

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
CIVIL SUIT NO. 472 OF 2017

1. MBOYA HABIBU IBRAHIM
10 2. YIGA FRANK:..... PLAINTIFF

VERSUS

UGANDA REVENUE AUTHORITY:..... DEFENDANT

BEFORE: HON. JUSTICE ESTA NAMBAYO

RULING

15 The Plaintiffs, Mboya Habibi Ibrahim and Yiga Frank (hereinafter referred to as the 1st & 2nd Plaintiffs respectively, filed this suit against Uganda Revenue Authority (the Defendant) seeking for a declaration that the Defendant's seizure of their Motor Vehicle Registration No. UAH 065 V (Fuso Truck) was unlawful, an order that the Defendant returns their Motor Vehicle and that costs of this application be provided.

20 **Background to the suit**

The brief background to this suit is that the 1st Plaintiff who is the registered owner of Motor Vehicle Registration No. UAH 065V hired it out to the 2nd Plaintiff to transport merchandise for sale from the Busia Boarder to Kampala. Along the way, the Defendant's officials seized and impounded the vehicle and the goods that the vehicle was carrying.

25 On the 16th of April, 2004, the 2nd Plaintiff was arraigned before the Chief Magistrate's Court at Nakawa under the East African Community Management Act, 2004, on counts of smuggling of uncustomed goods and he was convicted and sentenced to 12 months' imprisonment. Court also ordered that his goods and motor vehicle be forfeited to the State. The 2nd Plaintiff appealed against the decision of the trial court the High Court and subsequently to the Court of
30 Appeal. The Court of Appeal ordered for a retrial at the Chief Magistrate's Court.

When the matter came up for hearing of the retrial, the Defendant did to turn up for the hearing of the retrial and the trial Magistrate dismissed the case under S. 119 MCA. It is the Plaintiffs' claim that the Defendant has failed and or refused and or failed to hand over their goods and the vehicle, hence this suit.

35 **Representation**

Learned Counsel Juma Kiyingi appeared for the Plaintiffs while Learned Counsel Edmond Agaba together with Samuel Osugu were for the Defendant.

When the matter came up for hearing, Counsel for the Defendant raised a preliminary objection on grounds that this court has no jurisdiction to entertain this matter as a court of first instance.

40 Counsel submitted while relying on the case of *Uganda Revenue Authority –v- Rabbo Enterprises (U) Limited and Anor. (Supreme Court Civil Appeal No. 12 of 2004)*, that jurisdiction means authority which the court has to decide matters that are before it or take cognizance of the matters presented in a formal way for its decision.

45 Counsel also relied on Article 139 (1) of the 1995 Constitution of Uganda and Section 14 (1) of the Judicature Act, Cap 13 which provide for jurisdiction of the High Court.

That Article 139 (2) of the Constitution provides that subject to the provisions of the Constitution and any other law, the decisions of any court lower than the High Court shall be appealable to the High Court while Article 152 (3) provides that Parliament shall make laws to establish tax tribunals for the purposes of settling tax disputes.

50 Counsel explained that pursuant to the above provision, Parliament enacted the Tax Appeals Tribunal Act, Cap 345 which under Section 14 bestows the Tax Appeals Tribunal with power to review a decision made under a taxing Act or any taxation decision made by Uganda Revenue Authority. That in view of the above provisions, the High Court can only exercise its unlimited jurisdiction subject to other provisions of the Constitution and one such provision envisaged
55 under Article 139 (1) of the Constitution is Article 152 (3) of the Constitution which provides for Tax Appeals Tribunal.

Counsel then submitted that all tax disputes must first be lodged with the Tax Appeals Tribunal and only taken before the High Court on appeal.

60 He prayed that this court finds that the High Court does not have original jurisdiction to handle the matter at hand as it pertains to a custom dispute for which a specific procedural framework is provided for under the East African Customs Management Act, 2004, and that this suit be dismissed from this court with costs.

In reply, Counsel for the Plaintiffs submitted that the 1st Plaintiff was charged in the Chief Magistrate's Court at Nakawa under the East African Customs Community Management Act
65 (EACMA) 2004 for counts relating to smuggling of uncustomed goods contrary to Sections 199 (a) (iii) and 200 (d) (ii) under NAK-294/2009 on the 16th day of April, 2009. That the 1st Plaintiff was convicted and sentenced to 12 months' imprisonment and court also ordered for the forfeiture of his goods and motor vehicle. That the 1st Plaintiff appealed to the High Court

70 which summarily dismissed his appeal prompting the plaintiff to further appeal to the Court of Appeal where he was successful. The decision of the Chief Magistrate's Court was set aside and a retrial before another Magistrate ordered.

75 Counsel submitted that when the case went back for the retrial, the Defendant never appeared in any of the hearings prompting court to dismiss the case under Section 119 of the Magistrates Courts Act which put the Plaintiffs back to the status quo in which they were before the Defendant disposed of the lorry and goods belonging to the Plaintiffs.

80 Counsel submitted that Article 139 (1) of the Constitution confers upon the High Court original jurisdiction in all matters and this means that the High Court is clothed with jurisdiction and powers of a court of law and equity. That such jurisdiction is general and thus the court can hear in the first instance any suit that is specifically assigned to another court or tribunal under the law.

85 He clarified that the decision to deal with the 1st plaintiff's motor vehicle which was impounded by the Defendant's officials at the time it was being driven by the 2nd plaintiff was not an initiative by the Defendant or any of the Defendant's departments but instead it was a court's decision that was successfully challenged by another higher Court of Appeal and the decision was set aside and the matter sent back to the Chief Magistrate's Court for a retrial. That the Defendant failed to appear in Court for the retrial and that is why the case was dismissed from court. Counsel emphasized that dismissal of the case implies that the Defendant failed to prove that it dealt with the plaintiff's motor vehicle under the East African Customs Management Act, 2004 and prayed that the preliminary objection be over ruled so that the matter is heard on its merits.

Analysis

Article 139 (1) of the Constitution provides that; -

95 *"The High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law."*

Under section 14 (1) of the Judicature Act, it is provided that;

"The High Court shall, subject to the Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or any other law."

100 In the case of ***Akol Ellen Odeke –v- Okodel Umar EPA No. 6 of 2020***, Court noted that unlimited jurisdiction of the High Court only applies when the matter is properly before the High Court.

In this case, the 1st Plaintiff was convicted and sentenced in the Chief Magistrate's Court at Nakawa under the East African Customs Community Management Act (EACMA), 2004.

105 Court also ordered for the forfeiture of goods and the motor vehicle, Registration No. UAH 065V, Fuso truck. The 1st Plaintiff went through the Appeal mechanism as provided under the law and in Criminal Appeal No. 150 of 2009, the Court of Appeal set aside the conviction and sentence and ordered for a retrial of the matter before the Chief Magistrates court at Nakawa.

S. 229 of the EACCMA provides that: -

110 “(1) A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.

(2) The application referred to under subsection (1) shall be lodged with the Commissioner in writing stating the grounds upon which it is lodged...

115 (4) The Commissioner shall, within a period not exceeding thirty days of the receipt of the application under subsection (2) and any further information the Commissioner may require from the person lodging the application, communicate his or her decision in writing to the person lodging the application stating reasons for the decision.

Under S. 230 of the East African Customs Management Act 2004 provides that;

120 *(1) A person dissatisfied with the decision of the commissioner under section 229 may appeal to a tax appeals tribunal established in accordance with section 231*

S. 14. of the Tax Appeals Tribunal mandates the tribunal to review taxation decisions and states as follows;

125 *(1) Any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the tribunal for a review of the decision.*

(2)The tribunal has power to review any taxation decision in respect of which an application is properly made.

S. 27 of the Tax Appeals Tribunal Act cap 345 provides that appeals from the decisions of the tribunal may be made to the High Court.

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In *Uganda Revenue Authority-v-Rabbo Enterprises (U) & Anor, SCCA No.12 of 2004, Ekirikubinza, JSC*, noted that;

“The proper procedure therefore is that all tax disputes must first be lodged with Tax Appeals Tribunals and only taken before the High Court on appeal.”

135 It is my finding, in view of the above legal provisions, that upon dismissal of the case for lack of prosecution at Nakawa Chief Magistrate’s Court, the Plaintiffs should have written to the Defendant’s Commissioner requiring him/her to return its property and the vehicle. In the event

that the Defendant failed and or refused to return their property or made a decision that they were not comfortable with, the plaintiffs would then apply for a review to the Tax Appeals Tribunal. By so doing, the Plaintiffs would have complied with the Court of Appeal directive of a retrial and also presented their case before the Commissioner as required under the East African Customs Community Management Act (EACMA), 2004 and the Tax Appeals Tribunal Act before coming to the High Court. In tax disputes, the High Court only hears appeals from the Tax Appeals Tribunal. Therefore, I find that this case is improperly before this court as a court of first instance and I do hereby dismiss it with costs.

I so order

Dated, signed and delivered by mail at Kampala this 21st day of November, 2023.

Esta Nambayo
JUDGE
21st /11/2023.