

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

AT DAR ES SALAAM

CIVIL APPEAL NO. 241 OF 2018

*(Originating from Civil Case No 132 of 2017 of Kinondoni District Court, before
Honorable A. Mwingira)*

DABS LIMITED.....APPELLANT

VERSUS

YONO AUCTION MART CO. LIMITED.....1ST RESPONDENT

COMMISSIONER GENERAL T.R.A.....3RD PARTY/2ND RESPONDENT

JUDGEMENT

Last order date: 24/04/2020

Date of Judgement: 10/07/2020

MLYAMBINA, J.

Before the District Court of Kinondoni at Kinondoni, there arose a *plea in limine liti* that in terms of *Section 53 (1) of the Tax Administration Act No. 10 of 2015*, the District Court has no jurisdiction to entertain the matter. It was submitted that the assets alleged to be confiscated by the plaintiff were to recover taxes in terms of *Section 61 (4) (b) of the Tax Administration Act, 2015* and if the plaintiff (appellant herein) was aggrieved by the decision of the Commissioner General of TRA of issuing notice which created a charge over the assets which were later auctioned

to recover tax amount, the plaintiff was required to appeal to Tax Revenue Appeals Board.

Having heard that objection, the Kinondoni district court sustained it and dismissed the suit for want of jurisdiction. The appellant being aggrieved loaded this appeal on three grounds, namely:

1. That, the District Court erred both in law and facts for holding that the trespass made by the 1st respondent was in the exercise of tax liabilities without proper and clear evidence to that effect.
2. That, the District Court erred in law and facts in treating the defence of the third party (2nd respondent as the decision of the commissioner general TRA without clear order or warrant of distress issued to the appellant.
3. That, the District Court erred both in law and facts for delivering two different decision on the same issues and facts.

Wherefore, the appellant prayed this honorable court to grant orders as here under:

1. That, the ruling and orders of the District Court be set aside/quashed.
2. That, Civil Case No. 132 of 2017 which was dismissed be heard to its finality.

3. Costs of this appeal be provided by the respondent.
4. Any other orders and decree this honorable court may think fit and just to grant.

In respect of the first ground of appeal, the appellant argued that it is a cardinal principle of laws that every pleading must contain, and contain only a statement in a concise form of the material facts on which the party pleading relies. Thus, the appellant herein sued the 1st respondent for trespass of the appellant premises sometimes in 20th September, 2017. The plaint at paragraph 4 clearly states that the 1st respondent trespassed into the plaintiff's (appellant) premises located at Wazo Hill Tegeta. To back up the argument, the appellant cited the case of **Antony Leanard Msanze and another v. Juliana Elias Msanze and Another**, Civil Appeal No. 76 of 2012 Court of Appeal of Tanzania in which the court had this to say:

....court should not go far into written statement of defence or into replies.

It was the submission of the appellant the Trial Magistrate erred in deciding and consequently making a ruling against the appellant basing on the filed written statement of defence without considering the plaint itself. The appellant invited this court to the

case of **Stanbic Finance Tanzania Ltd v. Giuseppe Trupia and Chiara Malavas**, Commercial Case No. 42 OF 2000 at page 224 where it was held:

...The plaintiff should not be driven from the judgement seat without the court having considered his rights to be heard, excepting in cases when the cause of action was obviously and almost incontestably bad.

The 1st respondent on its part stated that pleadings are documents which established the cause of action. Thus, the Trial Magistrate was correct to base her decision on the pleadings.

The 2nd respondent replied that the trial Magistrate was correct in fact and law in addressing the primary objection and holding that the district court of Kinondoni has no jurisdiction to entertain Civil Case No. 132 of 2017 since the question of jurisdiction is a point of law.

Further, the trial magistrate based her decision on the facts, evidence and law which were submitted by the 2nd respondent to substantiate existence of proceedings of a civil nature arising from revenue laws administrated by Tanzania Regulation Authority between the appellant and both respondents when arguing in favour of the preliminary objection.

Thus, Section 7 of the Tax Revenue Appeals Act Cap 408 provides:

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

Also, Section 53 (1) of the Tax Administration Act, 2015 provides that:

A person who is aggrieved by an objection decision or other decision or omission of the commissioner general under this part may appeal to the board in accordance with the provisions of the TAX Revenue Appeals Act.

According to the 2nd respondent, the 1st respondent was a duly appointed Distrain Agent of the 2nd respondent pursuant to Regulation 84 of the *Tax Administration General Regulations, 2015* G.N. No. 101 of 2016 at the time he attached the assets subject to *Civil Case No. 132 of 2017* in the recovery of TZs. 449, 294, 997.00 outstanding taxes. *Regulation 84 (1) (b) of the Tax Administration Regulations, 2015* provides that:

A Distraint Agent may take possession and sell charged assets of a tax debtor on behalf of the Commissioner General under Section 62 of the Act.

To further buttress the position, the 2nd respondent cited two case law. In the case of **Tanzania Revenue Authority v. Tango Co. Ltd**, Court of Appeal of Tanzania at Arusha civil appeal No. 84 of 2009 (unreported) it was held:

The court would not entertain a matter for which a special forum has been established by law, unless the aggrieved party can satisfy it that no appropriate remedy is available in that special forum.

In the case of **Tanzania Revenue Authority v. New Musoma Textiles Ltd**, Court of Appeal at Dar es Salaam, *Civil Appeal No. 93 of 2009* (unreported), it was held:

The board shall have sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania revenue authority.

I have taken time to go through the submissions of both parties and the records below. I noted that the plaintiff's claim (appellant) before the trial court as against the 1st defendant herein was for

unlawful, unreasonable invasion at the plaintiff's premises and forceful taking away its agricultural equipment's. In its written statement of defence to the trial court, apart from raising the preliminary objection, the 1st respondent herein stated that the plaintiff defaulted to pay tax to Tanzania Revenue Authority who later issued warrant of distress of attaching the plaintiff's properties as listed in the balliff and notice of distress.

The same averment and preliminary objection were later raised by the 2nd defendant. It is my considered view that jurisdiction of the court can be ascertained from the pleadings generally. Order *VI Rule (i) of the Civil Procedure Code Cap 33 (R.E. 2019)* defines pleadings to mean:

A plaint or written statement of defence (including a written statement of defence filed by a third party) and such other subsequent pleadings as may be presented in accordance with rule 13 of Order VIII.

From the written statement of defence of both defendants, it was clear that the 1st respondent acted as a distraint agent of the 2nd respondent in terms of *regulation 84 (1) (b) of the Tax Administration Regulations, 2015* for the reason in terms of *Section 53 (1) of the Tax Administration Act, 2015*. If the appellant

was aggrieved with the decision or objection or omission of the Commissioner General of Tanzania Revenue Authority, its remedy was to appeal to the Board and not to file a fresh suit before the District Court against the Distrain Agent.

Since the matter was disposed at preliminary stage on point of law on lack of jurisdiction, the point which, I have upheld, it will be an academic endeavor to go on determining the grounds of appeal.

On the 3rd ground, there is only one ruling in record which is the impugned decision. The appellant has merely alleged on the existence of another ruling without producing it to the court.

In the end, the appeal stands dismissed for lack of merits. The appellant to pay costs of the appeal. Order accordingly.



Y. J. MLYAMBINA

JUDGE

10/7/2020

Judgement pronounced and dated 10th July, 2020 in the presence of counsel Michael Frank for the appellant and Paul Mtui and Mosses Kinabo for the 1st and 2nd respondents respectively. Right

of appeal explained.

Y. J. MLYAMBINA

JUDGE

10/7/2020