

TANZANIA / JUDGMENT

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IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA (DAR ES SALAAM-SUB REGISTRY) AT PAR ES SALAAM CIVIL CASE NO. 11277 OF 2024 BETWEEN C-LABS(TZ) LIMITED APPLICANT VERSUS THE HONOURABLE ATTORNEY GENERAL 1[®] DEFENDANT THE SOLICITOR GENERAL 2[™] DEFENDANT THE DIRECTOR GENERAL, TANZANIA REVENUE AUTHORITY FAST DEPARTMENT 3[™] DEFENDANT EZEKIEL MICHAEL BENJAMIN 4[^] DEFENDANT HAMZA SAID ISSA 5[™] DEFENDANT SULEIMAN SAID ISSA 6[™] DEFENDANT MOHAMED SAID ISSA 7[™] DEFENDANT

RULING

S. M. MAGHIMBI. J. In this suit, the Plaintiff's claims against the Defendants jointly and severally are for;

1. A declaration that the Plaintiff is a lawful owner of a Motor Vehicle which have registration number T845 DEH, Chassis No. 326359525, Mitsubishi Model Canter, body type; Truck White;
2. A declaration that auction of the said motor vehicle by the 3[™] 1 Defendant was unlawful and illegal;
3. An order for payment of compensation to a sum of Tshs. 29,000,000/= (Twenty-nine million) being replacement costs for the unlawfully auctioned motor vehicle;
4. Payment of a sum of Tshs. 50,000,000/= (fifty Millions) being loss of business for a period from 20[^] July, 2021 to the date of this suit;
5. General damages as the Court may assess,
6. Interests,
7. Costs of the suit and;
8. Any other relief as the court may deem just and fit to grant. On the hand, in filing their Written Statement of Defence, a preliminary Objection has been raised by the 1[^], 2[™] and 3[™] defendants on points of law that:

1. This Court has no jurisdiction to entertain this matter which emanated from a Tax Dispute contrary to the provisions of Tax Revenue Appeal Act [Cap 408 R. E. 2019] and part VII of the Tax Administration Act[Cap 438 R. E. 2019]
2. This suit is untenable and bad in law for being hopeless time barred contrary to Item 1 of Part I of the Schedule to the law of limitation Act [Cap. 89 R.E 2019].
3. The suit is untenable and bad in law for the Plaintiff has instituted a case against a non-existing party (the 3rd Defendant). It was the 1st, 2nd and 3rd defendants' prayer that the Court sustain the points of objection. Disposal of the objection was by way of written submissions. The 3rd defendant's submissions were drawn and filed by Ms. Grace Lupondo, learned Senior State Attorney while the plaintiff's submissions were drawn and filed by Mr. Elirehema Machuve, learned Advocate. Starting with the first point of objection, Mr. Lupogo submitted that the question of jurisdiction is basic as it goes to the root of the authority of the Court to adjudicate upon a case. That the question of jurisdiction is so fundamental that Courts must, as a matter of practice, first assure itself to have jurisdiction over a matter before commencement of the trial. On another angle, she also submitted on the pleadings where she argued that parties are bound by their pleading. She invited the Court to look at the Plaintiffs' pleadings under paragraphs 9, 13, 16, 18 and 19 where the plaintiff claims against the 1st, 2nd and 3rd defendants jointly and severally on cause of action that arose on the 20/07/2021 after the 3rd defendant ceased and confiscated the plaintiff's motor vehicle on allegation that the said motor vehicle was illegally imported into the country contrary to the customs laws. It was the assertion of Ms. Lupondo that, all along in the pleadings, the cause of action was pegged on the ownership and manner in which the motor vehicle was imported and whether the importation was in accordance with law, here in customs law. Ms. Lupondo then invited the plaintiff and this Court to a crucial point of deliberating as to whether the High Court has jurisdiction to entertain the cause of action emanating from Customs laws. Her argument is that the source of all these claims is the Commissioner General since he is the one commissioned to make tax law that directly affects a person. She supported her submissions by citing the provisions of Section 50 of the Tax Administration Act [Cap. 438 R.E. 2019]. She then elaborated that under paragraph 15 of the pleadings, the pleadings are deemed to show that the plaintiff was aggrieved by the conduct or acts made by the 3rd defendant and submitted their claim to the police station. That this move could not stop the Plaintiff from filing his complaint to the Commissioner General. It was submitted further that the plaintiff ought to have known the existence of the tax disputes resolving mechanism as provided for under the Tax Administration Act and the Tax Revenue Appeals [Act Cap. 408 R. E. 2019]. That the laws cited vest exclusive jurisdiction in what can be referred to as tax courts to the Tax Appeals Board, the Tax appeals tribunal and the Court of Appeal. She then argued that the Plaintiff could also have been accorded the right to be heard by filing an objection before the Commissioner General towards the decision of confiscating his motor vehicle and the same would have been determined. Ms. Lupondo referred this Court to the case of Commissioner General Tanzania Revenue Authority & Another vs Milambo Limited (Civil Appeal No. 62 of 2022)[2022] TZCA 348(14

June, 2022) at page 18 where it was held: - ".....Jurisdiction is a creature of statute and not the disliking of questions of civil nature, the exclusion of jurisdiction of civil courts is not to be readily interfered and such exclusion must either be explicitly expressed or clearly implied. See Justice Singh G.P in a treatise titled "Principle of statutory interpretation", 5th edition, 2001 at page 581. She then argued that with the holding of the Court, the Plaintiff ought to have resorted to his claim and complaints to the tax disputes resolving mechanisms as provided for under the TAA [Cap. 438 R.E 2019] and the Tax Revenue Appeal Act [Cap. 408 R.E 2019]. Also, considering the principle of law that Courts would not entertain a matter for which a special forum has been established and since tax disputes have an exclusive forum to deal with matters arising out of tax, this court has no jurisdiction. She therefore prayed for the suit to be dismissed on that ground. In reply, Mr. Machuve submitted that the present suit is NOT a tax dispute as the learned state attorney has tried to impress. That paragraphs 9, 13, 16, 18 and 19 of the Plaint do not contain any fact connected to a tax dispute as alleged. He elaborated that the reasons for his argument are not hard to fetch. Firstly, he submitted, the present dispute is not against the 3rd defendant alone. It is also against the 4th defendant (a seller of the disputed motor vehicle to the Plaintiff) and that such claims cannot be covered under the TAA. If at all there was a tax dispute (which there is none), the same could be between the 4th Defendant and the 3rd Defendant, and not the Plaintiff. Mr. Machuve submitted that a mere plea that the 3rd Defendant seized and confiscated the disputed motor vehicle does not render this case a tax dispute. That there is no any tax decision which the Plaintiff is challenging. He went on submitting that in its Written Statement of Defence, the 3rd Defendant has neither stated, nor attached any tax decision which would be in nexus with the present suit. Thirdly, he submitted, if at all the present suit has anything to do with revenue laws, the same cannot be ascertained as a preliminary objection because it calls for interrogation of facts. Under such circumstances therefore, he concluded that the preliminary objection automatically fails. He then cited the case of *Salvatory Nicholas Mbishi vs Tanzania Revenue Authority* (Civil Appeal No. 09 of 2023) [2023] TZHC 21878 (18 October 2023) Tanzania, when confronted with facts more or less similar to the present ones, the High Court held as follows from page 12 to 14 of the typed judgment of the Court: '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 out by appellants 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 cards over two different vehicles with the same registration number is not a decision as per above law, but rather 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 of 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." Having heard the parties, my determination will be from two angles, whether the current dispute in relation to the claim and in answer to that there will be an issue, if the same is not a tax dispute whether I will have jurisdiction to determine whether the defendants can be sued as parties in a claim arising out of their duties mandated to them under the tax laws. There the issue of jurisdiction would have been properly exhausted. The issue whether the defendants can be sued arises from Ms. Lupogo's submission that the plaintiff's claim would have been taken against the 4th to 7th defendants. To begin with, as submitted by Ms. Lupogo, jurisdiction is a creature of statute. It cannot be presumed, assumed or conferred by parties to the case. It is fundamental that the court satisfy itself that it has jurisdiction before any attempt to determine the case for, any matter decided by a court without jurisdiction is a nullity. Jurisdiction of Courts is of various categories as established by the laws taking into consideration of the nature of a case. It could be territorial, pecuniary or jurisdiction with regards to exclusivity of certain matters of certain nature i.e commercial cases, family issues and the like. It has to be taken into consideration that facts and nature of a case will be the one that determines jurisdiction of the Court. And parties have no choice but abide to the directives of the law when it comes to jurisdiction. In the case of Attorney General vs Lohay Akonaay and Another [1995] TLR page 80 it was stated that: courts would not normally entertain a matter for which a special forum has been established unless the aggrieved party can satisfy the Court that no appropriate remedy is available in the special form Again, the case of Inspector General of Police and Another vs; EX-B 83565/SGT Sylvester Nyanda Civil Appeal No. 369 of 2019 was cited whereby the Court held that: - "Where the law provides for a special forum, Ordinary Court should not entertain such matters". Therefore, it is important that I determine the objection on jurisdiction before I proceed with other objections. In determination, I will be guided by the contents of the plaint filed before this on the facts contained therein. Under paragraph 9 of the plaint, the Plaintiff claims for compensation against the defendants jointly and severally for a declaration that Motor vehicle with registration No. T 845 DEH, Chassis No. 326359525 Mitsubishi Model Canter is his lawful property. And, also that the auction ordered by the 3rd defendant was unlawful

and illegal, An order for payment of Compensation to a tune of Tshs. 29,000,000/= being replacement costs for unlawful auctioning his motor vehicle and Tshs 50,000,000/= for loss of business. Looking further in the facts contained in the plaint, one may question as to what was the cause of action that arouse or triggered the request of these declaration orders against the defendants above. The Plaint is explicit under paragraph 13 that the above claims arise from the acts of the 3rd defendant who is said to have, on 20/07/2021, ceased and thereafter confiscated the plaintiff's motor vehicle on the allegation that the same was illegally imported contrary to the customs laws. It is from here jurisdiction of this matter has to be ascertained. Having gone through the records, in paragraphs 9, 13, 16,18 and 19 the plaintiff herein pleaded on the claim against the defendants. It was averred that the Plaintiff's claims against the 1st, 2nd and 3rd Defendants are jointly and severally after the 3rd Defendant ceased and confiscated the Plaintiffs' Motor Vehicle on allegation that the said Motor Vehicle was illegally imported. The illegal importation was pegged on the position that it contravened Custom Laws. Therefore, in principle, the plaintiff's claim 10 is on ownership of the motor vehicle allegedly illegally confiscated by the 1-3rd defendants. The deprivation of ownership was confiscation and sale and the laws that the 3rd defendants were enforcing were Customs Law. The issue here Is whether the court has jurisdiction at this stage to determine a matter of violation of customs laws or whether the plaintiff had alternative remedy. Having considered the gist of the claim of the plaintiff against the defendants, my attention shifted to the contents of the pleadings particularly para 10-13 of the plaintiff where the plaintiff pleads; JO. That on 27/07/2018, the Plaintiff purchased a Motor Vehicle which have registration number 7845 DEH, Chassis No. 326359525 Mitsubishi Model Canter, body type; Truck White from the 4th Defendant at a purchase price of Tshs. 27,000,000/=. (Copy of sale Agreement and ID of SELLER are attached hereto and marked annexure "CT-1" and leave of the court Is sought so that It forms part of the Plaint).

11. That, upon purchasing the above motor vehicle, the Plaintiff successfully transferred ownership from the 4th Defendant Into the Plaintiffs name. (Copy of Motor Vehicle Registration Card is attached hereto and marked annexure "CT-2" and leave of the court is sought so that it forms part of the Plaint).
12. That, the Plaintiff kept using the motor vehicle for his company activities without any problem, where, the motor vehicle was used to carry goods and products within and outside Tanzania.
13. That, surpassingly on 20/07/2021, the 3rd Defendant ceased, and 11 thereafter confiscated the Plaintiffs motor vehicle stated above on the allegation that the motor vehicle was illegally imported into the country contrary to customs laws." The contents of the cited paras are clear that the plaintiff would not be in a better position to detail on the facts of the purchase of the motor vehicle because as the facts goes, it was the 4th defendant who imported the car and register it and thereafter sold the same to the plaintiff. Therefore, the person in better position to answer the details is the 4th defendant. Hence the plaintiff's

claim should be burdened to the 4th defendant whom as per the facts, sold the plaintiff a car that was illegally imported to the country. That being the case, and on that footing, the plaintiff would have no direct cause of action against the 3rd defendants. The illegal importation would have been done by the 4th defendant and thereafter sold the illegally imported car to the plaintiff. That being the case and, on that footing, I find it that the plaintiff has no cause of action against the 3rd defendants hence they were improperly sued, hence a misjoinder of parties. The next question is on the remedy to the misjoinder. The law is clear under Order I Rule 9 that a suit shall not be defeated by reason of the misjoinder of parties. The court dictates that the court may in every suit deal with the matter in controversy so far as regards the right and interests of the parties actually before it. As for the case at hand, much less as an order for amendment of the plaint would have sufficed the remedial measure, but under the circumstances, the amendments will result in substantial change in facts that it would defeat the purpose of the claim originally lodged in this court. That being the case, the proper remedy is to strike out the suit so that the plaintiff may refile another suit suing proper parties in their capacity and contribution to the claim beforehand. In the event therefore I find that this first objection, although on different reasoning and finding, the plaintiff has no cause of action against the 3rd defendant to bring them to action in this court. The objection is therefore sustained. Having sustained this objection, I see no need to determine the remaining objections. This suit is hereby struck out with no order as to costs. Dated at Dar es Salaam this 08th Day of November, 2024

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