

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM
(CORAM: KIMARO, J.A. MBAROUK, J. A. and MSAJIRI, J.A)**

CIVIL APPEAL NO. 86 OF 2008

SAMSON NGW'ALIDA APPELLANT

VERSUS

THE COMMISSIONER GENERAL

TANZANIA REVENUE AUTHORITY

RESPONDENT

(Appeal from the judgment and decree of the Tax Appeals

Tribunal at Dar es Salaam)

(Shangwa, J.)

Dated the 30th day of May, 2008

in

Customs and Excise Appeal No. 9. 2 of 2008

JUDGMENT OF THE COURT

3 & 16 November, 2011

KIMARO, J. A.:

The appellant is a businessman stationed in Mwanza. On 12th October, 2006 his offices at M/S Nyanza Cotton Oil Company Ltd

were searched by the officers of the respondent. A variety of goods worth Tshs.843,160,288.43 were put under guard allegedly for suspicion that they were uncustomed. On the following day, that is 13th October, 2006 the goods were taken away by the officers of the Appellant and stored at the offices of the respondent. What followed later on 20th October, 2006 was issuance of seizure notice to the appellant. On 17th November, 2006 the appellant claimed for the return of the goods but the respondent refused to honour his claim. Subsequently, the appellant was, through a letter dated 23rd March, 2007 with Reference No. TRA/RM/MZA/C.7/8 from the respondent's Regional Manager at Mwanza, required to appear before him for purposes of compounding the appellant's offence under section 219 of the East African Community Customs Management Act, 2004 and section 48 of the Value Added Tax Act, 1997. The appellant was also warned that, if he failed to appear, the goods would be forfeited under section 210 of the East African Community Customs Management Act, 2004 without further notice. The appellant did not appear before the respondent's Regional Manager. Instead, he did, on 23rd April, 2007 lodge a notice of intention to appeal against the decision taken by the respondent to seize his goods in the Tax

Revenue Appeals Board. Later, he filed Customs & Excise Tax Appeal No. 3 of 2007 which however, was dismissed.

Dissatisfied with the decision of the Tax Revenue Appeals Board, the appellant appealed to the Tax Revenue Appeals Tribunal. At the Tax Revenue Appeals Tribunal the appeal was not heard on merit. The Tribunal was of the opinion that it had no jurisdiction to deal with the matter. Its reasoning was that under section 230 of the East African Community Customs Management Act, 2004 which became effective on 1st January, 2005 Tanzania being one of the Partner States forming the East African Community was supposed to form a Tax Appeal Tribunal under section 231 of the Act for dealing with tax related matters. Since Tanzania had not formed such a tribunal under the said law, and the appellant having been aggrieved by the decision of the Commissioner, which was made under section 229 of the act, the remedy that was available to him was to appeal to the High Court of Tanzania under section 252 (6) of the Act. This decision of the tribunal was arrived at without giving the parties an opportunity for addressing the issue. Having formed that opinion, the Tax Revenue Appeals Tribunal dismissed the appellant's appeal and nullified the proceedings of the Tax Revenue Appeals Board.

The appellant was advised to appeal to the High Court of Tanzania against the decision of the Commissioner for refusing to release his goods.

Aggrieved by the decision of the Tax Revenue appeals tribunal the appellant had filed this appeal. Initially the appellant filed six grounds of appeal, but at the hearing of the appeal he abandoned two grounds and remained with four grounds. The grounds of appeal now are as follows:-

- (a) The Tax Revenue Appeals Tribunal erred in law in holding that the Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal respectively established under sections 4 (1) and 8 (1) of the Tax Revenue Appeals Act, 2000 have no jurisdiction to deal with Appeals/disputes arising from the administration of the East African Community Customs Management Act, 2004 regarding uncustomed seized goods.
- (b) That the Tax Revenue Appeals Tribunal erred in law in holding to the effect that the object of the

provisions of section 230 (1) of the East African Community Customs Management Act, 2004 is to establish a Tax Appeals Tribunal parallel to the existing Tax Revenue Appeals Board and Tax Revenue Appeals Tribunal respectively established under sections 4 (1) and section 8 (1) of the Tax Revenue Act, 2000.

- (c) That the Tax Revenue Appeals Tribunal erred in law in holding that an appeal against the decision of the Respondent on seized uncustomed goods directly lies to the High Court of Tanzania.

- (d) The Tax Revenue Appeals Tribunal erred in law for failure to act judiciously and not properly directing itself in dismissing the Appellant's appeal on the ground that was not raised by any of the parties to the appeal and even without calling upon them to address a ground that had been raised suo not by the Tax Appeals Tribunal in the absence of the parties.

During the hearing of the appeal the appellant was represented by Mr. Constantine Mutalemwa learned Advocate and the respondent by Mr. Felix Haule, learned Advocate. They also advocated for the parties in the Tax Appeals Board and the Tax Revenue appeals Tribunal.

The Appellant's Advocate argued the appeal going by the grounds of appeal seriatim. However for purposes of coherence in this judgment it is worthy dealing with the first and second grounds together. In fact the second ground of appeal should have been the first because it gives a foundation of the making a decision on the first ground of appeal. In support of the second ground of appeal, the learned Advocate for the appellant said the Tax Appeals Tribunal gave a wrong interpretation to Sections 230 and 231 of the East African Community Services Customs Management Act. He said the Act falls in the first schedule to the Tanzania Revenue Authority Act and it is among the laws which govern the administration of taxes in the country. Under section 230 of the customs Act, submitted the learned advocate, a party aggrieved by the decision of the Commissioner made pursuance to section 229 of the Act has a right

to appeal to the Tax Revenue Appeals Tribunal formed under section 231. Reading sections 230 (1) and 252 (6) together the learned Advocate said, there are three matters which come out. One is that each partner state has to establish a Tax Appeal Tribunal to hear tax appeals. Two, where such a tribunal is not yet established, a person aggrieved by the decision of the Commissioner made under section 229 of the Customs Act has to appeal to the High court. Three, where such tribunal is already in existence then tax appeals should go to the already established tribunals. He said the East African Community Customs and Management Act was assented to on 1st January, 2005. By then the Tanzania Revenue Authority Act, [CAP 399 R. E. 2006] was in operation. Also in operation, were the Tax Appeals Board and Tax Appeals Tribunal. The learned Advocate for the appellant said section 230 of the East African Community Customs Management Act did not mean to establish other Tax Appeals Tribunal to run parallel to the ones already in existence at the time the Act became operative. In this respect, argued the learned advocate, the tribunal had jurisdiction to hear the appeal. He prayed that this ground of appeal be allowed.

On his part the learned Advocate for the respondent supported the appeal. He conceded that at the time the East African Community Customs Management Act, 2004 became effective, both the Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal were already in existence and were working. The Tax Revenue Appeals tribunal was therefore required to hear the appeal as it had jurisdiction to do so.

The Tanzania Revenue Authority Act [CAP 399 R. E. 2006] became operative in 1995. It was enacted to establish the Tanzania Revenue Authority as a central body for the assessment and collection of specified revenue, to administer and enforce the laws relating to such revenue and to provide for related matters. The learned advocate for the appellant pointed out correctly that section 6 of the said Act gives a person aggrieved by the decision of the Commissioner - General in discharge of his functions under the first schedule to the act, the right to appeal to the Tax Appeals Board. The Tax Appeals Board is established under section 4 of the Tax Revenue appeals [CAP 408 R. E. 2006]. The Act became operative in 2001. The Tax Appeals Board has jurisdiction under section 6 of the act to hear proceedings of a civil nature in respect of disputes arising

from revenue laws administered by the Tanzania revenue Authority. Among the revenue laws failing under Cap 399 in the first schedule item, is the East African Community Customs Management Act No. 1 of 2005. Also established under CAP section 8, is the Tax Appeals Tribunal with sole jurisdiction under section 11 (1) is to hear appeals from the decision of the Tax Appeals Board on disputes on which original jurisdiction is conferred on the Board.

In rejecting the appellant's appeal the Tax Appeals tribunal said:-

"Despite the fact that the provisions of sections 230 (1) & 231 of the Act are very clear, one might be tempted to think that this tribunal is a tax appeals tribunal to which appeals from the decision of the Commissioner may lie as provided for under section 230 (1) of the act. . In our view, it would be erroneous for any person to thin k so. As a matter of fact, a tax appeals tribunal which is mentioned in section 230 (1) of the Act is different from this one and such tribunal is yet to be established in Tanzania. **Moreover, this tribunal was established under section 8 (1) of the Tax Revenue**

Appeals Act, 2000 and not section 231 of the East African community Management Act, 2004. (Emphasis added.)”

With respect, we agree that the tax Appeals tribunal misinterpreted sections 230 and 231 of the Customs Management Act, 2004. section 230 of the said Act states:

“Subject to any law in force in the Partner States with respect to tax appeals each Partner state shall establish a tax appeals tribunal for the purpose of hearing appeals against the decision of the Commissioner....”

As already indicated above, at the time the East African Community Management Act came in force in 2005 the Tanzania Revenue authority Act which was amended several times to cater for the changes that were occurring in the development of the country, was already in existence Section 252 (6) reads:-

“If at the commencement of this Act, a tax appeals tribunal is yet to be established by a Partner State as required by section 231, appeals against the decisions of the

Commissioner made under section 229 shall lie to the High Court of the Partner States” (Emphasis added).

The provision of section 252 (6) above is clear. The impression it gives is that if at the commencement of the Act a Partner State of the East African Community has established a tax tribunal, tax appeals will be continues to be heard by the already established tribunals. Otherwise while arrangements are being made to establish such a tribunal, appeals from the decision of the commissioner have to go to the High Court of the respective Partner States. Since at the time of the commencement of the East African customs Management Act the Tax Appeals Board and the Tax Appeals Tribunal were already in existence and were operative, the Tax Appeals Tribunal erred in holding that another tax appeals tribunal was required to be established to run parallel with the existing tribunal. As already indicated the Tax appeals Board is vested with power to hear disputes of civil nature arising from revenue matters in its civil jurisdiction and appeals from the Tax Appeal Board go to the Tax Appeals Tribunal. See the case of **Tanzania Revenue Authority V Kotra Company Ltd. Civil appeal No. 12 of 2009** (unreported). The Tax Appeals Tribunal

therefore erred in holding that it had no jurisdiction to hear the appeal. It was indeed the right forum for hearing that appeal. The first and second grounds of appeal have merit and they are allowed.

The third ground of appeal was covered in the process of dealing with the first two grounds.

The last ground of appeal is that the Tribunal in arriving at its decision that it had no jurisdiction to hear the appeal did not give the parties an opportunity to be heard on the matter. The issue was raised by the Tax Revenue Appeals Tribunal *suo moto* and a decision made without hearing the parties. The case of **Highlands Estate Ltd V. Kampuni ya Uchukuzi Dodoma Ltd & Another** Civil Application No. 183 of 2004 (unreported) was cited to support the complaint by the appellant that the tribunal erred in this respect. On this ground of appeal there is no need for wasting time. In the case of **Highlands** supra, the Court cited the case of **VIP ENGINEERING AND MARKETING LIMITED AND OTHERS VS CITY BANK TANZANIA LIMITED** CAT Consolidated Civil References No. 6, 7 and 8 of 2006 (unreported) to emphasize the importance of giving a party the right of hearing before making an

adverse decision against that party. In the case **VIP** (supra) the Court in arriving at its decision had quoted from another case and said:-

"The right of a party to be heard before adverse action or decision is taken against such a party has been stated and emphasized by the Courts on numerous decisions. The right is so basic that a decision which is arrived at in violation of it would be nullified...."

The tribunal was required to hear the parties before it made its decision on the question of its jurisdiction on the matter. It went against the rules of natural justice to raise the issue suo moto and then gave a decision on it without first giving the parties an opportunity to address the Tribunal on the matter. This ground has merit and it is allowed.

Following the analysis of the grounds of appeal as given above, we allow the appeal and order the tribunal to hear the appeal. On the question of costs each party agreed to bear its own costs. There is no order for costs.

DATED at **DAR ES SALAAM** this 8th day of November, 2011.

N. P. KIMARO

JUSTICE OF APPEAL

M. S. MBAROUK

JUSTICE OF APPEAL

S. MJASIRI

JUSTICE IOF APPEAL

I certify that this is a true copy of the original

(J. S. Mgetta)

DEPUTY REGISTRAR
COURT OF APPEAL