

9 May 2019



Court of Appeal rules TRAB has no criminal appellate jurisdiction

- Appeal filed by TRA
- Court of Appeal rules that the TRAB lacks jurisdiction to entertain appeals emanating from compounding of offences
- Holds that TRAB is not clothed with criminal appellate jurisdiction and Tribunal erred in law by reversing the decision of the TRAB
- Held that Judicial Review is an option still available to taxpayers

Background

This appeal originated from a dispute whereas the Appellant (TRA) seized and forfeited uncustomed goods belonging to two individuals (Individuals or Respondents) which were possessed contrary to section 200(d)(iii) of the East African Community Customs Management Act, 2004 (EACCMA).

The TRA thereafter exercised its powers under the law and compounded the offence in accordance with section 219 of the EACCMA. However, the Individuals claimed that the confession which led to the compounding was obtained by the TRA under undue influence of duress and appealed to the Tax Revenue Appeals Board (TRAB). The TRA successfully raised a preliminary objection that the TRAB lacked criminal appellate jurisdiction to entertain the matter as a result of which the Board struck out the appeal.

The Individuals further appealed to the Tax Revenue Appeals Tribunal (Tribunal) which reversed the decision of the TRAB and stated that it was necessary for the TRAB to deal with the merit of the appeal since it was based on the legal validity of the compounding order.

Aggrieved by the decision of the Tribunal, the TRA appealed to the Court of Appeal claiming, amongst others, that the Tribunal erred in law by directing the Board to hear on merit the matter originating from a compounding order of the Commissioner for Customs.

The decision

On 16 April 2019, the Court through Hon. Justice K.M. Mussa, Hon. Justice S.E.A. Mugasha and Hon. Justice S.A. Lila, having considered the arguments and submissions advanced by both parties, reversed the decision of the Tribunal. The Justices upheld the decision of the Board that the Board lacks criminal appellate jurisdiction on tax matters, hence it was correct for the Board to strike out an appeal founded on the Commissioner's power of compounding offences under section 219(3)(e) of the EACCMA. The Court of Appeal however did not close the doors of justice and kept the option of applying for a judicial review open for such aggrieved taxpayers.

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Some excerpts of what the Court of Appeal said in its judgement:

"Apparently in Tanzania, decision of quasi-judicial body which is final and not appealable can be challenged by seeking a judicial review before the High Court."

"...the provisions of sections 16(1) of TRAC and 230(1) and (2) of the EACMA under which the respondents' appeal was preferred do not confer the Board with the criminal appellate jurisdiction."

"... the words "the order shall be final and shall not be subject to appeal" contained in section 219(3)(e) of the EACCMA mean that, the Commissioner's compounding the offence order is not subject to appeal. It can be challenged by way of Judicial Review at the High Court under the Law Reforms (Fatal Accidents and Miscellaneous Provisions) Act."

To read the judgment, [click here](#).

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