IN THE HIGH COURT OF TANZANIA

AT DAR ES SALAAM

CIVIL CASE NO. 110 OF 1998

TRANSROAD TANZANIA LIMITED .....PLAINTIFF

V E R S U S

TANZANIA REVENUE AUTHORITY .....DEFENDANT

R U L I N G

IHEMA, J.

In Civil Case No. 110 of 1998 Transroad (Tanzania) Ltd on 23/4/1998 filed a suit against the Tanzania Revenue Authority the defendant praying for judgment and decree agaist the Defendant that:-

(a) restitution to the plaintiff of the whole consignment

(b) release of seized trailer number TZ 72006 to the owners in good condition of repair

(c) Damages:-

(1) T.Shs. 120,000/= per day for loss of income on the trailer from the date of seizure to the date of judgment

(2) container demurrage charges at US $ 20 per day from the date of seizure to the date of judgment

(3) T.Shs. 26,000,000/= being loss of expected income on the consignment on the open market.

(d) Interest at the bank rate till the day of judgment

(e) Costs of the suit

(f) any other relief(s) as the honourable court may deem fit and just to award.

The defendant upon being served with the plaint and with leave of the court filed its written statement of defence on 13/7/98. The defence mainly disputed the plaintiff's allegations emphasizing, among other things, that the seizure of the container was occasioned by false declaration on the goods shipped, as well as failure of the plaintiff to pay duty and tax demanded on the goods under reference.

It came to pass that sometime in September, 2001, three years after the pleadings had been filed, the defendant filed a notice of preliminary objection raising a point of law that t plaint is incurably defective for contravening the provisions of Order VII Rule 1 of the Civil Procedure Code. With leave of the court the parties made written submissions to argue the preliminary objection whereby the dfendant was represented by Mr Beleko, a legal officer while Mr. Mwita Waisaka learned advocate represented the plaintiff.

Arguing the preliminary objection Mr. Beleko citing the provisions of Order VII Rule I of the Civil Procedure Code 1966 enumerated the mandatory particulars to be contained in a plaint. Furthermore it was the view of Mr. Beleko that Rule 1(i) of Order VII of the Code imposes a mandatory requirement that a plaint should contain a statement of value of the subject matter of the suit for purposes of jurisdiction and court fees, so far as the case admits. Mr. Beleko finds that the value of the subject matter of the suit, to wit the trailer and 4361 pieces of footballs not to have been stated in the plaint, hence a serious omission rendering the plaint defective assuming that the court has jurisdiction.

Mr. Beleko had yet another ground to his preliminary objection in that the plaint before the court does not contain facts to show that the court has jurisdiction so as to comply with the provisions of Section 13 of the Civil Procedure Code 1966. To augment the submissions, Civil Case No. 179/91 Dsm Registry (unreported) was cited by Mr. Beleko.

In reply the learned advocate for the plaintiff attacked the preliminary objection for being filed out of time and at any rate not at the earliest opportunity since the same has been filed three years later subsequent to the written statement. Mr. Waisaka cited the provisions of Order VIII Rule 1(2) of the Civil Procedure Code in support.

On the question of jurisdiction it is contended by Mr Waisaka learned advocate that para 11 of the plaint has expressly stated the jurisdiction of the court notwithstanding that the reliefs prayed in the plaint are mostly declarator for the release of the subject matters of the suit.

In the alternative Mr. Waisaka implores the court to allow amendment to the plaint for the interest of substantive justice and at the same time seeks to distinguish the case of Tanzania Liquids Storage Co. Ltd V. Rejan Industries Ltd in Civil Case No. 179/91 with the present case. However Mr. Waisaka did not elaborate on the distinction.

In his short rejoinder Mr. Beleko was of the firm view that since the preliminary objection was based on a point of law, the question of limitation would not arise so long as the competency or incompetency of the suit is called into question.

It is quite plain that Rule 1 of Order VII of the Civil Procedure Code provides the mandatory particulars in a plaint. In particular Rule 1 (f) and (i) particularise that the plaint shall contain "the facts showing that the court has jurisdiction and a statement of the value of the subject matter of the suit for the purposes of jurisdiction and court-fees so far as the case admits." The present plaint appears not to comply with the above cited provisions of Rule 1 (f) and (i) of Order VII as such as correctly submitted by Mr. Beleko it is incurably defective. Adopting the holding of my brother Judge Bahati in the case cited above which is not disimilar to the present case I hold that the present case is to be rejected for being incurably defective and as such there is no plaint at all for all intents and purposes. It should further be pointed out that it is the settled position of the law that the question of illegality is a fundamental one going to the root of the case and as such it can be raised at any time in the course of trial.

In sum and for the reasons stated I uphold the preliminary objection and dismiss the plaint with costs. Order accordingly.

S. IHEMA

JUDGE

2/7/2002

For the Plaintiff: Absent but served

For the Defendant: Mr. Deleko

C.C. Komba

Court: Ruling read this 2/7/2002 in but in the presence of Mr. Deleko for the but in the absence of Mr. Waisaka for the in though read. Read before F.S.K. Mutungi District Registrar.

F.S.K. Mutungi

DISTRICT REGISTRAR

2/7/2002