

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**CIVIL APPEAL NO. 9 OF 2023**

*(Appeal from the Ruling of the Resident Magistrate Court of Moshi at Moshi dated 11<sup>th</sup> October 2022 in Civil Case No. 1 of 2022)*

**SALVATORY NICHOLAUS MBISHI ..... APPELLANT**

***VERSUS***

**TANZANIA REVENUE AUTHORITY..... RESPONDENT**

**JUDGMENT**

14<sup>th</sup> Sept. & 18<sup>th</sup> October 2023.

**A.P.KILIMI, J.:**

This is an appeal against a ruling delivered in Civil Case No. 1 of 2022 before the Resident Magistrate Court of Moshi at Moshi on the preliminary objection raised by the respondent. Before the trial court the appellant sued the defendant claiming a sum of Tshs. 20,000,000/= being compensation for the value of the confiscated and unlawful detaining of his motor vehicle, monthly interest at the rate of 7% from the date the vehicle was confiscated to the date of full payment and Tshs. 7,000,000/= as general damages.

The defendant raised a preliminary objection that the plaint was incompetent before the court for having contravened Section 53(1) of Cap 438 R.E. 2019 and Section 7 of the Tax Revenue Appeals Act, Cap 408 R.E.

2019. After hearing of the objection, the trial court upheld the preliminary objection and dismissed the suit. Now, aggrieved by the decision the appellant preferred the present appeal on two grounds as follows;

1. That the honourable Magistrate erred in law in holding that the suit before her arose out of revenue and proceeded to dismiss it.
2. That the honourable Magistrate erred in law and fact by concluding that the trial court was not clothed with jurisdiction to entertain the suit.

The above grounds of appeal were followed by prayers that the appeal be allowed, the dispute be determined on merit and cost be borne by the respondent. At the hearing the appellant was represented by Ms. Lilian Justus learned advocate while the respondent was represented by Mr. Brian Magoma learned state attorney. It was prayed that the appeal be heard by way of written submissions and the court granted the prayer followed by a scheduling order. I will refer to those submission in due course when the need arises.

Submitting on the first ground of appeal, Ms. Lilian submitted that not every suit involving Tanzania Revenue Authority (the Respondent) is to be entertained by the Board. She contended that even the Board's jurisdiction had limitations. Citing Section 7 of the Tax Revenue Appeals Act, Cap 408 "

TRAA” the learned counsel submitted that the Board has sole jurisdiction only in respect of disputes arising from the revenue laws administered by Tanzania Revenue Authority. She argued further that the word revenue as defined under section 3 of the Tax Revenue Appeals Act include "Taxes, duties, fees, levies, fines or other monies imposed or collected ... under the revenue laws listed in the First Schedule of the Tanzania Revenue Authority Act. It was her submission that nothing had been put forward by parties in their pleadings indicating that the dispute arose from taxes, duties, fees, levies or fines collected from revenue laws, thus, cannot fall on objection decision of the Commissioner General, to fortify her view referred the case of **Pan African Energy vs Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 172 of 2020

She further argued that what can be gleaned from the Plaintiff is that this was merely a dispute for a demand of a chattel that was wrongfully taken from the Appellant without any substantiated legal basis. The learned counsel submitted that the trial magistrate had erred per in curium when she came to the finding that the suit before her arose out of revenue and thus ought to have been filed before the Board. She was of the view that had this suit been so filed before the Board even the Board would have dismissed it

for want of jurisdiction. She supported her argument with the case of **Shana General Stores Limited vs Commissioner General (TRA)**, Civil Appeal No 369 of 2021.

Submitting on the second ground of appeal which was to the effect that the trial magistrate erred by concluding that the trial court was not clothed with jurisdiction to entertain the suit, Ms. Justus stated that the trial magistrate had erred since her ruling was based on allegations raised by the Respondent in their submission which were not pleaded and needed to be ascertained or required proof. She contended that it is trite law that submissions cannot include non-pleaded facts and arguing so she cited the case of **Astepro Investment Company Limited vs Jawinga Company Limited**, Civil Appeal No. 8 of 2015 (Unreported).

Ms. Lilian further submitted that contrary to requirement of law that on objection needs only legal arguments and not ascertainment of facts, thus the allegation by the respondent that the Commissioner General was implementing the Motor Vehicle (Tax Registration and Transfer) Act Cap 124 Act were first not pleaded and two they are facts that ought to be ascertained. She thus argued that the trial Magistrate relying on that facts in holding that the Trial Court lacked jurisdiction to entertain the suit at the

point of preliminary objections was a gross error and miscarriage of justice on part of the Appellant and discouraged as per the case of **Mukisa Biscuit**.

Concluding her submission Ms. Justus submitted that there was no appealable objection decision nor was there any revenue dispute upon which an appeal to the Board would lie. She contended further that the suit was proper before Trial Court and not before the Tax Appeals Board for it is not at all a tax or revenue dispute and as such the Board is not clothed with Jurisdiction to try it. In the end the learned counsel pleaded with the court to allow the appeal and prayed that the Ruling by the trial Magistrate be quashed and set aside and for the matter be remitted back to the trial court to be heard on merit.

Responding to the above Mr. Brian submitted that the Trial Magistrate had correctly decided, due to the provisions of section 7 of the Tax Revenue Appeals Act, Cap 408 R. E. 2019. He further submitted that the Tanzania Revenue Authority Act, Cap. 339 R. E. 2019 under the provisions of section 5(1) (a) read together with the First Schedule of the same, provides for the list of laws administered by the Authority. It was thus his submission that Appellant instead of consulting the above provision for the sake of noting the revenue laws applied, decided to consult section 3 of the Tax Revenue

Appeals Act (supra) and as such misdirected herself as to what is the gist of the provision. It was his considered view that what is at point is the revenue laws administered by the Authority and not what administered by revenue. He further argued that the trial magistrate was right as stated in her ruling that issues of motor vehicle registration and/ or transfer of motor vehicles are governed by the Motor Vehicle (Tax Registration and Transfer) Act, Cap. 124 R. E. 2019 and Road Traffic Act, Cap. 168 of which both are listed under the First Schedule to the Tanzania Revenue Authority Act through item 8 and 15. He contended further, that the issue at hand arose from administration of revenue laws and therefore the Trial Court had no jurisdiction to try the matter.

Submitting further it was the respondent's counsel contention that all the stated cases cited by the Appellant are distinguishable under the circumstances at hand as all those cases were challenging the jurisdiction of the Board in respect to refusal of waiver to pay one third or lesser amount which is a prerequisite before an objection is admitted by the Commissioner General. He submitted that in those cases the court had ruled that the Board had no jurisdiction due to the fact that as far as decisions from objection are

concerned, it was only upon receipt of the Final Determination of Objection can one approach the Board and not vice versa.

Responding to the second ground of appeal, Mr. Brian contended that the trial magistrate did not error by holding that the court had no jurisdiction, it was his submission that according to section 53(1) of the Tax Administration Act, Cap. 428 R. E. 2019, the Plaintiff being aggrieved by the detention of his motor vehicle by the Commissioner General (TRA), was required to appeal to the Tax Revenue Appeals Board. He said this was so because it is the Tax Revenue Appeals Board which has a sole jurisdiction in all proceedings of civil nature in respect of disputes arising from the revenue laws administered by the Tanzania Revenue Authority as per section 7 of the Tax Revenue Appeals Act, [Cap 408 RE 2019]

Responding to the issue that the trial magistrate based her decision on not pleaded facts or facts that needed to be ascertained. Mr. Brian contended that the point was not valid and that the reason for detaining his vehicle was correctly pleaded in the Written Statement of Defence which is due to the vehicle having an identical registration number with another vehicle. Therefore, the Appellant was required to pursue the matter before the Tax Revenue Appeals Board and not to file his Complaint before the Resident

Magistrate Court. He concluded by praying this appeal be dismissed with the costs.

Rejoining the submission Ms. Justus reiterated her submission in chief and added that what was before the trial court was a pure abuse of office, where a citizen's chattel was improperly confiscated and never returned. It was also the learned counsel submission all cases cited by the respondent's counsel are distinguishable from the instant matter, because on those cases had the decision of the Commissioner General capable of being appealed before the Board which is not the case in the matter before this court. She insisted further that without a decision of the Commissioner General the Appellant has no case before the Board. She also submitted that the circumstances of the Appellant were proper before the Trial Court and not the Board. On the strength of her submission Ms. Justus prayed for the appeal to be allowed.

I have thoroughly examined the trial court's record in relation to the grounds of appeal raised and also the submissions for and against the appeal. In determining whether the appeal has merit or not I will consider the two grounds of appeal together as they both point to the issue as to whether the trial court had jurisdiction to hear the matter. Nevertheless,



which caused the trial court to lack jurisdiction is due to the objection raised by the respondent therein. In my view of the pleading at the trial court, I find very appropriate to consider whether the raised preliminary objection raised was pure point of law.

It is a trite law that preliminary objections must meet the test of a famous and celebrated case of **Mukisa Biscuits Manufacturing Ltd. vs West End Distributors Ltd**, [1969] 1 EA 696 which defines what a preliminary objection is and also provides when it can be raised and when it should not be raised. The principle in this case enshrines an objection to be termed as real preliminary objection must be on a pure point of law and not of fact. For ease of reference, I quote the position set out in Mukisa Biscuits case as hereunder:

*"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion."*

Having considered the Ruling of the District Court, with respect, the learned Senior Resident Magistrate reached the decision by relying on the pleading that the plaintiff purchased a second hand/used motor vehicle with registration No. T. 135 ANH make Toyota Hilux from another person and registered in his name. Later in 2015 he was informed by the respondent that there were two different motor vehicle registration cards over two different motor vehicles with the same registration number, thus the respondent detained the said motor vehicle for investigating its chassis number after the appellant failure to present documents. The District court concluded the issue of registration is governed by the Motor Vehicle (Tax Registration and Transfer) Act Cap. 124 R.E 2019 and Road Traffic Act, Cap. 168 which are provided on list of laws administered by Tanzania Revenue Authority by virtue of section 5 (1) (a) of the Tanzania Revenue Authority Act (supra).

In my view of the above consideration of the trial court, I am of considered opinion the said court misdirected itself to grasp the pure point of law as envisaged by the case above, I am saying this because those were facts to be proved later before the court, nonetheless the same cannot be

said in itself are conclusive. But also, the facts above do not protrude on the face of it any error on points of law raised as objection by the defendant.

This position was highlighted by the Court of Appeal in **Sugar Board of Tanzania v. 21st Century Food and Packaging & Two Others**, Civil Application No. 20 of 2007 (unreported). When it observed that;

*"A preliminary objection is in the nature of legal objection not based on the merits or facts of the case but on the stated legal procedural or technical grounds. Such an objection must be argued without reference to evidence. The fundamental requirement is that any alleged irregular defect or default must be apparent on the face of the notice of motion so that the objector does not condescend to affidavits or other documents accompanying the motion to support the objection."*

[ Emphasis supplied]

Thus, being guided by the principles laid down in above case, I now proceed with this appeal, by revisiting the objection raised at the District Court. To start with the first part of objection the respondent at the trial relied his

objection under section 53 (1) of the Tax Administration Act (supra) provides that;

*"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"*

[ Emphasis added]

According to the Section 2 of the above Act which is interpretation section "objection decision" means a decision in respect of a tax decision made under section 52; However, under section 52 provides that the Commissioner General may, upon admission of an objection pursuant to section 51, make a decision by determining the objection or call for any evidence or any other information as may appear necessary for the determination of the objection and may, in that respect amend the assessment or other tax decisions in accordance with the objection and any further evidence that has been received.

Therefore, from the above law, for the above provision to apply must have been a tax decision issued under section 50(1) of the act, then the

appellant could have lodged his grievances to the Commissioner General by filing objection under section 51 (1) of the Act above. In view of the above law as rightly pointed by appellant's counsel there must be a decision by the commissioner general for the appellant to go to the board to challenge it. I have entirely perused the pleading no decision of the commissioner was stated or shown, and if there is any need to be ascertained by facts. Nonetheless what was stated in paragraph four of the written statement of the respondent about presence of two registration card over two different vehicles with the same registration number is not a decision as per above law, but rather are facts need to be ascertained by evidence to know whether the appellant has faulted any law or not, thus in whatever means cannot be objection on point of law as stated above.

In respect to the second objection the respondent alleged the objection on the point law is based on Section 7 of the Tax Revenue Appeals Act (supra) provides that;

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

[ Emphasis added]

As stated above in respect to pleadings showing the cause of action, the same need to be ascertained by facts to prove as to whether the respondent found any fault on part of Appellant in respect to revenue laws, also there is no evidence of any measures that were taken against appellant if at all there was fault on his part. In considering thereof, I am of considered opinion the issue whether revenue laws were breached cannot be settled automatically in above circumstances unless proved by ascertaining of facts at later stage which is contrary to the principle of Mukisa Biscuit said above.

Be it as it may, as observed above, if at all the Appellant was at fault there should have been evidence of measures taken against him and that could have been the decision of the Commissioner General from which the Appellant would have appealed against, therefore, since in the instant matter there was no decision to be appealed against, that is why the Appellant opted to file a normal civil suit to pursue his rights.

In light of what I have endeavoured to discuss above, I am settled the objection raised did not reflect a pure point of law in the above circumstances. I therefore find this appeal meritorious and proceed to allow

it. Consequently, the ruling of the trial court is hereby quashed and set aside.

I order the case file be remitted to the trial court for determination of the said civil case no.1 of 2022 on merit before another Magistrate. In the circumstances I make no order of costs.

It is so ordered.

**DATED at MOSHI** this day of 18<sup>th</sup> October, 2023.



X

JUDGE

Signed by: A. P. KILIMI

**Court:** - Judgment delivered today on 18<sup>th</sup> October, 2023 in the presence of Ms. Judith Mboya, Advocate holding brief of Ms. Lilian Mushemba, Advocate for Appellant. Also, in the presence of Mr. Brian William Magoma, State Attorney of Respondent.

**Sgd: A. P. KILIMI**  
**JUDGE**  
**18/10/2023**