H/C Iringa



**(DC) CIVIL APPEAL NO. 5 OF 2007**

**(ORIGINAL SONGEA DISTRICT COURT
CIVIL CASE NO 15 OF 2006.)**

**MBINGA COFFEE CURING CO. LTD..............APPELLANT
VERSUS
TANZANIA REVENUE AUTHORITY..............RESPONDENT.**

**6/9/2007 HEARING CONCLUDED
13/12/2007 JUDGMENT DELIVERED.**

**JUDGMNT.**

**L.M.K. UZIA, J.**

Mbinga Coffee Curing Company Limited appealed against the decision of the District Court of Songea where the suit was decided in favor of Tanzania Revenue Authority.

The memorandum of appeal contain three grounds only, which are summarized as follow.

1. That the Trial Magistrate erred in law when he failed to write a reasoned judgment.
2. That, the trial Magistrate failed to appreciate the appellant's legal arguments raised in the submission as a result he failed to make any finding and decision on them.
3. That the trial Magistrate erred in law in holding that

his court had no jurisdiction to entertain the appellants claims before him.

In reply to the memorandum of appeal, the respondent, Tanzania Revenue Authority maintained that, the District Court ruling was right that Civil courts lacked jurisdiction to entertain cases involving laws administered by Tanzania Revenue Authority. Briefly the facts of the case are as follow:

The appellant claim against the respondents a refund of sum of Tshs. 11,626,165 being outstanding balance out of Tshs. 13,469,616/= wrongly collected from the appellant bank accounts with the CRDB at Songea and Mbinga branches, interest thereon at the prevailing Commercial rate and Tshs. 5,000,000/- as general damages. It is further alleged that during 1998/1999, year of income, the plaintiff earned a sum of Tshs 38,2002,688/75. as interest on its fixed deposit accounts held with the CRDB Bank at Mbinga and Songea which amount was assessed and charged to tax by the defendant at the tune of Tshs. 13,469,616/=.

The said tax of Tshs. 13,469,616/= was by law payable to the respondent by the said CRDB Bank for and on behalf of the plaintiff by way of holding Mechanism after the same had been deducted from the said plaintiffs earned interest of Tshs 38,2002, 688/75, but the said CRDB bank either failed to or delayed in remitting and paying to the defendant the said charged tax of Tshs. 13,469,616/- subsequent to the said CRDB failure and/on delay in remitting distrained upon the plaintiffs bank Accounts with the said CRDB at Mbinga and Songea branches whereby he confiscated there from a sum of Tshs. 4,521,217 and 8,948,348.41/- respectively, all totaling to Tshs. 13,469,616/- this allegedly being a recovery measure of the outstanding withholding tax and interest thereon which was payable.

On other hand the respondent, Tanzania Revenue Authority, contended that the appellant was supposed to pay Tshs. 13,469,616/ for that matter, the decision of the District Court was right, because Civil courts had no jurisdiction in entertaining cases involving laws administered by Tanzania Revenue Authority.

On 6th/9/2007 this court granted leave for both parties to give their submission in writing. Mr. Mkwata advocate for the appellant, argued in his written submission that the judgment of the lower court was offensive of the mandatory provisions of the law, it was not supported by any reasons. It was legally faulty and the same ought to be set aside. He further argued that, salient issues were not covered, one of them was whether the act done by the Tanzania Revenue Authority was ultra wires that means the Authority acted beyond its powers in taking Tshs. 13,469,616/= from the appellant. The appellants advocate submitted that the Authority acted ultra - vires, he further argued that in such cases a litigant could be permitted to go to the ordinary Courts in conformity with the trite in practices under judicialism. The learned counsel cited to this court well known principle of law as propounded by the evident jurist DF. Mulla that it is always for the civil courts to determine in the last resort the limits of the powers of a court of special jurisdiction.

On the other hand, counsel for Tanzania Revenue Authority, one Justina Tumain Mashiba, informed the court by way of written submission that section seven (7) of the Tax Revenue Appeals Act, Cap 408 R.E. 2002, gives Tanzania Revenue Authority sole original jurisdiction in all proceedings of civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority.

She also cited to this court section 6 of the Tanzania Revenue Authority Act, Cap 399 R.E. 2002 which provides as follow.

> *" Any person who is aggrieved by the decision of the Commissioner General in relation to any act or omission in the course of the discharge of any function conferred upon him under the law set out in the first schedule to this Act, may appeal to the Board in accordance with the provision of the Tax Revenue Appeal Act."*

She further submitted that the respondent was required under the law to realize from the appellant the outstanding Government revenue in tune of Tshs. 13,467,616/=, that's why the respondent through the commissioner for income Tax invoked the provisions of section 3(2)(b) reading together with section 33(3)(A), and section 103 of the income Tax At No. 33 of 1973 (repealed, which was among the laws administered by the Respondent.), to realize such amount.

There were also some decided cases which were also cited by the counsel for consideration by this court, ie Mohsin Somji vrs Commissioner for customs and excise, commercial case No. 287 of 2007 (unreported) and Tanzania Breweries Company Ltd versus Tanzania Revenue Authority, Commercial case No. 260/2001. (unreported)

In short, the two decisions, conveyed a massage that courts jurisdiction is ousted in cases arising from laws administered by Tanzania Revenue Authority (respondent in this appeal) According to the section 5 A R.E. of Cap 399, a person aggrieved by the decision made by the commissioner General may appeal to the Board. Since the appellant has been aggrieved by the Commissioners decision of attaching appellants bank accounts so as to recover tax, therefore this matter should be referred to the Board and not ordinary Courts of law.

Indeed, both counsels have argued in their written submission at length, giving this court a lot of information regarding the appeal itself. According to what appears in the record, I hold the view that the trial court was right in deciding that it lacked jurisdiction in entertaining the matter, I now give reasons.

(i) Section 7 of the Tax Revenue Act Cap 408 R.E, 2002, is very clear on the issue, there in no doubt courts jurisdiction is ousted. The sole original jurisdiction in all proceedings of civil nature in respect of dispute arising from revenue laws is vested in the Board.

(ii) When the Tanzania Revenue Authority invoked the provisions of section 3(2)(b) reading together with section 33(3) (A), and section 103 of the Income Tax Act No. 33 of 1973 in order to realize from the appellant the outstanding Government revenue to tune of Tshs. 13,467,616/= was not acting Ultra - vires. That is to say going beyond the power of the Authority.

I therefore I hold that, the District Court was not a proper forum to challenge the decision made by Tanzania Revenue Authority.

For the above stated reasons, this appeal fails, it is devoid of merit, I dismiss it with costs.

L.M.K. UZIA

JUDGE

13/12/2007.