

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(IN THE DISTRICT REGISTRY)

AT MWANZA

CIVIL APPEAL NO. 13 OF 2021

*(Arising from the decision of Resident Magistrate Court of Mwanza at Mwanza in
Civil Case No. 78 of 2017)*

TANZANIA REVENUE AUTHORITY-----APPELLANT

VERSUS

IBRAHIM MARWA HAULAGE LTD-----1st RESPONDENT

JOSEPHAT MALE MALAY-----2nd RESPONDENT

JUDGMENT

Last Order:06.07.2022

Judgment Date: 18.07.2022

M. MNYUKWA, J.

This is the first appeal. Initially, parties appeared before the Resident Magistrate's Court of Mwanza at Mwanza, whereby Ibrahim Marwa Haulage Ltd and Josephat Male Malay were the plaintiffs (now the respondents in this appeal), successfully sued the Tanzania Revenue Authority the defendant at the trial court (now the appellant in this appeal). The respondents claimed before the trial court for the following reliefs:



- (a) A declaration that the seizure of the first plaintiff's cement and the second plaintiff's motor vehicle with Registration No T 475 AME is unlawful.*
- (b) A declaration that the first plaintiff has been denied the right to be heard in respect of the seizure of 500 bags of cement by refusal of the defendant to issue a Notice of Seizure in his name.*
- (c) Release of the first plaintiff's 500 bags of cement and the second plaintiff's motor vehicle with Registration No. T 475 AME.*
- (d) General damages to be assessed by the court.*
- (e) Interest on the decretal sum at court rate from the date of judgement until payment in full.*
- (f) Costs of the suit.*
- (g) Any other or further relief this Honourable Court may deem fit and just.*

The background of the matter is best captured by reproducing relevant paragraphs in the plaint which contains about 21 paragraphs.

- 1.
- 2.
- 3.
- 4.
5. *That in the month of January 2014, the first plaintiff imported 2500 bags of cement from Kenya to Tanzania via Sirari customs border station loaded in four (4) trucks*



namely: - truck No KBS 284 V/ZE 0077 loaded with 850 bags of cement which arrived on 28th January 2014, truck No T 704 CAD/T 598 ALM loaded with 640 bags of cement which arrived on 29th January 2014 truck No KBX 248 A/ZE 5148 and truck No KAQ 953 M/ZD 2694 loaded with 1010 bags of cement which arrived on 1st February 2014 respectively.

- 6. That, prior to the said truck arriving at Sirari customs station, the said cement had been duly entered and declared by the first plaintiff's customs clearing and forwarding agent M/s Saragire Commercial Ltd vide Customs Declaration Form No. R 101 dated 9th January 2014 and the requisite import duty has been assessed vide assessment No A. 101 also dated 9th January 2014. Copies of Customs Declaration Form Assessment Notice are annexed herein and marked ANNEXURE P1 and P2 respectively forming part of the plaint.*
- 7. That upon the first track arriving at Sirari custom station on 28th January 2014 the first plaintiff paid all the pre-assessed duties for all cement including the cement which was loaded in the trucks which arrived at Sirari on 29th January 2014 and 1st February 2014 respectively and the defendant acknowledges payment of the said duties vide receipt No POS 0004105 of 28th January 2014 which is part of Annexure P2.*
- 8. That after making payment of the requisite import duties, the cement was released from customs control on 1st February 2014 vide Release Order dated 1st February 2014, a copy of which is annexed hereto and marked Annexure P3 forming part of the Plaint.*



9. *That after the release of the cement the three trucks carried 2000 bags of cement to Mwanza where the 1st plaintiff had secured markets and truck No KAQ 953 M/2694 loaded with 500 gags of cement carried the said bags to Tarime town to look for markets. That in Tarime town the first plaintiff failed to secure markets for the 500 bags of cement and decided to take the said cement to Nyamongo town to look for markets.*
10. *That due to its weight the truck with Registration No KAQ 953 M/ZD 2694 could not pass on the road from Tarime to Nyamongo via Borega, hence the first plaintiff hired the second plaintiff's motor vehicle (lorry) with Registration No T. 475 AME and off-load 500 bags of cement from a track with Registration No KAQ 953 M/ZD 2694 and loaded the cement in the second plaintiff's lorry which proceeded to carry the said cement to Nyamongo town via Borega.*
11. *That, while on the way to Nyamongo center with 500 bags of cement on board, the second plaintiff's motor vehicle was stopped by the police who were on road patrol. On realizing that the said vehicle was conveying cement from Kenya, the police demanded to be shown the customs documents showing that the said cement had been duly cleared through customs. The driver of the lorry and the first plaintiff's officer cooperated with the police and showed them all the necessary customs documents (Annexure P1, P2 and P3) which exhibited that the cement had been duly cleared through customs at Sirari boarder station and the duty to and tax due had been paid in full.*



12. *That despite being shown the said documents, the police detained the second plaintiff's motor vehicle and the first plaintiff cement and the documents in order to conduct further investigation and told the driver and first plaintiff's officers to quit the place and that they would be informed of the outcome of the investigation later. The plaintiffs remained waiting for the outcome of the investigation from the police to no avail.*
13. *That on 21st March 2014, upon receiving a letter with Ref. No. TRA/CE/MU/SR/SM/VOL V11/185 dated 21st March 2014 from the Acting Assistant Regional Manager of the Defendant TRA-Mara, the plaintiffs learnt that the second plaintiff's motor vehicle, the first plaintiff's cement (500 bags) and customs clearance documents that were detained by the police on 1st February 2014 had been handed over by the police to the Defendant's customs and Excise Department and were being detained at Sirari Customs Boarder Station without notice of seizure to the plaintiffs. A copy of the letter is annexed and marked ANNEXTURE P4 forming part of the Plaint.*
14. *That on 31st March 2014 the second plaintiff wrote a letter to the Assistant Regional Manager of the Defendant at Sirari Customs Office which letter was in response to Annexure P4 and explained to the Defendant that the first plaintiff's cement being detained at Sirari Customs Office had been duly cleared through customs and the requisite import duty and taxes paid for the same by the first plaintiff and that the defendant was unlawfully detaining the said cement and the*

second plaintiff's motor vehicle and requested the defendant to release the same unconditionally. A copy of the second plaintiff's letter dated 31st March 2014 is annexed thereto and marked ANNEXTURE P5 forming part of the Plaint.

15. That on 13th April 2014, the Defendant's officers at Sirari customs office issued a Notice of Seizure No 0018699 vide which they purported to inform the second plaintiff that his motor vehicle with Registration No T. 475 AME had been seized by customs for conveying uncustomed goods, namely 474 bags of cement from Kenya, contrary to section 199(b) of the East Africa Community Customs Management Act, 2004. On the same day that is 3^d of April 2014, the Defendant's officers issued another Notice of Seizure No 0018700 in the name of the second plaintiff purporting to notify him that his 474 bags of cement had been seized for being uncustomed goods contrary to section 200(d)(iii) of the East Africa Community Customs Management Act, 2004. Copies of the Notice of Seizure are annexed hereto and marked ANNEXTURES P6 and P7 respectively.

The appellant filed the written statement of defence, denying some averment of the respondents. He also raised the preliminary objection that the trial court had no jurisdiction to entertain the case as the course of action falls under the tax matters which is within the jurisdiction of the Tax Revenue Appeals Board. After hearing the preliminary objection, the trial court overruled the preliminary objection and proceeded to hear the



matter on merit and delivered a judgement in favour of the plaintiffs. Aggrieved by the findings of the trial court, the appellant appealed to this court advancing three grounds of appeal as they are reproduced hereunder:

1. *That the trial court erred in law in entertaining and trying the suit while it had no original jurisdiction.*
2. *That the trial court erred both in law and in fact in holding that the motor vehicle with registration number T475 AME did not convey uncustomed goods*
3. *That the trial court erred both in law and in fact in holding that the appellant (TRA) illegally seized a motor vehicle with registration number T475 AME and the convey goods.*

The appellant prayed for the appeal to be allowed and the trial court's Proceedings, Judgement and Decree be nullified, quashed and set aside or reversed. The costs of the suit be borne by the respondents.

The present appeal was argued orally. The appellant was represented by Mr. Baraka Mwakyalabwe, learned state attorney whilst the second respondent appeared in person, unrepresented and the matter proceeded exparte against the first respondent.



During the hearing, the learned state attorney's main contention was that the trial court entertained the matter while it was not clothed with jurisdiction to do so. He enlightens that jurisdiction is a creature of statute and that section 7 of the Tax Revenue Appeals Act, [Cap. 408 R. E. 2019], gives power to the Tax Revenue Appeals Board to entertain the dispute relating to tax matters including uncustomed goods. He referred to the decision of the Court of Appeal in the case of **Khofu Mlewa vs Commissioner General of T.R.A and Commissioner for Customs and Excise**, Civil Appeal No 229 of 2019, CAT at Dar es Salaam which reaffirmed on the jurisdiction of the Tax Revenue Appeals Board as it is provided for under the Tax Revenue Appeals Act, Cap 408 R.E 2019 and East African Community Customs Management Act, 2004.

The learned State Attorney stressed that, the present appeal deals with uncustomed goods and therefore the trial court erred to entertain the matter which is not clothed with jurisdiction. He further refers to the decision of the Court of Appeal in the case of **Bryson Bwire Mbonde vs Tanzania Revenue Authority**, Civil Appeal No 88 of 2018, CAT at Mwanza. He retires on this ground of appeal, praying for the court to allow the appeal.



On the second and third grounds of appeal which were argued jointly, the learned state attorney averred that, it was wrong for the trial magistrate to hold that the appellant illegally seized the motor vehicle with registration No. T. 475 AME. He submitted that, the declaration done by the second defendant was in respect to the motor vehicle with registration number KBEX/ 248A/ZE 5148 and the car which has been seized bears the registration number T. 475 AME and that there was no evidence which shows that the said motor vehicle carried the goods which their tax was paid. He retires on these grounds by complaining that the trial court improperly evaluated the evidence before it and that's why it reached the erred decision. He thus prayed the appeal to be allowed and the court to grant the relief sought for, in the Memorandum of Appeal.

For his part, the second respondent submitted that this appeal is time-barred as it was filed out of the prescribed time provided by the law and the two cases cited by the appellant on the issue of jurisdiction are recent decisions which were delivered after the decision of the trial court has been delivered and therefore the issue of jurisdiction can not have any legal basis.

In rejoining, the learned state attorney admitted that the cases cited were delivered after the decision of the trial court, but instistingly averred



that, the law cited existed before the case was instituted in the trial court and therefore, they are applicable in our appeal at hand.

Since the respondent raised the issue of time-barred, I invited the appellant to respond on that issue. Responding, he claimed that, they filed the notice of appeal within time in this court that is on 10/07/2018. And that, it is the requirement of the law that, the Memorandum of Appeal should be accompanied by a copy of Judgement and since they have delayed to get the same, as they received it on 27.11.2020, that's why they lodged their appeal out of time.

In rejoining on the issue of time-barred, the second respondent stated that he is a layman and prayed for the court to do justice.

After hearing both parties, the only issue for determination and consideration is whether the appeal is merited.

Upon looking at the submissions of the parties, it is clear that the second respondent rose a legal point that, the appeal is time barred in the sense that, it has been filed out of time before this court.

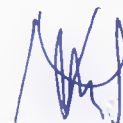
I shall begin to determine the issue of time-barred of which in other words, we can say, the second respondent challenges that, the appeal before this court is incompetent. It is the requirement of the law that, any person aggrieved by the decision of the Resident Magistrate Court (trial



court) may appeal within thirty days from the date of the decision and if the party failed to appeal within the stated period, the court may extend the time before or after the expiration of that period upon application by the party. (See section 25(1)(b) of the Magistrate's Courts Act, Cap 11 R.E 2019.)

It is settled position of law that in determining whether the matter is time-barred or not, the court has to look at the pleadings and its annexures, without further going into the evidence of the parties, in order to know when did cause of action arise. Further, in case of construing time for lodging an appeal, it is the date of the judgement pronouncement that is looked at. However, it is my understanding that if there is any document in the court file, showing that the party bringing an appeal has applied for a copy of Judgement within time and he was supplied out of time, the time starts to run from the day he received the copy of the said Judgement or Ruling.

What is observed from the available court records, is that, the appeal at hand was filed on 12/03/2021 and the impugned Judgement of the trial court was delivered on 17/04/2018. It is also on record that, the certification to show that the copy of the judgement is a true copy of origin was done on 24/04/2018. The records further reveal that, the



appellant wrote a letter on 10/07/2018 to request a copy of Judgement and Decree as he intended to file an appeal. In the said letter the appellant stated that the impugned decision was delivered in his absence and that they were not informed on the day of delivering judgement. On the same day when he made a request to be supplied with a copy of Judgement and Decree, he also filed a notice of intention to appeal though it is not the mandatory requirement of the law in civil cases.

Going back to the records, it is true that, they are silent as to whether the parties were informed on the day of Judgement but also the records are silent as to when the copy of Judgement and Decree were supplied to the appellant. It is only through his submission to this court which shows that they were supplied with a copy of the Judgement on 27/11/2020. There is no any other proof to that assertion in the court file.

Assuming that the Copy of Judgement and Decree was delivered to the appellant on 27/11/2020, as he filed the present appeal on 12/03/2021, still, the appellant delayed, since the appeal has to be lodged within thirty days from the date of Judgement. For that reason, as the law provides, the appellant was required to apply for an extension of time. In our case at hand, there is no record which shows that the appellant applied and was granted leave to appeal out of time.



In other words, the appeal was filed out of the prescribed time as it is provided by the law and thus, it is incompetent before this court.

Normally, having ruled the appeal to be incompetent, I would have proceeded to dismiss it forthwith. However, because of a fatal illegality which is clearly seen on the face of the record of the trial court, I shall refrain from following that route. I shall now demonstrate why.

While urging me to allow the appeal, the learned state attorney submitted that, the trial court determined the matter without being clothed with jurisdiction. He fortified his position by submitting that jurisdiction is the creature of statute and that the law ousts jurisdiction in the normal court on the matter originating from revenue laws. He supported his argument by citing the case of **Khofu Mlewa** (supra) and **Bryson Bwire Mbonde** (supra).

On his part, the second respondent's on the issue of jurisdiction was briefly that, the cases cited by the learned state attorney are the recent decision of the Court of Appeal and therefore cannot apply in the circumstances of our case at hand whose decision was delivered in 2018.

Admittedly, the issue of jurisdiction is a creature of statute, the power to give a certain court, body or tribunal the power to hear and determine a certain matter is legislative in character and the same applies



in conferring the right of appeal or to take away the right of appeal. It is also a trite position of law that parties can not consent to give a certain court, body or tribunal power to decide a certain matter as that is the exclusive mandate of the statute.

If the court decides the matter which it had jurisdiction as it is conferred by a certain law, its decision cannot be nullified regardless of whether it is a correct or wrong decision as the same can be challenged by way of appeal or revision on other grounds apart from jurisdiction. On the other hand, if the court decides the matter which it had no jurisdiction, its decision cannot be considered as a valid decision in the eyes of the law as it is nullity however correct it is.

It may also be worth, pointing out here that the issue of jurisdiction can be raised at any stage of the proceedings, it can also be raised by any party to the case or by court *suo moto*, so as to eliminate the chances of having illegal decision.

It is clear from the above-reproduced paragraphs which trace its origin from the plaintiff's claim that, the main controversy between the parties is the seizure of the alleged uncustomed goods and the motor vehicle purported to convey the uncustomed goods. To my understanding, the claim at hand is purely a civil claim emanating from



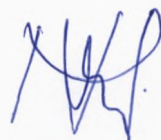
tax matters and revenue laws in which the mandate is given to the Tax Revenue Appeals Board to hear and determine that disputes. This is evidenced under section 7 of the Tax Revenue Appeals Act, Cap 408 R.E 2019 which states that:

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

Furthermore, section 7(1) of the Civil Procedure Code, Cap 33 R.E 2019 provides that:

"Subject to this Act the court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."

It is clear from its plain language that, the sections are linked to each other as the normal courts will lack jurisdiction if there is any other law which expressly or impliedly conferred jurisdiction to the other body. Thus, my understanding of these provisions is that since proceedings of a civil nature arising out of a dispute from revenue laws administered by the appellant, the same ought to be dealt with by the Board established under section 4 of the Tax Revenue Appeals Board, Cap. 408 R.E 2019.



As the disputes concerned with the uncustomed goods, as far as section 7 of the above-mentioned Act is concerned, the power to hear and decide the matter is exclusively under the domain of the board as normal courts are ousted from entertaining the same. This is rightly held by the Court of Appeal in the case of **Khofu Mlewa** (supra) where it was stated that:

"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 a dispute 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. "

As I have earlier noted, the second respondents' claim arose from the administration of the East African Community Customs Management Act, 2004, is a civil nature which is exclusively within the jurisdiction of the Board, which had inherent power to hear and determine the same.

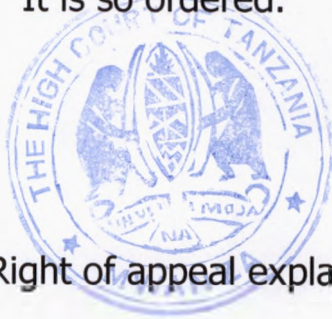
For that reason, in order to avoid perpetuating illegality, and in particular on the issue of jurisdiction which goes to the root of the matter, thus makes the decision of the trial court a nullity as it was not clothed



with jurisdiction. Acting under section 44(1)(b) of the Magistrates' Courts Act, [Cap. 11 R. E. 2019], I hereby invoked the Revisional power conferred to this court *suo moto* and revise the Proceedings, Judgement and Decree of the trial court emanating from the Civil Case No. 28 of 2014 are hereby quashed and accordingly set aside.

In the final result, the appeal is hereby struck out and whoever interested to pursue on, the matter may institute a fresh case before the competent machinery vested with jurisdiction to entertain it. I make no order as to costs.

It is so ordered.



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M. MNYUKWA
JUDGE
18/07/2022

Right of appeal explained to the parties.

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M.MNYUKWA
JUDGE
18/07/2022

Court: Judgement delivered this 18th July 2022 in the presence of parties.

A handwritten signature in blue ink, appearing to be 'M. Mnyukwa'.

M. MNYUKWA
JUDGE
18/07/2022