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IN THE COURT OF APPEAL OF TANZANIA

AT DAR-ES-SALAAM

(CORAM: MUGASHA, J.A., KEREFU, J.A., And MAIGE, J.A.)

CIVIL APPEAL NO.172 OF 2020

PAN AFRICAN ENERGY TANZANIA LTD..... APPELLANT

VERSUS

COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY.....RESPONDENT

(Appeal from the decision Judgment and Decree of the Tax Revenue Appeals Tribunal at Dodoma)

(Mjemmas, J (Rtd) Chairman.)

dated the 31st day of January, 2020
in
Tax Appeal No. 5 of 2019

JUDGMENT OF THE COURT

30th June & 9th July, 2021

MUGASHA, J.A.:

The appellant, **PAN AFRICAN ENERGY TANZANIA LTD** is challenging the decision of the Tax Revenue Appeals Tribunal (the Tribunal) which struck out its appeal on the ground that before the Tax Revenue Appeals Board (the Board), the appellant's appeal was preferred against a non-appealable decision.

What underlies the present appeal is briefly as follows: The appellant is a company registered in Tanzania involved in the production and supply of gas for power generation at the Ubungo power plant in Dar-es-Salaam. It also deals with the supply of natural gas to industrial and commercial customers as well as the supply of compressed natural gas for use in motor vehicles. On the other hand, the respondent is the Chief Executive Officer of the Tanzania Revenue Authority charged with assessing and collecting various taxes and revenues on behalf of the Government of the United Republic of Tanzania.

On 2/3/2016, the respondent issued a notice of assessment No. F 420838951 to the appellant for the year of income 2014 with the chargeable income of TZS. 84,228,425,576.50, notice of original/adjusted/ jeopardy assessment No. F14040 and notice of amended assessment No. F4210471999 for the year of income 2013. Discontented, the appellant lodged notices of objection against the assessment and applied for a waiver of one third tax deposit required for the admission of the objection. The respondent declined to grant the waiver for reasons that, the grounds fronted by the appellant to apply the waiver were also pleaded in the

notices of objection and as such, could not be dealt with before the determination of the objection.

Aggrieved with the refusal of waiver, the appellant lodged before the Board, Appeals Nos. 149 of 2016; 187 and 188 of 2017 which were consolidated and heard as one. The Board ultimately dismissed the appeal on ground that the respondent was justified to refuse the grant of waiver. Still undaunted, the appellant lodged an appeal before the Tax Revenue Appeals Tribunal (the Tribunal) which was struck out for being incompetent. The holding of the Tribunal is reflected at page 881 of the record of appeal as follows:

> *"In the same spirit, we are of settled mind that the purported Tax Appeals 149 of 2016, 187 of 2017 and 188 of 2017 before the Tax Revenue Appeals Board which did not result from an objection decision of the Commissioner General were incompetent. Consequently, the present appeal before the Tax Revenue Appeals Tribunal is incompetent. We therefore strike out the three appeals which were lodged at the Tax Revenue Appeals Board for being incompetent and the decision and proceedings of the Board are hereby*

nullified. The instant appeal before the Tax Revenue Appeals Tribunal is struck out for being incompetent.

It is against the said backdrop, the present appeal found its way to the Court whereby the appellant, as earlier stated, is challenging the decision of the Tribunal. In the Memorandum of Appeal, the appellant has fronted three grounds of complaint as follows:

1. That, the Tax Revenue Appeals Tribunal grossly erred in law by holding that the Tax Appeal No. 5 of 2019 before the Tribunal was incompetent for being against a non-appealable decision.

2. That, the Tax Revenue Appeals Tribunal grossly erred in law by holding that the Tax Appeals before the Board, Tax Appeal No. 149 of 2016 and Tax Appeals Nos 187 and 188 of 2017 were incompetent for being on non-objection decision.

3. That, the Tax Revenue Appeals Tribunal erred in law for failing to consider the appellant's submissions on legal arguments that the respondent's decision refusing to grant one third waiver is appealable decision.

To bolster their arguments for and against the appeal, parties filed written submissions. At the hearing, the appellant was represented by Messrs. Fayaz Bhojani and William Mang'ena, learned counsel whereas the respondent had the services of Ms. Consolatha Andrew and Mr. Marcel Busegano, both learned Senior State Attorneys and Messrs. Leyan Sabare and Amandus Ndayenza, both learned State Attorneys.

In the course of hearing the appeal, the learned counsel for each of the parties adopted the written submissions. However, following a brief dialogue with the Court, Mr. Fayaz abandoned contents and all references in the written submissions relating to the constitutionality or otherwise of the limitation on the available remedy of challenging the refusal to grant the waiver. Then, Mr. Fayaz commenced his address to the Court by submitting that, in the present appeal, what is in dispute, is the interpretation of the provisions of the Tax Administration Act of 2015 (the TAA) and the Tax Revenue Appeals Act [CAP 408 RE.2002] (the TRAA) on the tax payer's remedy in the event of the respondent's refusal to grant waiver to deposit one third of the assessed tax in order to validate the notice of objection. He pointed out that, while under section 50 (1) of the TAA, the CG has discretion to make any tax decision including 'assessment'

or 'other decision' or 'omission', in case of a grievance, section 51 of the TAA regulates the manner of lodging an objection subject to payment of one third deposit.

It was further contended that, the law mandates the respondent with discretion to reduce or waive the amount to be paid upon being moved by the tax payer, in case the waiver is refused, that is among the contemplated "other decisions" or "omissions" which are appealable to the Board in terms of section 53 (1) of the TAA because section 7 of the TRAA clothes the Board with exclusive original jurisdiction to entertain civil matters relating to the interpretation of revenue laws administered by the respondent. Appeals emanating therefrom lie to the Tribunal and there is no limitation on the nature of appeals thereto. As such, the appellant faulted the Tribunal by focusing solely on the provision of section 16 (1) of the Tax Revenue Appeals Act instead of considering it together with the extensive right of appeal as articulated under section 53 (1) of the TAA. This, it was argued, culminated into the striking out of the appeal which was irregular because the appellant's right of appeal against refusal to grant the waiver, is embraced in 'other decisions' or 'omissions' of the Commissioner General.

Apart from attacking the limited appealable decisions as prescribed under section 16 (1) of the TRAA, to be a drafting oversight, it was the argument of Mr. Fayaz that, there is no clarity as to how a tax payer can invoke a remedy of an appeal to the Board against 'other decisions' or 'omissions' of the respondent. He thus urged the Court to read sections 16 (1), (3), 19 of the TRAA together with sections 50, 52, 53 (1) of the TAA, Rules 2 and 6 of the Tax Appeals Board Rules and invoke a harmonious construction so as to meaningfully give effect the phrase 'other decisions' or 'omissions' in section 50 and 53 of the TAA. To support his proposition, he referred us to a Book titled **Introduction to Interpretation of Statutes**, 4th Edition by Avtar Singh and Harpreet Kaur. Ultimately, the appellant's counsel urged the Court to allow the appeal and reverse the decision of the Tribunal. Moreover, cases cited by the appellant's counsel included: **TANZANIA REVENUE AUTHORITY VS TANGO TRANSPORT COMPANY LIMITED,** Civil Appeal No. 84 of 2009 and **TANZANIA REVENUE AUTHORITY VS KOTRA COMPANY LIMITED,** Civil Appeal No. 12 of 2009 (both unreported).

On the other hand, the respondent opposed the appeal and supported the Tribunal's decision in striking out the incompetent appeal for

being preferred against a non-appealable decision before the Board. He pointed out that, although section 7 of the TRAA clothes the Board with sole original jurisdiction to entertain and adjudicate disputes of a civil nature relating to the tax laws administered by the respondent, in terms of section 16 (1) of the TRAA what is appealable to the Board is solely an objection decision arising from a tax decision made by the respondent. On this, it was argued that since section 2 of the TAA defines an objection decision to be a tax decision made under section 52 of the TAA, it is incorrect to classify the refusal to grant waiver as 'other decisions' or 'omissions' of the respondent in terms of section 50 (3) and (4) of the TAA and Rule 93 of the Tax Administration (General) Regulations, 2016 Government Notice No. 101 of 18/3/2016.

The respondent as well, challenged the appellant's reliance on section 16 (3) of the TRAA which regulates the service of the notice of appeal and that it has nothing to do with the rejection to grant the waiver. Finally, the respondent submitted that the appellant's invitation to the Court to invoke harmonious interpretation on what constitutes an objection decision is uncalled for because the same was adequately addressed and determined in the case of **PAN AFRICAN ENERGY TANZANIA LIMITED VERSU**

THE COMMISSIONER GENERAL TRA, Civil Appeal No. 121 of 2018 (unreported).

The respondent urged the Court not to consider the cases of **TANZANIA REVENUE AUTHORITY VS TANGO TRANSPORT COMPANY LIMITED** (supra) and **TANZANIA REVENUE AUTHORITY VS KOTRA COMPANY LIMITED,** (supra) relied upon by the appellant's counsel as they relate to disputes which were wrongly filed in the High Court which is not the case herein. Finally, the respondent urged the Court to dismiss the appeal with costs.

In rejoinder, apart from Mr. Fayaz conceding that the appeal was preferred under section 16 (1) of the TRAA, he averred the same to be in line with the standard forms used in filing appeals before the Board. However, he submitted that the main concern of the appellant is about the lacking remedial measures in case a waiver is refused *vis a vis* the Tribunal's decision limiting nature of appeals which he viewed to be dangerous. He also contended that, Rule 93 of the Tax Administration (General) Regulations cannot override the provisions of section 51 of the TAA which regulates objections to tax decisions. On the definition of an

objection decision under section 2 of the TAA, he reiterated his earlier prayer urging the Court to read the Act as a whole and make a harmonious interpretation of the law to give effect the intention of the lawmakers. When probed by the Court on the settled position of the law on the objection decisions being solely appealable, he urged the Court to depart from its earlier decision in **PAN AFRICAN** case (supra).

Having carefully considered the rival submissions of learned counsel from either side, it is not in dispute that section 7 of the TRAA clothes the Board with sole original jurisdiction to entertain and adjudicate disputes of a civil nature relating to the tax laws administered by the respondent and that the appeals therefrom lie to the Tribunal. What is in dispute is whether the refusal to grant waiver to deposit one third of the assessed tax is a tax decision which is appealable to the Board in terms of section 16 (1) of the TRAA. This constitutes a question of law to be determined by the Court as per the dictates of section 25 (2) of the TRAA.

As we have been called upon to construe several provisions in the TRAA and TAA relating to what is in dispute, we begin with the four rules of Statutory Interpretation to wit: the literal rule; the golden rule; the mischief

rule and the purposive approach. Which rule is the best? The golden rule is that the words of a statute must *prima facie* be given their ordinary meaning. It is yet another rule of construction that when the words of a statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning irrespective of the consequences. See – http://www.lawctopus.com.canons.

We also deem it crucial to borrow a leaf from the Book which was referred and availed to us by the appellant's counsel titled: **Introduction to Interpretation of Statutes,** by AVTAR SIGNH and HARPREET KAUR 4TH EDITION. The learned Authors observed at pages 5 and 6 as follows:

> *"The most and rational method for interpreting a statute is by exploring the intention of the legislature through the most natural and probable signs which are either the words, the context, the subject-matter, the effects and consequences, or the spirit and reason of the law. in the court of law what the legislature intended to be done or not be done can only be legitimately ascertained from that what it has chosen to enact, either in express words or by reasonable and necessary implication.*

But the whole of what is enacted 'by necessary implication can hardly be determined without keeping in the purpose of object of the statute. A bare mechanical interpretation of the words and application of legislative intent devoid of concept or purpose will reduce most of the remedial and beneficent legislation to futility....

Ordinarily, the determining factor of intention of a statute is the language employed in the statute. Gajendragadkar J, said in a case that 'the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself'..."

The area on the canons of interpretation to be invoked in the construction of statutes when the words are unambiguous is not grey in our jurisdiction and in the case of **REPUBLIC VS MWESIGE GEOFREY AND ANOTHER,** Criminal Appeal No. 355 of 2014 (unreported) the Court said:

"...in the familiar canon of statutory construction of plain language, when the words of a statute are unambiguous, judicial inquiry is complete because the courts must presume that a legislature says in a statute what it means and means in a statute what is says there. As such, there is no need for

interpolations, lest we stray into the exclusive preserve of the legislature under the cloak of overzealous interpretation."

[See also - **RESOLUTE TANZANIA LIMITED VS COMMISSIONER GENERAL,** TRA, Civil Appeal No. 125 of 2017, **MBEYA CEMENT COMPANY LIMITED VS COMMISSIONER GENERAL TRA,** Civil Appeal No. 160 of 2017 **COMMISSIONER GENERAL TRA VS ECOLAB EAST AFRICA (TANZANIA) LIMITED,** Civil Appeal No.35 of 2020 (all unreported)]. We shall be guided by among others, the stated position in determining the case under scrutiny.

It was the appellant's counsel proposition that, the refusal by the respondent to grant the waiver is covered by the phrases "other decisions" or "omissions" in what constitutes a tax decision can be discerned from the provisions of section 50 of the TAA which stipulates as follows:

"50. -(1) The Commissioner General may, subject to subsection (2), make ***any tax decision including*** *assessment or other decision or omission on a matter left to the discretion, judgment, direction, opinion, approval, consent, satisfaction or*

determination of the Commissioner General under a tax law that directly affects a person."

For a number of reasons, we found the appellant's submission wanting. We say so because: **Firstly,** in terms of section 50 (1) of the TAA, the respondent is mandated to make any tax decision including 'assessment' or 'other decision' or 'omission' on a matter left to the discretion, judgment, direction, opinion, approval, consent, satisfaction or determination of the Commissioner General under a tax law that directly affects a person. **Secondly,** in terms of subsection (3), a tax decision under section 50 of the TAA is considered to have been made in case of: self-assessment, on the due date of filing the tax return; other assessments, when the notice of assessment is served on the taxpayer; and any other tax decision where, the tax specifies a time by which the Commissioner General is to make the decision; or when the Commissioner General serves the affected person with written notice of the decision. **Thirdly,** in terms of subsection (4), three circumstances constituting conclusive evidence that **a tax decision** has been made and the decision is correct are: (i) self-assessment, the tax return that causes the assessment or a document under the hand of the Commissioner General

purporting to be a copy of the tax return; (ii) other assessments, the notice of assessment or a document under the hand of the Commissioner General purporting to be a copy of the notice; (iii) any other tax decision, a written notice of the decision under the hand of the Commissioner General or a document under the hand of the Commissioner General purporting to be a memorandum of the decision.

It is glaring that the whole of section 50 defines and regulates tax decisions left to the discretion, judgment, direction, opinion, approval, consent, satisfaction or determination of the Commissioner General. In particular, under section 50 (1) of the TAA, the preposition '***including***' between the phrases 'any tax decision' *and* 'assessment' or 'other decision' or 'omission' means that the former is a larger group which embraces the latter. This is cemented by a latin maxim of *ejusdem generis* rule which means 'of the same kind'. The rule requires that: *where in a statute there are general words following particular specific words, the general words must be confined to things of the same kind as those specifically mentioned.* http://ca.practicallaw.thomsonreuters.com. This was emphasized by the Supreme Court of the United States in the case of **CIRCUIT CITY STORES INC VS ADAMS,** 532 US 105 [2001], whereby

the maxim was defined as: "*situation in which general words follow specific words in statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.*"

Moreover, in a book titled **Kanga and Palkhivala's the Law and Practice of INCOME TAX** by Arvind P. Datar 11th Edition, at page 10 the learned author has discussed as to when the rule of *ejusdem generis* can be applicable in the following terms:

> "The rule of *ejusdem generis is intended to be applied where general words have been used following particular or specific words of the same nature. The Rule of ejusdem generis applies when (1) the statute contain an enumeration of specific words, (2) the subject of enumeration construes a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms following enumeration and (5) there is no indication of a different legislative intent. It serves to restrict the meaning of the general words to thing or matters of the same genus as the preceding particular words. For the invocation of the rule there must be one distinct genus or category. The specific*

words must apply not to different objects of a widely varying character but to words that convey things or objects of one class or kind.... Thus the restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it."

In the light of the *ejusdem generis* rule, the phrase any **tax decision including** is a general large family which includes **'assessment', 'other decisions' or 'omissions'** to be part of the larger family that is, 'tax decision'. We are fortified in that account because in order to ascertain the meaning of a clause in a statute, courts must look at the whole statute, at what precedes and what succeeds and not merely the clause itself and also compare the clause with other parts of the law and the setting in which it occurs. If we can apply the rule therefore, the phrases 'other decisions' or 'omissions' must be of the same nature as tax decisions and not otherwise. Thus, in the light of the unambiguous and plain language used in section 50 (1) of what is a tax decision, we are satisfied that, refusal to grant the waiver is excluded in the realm of what constitutes a tax decision and neither is it an objection decision. This was emphasized in the case of **PAN AFRICAN ENERGY TANZANIA LTD VS COMMISSIONER GENERAL (TRA)** (supra) whereby, having considered sections, 51 and 53 of TAA

which makes cross reference to the effect that an appeal to the Board has to be in accordance with section 16 (1) of the TRAA we said:

> *"...it is significantly discernible that an appeal to the Board is presently narrowed down to an objection decision of the CG made under the TAA. It is beyond question that, in the situation at hand, there is, so far, no objection decision of the CG and, to say the least, going by specific language used in section 16(1), the purported appeal before the TRAB which did not result from an objection decision of the CG was incompetent."*

We find the said decision still good law and as such, we decline the appellant's counsel invitation to depart from it.

Without prejudice to the aforesaid, the appellant's counsel also invited us to consider that the refusal of waiver is among the appealable decisions envisaged by Rule 6 of the Tax Appeals Board Rules which prescribes the documents which must accompany the appeals to the Board. Indeed, the said Rule was not brought to our attention and it was not considered in the **PAN AFRICAN** case (supra) and as such, we shall now consider it. Rule 6 stipulates as follows:

"6. -(1) A person who institutes an appeal to the Board shall attach all material documents which are necessary including appealable decision, for the proper determination of the appeal.

(2) Without prejudice to sub-rule (1), the appeal shall contain the following documents-

(a) where the appeal is against objection decision of the Commissioner General-

(i) a copy of a notice of assessment of tax;

(ii) a copy of notice of objection to an assessment submitted to Commissioner General by the appellant;

(iii) a copy of the final objection decision of assessment of tax or any other decision by the Commissioner General being appealed against;

(iv) a copy of a notice issued by the Commissioner General regarding the existence of liability to pay tax, duty, fees, levy or charge;

(v) a copy of the notice of proposal on how the Commissioner wants to settle the objection (if any);

(vi) a copy of submission made by taxpayer in response to the notice of appeal, (if any);

(b) where the appeal relates to refusal by the Commissioner General to admit a notice of objection, a copy of the decision of the Commissioner General to admit a notice of objection;

(c) where the appeal relates to-

(i) refund, drawback or repayment of any tax, fee, duty, levy or charge, a statement showing the calculation by the appellant of the amount due for refund, drawback or repayment of any tax, fee, duty, levy or charge;

(ii) refusal by the Commissioner General to make any refund or repayment; a copy of the decision of the Commissioner General refusing to refund; and

(d) where the appeal relates to the decision by the Commissioner General to register, or refusal to register. Any trader for the purpose of the Value Added Tax Act, a copy of the decision of the Commissioner General.

Having scrutinized the plain language used in the cited Rule, the envisaged appealable objection decisions are where **one,** the appeal is against objection decision of the Commissioner General; **two,** the appeal relates to refusal by the Commissioner General to admit a notice of objection; **three,** the appeal relates to refund drawback and **four,** the appeal relates to the decision by the Commissioner General to register, or refusal to register, any trader for the purpose of Value Added Tax. In this regard, it is clear that, the refusal to grant waiver is not among the envisaged appealable decisions and we believe, the exclusion was deliberately so because it is neither a tax decision nor an objection decision. Besides, the waiver is excluded under the rule " *expressio unius est clusio alterius*" which means, when one or more things of the same class are expressly mentioned others of the same class are excluded. On this account, we subscribe to what the two learned authors observed in their book titled: **Introduction to Interpretation of Statutes,** at page 23 (supra) as follows:

> *"When the language of a statute is plain, words are clear and unambiguous and give only one meaning, then effect should be given to that plain meaning only and one should not go in for construction of the*

> *statute.* ***When a language is plain and unambiguous and admits of only one meaning no question of construction of a statute arises, for the Act speaks for itself. It is not open to first create on ambiguity and then look for some principle of interpretation. Courts should not be overzealous in searching for ambiguities or obscurities in words which are plain.***

[Emphasis supplied]

[See also **STATE OF UTAR PRADESH VS VIJAY ANAND MAHARAJ AIR** 1963 SC 946 and **PATENGRAO KADAN VS PRIHVIRAJ SAJAJIRAO DESHMUHK AIR (**2001) 3 SCC 594.]

In view of the aforesaid, we decline the appellant's invitation to interpret the refusal to grant waiver a tax decision because since the language used in the TRAA and TAA is plain, the legislative intent is vivid and to do otherwise as suggested by the appellant, is to embark on interpolations which is not giving effect to the clear meaning of the statutes in question. In the same vein, in the absence of any inconsistencies in the provisions in question that the refusal to grant the waiver is neither a tax decision nor an objection decision which can be appealed against before

the Board, we decline the appellant's counsel invitation to invoke the harmonious construction of the provisions in question.

We have also read the objects and reasons in the Special Bill Supplement No. 4 of 12/5/2014 for the enactment of the Tax Administration Act which also amended several Tax legislation including the Tax Revenue Appeals Act. The objects and reasons among other things, included the following:

> *"Tangu kuanzishwa kwa Mamlaka ya Mapato pamoja na maboresho yaliyofanyika, pamekuwa na ugumu wa utekelezaji wa sheria za kodi katika maeneo yafuatayo: -*
>
> *(i) Not applicable.*
>
> *(ii) Not applicable*
>
> (iii) *Kuwepo kwa usumbufu kwa walipa kodi unaotokana na taratibu za usimamizi na utawala zinazotofautiana kwa kila aina ya kodi ambayo wakati mwingine husababisha walipa kodi kupoteza haki zao za msingi bila sababu."*

We are aware that the Objects and Reasons in the Bill of the intended piece of legislation can be invoked by the Court to read the intention of Parliament in enacting a particular legislation. However, from the stated

objects, we could not discern if the Parliament had intended to make the refusal to grant of the waiver, a tax decision which is appealable. We say so because, it is glaring that the enactment of the Tax Administration Act among other things, consolidated the dispute resolution processes which prior to the enactment of TAA also happened to be under the TRAA. This is evidenced by the repeal of sections 12,13 and 14 amendments to section 16 in the TRAA, which were replaced in the TAA in the enactment of section 50, 51, 52 and 53 governing the tax decisions, procedure to apply waiver and objection decisions which are appealable to the Board subject to complying with the TRAA. Besides, the refusal to grant the waiver was not given a status of being either a tax decision or objection decision which is appealable to the Board. Since ordinarily, the determining factor of the intention of a statute is the language used in the statute, the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. This was emphasized by Lord Brougham who in the case of **ROBERT WIGRAM CRAWFORD VS RICHARD SPOONER** 4 M.A 179 having considered about the importance of the text of the statute at page 187 he said:

'If the Legislature did intend that which it has not clearly expressed: much more, if the Legislature intended something very different; if the Legislature intended pretty nearly the opposite of what is said, ***it is not for judges to invent something which they do not meet within the words of the text..."***

[Emphasis supplied]

(See – also **KANAILAL SUR VS PARAMNIDHI SADHUKAN AIR** [1957] SC 907, **PRAKASH NATH KHANNA VS CIT** [2004] 9 SCC 266 ITR.266),

We fully subscribe to the said observation and as such, again, we decline the appellant's counsel invitation to read and improvise what is not in the statute namely, TAA and TRAA.

Before we pen off, we have to address the appellant's grievance on the limitation imposed by the legislation rendering the refusal to grant the waiver non-appealable. Referring to the impugned decision of the Tribunal, the appellant's counsel viewed this to have been occasioned by bad drafting of the provisions in question curtailing the appellant's right of appeal to the Board. We found the assertion wanting because jurisdiction of the court is a creature of statute and as such, we cannot venture into

inserting an appellate mechanism in the legislation as that is going beyond the enactment regulating resolution of tax disputes as articulated in the TRAA and straying into the exclusive preserve of the legislature under the cloak of overzealous interpretation. We are fortified in that account being aware that when words of a statute are clear and capable of giving a plain meaning, the intention of the Legislative should be gathered from the language used and attention should be paid to what has been said and what has not been said. Thus, the courts should not busy themselves with supposed intention as suggested by the appellant's counsel.

We have gathered that in Uganda, whose tax laws are more or less similar with those applicable in Tanzania, an attempt was made to question the legality of the requirement that an objection of tax assessment must be subject to 30% deposit of the assessed tax in **FUELEX (U) LIMITED VS UGANDA REVENUE AUTHORITY,** Tax Application No. 25 of 2007. The Tax Appeals Tribunal declined to determine the issue that was not within its jurisdiction and referred the matter to the Constitutional Court. The **FUELEX** case equally cements our position that, although the requirement to deposit waiver and the Commissioner General's discretion to refuse the same are schemed under the TAA, that in itself does not clothe the tax

courts with jurisdiction to determine the propriety or otherwise of the refusal to grant the waiver.

In view of what we have endeavoured to discuss, we are satisfied that the Tribunal was justified to strike out the appellant's appeal on account of being preferred to the Board against a non-appealable decision. Thus, we find no cogent reasons to reverse the decision of the Tribunal and the appeal is hereby dismissed with costs.

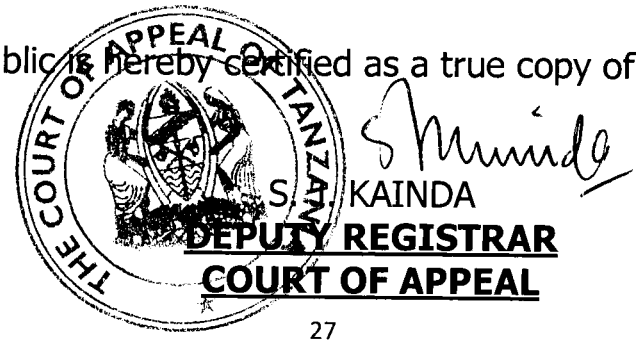
DATED at **DAR ES SALAAM** this 9th day of July, 2021.

S. E. A. MUGASHA
JUSTICE OF APPEAL

R.J. KEREFU
JUSTICE OF APPEAL

I.J. MAIGE
JUSTICE OF APPEAL

The Judgment delivered this 9th day of July, 2021 in the presence of Mr. William mang'ena and Mr. Hamza Ismail both learned counsel for the appellant and Mr. Marcel Busegano, learned Senior State Attorney for the Respondent/Republic is hereby certified as a true copy of the original.



S. M. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL

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