

IN THE SUPREME COURT OF ZAMBIA SCZ APPEAL NO. 2 OF 1996.

(AT LUSAKA

(CIVIL JURISDICTION)

ZAMBIA REVENUE AUTHORITY Appellant
and
FAZMAC AGENCY MANUFACTURERS LTD Respondent

Coram: Sakala, Chaila and Chirwa JJS.
14th May, 1996.

For the Appellant, Mr. M. M. Mundashi, Legal Counsel, Zambia
Revenue Authority.

For the Respondent, Mr. M.E.A. Twumasi of Messrs. Kitwe
Chambers.

J U D G M E N T

Sakala JS delivered the Judgment of the Court.

This is an appeal against a ruling of the High Court ordering a stay of a warrant of distress issued by the Commissioner of Taxes under Section 79 of the Income Tax Act Cap 668 of the Laws of Zambia pending the determination of the main action.

The facts of the case, which appear to be common cause, are that, the respondent issued an originating notice of motion seeking for the following reliefs:

1. That a Warrant of Distress issued by the appellant herein was invalid as the appellant had not complied with the provisions of Section 108 of the Income Tax Act.
2. A Declaration that the said valid Warrant of Distress was null and void.
3. A Declaration that the appellant ought to make a decision on an objection raised to make the Applicant Appeal to the Tax Appeals Board.

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It was common cause that after an assessment the respondent raised an objection which was followed by an exchange of correspondence and meetings. From the documents on record the appellant had informed the respondent that they would be informed of the decision on the objection. It was not in dispute that the appellant has still not taken a decision on the objection. While the respondent was awaiting a decision on the objection they were served with a warrant of distress in the sum of K61.2 million. In turn the respondent commenced the proceedings resulting in the ruling, after inter-parte proceedings, the subject of the present appeal. In the ruling the learned Judge ordered the stay of the warrant of distress issued by the Commissioner of Taxes pending the hearing of the motion. The appellant have appealed against that ruling.

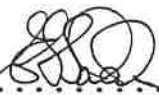
On behalf of the appellant Mr. Mundashi has argued two grounds of appeal although three grounds of appeal were filed. The first ground of appeal argued by Mr. Mundashi was that the learned Judge erred in law by holding that the High Court has power to stay execution of a warrant of distress issued pursuant to the provisions of the Income Tax Act. He submitted that the warrant of distress is issued pursuant to the provisions of Section 79 of the Income Tax Act Chapter 668 of the laws and in the said Act there is no power vested in the High Court to enable it stay execution of a warrant of distress issued by the Commissioner of Taxes. It was Mr. Mundashi's contention that in the absence of any provisions in the law empowering a court to stay a warrant of distress it was a misdirection on the part of the High Court to issue a stay order. As regards the second ground Mr. Mundashi pointed out that under sections 77(4) and 77(6) of the Income Tax Act, once tax has been assessed it is payable on due date whether there is an objection or no objection. This is the position even when there is an appeal. And if the taxes are not paid on the due date then the Commissioner of Taxes is entitled by law to issue a warrant of distress. Mr. Mundashi abandoned the third ground as it touched on the merit of the main action. But he contended that the court ought not to have stayed the execution of the warrant had the relevant provisions of the Act been considered.

In reply to the submissions by Mr. Mundashi, Mr. Twumasi submitted that the High Court has inherent jurisdiction to stay execution once an action is before it. He pointed out that the court has jurisdiction and power to control matters that have been brought before it. He argued that in the instant case the respondent was faced with a warrant of distress in the amount of over K61 million. He needed to protect himself and this he did by applying to court for an originating notice of motion seeking in the interim, a stay order of execution. He also pointed out that had the stay not been made, the notice of motion would have become an academic exercise. Counsel informed the court that at the time the warrant of distress was issued the respondent had not been availed a decision to his objection. Consequently the respondent was not in a position to appeal to the Tax Appeals Board.

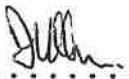
We have considered the documents on record and the submissions by both learned counsel. We are satisfied on the facts not in dispute that the Commissioner of Taxes is empowered under the law to issue a warrant of distress when assessed tax is due, equally we accept that once a Tax payer has been assessed he is entitled to raise an objection. Once an objection is raised, the Commissioner is required to make a decision and if the tax payer is not satisfied he is entitled to appeal to the Tax Appeals Board. We accept Mr. Mundashi's argument that when the assessed tax is due, under the law the tax payer is compelled to pay the assessed amount regardless of an objection raised or appeal made. But we do not understand the Income Tax Law to suggest that once a tax payer has commenced an action before a court the court has no jurisdiction to prevent any injury when a matter has been raised in connection with a matter pending before it. Whether that matter is properly before that court is a different issue .

In our view the court has undoubted jurisdiction in judicial review even if that expression is not expressly stated in any law. In the instant case the Commissioner of Taxes having accepted the objection raised by the respondent they were under the very law compelled to comply with the provisions of the Income Tax Act namely, to make a decision to enable the respondent, if aggrieved, to appeal to the Tax Appeals Board. The Commissioner did not make a decision on

the objection but instead proceeded to issue a warrant of distress in excess of K61 million. In our view the respondent were entitled to protect themselves. Whether the action was properly taken before court in terms of the Income Tax Act is not for us to determine. It is a matter that will be determined by the trial court. For the foregoing reasons, this appeal is dismissed with costs to be taxed in default of agreement.


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E.L. Sakala,
SUPREME COURT JUDGE.


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M.S. Chaila,
SUPREME COURT JUDGE.


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D.K. Chirwa,
SUPREME COURT JUDGE.