

**IN THE HIGH COURT OF TANZANIA  
DAR ES SALAAM REGISTRY  
DAR ES SALAAM**

**CIVIL CASE NO. 101/2002**

**TANZANIA ZAMBIA RAILWAY AUTHORITY  
VS.  
TANZANIA REVENUE AUTHORITY**

28/3/2003

Coram: Kaganda J.

For the plaintiff/applicant:- Mr. Safari Adv.

For the Def/Respondent: abs.

CC – Masebo

**RULING**

The preliminary application which has been filed and presented by the plaintiff's counsel is an interesting one and needs a sense of Equity. In the chamber Summons and an Affidavit the applicants seek an Order for an Interim relief pending hearing of the Suit. On reading the Law Establishing the two Organizations I found each having exemption clauses or provisions austering the jurisdiction of the courts. These I will not deal with much because they are likely to come on full hearing of the Suit or when hearing Interparties. This application was filed after the respondents attachment by letter issued by the Commissioner of the plaintiff's Bank Accounts. He did so basing on the powers conferred upon him under section 103 of the Income Tax Act, 1973. The amount attached is Tsh: 5,629,909,228/= which arose on failure to pay taxes. That letter reads:- (Addressed to the Manager Stanford chartered Bank)

“ In the exercise of the powers conferred upon me by S. 103 of the Income Tax Act, 1973 I hereby declare you to be the agent of the above Person and require you to pay me the Sum of Tsh:5,629,909,228/= being tax due by the said person from any money including Pensions, Salary, wages or any other remuneration which may at any time within twelve months from the date of this notice be held by you for, or due by you to the said person .....

On the other hand the plaintiffs claim protection of their property under 85 of Act No. 10 of 1995 namely Tanzania Zambia Railway Act which States:-

“ Not with standing anything to the contrary contained in any written Law, where any judgement or Order has been Obtained against the Authority, no execution or attachment, or process in the nature thereof, shall be issued against the Authority of against any property of the Authority, but the Managing Director shall Cause to be paid out of the revenue of the Authority Such amount as may, by judgement or order be awarded against the Authority to the person entitled to.”

My understanding of this section is that the exemption covers only execution of judgements or Orders. Normally these are given by Courts of Law, but this may be argued later by the parties if they so wish. Furthermore my Interpretation of the two Laws is that the Respondents want to be paid the taxes due through the force of Law whereas the plaintiffs want to pay the dues amiably. This is so because the plaintiff haven't Objected to the assessment but only to the mode of payment. My concern too is on the mode of payment which touches the salaries and wages of Innocent Souls. Unfortunately the Income Tax Act, 1973 section 103 (1) has Included these to fall under word "money"; the S. 103 (1) " In this Act "money" Includes any debt, deposit or credit, any salary, wages and pensions payments and any other remuneration what so-ever."

The plaintiff's counsel argued that if the attachment is executed it will paralyse all the activities of the Cooperation and might attract a strike by the Employees on missing their wages. The issue before me is whether the Court should issue the Injunction restraining the Respondents from attaching the Bank Accounts. The letter requiring the Branch Manager to effect the attachment was dated 21<sup>st</sup> February, 2003 which is a month ago. The application was filed Under O.XXI R. (1) Section 68 (2) and S. 95 of the Civil Procedure Code (1966). It is heard expert Under Certificate of Urgency. After reading the provisions of governing both parties I have come to the conclusion that this matter should be addressed with a Sense of Equity, that is because if there is more delay then the object of the Injunction will be defeated. My reasoning is mainly centered on the rights of Employees whom I have addressed as Innocent Souls and not very much to threat of them striking as presented by the learned Counsel. This becomes true because Employees in this Country mainly depend on their salaries or wages for their daily bread including families and dependants. I find therefore not proper to punish them on the negligence of their Employer. Borrowing the mind of Mapigano, J. when he dealt with exparte rulings in Tanzania Knitwear Ltd Shamshu V. Esmail [1989] TLR.48, he held that, Ex-parte Injunctions could only be granted in special circumstances i. e done in good faith. I find that this is one of those cases relevant to his decisions because protecting the attachment of salaries/wages to Innocent Souls is a Special Circumstance and correctly so, is done in good faith. The Injunctive relief is therefore granted and limited only to the account holding the Employees salaries/wages.

Prior to the hearing of the application Hon. Ihema, J. on 27<sup>th</sup> March, 2002 ordered as follows:- That

" Let S. K. Safari & Co. Advocates indicate the nature of the Cause of action i.e. whether it is a claim, a petition, an application etc. The learned Counsel to cite the Supporting relevant provisions of the Law for his pleadings."

In response to that, Mr. Safari claimed that his pleadings were based Under Order 34 sections 1, 2, 3 and 4 which he said were all dealing with the Question of Agreements being filed as a suit. The sections read as follows:-

- 3 (1) The agreement, if framed in accordance with the rules here in before contained, may be filed in the Court which would have jurisdiction to entertain a suit the amount of value of the subject matter of which is the same as the amount or value of the subject matter of the agreement."

Sub Section (2) Continues to clarify that:-

"The agreement, when so filed shall be numbered and registrered as a suit between one or more of the parties claiming to be Interested as plaintiffs or plaintiff and the other or the others defendant or defendants and notice shall be given to all parties to the agreement other than party or parties by whom it was presented."


Finally subsection four (4) deals with the issue of jurisdiction of the Court by Stating that:-

"Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the Statements contained there in."


I do not intend to deal with this issue now but I believe this Court has jurisdiction to hear all matters except where the Law provides contrary to. A good example of it is S. 7 of the Tanzania Revenue Authority. This Law conferers jurisdiction to the Tax Appeals Tribunal by Stating that:-

"All proceedings of a civil nature in respect of disputes arising from revenue Sect. Law administered by the Tanzania Revenue Authority will be administered 12. by the Board".

This suit involves some broader arguments after the parties have addressed the whole matter. In the event it is therefore Ordered that the suit be heard the soonest; mean while the application to restrain the respondents attaching the plaintiffs Bank Accounts is partially granted on that it is Limited to the account holding the Employees wages/salary only. No order as to costs.

  
**S. S. H. Kaganda J.**  
**28/3/2003**

Cut The ruling delivered exparte in the presence of the plaintiffs Advocate one Mr. Safari.

  
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28/3/2003

**Order**

Hg 9/4/2003 - The Resp.  
Be notified accordingly.

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28/3/2003