

TANZANIA / JUDGMENT

business printers limited vs commissioner general of tanzania revenue authority and another 2021 tzhclandd 653 7 october 2021

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TANZLIIDECIDED
7 October 2021

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IN THE HIGH COURT OF TANZANIA (LAND DIVISION) AT DAR ES SALAAM MISC. LAND
APPLICATION NO 522 OF 2021 BUSINESS PRINTERS LIMITED.....
APPLICANT VERSUS COMMISSIONER GENERAL OF TANZANIA REVENUE
AUTHORITY..... 1st RESPONDENT ATTORNEY GENERAL.....
2nd RESPONDENT MANSOOR J DATE OF RULING- 07TH OCTOBER 2021

RULING

The applicant, Business Printers Limited, filed an application for an interim order against the 1st and 2nd respondents and all their agents, affiliates, assignees and officers in and outside the United Republic of Tanzania from selling by way of online auctioning the 1 | Page Applicant's landed property and printing factory plus its business facilities located at Plot No. 2396/202 Lugoda Street, Lugoda Road, Gereza Area, Ilala District, Dar es Salaam, comprised in a Title Deed No 186063/74, and Directors personal matrimonial houses wherever they are situate, pending the filing of the intended suit. The applicant filed the application under section 5 and 2 (1) and (3) of the Judicature and Application of Laws Act, Cap 358 R: E 2019, and sections 68 (c), (e), and section 95 of the Civil Procedure Act, Cap 33 R: E 2002. Section 5 of the Judicature and Application of Laws Act, read as follows:

5. Subject to any written law to the contrary, a judge of the High Court may exercise all or any part of the jurisdiction of, and all or any powers and authorities conferred on, the High Court. Section 2 (1), (2) and (3) of the Judicature and Application of Laws Act reads as follows: 2 | Page 2.-(1) Save as provided hereinafter or in any other written law, expressed, the High Court shall have full jurisdiction in civil and criminal matters.
- (2) For the avoidance of doubt, it is hereby declared that the jurisdiction of the High Court shall extend to the territorial waters.
- (3) Subject to the provisions of this Act, the jurisdiction of the High Court shall be exercised in conformity with the written laws which are in force in Tanzania on the date on which this Act comes into operation (including the laws applied by this Act) or which may hereafter be

applied or enacted and, subject thereto and so far as the same shall not extend or apply, shall be exercised in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the twenty-second day of July, 1920, and with the powers vested in and according to the procedure and practice observed by and before Courts of Justice and justices of the Peace in 3 | Page England according to their respective jurisdictions and authorities at that date, save in so far as the said common law, doctrines of equity and statutes of general application and the said powers, procedure and practice may, at any time before the date on which this Act comes into operation, have been modified, amended or replaced by other provision in lieu thereof by or under the authority of any Order of Her Majesty in Council, or by any Proclamation issued, or any Act or Acts passed in and for Tanzania, or may hereafter be modified, amended or replaced by other provision in lieu thereof by or under any such Act or Acts of the Parliament of Tanzania: Provided always that the said common law, doctrines of equity and statutes of general application shall be in force in Tanzania only so far as the circumstances of Tanzania and its inhabitants permit,..." The Counsel for the Applicant Mr. Florence Tesha said he filed the application under the JALO, and under the general and discretionary powers of the High Court given under section 68 (c), and (e), and section 95 of the Civil Procedure Code because there 4 | Page are no provisions under the written laws for an order of interim injunction if there are no pending suit in Court. He said, although he did not title the application as the mareva injunction, but the application is mareva, and that the High Court under the general powers given under section 5 and 2 of JALO can entertain and issue the mareva injunction pending the filing of the suit. A Mareva injunction, also known as a freezing or asset protection order is a type of interlocutory injunction which prevents a defendant/respondent from dealing with the whole or part of their assets (i.e., by moving assets abroad or dissipating them) while legal proceedings are ongoing. Mareva injunctions are therefore used to protect the plaintiff's potential right to access an effective and just remedy at the conclusion of proceedings, ensuring that court process and justice are respected. In the written laws, this kind of remedy can be obtained by an attachment order before judgement provided for under Order XXXVI of the Civil Procedure Act, Cap 33 RE 2019. Mareva orders are legislated in the United Kingdom but not available in Tanzania Written Laws. The power to make such an 5 | Page order is derived from the inherent jurisdiction of the High Court, so argues Counsel Florence Tesha. To get the mareva order the applicant must show that he has a good arguable case and to prove that the judgment is in danger of being unsatisfied in whole or in part due to the removal or disposal or dealing of the or to and the Court also maintains its discretion to issue a Mareva injunction where it would be in the interests of justice to do so. Can Mareva injunction be issued by the High Court, Land Division of Tanzania, in the absence of a suit, this issue shall not be discussed in this Ruling. The application was served onto the respondents, and they entered appearance and took objection on jurisdiction of the High Court, Land Division to entertain the application saying that the application emanated from administration of revenue laws, and only the Tax Revenue Board is having sole and exclusive jurisdiction to entertain tax disputes. The Counsel for the respondents Mr. Gallus Lupogo, State Attorney, said, section 7

of the Tax Revenue Appeals Act, Cap 408 R: E 2002 ousted the jurisdiction of the ordinary Courts, High Court in particular from entertaining and determining matters 6 | Page emanating from revenue laws. Counsel Lupogo argues that since the affidavit of the applicant in support of the application, in particular annexure BPL-2 states that the premises at dispute are under TRA warrant of Distress and are in TRA custody, that BPL facilities are still under TRA custody as a result of Warrant of Distress that was issued by TRA on 14/03/2017 against BPL for purposes of Tax Debt Collection, and by Annexure BPL-2 to the applicants affidavit, the applicant was asking the respondents to lift the Warrant of Distress and hand back the BPL facilities to the Applicant the counsel argues that from the applicant's own pleadings, the issue at hand in the application falls under the revenue laws, and the proper forum would have been the Tax Revenue Board. The Counsel cited the case of Tanzania Revenue Authority vs New Musoma Textile Limited, Civil Appeal No. 93 of 2009, (unreported) in which the Court of Appeal had ruled that "since the dispute is over the goods which were restrained by TRA by a distrained good order, then the Commissioner General was in the exercise of his powers under the VAT Act, and whatever claims arises out of the exercises of those powers, in the view of the Court / I k age of Appeal, was a dispute arising from that particular revenue laws, and therefore justiciable in the Tax Appeals Board." In the end, the Justices of Appeal at page 11 and 12 of the typed judgement had held that, "the High Court had no powers to determine a dispute of a civil nature in respect of a dispute arising from a revenue law." The Counsel for the respondent also referred this Court to the case of Tanzania Revenue Authority vs Tango Transport Company Limited, Civil Appeal No. 84 of 2009, (unreported), the Court of Appeal sitting at Arusha. In this case Tango Transport Limited sued the TRA at the High Court for general damages, restoration of the value of its properties, interests and costs arising out of a sale by public auction the vehicles of Tango Transport which were held by TRA by a warrant of distress. In deciding the matter, the Court of Appeal at page 3 of the typed proceedings had held that "a question of jurisdiction can be taken at any stage of the proceedings, even on appeal", and at page 6 of the typed judgement, the Court of Appeal said that "the High Court eclipsed its authority by entertaining and determining chief issues on tax assessment and liability that were legally outside its competence." The Court of Appeal held at page 12 and 13 of the typed o I r age judgement that "all considered with respect, the High Court by entertaining and determining the tax dispute between the parties travelled beyond its jurisdiction, which was expressly ousted by the specific forums established under the Income Tax Act. It erroneously crowned itself with jurisdiction that it did not possess in entertaining and determining this suit, which was fundamentally a tax dispute." The Counsel for the respondents also referred the Court to the case of Bryson Bwire Mbonde vs Tanzania Revenue Authority, Civil Appeal No. 88 of 2018, (unreported) Court of the Appeal Sitting at Mwanza in which the Court of Appeal said section 7 (1) of the Civil Procedure Code, Cap 33 R:E 2019 confers to the High Court jurisdiction to try all suits of civil nature but the same provisions bars the High Court to try cases which their cognizance is expressly or implied barred. The Court of Appeal continued to say at page 9 of the decision that "all proceedings of a civil nature arising out of disputes from revenue laws administered by the respondents ought to be dealt with by the Board; The

Court of Appeal continued to hold at page 11 of the typed judgement that "on our part, we hold the view that the type of relief does not 3 I rage determine the jurisdiction. Thus, the claim for compensation may not have been listed in the provision but the controlling provision remains to be section 7, therefore, that, any proceedings of a civil nature arising from the respondent's administration of revenue laws ought to be determined by the Board. In the end, the Counsel for the respondent prayed for the Court to dismiss the application as the High Court lacks jurisdiction to try it. He also prayed for the costs. Advocate Florence Tesha resisted the preliminary objection with force saying that the Counsel for the respondent had misconceived the nature of the application. That the claims they intend to file is not emanating from administration of revenue laws, but it is for rentals as the respondents have been utilizing the applicant's premises without paying rents. He also said that the respondents ought to have filed the affidavits before taking the objection on jurisdiction, and counsel for the respondent cannot be heard on facts which are not on records. That the courts cannot be guided by the mere statements from the bar. 10 | P a g e The Counsel for the applicants distinguishes the cases cited by the applicants on jurisdiction and said paragraph 3,4,5 and 6 of the affidavits of the applicant in support of the application shows that the applicant is the legal owner of the property in dispute, and they operate the factory. For Four Years and 3 months now, the respondent has been using the factory. The Counsel for the Applicant admits in his submissions that the Tanzania Revenue Authority "TRA" took possession of the disputed premises since there was a tax claim and under a distraint warrant but argues that in the intended suit the issue to be determined is not a tax issue but issues of rentals. The Counsels argues that paragraph 5 of the affidavit of the applicant and annexure BPL4 attached to the affidavit shows that there are no issues of tax in the intended suit. The Counsel for the applicant cites section 5 of the JALO, and says the High Court has general powers to hear and determine all issues conferred on the High Court, and so it has powers and jurisdiction to hear and entertain the present application. The Counsels argues the application is not on administration of revenue laws. 11 | P a g e In rejoinder, Counsel for the respondent argues that they raised an issue on jurisdiction, and issues on jurisdictions can be raised at any time of the proceedings, even on appeal. The Counsel insisted that the applicant could have his application heard by the Tax Appeals Board as section 27 of the Tax Revenue Appeal Act, the party is allowed to file an application before the Board by way of a chamber summons supported by the affidavit. The Counsel argues that there is no need of disturbing the jurisdiction of the High Court by imposing the jurisdiction which is expressly ousted by section 7 of the Tax Revenue Appeals Act, Cap 408 R: E 2019. The Counsel also argues that it is from the pleadings of the applicant from which the issues of jurisdiction have been gathered. The applicant's own affidavit and annexures shows that the respondent issued a distress warrant over the property of the applicant and seized the properties for there was a tax claim, and this application and the intended suit is a result of the distress warrant, which is the administration of the revenue laws by the respondent. The Counsel rests his submissions by praying before the Court to dismiss the application, with costs. 12 | P a g e I understand that the procedure for raising preliminary objections on points of law is that the Respondent or Defendant files a statement of defense

wherein the point of law is raised or if it is an application, the Respondent shall canvass the objection in the Notice of Preliminary Objection. The law is trite that an objection that a Court has no jurisdiction to entertain a matter or action is a fundamental one and it can be raised at any stage of proceedings in the High Court, the Court of Appeal or at the trial Court by the parties or Suo moto or by the Court itself. It is advised that because the issue of jurisdiction is regarded as a threshold issue and a lifeline for continuing any proceedings, objection to it ought to be taken at the earliest opportunity and a decision should be reached on it before any other step in the proceedings is taken, because if there is no jurisdiction, the entire proceedings are a nullity no matter how well conducted. However, a trial without jurisdiction is a nullity and the importance of jurisdiction is the reason why it can be raised at any stage of a case, be it at the trial, on appeal to the Court of Appeal or before any steps have been taken in the suit or application. Thus, it was correct on the part of the respondent to take up the issue of jurisdiction at the earliest stage of the 13 | P a g e proceedings before taking any other step in the proceedings, and that the Court was well within its ambit to entertain the issue of jurisdiction before embarking into the proceedings. The Counsel for the applicant did not state any facts which are not in the records, the issue of jurisdiction has been gathered from the applicant's own pleadings and annexures. From the annexures attached to the applicant's affidavit, the respondent took possession of the applicant's premises under the distress order. The applicant was notified by the Commissioner General of TRA under a distress warrant for payments of taxes. The Commissioner General of TRA has the powers to also seize and sell personal property of the individual or business to satisfy the delinquent taxes. If a person is aggrieved by the acts or decision of the Commissioner General exercising his powers on the administration of the revenue laws, the proper forum is the Tax Revenue Board. Section 7 of the Tax Revenue Appeal Act have ousted the jurisdiction of the High Court to try any civil action which involves issues of taxes. I am in total agreement with the holding of the Court of Appeal decisions cited by the Counsel for the respondents, that, the Tax Revenue Board has been conferred 14 | P a g e with sole and exclusive jurisdiction to entertain matters involving revenue laws, and not only issues of assessment of taxes but all other issues of civil nature arising out of administration of revenue laws. The claim of the applicant in this application and in the intended suit which is an issue whether the Commissioner General Distress Order has ceased to have effect and that the applicant is entitled to rentals falls exclusively under the revenue laws of which this Court's jurisdiction has been expressly ousted by section 7 of the Tax Revenue Appeals Act. Since the Commissioner General of TRA levied distress on personal property of the applicant for arrears of taxes due to TRA, the applicant could either apply for the lifting of the distress warrant, or pay the taxes due or commence action for recovery of property at the Tax Appeals Board. The applicant filed the application at the Court which does not have the jurisdiction to try disputes emanating from the powers of the Commissioner General of TRA exercising his powers of administration of Revenue Laws. 15 I P a g e In conclusion, therefore, the objection on jurisdiction of this Court, taken by the Counsel of the respondent is upheld. This Court has absolutely no jurisdiction to try and entertain disputes of civil nature arising from revenue laws administered by the Tanzania

Revenue Authority. In the result, the application is dismissed with costs. DATED AND
DELIVERED AT DAR ES SALAAM THIS 07th DAY OF OCTOBER 2021 JUDGE 07th OCTOBER
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