IN THE COURT OF APPEAL OF TANZANIA

AT MOROGORO

(CORAM: LEVIRA, J.A., MASOUD, J.A. And MLACHA, J.A.)

CIVIL APPEAL NO. 195 OF 2025

AUMS (TANZANIA) LIMITED ..... APPELLANT

VERSUS

THE COMMISSIONER GENERAL,
TANZANIA REVENUE AUTHORITY ..... RESPONDENT

(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal at Dar es Salaam)

(Herbert, Vice Chairperson)

dated the 15th day of April, 2025

in

Tax Appeal No. 98 of 2024

JUDGMENT OF THE COURT

4th & 15th December, 2025

MASOUD, J.A.:

The appellant is aggrieved by the decision of the Tax Revenue Appeals Tribunal which reversed the decision of the Tax Revenue Appeals Board relating to the respondent's audit of the appellant's tax affairs covering the years of income 2019 and 2020. The impugned decision concerned the applicable rate of final withholding tax on payments made by Geita Gold Mining Limited (GGML) to the appellant for technical services during the year of income 2019 and 2020. The appellant is a company registered in Tanzania dealing with provision of underground mining technical services to the mining industry.

The pertinent issue before the Tribunal was whether the applicable rate was 3% in terms of clause 4.5.2 of the 1999 Mine Development Agreement (MDA) as preserved by section 143 (1) of the Income Tax Act, 2004 (the ITA, 2004), or the statutory 5% provided by paragraph 4 (c) of the First Schedule to the ITA, 2004. Going by the record, the genesis of the issue was a complaint by the appellant against withholding tax assessment at the statutory rate of 5% under paragraph 4 (c) of the First Schedule to the ITA, 2004, as amended, which resulted in a 2% shortfall plus interest. The shortfall led to a claim by the respondent that the appellant is required to pay an additional 2% withholding tax on payments received from GGML for the provision of technical services.

The Board resolved the issue in favour of the appellant, having held that the applicable rate was 3% as it is the rate that was stabilized by section 143 (1) of the ITA, 2004 read together with clause 4.5.2 of the MDA. Whilst reversing the decision of the Board on appeal lodged by the respondent, the Tribunal relied on the decision of this Court in **Geita Gold Mining Limited v. Commissioner General, Tanzania Revenue Authority** [2020] TZCA 285. It resolved the issue in favour of the respondent. Consequently, it held that the applicable rate was the

statutory rate of 5% which was the applicable and prevailing rate under the law. In particular, the Tribunal held that:

> *"The language of clause 4.5.2 of the MDA is clear, unambiguous, and admits of only one reasonable interpretation. The clause expressly provides that GGML* ***'shall be liable to withhold taxes from payments to third parties as may be required by law from time to time.'*** *This wording was deliberately chosen to ensure that the withholding tax rate would automatically adjust to reflect any subsequent changes in the applicable tax legislation. The Board's interpretation that this clause somehow fixes the rate at 3% in perpetuity is not only untenable but directly contradicts the express terms of the agreement.*
>
> *The respondent's reliance on section 143 (1) of the ITA 2004 is fundamentally misplaced. While this section does provide for stabilization of certain fiscal terms in registered agreements, it cannot be interpreted to override the specific wording of clause 4.5.2 which was specifically drafted to ensure that withholding tax rate would adjust in accordance with changes in the law.*
>
> *Moreover, the Court of Appeal in the* ***Geita Mining Case*** *considered this very issue and held unequivocally that* ***'the appellant's complaint***

that the rate was meant to be static is unfounded because the Mine Development Agreement had envisaged changes in the rate of withholding tax from third parties as may be required from time to time.' "

Before this Court the appellant's complaints in her memorandum of appeal, which we need not reproduce them here, revolved on, more or less, the same issue that was determined by the Tribunal in favour of the respondent. The issue concerns the interpretation of clause 4.5.2 of the MDA in relation to the proposition by the appellant against the respondent that the clause sets a static rate of withholding tax at 3% as it is read with section 143 (1) of the ITA, 2004 now section 169 (1) of ITA, Cap. 332 R.E. 2023.

As it will become clear shortly, parties in the instant appeal are, generally speaking, at one that a similar issue as the one we are facing in this appeal was once before this Court in **Geita Gold Mining** (supra). They are also at one, correctly so in our view, that this Court in that case determined that issue in favour of the respondent after interpreting clause 4.5 and sub-clause 4.5.2 of the MDA. In its holding in relation to clause 4.5 and sub-clause 4.5.2, this Court, among other things, was firm that the complaint that the rate of 3% was intended to be static is unfounded, because the MDA had envisaged changes in the rate of

withholding tax from third parties as may be required from time to time. Thus, the appellant in that case was obliged to withhold tax from payments made to third parties at the rate applicable pursuant to the current law which is in force relating to income tax. The pre-occupation of the appellant is in this appeal, seemingly, to make a case that, that decision is seriously distinguishable from the instant case. For that matter, it cannot be used as an authority for purposes of determining the case at hand.

At the hearing, Dr. Abel Mwiburi who teamed up with Mr. Alan Nlawi Kileo, both learned advocates, brought our attention to page 16 of the appellant's written submissions as he invited the Court in terms of rules 4 and 106 (4) of the Tanzania Court of Appeal Rules, 2009 (the Rules) to depart from its earlier decision in **Geita Gold Mining** (supra). In his submission, the learned counsel was of inclination that the cited rules recognize circumstances where the Court can depart from its earlier decisions.

Whilst mindful of the powers of the Chief Justice in constituting the full bench of the Court for purposes of considering whether to depart from its previous decision, Dr. Mwiburi on reflection, prayed informally for adjournment. The adjournment was in his submission meant to give room to the appellant to administratively move the Chief

Justice to consider constituting the full bench of the Court. The prayer was vehemently opposed by Mr. Thomas Buki, learned Senior State Attorney who was assisted by Mr. Abdillah Mdungu, learned State Attorney.

Of significance to us, the learned Senior State Attorney opposed the prayer for adjournment, arguing that there was no good cause shown justifying granting the adjournment. Stressing on his stance, he argued that there was no letter shown by the appellant to the effect that administrative measures have already been taken; that, there was no foundation laid justifying the cause sought to be taken; that, although the appellant is truly dissatisfied with the decision of this Court in **Geita Gold Mining**, her mere dissatisfaction without more, does not by itself, hold as good cause for adjournment for purposes of moving the Chief Justice to consider constituting the full bench of the Court to consider departing from that decision. In support, Mr. Buki referred us to, among others, the case of **Ophir Tanzania (Block 1) v. Commissioner Geneal, TRA** [2021] TZCA 350, where this Court declined the invitation to depart from the Court's own precedents.

Having anxiously considered the rival submissions on whether to adjourn the hearing to give room to the appellant to take steps towards moving the Chief Justice, we were not persuaded that there was good

cause shown for adjournment in terms of rule 38A (1) of the Rules regard being had to the arguments raised by Mr. Buki which we subscribe to. It is on such reasons that we declined the invitation to adjourn the hearing and hence forth proceeded with the hearing.

After adopting the appellant's written submissions, Dr. Mwiburi and Mr. Kileo addressed us amplifying on the said submissions. In all, their length submissions anchored on a number of arguments.

It was for that matter argued that, there is no justification for assessment of additional 2% withholding tax from payment received from GGML for provision of technical services; that, the 3% rate on technical services was contractually guaranteed under clause 4.5.2 of the MDA which has statutory force under section 143 (1) of the ITA, 2004 and section 86 (1) (d) of the same Act which regard it as final tax and which protects binding fiscal agreements; that, the argument that, since the statutory rate had been increased to 5%, the respondent is entitled to demand additional 2% withholding tax from the appellant is baseless in view of clauses 4.5, 4.5.2 and 4.7 of the MDA and section 143 (1) of the ITA, 2004 as the said clauses must be read harmoniously without ignoring the import of the afore said statutory provision; and that, **Geita Gold Mining** is distinguishable and reliance on it by the Tribunal was misplaced because of the following: It related to

obligations of withholding agent, it did not address section 143 (1), and that unlike the situation in the instant appeal, it was in that case disputable whether the payment was in respect of technical services. They added that the improper interpretation of clause 4.5.2 of the MDA is a result of selective reading that elevated the opening words of clause 4.5 and which ignored fiscal terms of the registered MDA. Further that, since the respondent was not entitled to assess additional 2% as withholding tax, she was equally not justified in imposing interest on the appellant. Reliance was placed on a number of authorities including **Commissioner General Tanzania Revenue Authority (TRA) v. Vodacom Tanzania Public Limited Company** [2025] TZCA 343; **Bulyanhulu Gold Mine Limited v. Commissioner General (TRA)** [2016] TZCA 571; **Sandaram Pillai v. R. Pattabiraman** [1985] AIR 582; and **Commissioner General (TRA) v. CRJE Estate Limited** [2022] TZCA 614.

Arguing against the appellant's submissions after adopting the respondent's written submissions in reply, Mr. Buki was brief and focused. He relied heavily on the interpretation of clause 4.5 and sub-clause 4.5.2 of the MDA which was given by the Court in **Geita Gold Mining**. He argued further that, the argument that the case is not relevant since section 143 (1) of the ITA, 2004 was not discussed by the

Court does not hold because the interpretation of clause 4.5. and sub-clause 4.5.2 of the MDA by the Court covers the circumstances of the instant appeal as regards withholding tax as may be required by law from time to time.

The interpretation of that clause by the Court, the learned Senior State Attorney added, indicates that the rate specified in the MDA was not intended to remain static. Since the prevailing law prescribes the rate of 5% in place of the rate of 3% which was then applicable, the respondent was justified in assessing the additional tax after discovering that the amount withheld by GGML did not correspond with the rate of 5% applicable under the prevailing law. According to Mr. Buki, the provision of section 143 (1) of the ITA, 2004 is not relevant since clause 4.5.2 of the MDA does not have the effect of stabilizing the applicable rate of withholding tax payable from payments made to third parties for technical and management services.

The above argument by the learned State Attorney was reinforced by his particular reference to the phrase "*as may be required by law from time to time*" in clause 4.5 of the MDA which is, in his harmonious interpretation viewpoint, a dominant phrase of the clause subjecting the liability of withholding taxes to changes from time to time in accordance with the requirements of law as it may be amended from time to time.

Such construction does not, it was argued, undermine other clauses and sub-clauses of the MDA and the overall intent of that agreement and the law. He added further that, 3% rate in sub-clause 4.5.2 simply reflected the withholding rate then in force which was however subject to changes as intimated in the very clause and which was, with the repeal of the ITA, 1973, replaced with a new withholding tax rate of 5% under ITA, 2004. We understood Mr. Buki as arguing that with the statutory changes introducing 5% rate as the applicable and prevailing rate, there is no basis for the applicability of the 3% rate under clause 4.5.2 of the MDA which is now no long in force. Reliance was made on, among others, **Commissioner General Tanzania Revenue Authority (TRA) v. Vodacom Tanzania PLC** (supra).

The rest of the learned Senior State Attorney's subsequent submission emphasized that the decision in **Geita Gold Mining** laid down a general principle of law governing operation of withholding obligations under the MDA. The principle applies to all payments made under the relevant clause and it is not dependent on, for instance, obligations of a withholding agent, nature of services in respect of which withholding obligation arises, and whether or not section 143 (1) of the ITA, 2004 is under consideration, Mr. Buki roundly submitted.

In view of the authority of the decision of this Court in **Geita Gold Mining**, and the rival arguments of the learned counsel, we think the first issue for our attention is whether the principle in that case is applicable in the instant appeal to resolve the issue whether clause 4.5.2 of the MDA read together with section 143 (1) of the ITA sets a static rate of withholding tax at 3%. In relation to the issue, we are mindful that the parties are at one that clause 4.5.2 of the MDA envisioned a withholding tax rate of 3% which was then in force under ITA, 1973. We must here emphasize that we did not hear any party arguing that the withholding rate of 3% was then lower than the then prevailing statutory rate of withholding tax under ITA, 1973. We are equally mindful that, with the changes of the law, particularly, the repeal of the ITA, 1973, the enactment of the ITA, 2004 and the subsequent amendments thereof, the prevailing rate of 3% was replaced with the rate of 5% which is currently applicable and in force. That rate is applicable for withholding tax from payment made to third parties for provision of technical services.

Construing the relevant provisions of clause 4.5 and sub-clause 4.5.2 of the MDA, in relation to the issue whether the rate of withholding tax of 3% on payment made to a third party for technical services and management fees was static and stabilized at such rate,

this Court in **Geita Gold Mining** was satisfied that, that rate was not intended to be static. In that respect, the Court reasoned to the effect that the MDA had in itself envisaged changes in the rate of the withholding tax from third parties as may be required from time to time. By way of concluding, this Court in that case was firm that as correctly concluded by the Tribunal, the Commissioner General, TRA was surely obliged to withhold tax from payments made to third parties at the rate applicable in terms of the prevailing ITA, 2004 which is now in force. The most relevant part of the Court's judgment in which the relevant statement of principle emerged after the Court had painstakingly scrutinized clause 4.5 as well as sub-clause 4.5.2 of the MDA in part reads thus:

> *Thus, the appellant's complaint that the rate of 3% was intended to be static is unfounded, because the MDA Agreement had envisaged changes in the rate of withhold tax from third parties as may be required from time to time.....*
>
> *As correctly concluded by the Tribunal, the appellant was obliged to withhold tax from payments made to third parties at the rate applicable in terms of the current law in force relating to income tax.*

Since the above principle of law arose from the examination of provisions of clause 4.5 and sub-clause 4.5.2 of the MDA which are the relevant provisions in this appeal, we are in agreement with Mr. Buki that the principle is clearly applicable to the circumstances of the case at hand. The argument that the principle is inapplicable because in that case this Court did not consider the provisions of clause 4.5 and sub-clause 4.5.2 in light of section 143 (1) of the ITA, 2004 is in our view of no avail. In so far as the Court in that case considered the provisions of clause 4.5 and sub-clause 4.5.2 in light of the then existing rate of 3% under the repealed ITA, 1973 and the prevailing rate of 5% under the ITA, 2004, we are fortified that the Court pronounced the principle mindful of the existence of the provision of section 143 (1) of the ITA, 2004 whose scope of application is limited to the extent provided for in the relevant agreement as shown above and as will become apparent shortly.

In view of the above, it is no wonder that at page 12 of the judgment of this Court in **Geita Gold Mining**, the Court wondered as to whether *"...following the repeal of the Income Tax Act 1973, the withholding tax at the rate of 3% as stated in the MDA Agreement continued to exist."* The Court went on to state that *"...in our jurisdiction which is the practice in the commonwealth jurisdictions, the effect of*

repealing a legislation is that, unless the contrary intention appears, the repeal does not revive anything not in force or existing at the time at which the repeal takes effect."

We have had, nevertheless, regard to the provisions of section 143 (1) of the ITA, 2004 now section 169 (1) of ITA, Cap. 332 R.E 2023 which is at the heart of the appellant's contention and in respect of which the appellant wants to get a tax relief based on a claim of stabilization of withholding tax at 3% rate. The argument in relation to that provision was that it had the effect of stabilizing what was agreed upon under clause 4.5 and sub-clause 4.5.2 of the MDA. We are, however, aware that none of the counsel addressed us in detail on how that provision would support the appellant's case or otherwise.

In our further reading of the provisions of section 143 (1) (a) (i) now section 169 (1) (a) (i) as a fore stated, we came across the phrase "*to the extent provided for in the agreement*" which must, in our view, be construed to mean that, tax liability by a taxpayer will be limited to the extent provided for in the relevant agreement for fiscal stability such as the MDA. Therefore, clause 4.5 and sub-clause 4.5.2 of the MDA, interpreted by this Court with particular reference to the phrase "*as may be required by law from time to time*", has the effect of subjecting the withholding tax rate in the MDA to the applicable rate under the

prevailing law that is in force at any given time. Thus, the withholding tax rate of 3% in the agreement (i.e the MDA), which was in accordance with the ITA, 1973 as it then was, ceased to exist and apply with the repeal of the ITA, 1973 and the enactment of ITA, 2004 as pointed out above. That, clearly suggests that the intention under the MDA was to align the agreement with the prevailing law, rather than confining it to the rate that was in force when the agreement was concluded and therefore contrary to the law.

We think it is in light of that phrase *"to the extent provided for in the agreement"* that this Court in **Geita Gold Mining** had to scrutinize the relevant provisions of clause 4.5 and sub-clause 4.5.2 to establish whether the withholding tax liability rate of 3% is stabilized or limited by the agreement which issue is also relevant in the instant case. We are in agreement with Mr. Buki that, the phrase in clause 4.5 *"as may be required by law from time to time"* is loud and clear that the agreement, namely the MDA, was as we held in **Geita Gold Mining** not intended to stabilize the withholding rate of 3% which was then in force to a static position. Rather, it was intended to abide by changes in the law.

Certainly, if we were to construe the provisions of clause 4.5 and sub-clause 4.5.2 of the MDA in line with the submissions by the appellant's counsel, we will, we are afraid, be construing the phrase *"as*

may be required by law from time to time" not only contrary to our interpretation in **Geita Gold Mining**, but also not in the sense in which it is ordinarily used. If we may add, the provision of sub-clause 4.5.2 of the MDA, which the learned counsel for the appellant invited us to consider on its own right in line with their harmonious interpretation viewpoint, is clearly part and parcel of the very provisions of clause 4.5 and sub-clause 4.5.2 whose scope of application is, in terms of our decision in **Geita Gold Mining** and what we have already found herein above, subject to the requirement of the prevailing law. All considered, we are not at all in doubt that, the agreement indicates that the parties anticipated potential changes in the law and intended the agreement to adapt accordingly.

We are, at this juncture, satisfied that the respondent correctly assessed the withholding tax at 5% as once that rate was increased from 3% to 5%, the prevailing rate of 5% started to apply accordingly by operation of clause 4.5 and sub-clause 4.5.2 of the MDA read with section 169 (1) of the ITA, Cap. R.E 2023. Interest thereof, accordingly accrued by operation of section 76 of the Tax Administration Act, 2015.

Based on what we have deliberated upon herein above, we are in agreement with the submission by Mr. Buki that this appeal must fail. We are of that view on account of our findings herein above and the

statement of principle obtaining from the decision of this Court in **Geita Gold Mining** which applies with full force in this appeal. Consequently, we uphold the decision of the Tribunal and proceed to dismiss the appeal with costs.

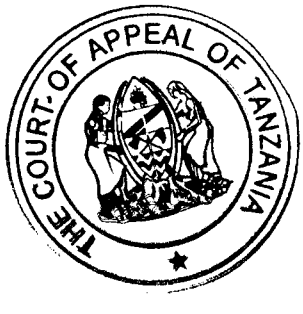
DATED at **DODOMA** this 11th day of December, 2025.

M. C. LEVIRA
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

L. M. MLACHA
JUSTICE OF APPEAL

The Judgment delivered this 15th day of December, 2025 in the presence of Mr. Abel Mwiburi, Mr. Alan Kileo, learned counsels for the appellant, Mr. Abdallah Mdunga Hussein, learned State Attorney for the respondent and Ms. Thabita Daniel, Court Clerk; both through Virtual Court is hereby certified as a true copy of the original.



D. P. KINYWAFU
DEPUTY REGISTRAR
COURT OF APPEAL