

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
MWANZA DISTRICT REGISTRY
AT MWANZA**

CIVIL CAUSE NO.17 OF 2022

JASTINE RUTA KAIGI -----PLAINTIFF

VERSUS

THE TANZANIA REVENUE AUTHORITY-----1st DEFENDANT

MKOMBOZI COMMERCIAL BANK PLC-----2nd DEFENDANT

THE ATTORNEY GENERAL-----3rd DEFENDANT

RULING

Last Order: 07.09.2022

Ruling Date: 15.09.2022

M. MNYUKWA, J.

When the plaintiff served the defendants with a copy of the plaint which was filed in this court on 10th May 2022, the defendants filed their respective written statements of defence along with the notice of preliminary objections. While the first and second defendant raised the jurisdictional issue of this court to determine the dispute at hand, the second defendant also claimed that the plaintiff's case is hopelessly time-barred and that the plaintiff's case is an abuse of court process, whereas on his part the third defendant objected the suit to be incompetent before



this court for plaintiff's failure to serve a ninety days' notice to him and the Solicitor General contrary to section 6(2) and (3) of the Government Proceedings Act, Cap 5 R.E 2019.

As a matter of practice, the court scheduled the preliminary objections to be heard and the hearing was done by way of oral submissions. During the hearing, the plaintiff was represented by Arsen Molland, learned counsel, the first defendant was represented by Baraka Mwakiyalabwe, the learned state attorney, the second defendant afforded the legal services of Dr. George Mwaiondola, learned advocate and the third defendant was represented by Sabina Yongo, the learned state attorney.

The brief background of the matter is best captured by reproducing relevant paragraphs in the plaint as follows;-

- 3 (a) *The above named Plaintiff is the lawful owner of the Truck Registration Number, T 856 CBJ, Make-Mitsubishi, Model-Fuso, Body type-Truck, Engine No. 1 Chasis No. FK315C520101, with Motor Vehicle Registration card No. 7914903 which bears the plaintiff's names-Photocopy of the said card is herein attached and pray to crave part into this Plaint as annexure KAIGI-1.*

(b) *The plaintiff lost the whereabouts of his motor vehicle card No. 7914903, though tried to trace it but in vain and on 31 May, 2019 he decided to report over the untraced document – See copy of the police loss report is herewith appended, pray to crave part into this Plaint as annexure KAIGI-2.*

(c) *Sometimes in November 2021 the plaintiff face the first defendant to supply the information so that the new Motor Vehicle card be issued to him, it is when the officials of the first defendant orally informed him over the created encumbrance, thereupon directed the Plaintiff to write a letter to request for **Motor Vehicle Trail report**, he complied and he was supplied with the said report- See copy of the letter and the MV Audit Report herein collectively attached pray to crave part into this Plaint as annexure KAIGI 3.*

(d) *It was revealed that, the first defendant has unlawfully indorsed the second defendant (third party) interest/caveat into the registration book and/ or vehicle register as the "**CURRENT TITLE HOLDER**," the fact which is hindering the motor vehicle Reg, No T. 856 CBJ, from any disposition, mortgage, sale, transfer and denial of the right to be availed with new title.*

(e) *There was no prior agreement in between the plaintiff and the second defendant to justify the registration of*

the third party interest by the first defendant, the fact which should have been prior investigated by the first defendant before registering such interest. (f) That, if the second defendant possess the untraced motor vehicle card No. 7914903, it is unlawfully obtained, unlawfully possess it and unlawfully applied to register encumbrances.

(g) The first defendant acted negligently and cause trespass of ownership.

In his prayer, the plaintiff prayed this court to grant the following reliefs:

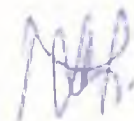
- (a) The court to find that the encumbrances created in respect of Motor Vehicle card Reg. No 7914903 was unlawfully registered;*
- (b) An order to remove encumbrance entered;*
- (c) If the second defendant is in possession of the Motor Vehicle Card No 7914903 be ordered to return it to the plaintiff and if not the Court to order the first defendant to prepare a new motor vehicle card in respect of Truck Reg No T 856 CBJ belong to the plaintiff;*
- (d) Costs for trespass into ownership and create encumbrances, interfering with title, and psychological and mental torture, be atoned with the General Damages of Tsh. 100,000,000/=;*
- (e) Costs of the suit;*
- (f) Any other relief(s) deem just to be granted.*



The learned state attorney who represented the first defendant kicked the ball rolling by arguing the preliminary objection on the jurisdictional issue. Mr. Baraka Mwakiyalabwe submitted that; this court has no jurisdiction to entertain the matter as the plaintiff sued the first defendant in relation to the Order issued by him to the effect that the encumbrance created in respect of motor vehicle card No. 7914903 was unlawful as he prays this court to remove the said encumbrances.

The learned state attorney enlightens that, the law governing registration, deregistration and creation of encumbrances is the Motor Vehicle (Tax on Registration and Transfer) Act, Cap 124 R.E 2019 and that, the said law is among tax laws which is administered by the first defendant. As section 7 of the Tax Revenue Appeals Act, Cap 408 R.E 2019 provides the original jurisdiction in all proceedings of civil nature in respect of a dispute arising from revenue laws administered by the Tanzania Revenue Authority, this court will not have jurisdiction to entertain the same since it is Tax Revenue Appeal Board which will have power to hear and determine the matter.

He went on to refer to section 7(1) of the Civil Procedure Code, Cap 33 R.E 2019 that it ousts this court jurisdiction to hear and determine suits in which their cognizance is expressly or impliedly barred. He bolsters his



argument by referring this court to the case of **Tanzania Revenue Authority v New Musoma Textile Limited**, Civil Appeal No 93 of 2009, CAT at Dar es Salaam and the case of **Khofu Mlewa v Commissioner General of TRA and Another**, Civil Appeal No 229 of 2019, CAT at Dar es Salaam. He retires by praying this court to dismiss the case and order the plaintiff to pay costs.

As I have earlier on hinted, Dr. George Mwaisondola also raised an objection on the issue of jurisdiction, but he did not submit as he supported what has been submitted by the learned state attorney who is representing the first defendant.

Responding, the plaintiff's counsel submitted that this court has jurisdiction as the law cited by the learned state attorney, the Tax Revenue Appeals Act, Cap 408 R.E 2019, is not applicable in the circumstance of our case at hand because the Act itself deals with appeals on tax matters while the present case is all about the removal of encumbrances. He went on to state that section 7 of the Tax Revenue Appeals Act, Cap 408 R.E 2019 did not apply to the circumstances of our case at hand because the Board deals with appeals from the Taxing officer and the appeals originated from the Tax Administration Act.



He further attacks the submission of the learned state attorney by arguing that, the Motor Vehicle (Tax Registration and Transfer) Act, Cap 124 R.E 2019 is not applicable in our case at hand because, it was made for the purpose of motor vehicle registration and transfer of the motor vehicle and there is nowhere in this law where registration of encumbrances or caveat is provided for. He distinguished the cases cited by the learned state attorney as they are not related to the registration of encumbrances

He remarked that, the present suit is brought under section 6(4) of the Government Proceedings Act, Cap 5 R.E 2019 which provides that all suits against the Government to be instituted in the High Court. He further submitted that section 53(1) of the Tax Administration Act, Cap 438 R.E 2019 requires any person aggrieved by an objection decision or other decision of the Commissioner General may appeal to the Board in accordance to the provision of the Tax Appeals Act: However, the case at hand does not originate from the decision of the Commissioner General as it falls under section 7 of the CPC, Cap. 33 R.E 2019.

In re-joining, the learned state attorney did not add anything useful from his submission in chief. He insisted the matter to be dismissed.



Now, turning to the preliminary objection raised by the second defendant's counsel, it was Dr. George Mwaisondola's submission that, the suit is *res-judicata* and abuse of court process. He submitted that, prayer (a) to (d) in the plaintiff's plaint is an abuse of court process because the whereabouts of the registration card is known, as the same was conclusively determined by the Resident Magistrates' Court in Civil Case No. 92 of 2019 between **Justine Rutta Kaigi v Mkombozi Commercial Bank (PLC)** and in that case parties settled the matter and the settlement deed was filed in court.


He went on that, he understands that preliminary objection should base purely on point of law, but if the objection is on the issue of *Res-judicata* and *Res-subjudice*, the court can go through the records as it was stated in the case of **Winfrida Kokubebe v Frank Isidory Saikoki and 2 others**, Land Case No. 9 of 2019, HCT at Mwanza. He retires on this point by stating that, since the plaintiff knows where his registration card is, his prayer on deregistration is an abuse of the court process.

On the other objection, Dr. George Mwaisondola submitted that, the suit is time-barred as he enunciated that, if the present suit is not a tax case, it is a tort case which is supposed to be instituted within three (3) years from the date the registration card was issued and the name of the



second defendant was entered in the register. He added that, annexure KAIGI 1 shows that, registration was done on 07/07/2012 and if it is a tort case the time elapses on 08/07/2015, and since the present case was filed on 10/05/2022, the plaintiff delayed for six (6) years and nine (9) months. He refers to section 3(1) of the Law of Limitation Act, Cap. 89 R.E 2019 which reads together with sections 4 and 5 of the same Act and concluded that the matter deserved to be dismissed with costs as it is time-barred.

Responding, Mr. Molland submitted that, the preliminary point of law should be purely on law. He strongly disputed the present case to be *res-judicata* for the reason that the parties are not the same as in Civil Case No. 92 of 2019, the parties were **Justine Rutta Kaigi v Mkombozi Commercial Bank (PLC)** and the suit at hand the parties are **Jastine Ruta Kaigi V The Tanzania Revenue Authority and Two others**, and that **Justine Rutta Kaigi** and **Jastine Ruta Kaigi** are two different persons. The counsel went on to state the other elements of *res-judicata* which are not met, like the matter are not substantially and directly the same, the subject matter in issue that is the removal of encumbrances were never heard and determined by any court.



On the issue of this suit to be time-barred, the counsel referred to KAIGI 3 which is the centre of this dispute and argued that, the plaintiff got information about encumbrances on 5th March, 2021 and the time started to run after discovery. He added that, the matter before this court is a civil case and if the court will refer to KAIGI 1, will be seeking evidence which is not the case at the moment. He concluded by referring to the famous case of **Mukisa Biscuits** on how the preliminary objection needs to be. In rejoining, Dr. Mwaisondola mainly reiterates what he had submitted in chief.

On the last objection which was raised by the learned state attorney representing the third defendant, it is her submission that the suit is incompetent as the plaintiff did not issue ninety days' notice to the third defendant contrary to section 6(2) and (3) of the Government Proceedings Act, Cap 5 R.E 2019. She averred that, the law requires that if a person intends to sue the Government or its agency should issue a ninety days notice. She emphasized that, the requirement of serving notice has been coached by the mandatory term of the word "shall". She added that, in paragraph 3(h) of the Plaint, the plaintiff pleaded that he issued the statutory notice to the defendant while there is no proof of stamping to acknowledge that the same was received by the third defendant. She



went on to attack annexure KAIGI 4 as a demand notice to remove caveat and not a ninety days notice as it is required by the law. She, therefore, prays the matter to be struck out as it was done in the case of **Audacity Intercom (T) Ltd v Bukombe District Council v Attorney General**, Civil Case No 28 of 2021.

In rebuttal, Mr. Molland averred that, the ninety days' notice was served to the third defendant as it was stated in paragraph 3(h) which refers to annexure KAIGI 4. He stated that, the notice was served by dispatch and the copy of the dispatch shows that the notice was received on 15th November, 2021. He disputed on the sealing of the document as the requirement of proof of service since the dispatch shows that the document was properly received. He thus, prays the objection to be overruled with costs. Re-joining, Ms. Sabina Yongo reiterates what she has submitted in chief.

Having carefully analysed the submissions of both parties in support for and against the preliminary objections, now the court is called out to determine the points of the preliminary objection raised by all defendants in this suit.

My take-off point in determining the preliminary points of objection raised by the counsels for defendants is on the issue of jurisdiction which



is raised by the counsel of the first and second defendants. I am compelled to start with the issue of jurisdiction as it will give us the direction on determination of other points of preliminary objection. While the counsel for the first and second defendants argued that this court is not clothed with jurisdiction to hear and determine the suit at hand, the plaintiff strongly disputed that assertion and argued that, this court is vested with a requisite jurisdiction to hear and determine the suit before it.

Before I embark to determine the issue of jurisdiction, it is worth to note that, the central issue in this complaint is the act of the first defendant to register encumbrances and recognizes the third defendant as a current title holder which inhibits the plaintiff from carrying out any dispositional transactions of his property such as sale, mortgage, lien, transfer or exercise of any monetary rights which necessitate the establishment of ownership.

Turning now to the question of jurisdiction of the court, it is a well-settled position of law that jurisdiction is a cornerstone of all decisions of the court. Jurisdiction is the power or limit of a certain court, tribunal, board or any machinery entrusted to deliver justice to hear and determine a matter before it. It is also a settled position of the law that jurisdiction

is a creature of the statute as parties to the case cannot give a court the power which it does not possess as well as they cannot denies the court, the power which is created by the statute. It is better to remark here that, a court which determined the case without being clothed with jurisdiction, its decision is nullity.

Parties in this case, are not in agreement with the issue of jurisdiction. While the first and second defendants argued that, this court has no jurisdiction to determine the dispute at hand since it is the Board which has sole original jurisdiction to determine all proceedings of a civil nature in respect of a dispute arising from revenue laws administered by the first defendant. In other words, these defendants join forces to state that, this court is ousted its power to hear and determine the suit at hand.

On his part, the plaintiff strongly disputed that assertion as he argued that, this court has a prerequisite jurisdiction because in a suit where Government is a party to a case, it is the High Court which has power to hear and determine the same and the issue to register encumbrances does not fall under the mandate of tax laws cited by the defendants.



As I endeavour to resolve the issue of jurisdiction, I think it is necessary to reproduce section 7(1) of the Civil Procedure Code, Cap. 33 R.E 2019 which provides that:

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

In the instant case, the plaintiff has been emphatic that the ordinary court and in particular this court has jurisdiction to determine the dispute at hand because he is suing the Government in which the jurisdiction is vested to the High Court and that encumbrances registration is not covered under the law administered by the first defendant. Whereas, the first and second defendants maintained that, registration, deregistration and creation of encumbrances is governed by the Motor Vehicle (Tax Registration and Transfer Act), Cap 124 R.E 2019 which is a tax law. He also based his argument on sections 7 and 7A of the Tax Revenue Appeals Act, Cap 408 R.E 2019 which provides that:

"Section 7. 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."



Section 7A. The Board shall not entertain any appeal arising from assessment of tax unless part VII of the Tax Administration Act is complied with"

My understanding on the above provision is that, any dispute of a civil nature arising from revenue laws administered by the first defendant ought to be dealt with by the Board which is established under the Tax Revenue Appeals Act, Cap 408 R.E 2019.

In the instant case, it is evident that the plaintiff's complaint as pleaded in paragraph 3(c)(d)(e) of the plaint is a claim of the first defendant to register encumbrances filed by the second defendant and recognizes him as a current title holder as it is reflected on attachment marked as KAIGI 3 which is the *MV Audit Trail Report* issued by the first defendant.

It is clear to my side that what did the first defendant do is within its mandate in administering the revenue laws as it was rightly argued by the counsel of the first defendant. I say so because under section 2 of the Motor Vehicle (Tax on Registration and Transfer) Act, Cap 124 R.E 2019 which is interpretation section, provides the meaning of transfer to include:



"any transaction whereby the property, or any interest in the property, in a motor vehicle is transferred from one person to another person whether pursuant to any sale, mortgage, or any other arrangement of any kind, and whether or not the transfer for any valuable consideration."

It is undisputed that, the first defendant registered encumbrances entered by the second defendant to whom is now recognized as a current title holder which in turn affects the interest attached to the plaintiff in respect to the motor vehicle in question. Thus, it is my considered view that, since the act of the first defendant to register encumbrances was within the scope of his work, it is my conclusion that he was administering one of the revenue laws entrusted to him.

As I have earlier on noted, in the case at hand, the dispute arose when the first defendant was administering one of the revenue laws. On a perusal of different tax laws, I have gone through Part VII of the Tax Administration Act, Cap 438 R.E 2019. Part VII of the above law is all about dispute resolution. Section 50(1) of the above-mentioned law provides that:

"Section 50(1). The Commissioner General may, subject to subsection (2) make any tax decision including assessment or other decision, or omission on the matter left to the discretion, judgment, direction, opinion, approval, consent,



satisfaction or determination of the Commissioner General under a tax law that directly affects a person.”

While Mr. Baraka Mwakiyalabwe fortified that, this court had no jurisdiction and the plaintiff could have accessed his right to the Board, Mr. Arsen Molland strongly opposed that idea. However, on my side, it is my firm view that the pleaded facts and the type of relief sought determine the issue of jurisdiction in our case at hand. Therefore, the claim is within the purview of the Board and this court is not vested with jurisdiction to entertain the same. The Court of Appeal of Tanzania in the case of **Bryson Bwire Mbonde v Tanzania Revenue Authority**, Civil Appeal No 88 of 2018, at Mwanza observed that, when the first defendant is administering Cap 124 R.E 2019, he is administering one of the revenue laws and therefore ordinary court does not have jurisdiction to entertain the same.

In his argument, Mr. Molland said that the case of **New Musoma Textile Limited** (supra) and **Khofu Mlewa** (supra) are not applicable in our case at hand as the same did not deal with the issue of registering the encumbrances. While I agree that the above cited cases did not discuss the issue of encumbrance, without any disrespect to the appellant’s learned counsel, I don’t agree with him because the above cases interpreted section 7 of the Tax Revenue Appeals Act which gives



sole original jurisdiction to the Board to entertain disputes of civil nature arising from revenue laws administered by the first defendant in which Cap 124 is one of them.

All said and considered, I find the preliminary objection on the issue of jurisdiction has merit and it is hereby sustained. Since the preliminary objection on the issue of jurisdiction has the effect to dispose of the suit in this case, I am not going to determine other points of the preliminary objection raised as it will be an academic exercise.

In the final analysis, I hereby struck out Civil Case No 17 of 2022 with costs.

It is so ordered.

Right of appeal explained to the parties.




M.MNYUKWA
JUDGE
15/09/2022

Court: Ruling delivered on 15th September 2022 in the absence of both parties.


M.MNYUKWA
JUDGE
15/09/2022