7 (1) of the Civil Procedure Code, Cap. 33 R.E. 2002 (now R.E. 2019) (“the CPC”), she stated that courts (including the High Court) are precluded from hearing and determining any suit of a civil nature whose cognizance is either expressly or impliedly barred.

Ms. Andrew went on to refer to **Tanzania Revenue Authority v. New Musoma Textile Limited**, Civil Appeal No. 93 of 2009 (unreported) where this Court observed that courts would not normally entertain a matter for which a special forum has been established unless the aggrieved party can satisfy the court that no appropriate remedy is available in the special forum. In that case, the Court held that any dispute arising from the exercise of powers under any revenue law administered by the TRA is justiciable in the Board in accordance with section 7 of the Act.

Adverting to the instant case, Ms. Andrew argued that the appellant's claim, challenging the respondents' act of selling her goods under the EACCMA, is a dispute justiciable in the Board as it arose from the administration of a scheduled revenue law. She supported the High Court's finding that the dispute was a civil action without a direct nexus with compounding order. That the legality or otherwise of the said order was not pleaded in the appellant's plaint as a particular complaint.

Ms. Andrew submitted further that the two decisions of the Board relied upon by the appellant (**Rungwe Freight** and **John C. Mwemezi**) were neither binding on this Court nor relevant to the instant dispute as they both were slipshod challenges before the Board against compounding orders which

were final. She also distinguished **Mohamed Ali-Salim** (*supra*), cited by Mr. Mikidadi, in that the appellant's action before the High Court was not a challenge against a compounding order but a claim for compensation for loss of the auctioned goods.

Mr. Maswanyia, then, took over from Ms. Andrew to round off the respondents' submissions. He maintained that the current dispute, arising from the respondents' exercise of powers under the EACCMA, was a tax matter. That the appellant's challenge of the sale of the impounded goods was a civil action falling under section 7 of the Act. As regards Mr. Mikidadi's contention that the suit was anchored on section 221 (1) of the EACCMA, Mr. Maswanyia countered that the said provision does not stipulate the jurisdiction of any court but that it only governs the second respondent's standing to sue or being sued in his own name.

Rejoining, Mr. Mikidadi sought to distinguish **New Musoma Textile Limited** (*supra*) from the present dispute on the fact that the action therein did not arise from a compounding order.

We have examined the record of appeal and keenly considered the oral and written submissions of the counsel from either side as well as the authorities cited. As we indicated at the outset, the sticking issue in this dispute



is whether the High Court has jurisdiction to try the appellant's suit for compensation.

To begin with, we think it is necessary to reaffirm the position in **New Musoma Textile Limited** (*supra*) that, in terms of section 7 of the Act, the Board has the sole original jurisdiction in all proceedings of a civil nature arising from the revenue laws administered by the TRA. In addition, in that decision the Court restated the rule as per section 7 (1) of the CPC that courts (including the High Court) have jurisdiction to try all manner of civil suits except those of which their "cognizance is either expressly or impliedly barred." It is also well established and Ms. Andrew was perfectly right that courts would not normally entertain a matter for which a special forum has been established unless the aggrieved party can satisfy the court that no appropriate remedy is available in the special forum – see **New Musoma Textile Limited** (*supra*), relying on two previous decisions of the Court: **Attorney General v. Lohay Akoonay and Another** [1995] TLR 80, which was followed in **Tanzania Revenue Authority v. Kotra Company Limited**, Civil Appeal No. 12 of 2009 (unreported).

In the instant case, it is evident that the appellant's action as pleaded in paragraphs 4 and 21 of the plaint is a claim for compensation for the loss of

her impounded uncustomed goods sold by the respondents following a compounding order having been made. She admitted in her in paragraphs 13 – 15 of the plaint that she wholly accepted the compounding order, which, then, she never wished to challenge by way of judicial review. On that basis, we agree with Ms. Andrew that the decision of the Court in **Mohamed Ali-Salim** (*supra*) as well as those of the Board in **Rungwe Freight** and **John C. Mwemezi** (*supra*) have no application to this matter. For, it is clear that the said decisions are all on the finality of compounding orders made in the exercise of the second respondent's punitive powers under the EACCMA while the present dispute is a civil action for compensation for loss of auctioned goods.

It was Mr. Mikidadi's earnest contention that the Board had no jurisdiction to try "a civil matter arising from a compounding order." With respect, we do not agree with him. Section 7 of the Act stipulates the Board's jurisdiction broadly and clearly; that the Board has exclusive original jurisdiction in "*all proceedings of a civil nature in respect of disputes arising from the revenue laws administered*" by the TRA. Whether a civil action arose from or is connected with a compounding order is inconsequential as long as it arose from the administration by the TRA of a scheduled tax revenue law. A civil action may have arisen following the compounding of a criminal offence under

the EACCMA but that fact does not change the nature of ensuing proceeding as a civil action.

On a careful analysis of the pleadings, we are respectfully of the opinion that the key question raised by the appellant's claim was whether the respondents lawfully auctioned off the impounded goods. As it is common ground that the goods were seized and dealt with under the provisions of the EACCMA, which is one of the scheduled laws administered by the TRA, the substance of the dispute is whether the respondents lawfully exercised their powers under that law in disposing of the goods. In the premises, we endorse Mr. Maswanya's submission that the appellant's claim arising from the administration of the EACCMA is an action of civil nature only justiciable in the Board.

We recall that Mr. Mikidadi predicated the appellant's suit on section 221 (1) of the EACCMA, which we reproduced above. This contention is plainly misconceived and it was rightly refuted by Mr. Maswanya on the ground that the said provision is non-jurisdictional but directory on the second respondent's standing to sue or being sued in his own name. To be sure, it is no more than a stipulation that the Commissioner of Customs (the second respondent herein)

*"may sue or be sued in the name of the Commissioner"* where proceedings may be brought under the EACCMA by or against the Commissioner.

All considered, we are of the respectful view that the High Court correctly declined to take cognizance of the appellant's recourse to it for want of jurisdiction in view of the express provisions of section 7 of the Act.

However, before we take leave of the matter we feel constrained to point out that in his disposition of the matter after he declined to take its cognizance, the learned High Court Judge slipped into error by dismissing the suit. It is settled that an order of "dismissal" connotes that a matter has been heard and disposed of on its merits – see **Ngoni-Matengo Cooperative Union Ltd. v. Alimohamed Osman** [1959] 1 EA 577. See also the unreported decisions of the Court in **Hashim Madongo & Two Others v. Minister for Industry and Trade & Two Others**, Civil Appeal No. 27 of 2003; **Mustafa Fidahusseini Esmail v. Dr. Posanyi Jumah Madati**, Civil Appeal No. 43 of 2003; and **Peter Ng'homango v. Attorney General**, Civil Appeal No. 114 of 2011. The learned Judge should, instead, have struck out the suit because it was terminated at the pre-trial stage on a point of law. In the premises, we vacate the dismissal order and substitute for it an order striking out the suit. Needless to say, this variation is inconsequential to the outcome of the appeal.

The upshot of the matter is that the appeal is without merit. It stands dismissed with costs.

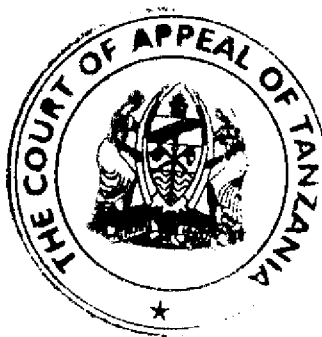
**DATED at DAR ES SALAAM** this 25<sup>th</sup> day of February, 2021.

I. H. JUMA  
**CHIEF JUSTICE**

G. A. M. NDIKA  
**JUSTICE OF APPEAL**

M. A. KWARIKO  
**JUSTICE OF APPEAL**

The judgment delivered on this 26<sup>th</sup> day February, 2021, in the presence of Mr. Zidadi Mikidadi, learned counsel for the appellant and Ms. Salome Chambai, learned State Attorney for the respondent/Republic, is hereby certified as a true copy of the original.



*S. J. Kainda*  
S. J. KAINDA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**