LEGAL UPDATE

FB ATTORNEYS

10 July 2021

Court of Appeal Cements Position on Appealability of Waiver Rejections

- **Rules that refusal to grant waiver is a non-appealable decision**
- **Adopts the golden rule of interpretation of statutes**
- **Recites that words of the statute ought to be given their ordinary meanings irrespective of its consequences**
- **Holds that when the words of a statute are clear judicial inquiry is complete**
- **Rules that other decisions as provided for in the law do not include waiver rejection decisions**
- **Observes that general words following specific words should be interpreted to limit the same to the extent of specific words only**
- **Applies exclusionary principle that the Board Rules expressly exclude waiver rejection decisions**

The Court of Appeal of Tanzania (the Court) has pronounced its decision yesterday in Civil Appeal No. 172 of 2020 regarding the appealability of the Commissioner's refusal to grant waivers by insisting that decisions refusing grant of waiver is a non-appealable decision. The Court adopted this position based on the reasoning that the refusal to grant waiver is not a result of an objection decision or a tax decision.

In so doing, the Court dismissed a plea by the Appellant who moved the Court to adopt a harmonious interpretation of statutes following the inconsistencies notable in section 16(1) and 16(3)(a) and (b) of the Tax Revenue Appeals Act (the TRAA), compared to the Tax Administration Act. The Court held that words of a statute ought to be given their ordinary meanings irrespective of their consequences.

Further, the Court opined that when the words of a statute are clear, judicial inquiry is complete. In this context, the Court made a finding that the provisions of section 16(1) of the TRAA are clear enough, hence there was no need of making interpolations. The Court insisted that employing interpretation to clear words of a statute will be unnecessary distortion of the clear intention of the Legislature.

Furthermore, the Court cited with approval its previous decision in *PanAfrican Energy vs. Commissioner General (TRA), Civil Appeal No. 121 of 2018* in cementing that other decisions as provided for in the law do not include waiver rejection decisions. The Court held that waiver rejection decisions were deliberately excluded from the list of appealable decisions (*expressio unius est clusrb alteriut*) because they are neither tax decisions nor objection decisions. It was further emphasized that, when one or more things of the same class are expressly mentioned, others of the same class are excluded as well.

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FB Attorneys is an all service law firm based out of Dar es Salaam, Tanzania.

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FB Attorneys has been ranked as a tier 1 law firm by the IFLR 1000 in the Energy & Infrastructure and Financial & Corporate sectors, tier 1 by Legal 500 and band 1 by Chambers and Partners General Business Law.

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Moreover, the Court in reinforcing its position held that general words following specific words should be interpreted to limit the application of general words to the extent of specific words only. In similar vein, the Court interpreted rule 6 of the Tax Revenue Appeals Board Rules, 2018 to imply that the rule expressly excludes waiver rejection decisions from the list of appealable decisions.

This decision of the Court has not yet provided a solution to a mind-boggling question among taxpayers as to what should be a remedy if one is aggrieved by a non-assessment decision of the Commissioner in tax administration.

Further, the Court's judgments means that objecting to a waiver rejection decision is now not tenable as only tax decisions can be objected to, and waiver rejection decisions, as per the Court, are not tax decisions. Our analysis is that unless there is legislative intervention moved by the TRA, the only option now available to a taxpayer aggrieved by a waiver rejection decision is to file for a judicial review at an already overloaded High Court, which increases the costs of litigation to taxpayers and, will severely delay TRA from addressing the merit of the underlying tax dispute.

The Court before penning off the judgment showed some sympathy to taxpayers as to its non- appealability interpretation of waiver rejection decisions by referring to a case of Fuelex (U) Limited versus Uganda Revenue Authority. In the Fuelex case, the legality of the mandatory 30% deposit requirement before objections can be determined in Uganda was challenged. The Ugandan Tribunal referred the matter to the Constitutional Court which on 24 July 2020 ruled by a majority decision that the provision was unconstitutional stating *"section 15 of the TAT Act in so far as it compels an objector to a tax assessment, whose challenge is not with regard to the amount of tax payable, to pay to the tax authority 30% of the tax assessed is inconsistent with Article 44 of the Constitution, hence it is unconstitutional."*

To read a copy of the judgment click here.

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