IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: KEREFU, J.A., KHAMIS, J.A. And NANGELA, J.A.)

CIVIL APPEAL NO. 180 OF 2025

AMANA BANK LIMITED..... APPELLANT

VERSUS

COMMISSIONER GENERAL, TANZANIA REVENUE AUTHORITY... RESPONDENT

(Appeal from the Decision of the Tax Revenue Appeals Tribunal, at Dar es Salaam)

(Herbert, Vice Chairperson)

Dated the 25th day of November, 2024

in

Tax Appeal No. 18 of 2023

JUDGMENT OF THE COURT

04th & 15th December, 2025

NANGELA, J.A.:

This appeal arises from the decision of the Tax Revenue Appeals Tribunal ("the Tribunal") in Tax Appeal No. 18 of 2023, which upheld an earlier determination of the Tax Revenue Appeals Board ("the Board"). The Board had dismissed the appellant's appeal challenging the decision of the respondent, the Commissioner General, of the Tanzania Revenue Authority.

The material facts, as concurrently established by both the Board and the Tribunal, are straightforward. On one hand, the appellant is a licensed

banker operating under the laws of Tanzania and provides banking services, in strict compliance with Islamic and Sharia principles, including a financing product commonly known as *Murabahah*.

On the other hand, the respondent, The Commissioner General of Tanzania Revenue Authority (TRA), is the Chief Executive Officer of the TRA, a body corporate established under section 4 of the Tanzania Revenue Authority Act, Cap 399 [R.E. 2023], for purposes of assessment and collection of revenues. For purposes of this appeal the respondent is charged with the administration of the Value Added Tax Act, 1997 (now repealed) (hereafter referred to as the VAT Act, 1997).

In the 2015/2016 financial year, the respondent conducted a routine tax audit of the appellant's operations for the period 2011 to 2014. The audit report (exhibit A2) concluded that, under the repealed Value Added Tax Act, 1997, the appellant's *Murabahah* facilities did not constitute exempt supplies of financial services. Instead, the respondent determined that the transactions amounted to ordinary buying and selling of goods. Consequently, on 04/07/2016, the respondent issued VAT Assessment Debit No. 435946252 (exhibit A3), assessing VAT in the sum of TZS 21,595,112,440.22 on the *Murabahah* transactions. However, the appellant

disputed the assessment and, on 15/06/2016, lodged a Notice of Objection challenging both the findings and the legal basis of the assessment.

Pursuant to section 52 (3) of the Tax Administration Act, 2015 (now section 63 (3), Cap. 438 [R.E. 2023]), the respondent issued a settlement proposal (exhibit A5), on 23 December 2020. In that proposal, the respondent maintained the position that the appellant's *Murabahah* facility of buying and selling goods and services to its customers did not qualify as an exempt supply of financial services under paragraph 9 of the Second Schedule to the repealed VAT Act, but instead constituted a standard taxable supply. In view of that, the respondent maintained that the appellant ought to have charged VAT on all *Murabahah* transactions in terms of sections 5, 6 and 13 of the repealed VAT Act, 1997.

The appellant filed a reply submission (exhibit A6) in response to the settlement proposal. She maintained that the *Murabahah* transactions are legally licensed forms of financing duly recognized by the Bank of Tanzania and which qualify as exempt supply of loan, credit and advances envisaged under paragraph 9 (3) of the Second Schedule to the repealed VAT Act and supply of financial services exempted under paragraph 13 of the Schedule to the VAT Act 2014.

However, after the parties failed to reach agreement, the respondent, on 29/04/2021, issued a final determination under section 52 (5) of the Tax Administration Act (exhibit A7). In it, the respondent affirmed its earlier position, noting that, unlike conventional lending by commercial banks, where funds are advanced directly to a borrower, *Murabahah* financing requires the appellant to purchase and pay for goods or services in its own name. Once the title passes to the bank, the goods or services are then supplied to the borrower at an agreed profit margin, i.e., mark-up or profit on the costs incurred. This structure, the respondent concluded, fell outside the scope of exempt financial services under the repealed VAT Act.

Aggrieved by the respondent's final determination, the appellant lodged an appeal before the Board. The Board identified four issues for determination: (a) whether the *Murabahah* financing facility constituted exempt supplies under the repealed VAT Act; (b) if so, whether the respondent's VAT assessment on the *Murabahah* facility was valid in law; (c) whether the respondent's computation was lawful; and (d) the reliefs, if any, to which the parties were entitled. Upon reviewing the facts, evidence, submissions, and applicable law, the Board confirmed the respondent's assessment which characterized the Murabahah facility as a taxable supply, and eventually dismissed the appellant's appeal.

Undeterred, on 03/10/2022, the appellant preferred a further appeal to the Tribunal. In summary, the appellant's case before the Tribunal rested on four principal grounds: one, that the Board failed to properly consider the essential features of the *Murabahah* agreements as a legally recognized and permissible Islamic financing arrangement qualifying for exemption under paragraph 9 (3) of the Second Schedule to the repealed VAT Act, 1997; two, that, the Board failed to apply paragraph 9 (3) of the Second Schedule to the repealed VAT Act, 1997 to the facts and circumstances of the appeal, thereby reaching at an erroneous conclusion; three, the Board erred in law and fact in holding that the appellant's *Murabahah* financing facilities did not constitute exempt supplies under the repealed VAT Act, 1997; and, four, that the Board erred in law and fact in upholding the respondent's computation of VAT and in finding the resulting VAT assessment on the appellant's Murabahah facilities to be valid.

The Tribunal considered the parties' submissions, the record of appeal laid before it, and the applicable law. It confirmed the Board's decision that the *Murabahah* arrangement was a taxable supply and that, the appellant had a duty under section 18 (2) (b) of the Tax Revenue Appeals Act, Cap. 408 [R.E.2019] (the TRAA), to prove that the respondent's tax computations were erroneous. Based on such findings, in the end the Tribunal dismissed

the appeal for lack of merit. The appellant now challenges that decision before this Court.

For purposes of this appeal, the appellant raised four grounds of appeal for our consideration, and the same may be paraphrased to read as follows, that:

> *1. the Tribunal erred in law by finding that the complaint concerned the Board's interpretation of paragraph 9 (3) of the Second Schedule to the repealed VAT Act, 1997, yet failing to interpret that provision and apply it to conclude that the appellant's Murabahah financing facilities constitute exempt financial services;*
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> *2. the Tribunal erred in law in holding that the appellant's Murabahah facilities, though involving the sale of goods to customers, do not amount to the supply of exempt financial services under paragraph 9 of the Second Schedule to the VAT Act, 1997;*
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> *3. the Tribunal erred in law by misconstruing exhibit A6 (Shariah Standard No. 8) and the testimony of AW1 regarding Murabahah financing as an established, Shariah-compliant form of credit, and wrongly concluding that the arrangements*

were taxable sales of goods rather than exempt financial services under paragraph 9 of the Second Schedule to the VAT Act, 1997, thereby treating them as taxable under sections 3, 5, 6, and 13 of the Act; and,

4. the Tribunal erred in law by misapprehending exhibit A2 as containing tax computations and, on that basis, incorrectly applying section 18 (2) (b) of the TRAA to hold that the appellant bore the burden of disproving the respondent's tax computations, even though no such computations were ever issued by the respondent or tendered in evidence before the Board.

When this appeal was called on for hearing, Messrs. Yusufu Mohamed and Jovin Marco Ndungi, learned Advocates, appeared for the appellant. On the part of the respondent, it was Mr. Hospis Maswanyia, learned Principal State Attorney who appeared in Court, assisted by Mr. Olais Mollel, State Attorney. At the onset, we drew the attention of the parties to the fourth ground of appeal, calling upon them to submit as to whether it was raising a pure question of law or was a mix of law and facts. In addressing that issue and the rest of the grounds of appeal, both parties commenced their

address by adopting their written submissions in respect of the four grounds of appeal and offered few clarifications thereto.

When Mr. Mohamed took the floor, he commenced his address by giving the context to the appellant's complaint. In addressing grounds one, two and three, he emphasized that the appellant's banking services are provided strictly in accordance with Islamic and Shariah principles and, that one of them is the *Murabahah* financing, which he described as 'an alternative form of financing' that involves no movement of funds to the borrower.

According to Mr. Mohamed, instead of advancing a cash loan, the lender procures the goods or services for which the financing is intended, adds a predetermined profit margin, and then supplies them to the borrower. The borrower repays over time, either in instalments or as otherwise agreed.

Mr. Mohamed further explained that, under a *Murabahah* arrangement the lender (the bank) holds only 'constructive ownership' of the procured goods/services, and, does not receive invoices in its name nor acquire actual ownership in the conventional sense. He concluded that, this type of arrangement falls within the exemption provided under paragraph 9 (3) of the Second Schedule to the repealed VAT Act, 1997. As regards ground 4

and whether such ground raises a purely legal issue, Mr. Mohamed submitted that, it did purely raise a legal issue worth of being entertained by the Court as it seeks to challenge the legality of shifting the burden of proof to the appellant in relation to computations undertaken by the respondent which he contended were non-existent.

For his part, Mr. Maswanyia, offered brief clarifications as well. Referring to page 151 of the record of appeal, he clarified that the issue which the Tribunal was concerned with was the nature of the *Murabahah* arrangements. He clarified that, because there is no movement of cash into the borrower's hands but the bank itself procures and supplies the goods or services to the customer, who is then treated as the borrower, the transaction constitutes a taxable supply of goods under section 3 of the repealed VAT Act, 1997. He maintained that the bank assumes a constructive ownership, and the transaction does not fall within the exemption under paragraph 9 (3) of the Second Schedule to the Act. He therefore concluded that, under the law as it then was, the arrangement was taxable rather than exempt.

Mr. Maswanyia clarified further that, even if the appellant is a regulated entity by the Bank of Tanzania, that fact alone does not make its arrangement in the form of *Murabahah* to be exempt under the repealed

VAT Act, 1997. He contended that matters of imposition, assessment and collection of taxes are an exclusive mandate of the respondent and, tax exemption are not taken lightly. To buttress his point, he referred us to the decision of the Court in **National Bank of Commerce Ltd v. Commissioner General Tanzania, Revenue Authority** (Civil Appeal No. 251 of 2018) [2020] TZCA 309 (16 June 2020- TanzLII) and a decision of the Supreme Court of the Philippines, **Esso Standard Eastern, Inc. v. Acting Commissioner of Customs,** G.R. No. L-21841, October 28 1966, this decision to us, being only of persuasive value.

Mr. Mohamed made a brief rejoinder which, in principle, was a reiteration of his earlier submissions and nothing much.

We are grateful to both counsel for their lucid clarifications and submissions. While we may not reproduce all what the learned counsel submitted to us, we wish to firmly reiterate our view that, in the course of composing this decision, we took into account their submissions and all assertions made therein as well as the clarifications which the learned counsel for the parties made before us.

Turning back to the nitty-gritty of the appeal before us, the main issue is whether it is meritorious. However, before we embark on the analysis of

the parties' submissions and examine the record and the law as was applied to the facts on the ground by the Tribunal, we find it apposite, **first**, to state that, in accordance with the provisions of Section 26 (2) of the TRAA, the jurisdiction of this Court over appeals arising from the Tax Revenues Tribunal is very limited only to matters that involves questions of law.

Second, as earlier on noted hereinabove, the appellant advanced four grounds of appeal in his memorandum of appeal. In our view and, for ease of analysis, these may be grouped into two clusters. The first cluster comprises grounds one, two and three, which concern the interpretation of the repealed VAT Act of 1997 and the nature of *Murabahah* financing. Under this cluster, the appellant is challenging the Tribunal's interpretation and application of paragraph 9 (3) of the Second Schedule to the VAT Act, 1997, and its characterization of *Murabahah* financing. Her complaint is essentially that, in addressing these grounds, the Tribunal misinterpreted the relevant VAT provisions, wrongly classified the *Murabahah* facilities as taxable sales of goods rather than exempt financial services, and consequently, misunderstood the nature of *Murabahah* as a Shariah-compliant arrangement.

The second cluster is comprised of ground number four and, since we had earlier raised a concern regarding whether it qualifies as a ground raising

pure question of law to warrant our attention and proper exercise of our jurisdiction, we shall commence our deliberation by focusing on that ground.

For ease of reference, we have taken the liberty of reproducing the fourth ground of appeal hereunder. It reads as follows:

> *"The Tribunal erred in law by misapprehending exhibit A2 as containing tax computations and, on that basis, incorrectly applying section 18 (2) (b) of the TRAA to hold that the appellant bore the burden of disproving the respondent's tax computations, even though no such computations were ever issued by the respondent or tendered in evidence before the Board."*

To begin, we address whether the quoted ground, as framed, raises a pure point of law. What, then, constitutes a pure point or question of law? This issue is not new; the Court has considered it in several decisions. For instance, in **Atlas Copco Tanzania Ltd v. Commissioner General, Tanzania Revenue Authority** (Civil Appeal No. 167 of 2019) [2020] TZCA 317 (17 June 2020, TanzLII), the Court examined comparative approaches from other jurisdictions and concluded as follows:

> *Thus, for the purpose of section 25 (2) of the TRAA, we think, a question of law means any of the following: **first,** an issue on the interpretation of a*

provision of the Constitution, a statute, subsidiary legislation or any legal doctrine on tax revenue administration. ***Secondly,*** *a question on the application by the Tribunal of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine to the evidence on record.* ***Finally,*** *a question on a conclusion arrived at by the Tribunal where there is failure to evaluate the evidence or if there no evidence to support it or that it is so perverse or so illegal that no reasonable tribunal would arrive at it.*

See also **Serengeti Breweries Limited v. Commissioner General, Tanzania Revenue Authority** (Civil Appeal No. 453 of 2023) [2025] TZCA 685 (3 July 2025, TanzLII); **Q-bar Limited v. Commissioner General Tanzania Revenue Authority** (Civil Appeal 163 of 2021) [2022] TZCA 381 (16 June 2022), and **Shoprite Chackers T. Limited v. The Commissioner General, Tanzania Revenue Authority** (Civil Appeal 307 of 2020) [2021] TZCA 622 (29 October 2021, TanzLII).

In **Serengeti Breweries Limited** (supra), the Court was clearer in stating that, a complaint related to improper evaluation of the evidence by the Board or Tribunal is not a question of law, and that, where the complaint invites a reopening of factual issues in order to support the appeal, that does

not constitute a question of law. The complaint must be a pure point or question of law.

In the context of the fourth ground of appeal, therefore, the question that follows is whether that ground meets the criteria set out in the above cited authorities. In his submission, Mr. Mohamed, the counsel for the appellant, was adamant that the fourth ground of appeal raises a purely question of law. His argument was premised on the ground the Tribunal imposed upon the appellant the burden to disprove the respondent's tax computations under TRAA, section 18 (2) (b) of the TRAA, despite the fact no computations were ever issued or tendered.

However, the respondent contended otherwise arguing that, that ground of appeal, **first**, invites the Court to revisit the evidence on record and ascertain if the computation were existent and availed to the appellant or that they were non-existent, and, **second**, if the said computations were non-existent, then the Court will consider whether it was proper to impose upon the burden on the appellant a burden to disprove the respondent's tax computations that were non-existent, **third**, if they were existent, the Court will have to evaluate the same with a view to satisfy itself that they were correctly assessed by the respondent.

However, upon keen examination of the fourth ground of appeal we hold a view that it does constitute a pure question of law. Two things make us hold that view. **First**, the ground challenges the Tribunal's application of section 18 (2) (b) of the TRAA, specifically regarding which party bears the burden to disprove tax computations and, **second**, questions whether in the context of this appeal, that burden can arise in the absence of computations tendered in evidence. These two components raise one major question of legal principle concerning the proper interpretation and application of a statutory burden of proof. Having so held, what follows is the determination of that ground and the issue for our consideration is whether the Tribunal erred in law by imposing on the appellant the burden to disprove the respondent's tax computations in the absence of any such computations being issued or tendered in evidence, contrary to section 18 (2) (b) of the TRAA.

As observed earlier, the appellant seems to argue that, the Tribunal should not have imposed a burden on the appellant because it was a settled factual position that no computations were produced. But was it an accepted finding of the Tribunal that the respondent's tax computations were inexistent? As we intimated earlier, our duty is to strictly confine ourselves to the dictates of the law, meaning we shall not allow ourselves to be drawn

to the reopening of the evidence or its evaluation. We shall therefore strictly look at what the Tribunal decided which it ought not to have decided or not decided but which it ought to have decided in relation to the discharge of the burden of proof.

The Tribunal's deliberation on the point which constitute the fourth ground of appeal can be found on pages 428 to 429 of the record of appeal. The tribunal held, and we quote:

> *"We support Boards Judgement based on the Testimony of AW1. That,* ***during audit and objection process, there was oniy one major issue*** *which was: whether Murabahah financing facility issued to its customers are exempt supplies under the repealed Value Added Tax Act, 1997 (VAT Act).* ***The appeliant did not chalienge computation and did not present any documents to chaiienge the computation because the computation was not an issue during the objection process. If the objection was among the points of contention, the appeiiant was supposed to present evidence before the Honourabie Board to show how the respondent's computation was erroneous.... The appeiiant failed to present evidence during objection and even before the Board to***

challenge the respondent's computation. *Based on the wording of section 18(2)(b) of the Tax Revenue Appeals Act, ... the burden of proof on whether the computations [were] correct or not falls on the appellant."* (Emphasis added).

From the above excerpts from the Tribunal's impugned decision, it is clear that the Tribunal did not misinterpret nor misapply section 18 (2) (b) of the TRAA as contended by the appellant. We hold that view based on the sequence of the Tribunal's reasoning as expressed in the above excerpt, and which we find to be legally appropriate and logically sound. We shall expound on this. **Firstly,** that, the Tribunal interpreted and applied the provision, contextually, by first making a factual finding that, at the stage of audit objection, there was only one contentious issue, *i.e.*, the *Murabahah* financing issue. **Secondly**, that, at that time of objection process, the issue of computation was never raised as an issue or a point of objection. **Thirdly**, (which in our view was given in the alternative to the second point) if the issue of computation was among the contentious points, the appellant never presented before the Board evidence to challenge the respondent's computation; and **fourthly**, based on the preceding point, the burden was upon the appellant to controvert such computations, this being a legal requirement under section 18 (2) (b) of the TRAA.

It follows, therefore, that, even if the question whether, as a matter of law, a burden could be imposed on the appellant to disprove the respondent's tax computations under section 18 (2) (b) of TRAA, despite the fact that no computations were ever issued or tendered is a pure question of law, based on what has been stated hereabove, that issue cannot stand because as correctly reasoned and held by the Tribunal, the issue of computation was not an issue in the first place, and if it were, then it was the respondent who had the burden of disproving their correctness.

The appellant's argument that respondent's computations were not on the table for discussion is not supported by what is available on record considering what the Tribunal stated as earlier on noted hereinabove. That appellant's contention, therefore, is nothing more than a façade inconsistent with the actual facts. As correctly stated by the Tribunal, the onus was on the appellant to disproved the erroneousness of the respondent's computations. We settle the arguments surrounding the fourth ground that way, holding that the ground is devoid of merit. We straightaway dismiss it.

We now turn to the first cluster of the grounds of appeal which is composed of grounds one, two and three. As we have earlier on intimated, these grounds befit being addressed conjointly. In essence, they seek to challenge the Tribunal's interpretation and legal characterization of: (a)

paragraph 9 (3) of the Second Schedule to the repealed VAT Act, 1997; (b) the statutory definition of "financial services" and their VAT treatment; and (c) the legal status of *Murabahah* financing, specifically within the context and meaning of the repealed VAT Act, 1997. In that regard, they raise two pertinent issues:

> **Issue 1:** *Whether the Tribunal misapprehended the nature and legal status of Murabahah financing—including the evidence in exhibit A6 and AW1's testimony—and consequently erred in classifying the arrangements as taxable sales of goods rather than exempt financial services under the VAT Act, 1997,* and
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> **Issue 2:** *Whether the Tribunal erred in law by failing to properly interpret and apply paragraph 9 and paragraph 9 (3) of the Second Schedule to the VAT Act, 1997 in determining the VAT treatment of the appellant's Murabahah financing facilities.*

In addressing the above two issues arising from the consolidated grounds one, two, and three of appeal, however, it is imperative to examine the VAT regime under the 1997 Act and its mechanism for imposing the tax.

First, under that framework, VAT was levied on "taxable supplies" of goods and services. **Second**, section 5 defined what qualifies as a taxable supply, **third**, section 2 of the Act expressly provided that "taxable supplies"

did not include exempt supplies, which under the section "exempt supplies" are defined as "supplies of goods or services described in the Second Schedule to this Act." **Fourth**, section 6 clarifies on when a taxable supply is made, i.e., it is when goods leave the supplier's control or are made available to the recipient. **Fifth**, section 10 (1) of the Act, provides that, a supply is "exempt supply" only if it is of a description specified in the Second Schedule. And, finally, **sixth**, all that boils down to the conclusion that any exemption under the repealed VAT Act 1997 was solely derived from the Second Schedule to the Act and relevant, in our context, paragraph 9 (3) of the Schedule.

With that understanding, we now turn to the Issues number 1 and 2 above, which, given the fact that they arise from the consolidated grounds one, two, and three of the appeal, it befits as well to address them conjointly as well.

In his submissions, Mr. Mohamed, argued that, in this appeal, judicial analysis and consideration of the provisions of paragraph 9 (3) of the Second Schedule to the VAT Act, 1997 was/is central and indispensable in reaching a just determination. We fully agree to that submission of his. In essence, even before the Board and the Tribunal, paragraph 9 and 9 (3) of the Second Schedule to the repealed VAT Act, 1997, took a central focus of attention.

In our view, the same applies to this appeal, as the parties' opposing positions concerns the nature of *Murabahah* financing, this as we stated earlier, being the substance of grounds one, two, and three of the appeal. All along, therefore, the crucial issue has been on whether the appellant's *Murabahah* financing facility qualified as an exempt supply under the repealed VAT Act, 1997. That legal question squarely points to not only the statutory definition of what constitute "exempt supplies" but also on how they are treated under paragraph 9 (3) of the Second Schedule to the repealed VAT Act.

In his submission, therefore, Mr. Mohamed faulted the Tribunal's decision contending that, the Tribunal did not give a proper interpretation of paragraph 9 (3) of the Second Schedule to the Act. He argued that, although it exempts from VAT the provisions of any loan, advance or credit, and that the *Murabahah* arrangement falls within the exempt category as a loan, yet the Tribunal ruled otherwise. He contended that the appellant had placed before the Tribunal the Board's reasoning, found at page 194 of the record of appeal, which he viewed as erroneous and unrepresentative of the *Murabahah* facility's true nature. On that page, the Board had stated as follows:

"By taking constructive ownership of the goods and supplying those goods to the clients at a markup this transaction turns the loan facilities into supply of taxable goods."

According to Mr. Mohamed, although that reasoning was the basis of the appellant's appeal to the Tribunal in search of a proper interpretation and application of paragraph 9 (3) of the Second Schedule to the repealed VAT Act, 1997 the Tribunal only ended up observing that the complaint in the appeal before it was about the trial Board's interpretation of paragraph 9 (3) of the Second Schedule, presumably without much ado. But the immediate question that comes our way, based on those submissions, is whether, truly, the Tribunal merely made an observation of the nature of the complaint before it without much ado. We find the contrary to be true and, we shall demonstrate here.

First, our attention is drawn to pages 426 to 427 of the record of appeal where the Tribunal, apart from making a finding that the complaint before it was on the Board's interpretation of paragraph 9 (3) of the Second Schedule to the repealed VAT Act, 1997, went ahead and considered section 2 of the same Act and concluded that, according to the respective repealed VAT Act, 1997, for any supply of goods or services to qualify for exemption, it must be prescribed under the Second Schedule. **Second,** it also made a

finding that, based on Paragraph 9 of the Second Schedule to the repealed VAT, Act 1997, what was exempted there under was the supply of financial and insurance services and not supply of goods and services. **Third**, it is also clear, as pages 427 to 428 of the record of the appeal indicate, that, the Tribunal addressed itself regarding whether the *Murabahah* facility was an exempt supply under paragraph 9 (3) of the Second Schedule to the Act.

In particular, having considered what constitutes exempt supplies under section 2 and what qualifies as 'exempt supplies' under paragraph 9 (3) of the Act, the Tribunal stated as flows:

> *"It is undisputed that, the Bank does not charge interest but it receives profit by selling the same goods to the customers at profit markup of cost of goods. It is also undisputed that, Murabahah facility involves sell of goods to its customers not lending money to its customer. The act of buying goods and selling the same to its customers at an agreed profit markup is pure supply of goods, which is taxable under the VAT Act. According to the VAT Act, 1997, any supply of goods or services to qualify for exemption it must be prescribed under the Second Schedule to the Act. Looking at the said Schedule, especially item 9 what have been exempted under the law is supply of financial and insurance services,*

not supply of goods. As submitted by the respondent the act of buying goods and selling the chosen goods to its customer on instalments payment schedules is not supply of financial services in nature, rather it is supply of goods which is not exempted under the Act."

Based on what AW1 had testified before the Board, the Tribunal further cemented its findings, by stating, at page 428 of the record of appeal, that:

"From the above submission, it is clear that goods or services supplied by the Bank to its customer on Murabahah arrangement are not a supply of financial services exempted under item 9 of the VAT Act ... The VAT assessment issued is proper and correct in the eyes of the law."

From the above considerations, therefore, it will be erroneous to say, as the appellant counsel seems to be arguing, that, the Tribunal merely ended up observing that the complaint in the appeal before it was about the trial Board's interpretation of paragraph 9 (3) of the Second Schedule to the VAT Act, 1997, without providing its own interpretation of that provision based on the issue for which it was called upon to address, *viz*, whether *Murabahah* facility was an exempt under paragraph 9 (3) of the Second Schedule to the repealed VAT Act, 1997.

But be that as it may, for us, the pertinent issue, after all that which the Tribunal did, is whether looking at the above noted analysis the Tribunal undertook, it properly interpreted those respective provisions, given the contexts under which the appeal before it was premised. That, for now, is precisely what the two conjoined issues we raised hereinabove seek to address. Earlier, we did highlight on the statutory framework under which the repealed VAT Act, 1997 charged VAT and exempted certain supplies that were regarded as "exempt supplies". As we intimated, under that framework, VAT was charged on taxable supplies of goods or services made in the Mainland Tanzania by a registered person.

According to section 6 (1) (a) of the Act a "supply of goods" occurs where ownership in goods is transferred or where goods are made available to another person for consideration. Thus, in terms of section 10 (1) of the Act, a supply of goods or services will only qualify as an exempt supply if it is of a description specified in the Second Schedule to this Act, specifically under paragraph 9. Since that paragraph relates only to financial and insurance services, any exemptions must strictly originate from the statutory Schedule.

It is worth noting, however, that, in essence, under the repealed VAT Act, 1997 the form of the legal supply, be it transfer of goods or services, is

what determines VAT treatment. This means the Act's wording as far as exemptions are concerned, treated them very narrowly. In his submissions, the appellant's counsel brought to our attention the decision of the Court in **Mantra Tanzania Limited v. Commissioner General, Tanzania Revenue Authority (TRA)** (Civil Appeal 380 of 2021) [2023] TZCA 190 (19 April 2023, TanzLII) on the basic rule of construction and interpretation of tax statutes. In that decision, the Court noted as follows:

> *"We have carefully examined the SAAs, in particular the above quoted clauses. While doing so, we were alive of one of the basic rules of construction and interpretation of transactions on tax liabilities. It states that: "**Substance not form is the basis of interpretation of transactions. The courts will look at the real substance not the form of the transactions**; for example, it does not make any difference whether, a tax-payer labels a payment or consideration for services rendered a salary, gift, commission, pension; gratuity, emolument or benefit."*

Essentially, the above cited decision of the Court, came way after a lot of reforms had gone into the Tanzanian taxation regime, including the repeal and re-enactment of the VAT Act, 2014 (Value Added Tax Act (Cap.148 R.E. 2023)), the enactment of the Value Added Tax (General Regulations) (2015);

the Tax Administration Act, Cap. 438 [R.E. 2023], to mention only a few. In essence, our careful scrutiny of the legislative design of the repealed VAT Act, 1997, make us come into a conclusion that, the legislature did not entrench in its legal fabric the substance-over-form doctrine when dealing with exemptions. Instead, the Act reckoned exemptions in a strict-schedule-based manner and applied them based on precise statutory classifications such as type of supplies or category of goods and services, while, requiring taxpayers to show that their dealings fit squarely within the exemption's diction.

In our considered view, that structure of the Act reflected a form-oriented legislative approach where eligibility depended on meeting the literal terms of the exemption rather than the underlying economic substance of the transaction. Put differently, exemptions under the Act were narrow, rule-bound, and formalistic, not substance-driven. On that account, the above cited authority cannot be of assistance to us as it came much later after reforms which may not be the subject of discussion in this decision. This understanding, in our view, is paramount and pertinent, in considering the issues surrounding the legal characterization of the *Murabahah* transactions in light of the provisions of that Act.

That having been said, did the Tribunal got it right? As observed earlier, both the Board and the Tribunal concurrently characterized *Murabahah* transactions as taxable supplies and not exempt supplies. Based on what we have laboured to establish, concerning how the repealed VAT Act, 1997 treated exemptions, we are of the view that the Tribunal was right in concurring with the decision of the Board. We shall explain why.

The first reason, is the way the *Murabahah* arrangement works *vis-a-viz* what was the position of the law by the time the impugned transactions took place. Its mechanism was well articulated before the Board by the appellant's sole witness AW1. For ease of reference, we refer to pages 150 and 151 of the record of appeal (also reflected at page 267), which set out the witness's testimony as follows:

> *'Murabahah facility is a financing facility given to our customer which is organized under Islamic principles of financing through cost plus mark-up. A process through the Murabahah is that the bank receives deposits from general public as savings deposits and do intermediation of those resources in the form of financing to general public through advancing working capital facilities, asset financing and advances to the employees. However, through Murabahah arrangements and by basic Islamic*

principles which is the foundation of the bank, the bank does not give money directly to its customers, rather it pays money directly to suppliers of goods and services where the bank charges the mark-up of profit on the costs incurred. In addition, the bank, in the process, takes constructive ownership of the goods and sell to the customers where repayment of that facility is done in differed cases depending on customer cash flow. When a customer applies for financing facility, he submits application letter for that facility along with or (sic) documentations required under the law ... the bank appoints the customer as agent to select the goods he wants and bring the purchase requisition for the bank to pay the supplier. The constructive ownership of the goods is taken by the bank from the time the bank appoints a customer as an agent to the point where either the customer receives the shipping documents for the user or receiving the goods. So, in between the bank is considered to be constructive owner of the goods."

In essence, that long narrative above may be simplified to a nutshell to mean a *Murabahah* arrangement works as follows: the customer applies for financing, the bank purchases the required goods and takes constructive ownership, then sells them to the customer at a profit, with repayment made on a deferred basis according to the customer's cash flow.

Now, by contextualizing the above scenario within the framework of the repealed VAT Act, 1997, it is clear, as correctly argued by Mr. Maswanyia, that the arrangement signifies two contractual scenarios: one, there is a component where the banker purchase goods/services from suppliers (normal sale) and title passes (even if constructively) to the bank; and, two, the bank's sale to the customer (also normal sale) where title passes from the bank to the customer.

The above noted twin transaction scenario mirrors what Abdul Karim Aldohni noted, from a comparative perspective, in his book **The Legal and Regulatory Aspects of Islamic Banking: A Comparative Look at the United Kingdom and Malaysia** (Routledge, 2011). At pages 108–109, he observes:

> "*Under Islamic banking, debt finance is replaced by equity finance, which is based on participating in the commercial venture and sharing profits and bearing losses. Consequently, new financial products have been produced in the banking market presenting different means to mobilize the required finance. Even though some of these new financial structures, to some extent, are not different from many conventional contracts, they still may cause legal controversy .... In other words,* ***the Murabaha***

> ***(mark-up) contract is used by Islamic banks to replace personal loans offered by conventional banks. The Murabaha agreement includes two purchasing actions, which are taxable transactions.***" (Emphasis added).

At page 110, the author further discusses the *Murabahah* arrangements in relation to another related concept of "*Mudarabah*", which is essentially a profit-sharing partnership (money from one, effort from another) and observes that:

> "*Islamic banks cannot have the conventional deposit accounts that earn interest; instead, they have investment accounts. Customers who agree to deposit their money in investment accounts become part of a Mudaraba contract. Investment account holders (capital owners/Rab Almal) entrust the Islamic bank (Mudarib/entrepreneur) with their funds; in return, the Islamic bank manages the funds and distributes the profits earned by the Investment.* ***This return is legally classified as a profit, which is subject to tax.***"(Emphasis added).

The above extracts show that *Murabahah* arrangements can become taxable depending on how the transactions are structured from the taxing authority's perspective, which is supported by the cited material. In the

context of the current appeal, considering AW1's testimony on pages 150 to 151 of the record of appeal, and the Board's and the Tribunal's findings on pages 193 to 194 and 427 to 428 of the same record, it is clear to us that, the *Murabahah* arrangement did not constitute a loan in the legal form but rather a trade finance sale of goods, with known cost and fixed profit under a deferred payments plan. Accordingly, the Tribunal was justified in aligning its position with that of the Board.

But the **second** reason is premised on how, the outcome of the characterization of a transaction was treated by the law. In the context of this appeal, both the Board and the Tribunal characterized the *Murabahah* arrangement as constituting a taxable supply. But, having arrived at such a characterization of what the *Murabaha* arrangement stood for, both the Board and the Tribunal did not end up there. Their characterization outcome was subjected to the legal parameters of what constitutes exempt supplies under the repealed VAT Act, 1997.

Essentially, the parameters set by the provisions of the law constitute, in particular, sections 2, 3, 5, 6, 13 and paragraph 9 (3) of the Second Schedule to the Act. In principle, since section 3 of the Act, regarded VAT as a tax on consumption of goods/services, that legal form matters: if the legal form is a sale of goods, VAT attaches to that sale, and, as already explained,

that is why the Board and the Tribunal arrived at a concurrent position that the *Murabahah* arrangements constituted taxable supplies. Under paragraph 9 (3) of the Second Schedule to the Act, what is exempted thereat is "the provision of loan, advance or credit."

In his submission, Mr. Maswanyia urged us to consider the above provision strictly, persuading us to consider a persuasive view adopted by the Supreme Court of the Philippines in the case of **Esso Standard Eastern, Inc. v. Acting Commissioner of Customs,** G.R. No. L-21841, October 28 1966). The brief fact constituting that appeal were that it involved a petitioner who was engaged in a business of manufacturing lubricants and processing gasoline but owned gasoline stations with pumps which he used to lease to third parties who operated them. Upon purchasing pump parts, he claimed tax exemptions for which the Court denied his petition given that the pump parts were not intended for his exclusive industrial use since the law had provided that exemptions were solely grantable "for the use of the industries".

What is of significance and, thus relevant to our discussion, is how exemptions are treated and construed even in other jurisdictions. In that appeal, the Court held as follows:

> *"Exemption from taxation is not favoured and exemptions in tax statutes are never presumed. Exemptions from taxation are construed in strictissimi juris against the taxpayer and iiberally in favour of the taxing authority. Where the State has granted in express terms certain exemptions, those are the exemptions to be considered, and no more."*

In essence, the above authority supports our earlier view that the legislative framework of the repealed VAT Act, 1997, called for a strict application of the law. Paragraph 9 (3) of the Second Schedule, under which the *Murabahah* arrangement fell, exempted specific financial services such as granting credit, dealing in money, or operating bank accounts. Its wording was narrow, applying strictly to financial services and not to ordinary sales of goods.

From this understanding, because the Murabahah arrangement did not constitute a loan in legal form but was a sale of goods with deferred payment, the sale portion does not qualify as a financial service and thus falls outside paragraph 9 (3) of the Second Schedule to the repealed VAT Act, 1997. We therefore hold that the Tribunal correctly characterized the legal status of the *Murabahah* arrangement as assessed by the respondent, and, given the wording of paragraph 9 (3), it does not fall within the

statutory definition of "financial services" for VAT exemption. This discussion and conclusion answer negatively the two issues raised above.

Having said that, grounds one, two, and three, considered together, are devoid of merit. Since we earlier dismissed the fourth ground for lack of merit, the appeal is unmeritorious, and we accordingly dismiss it. In the circumstances of this appeal, we make no orders as to costs.

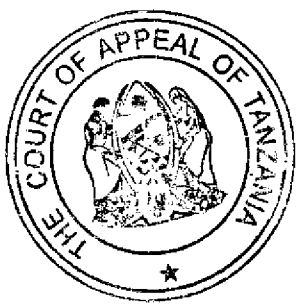
DATED at **DAR ES SALAAM** this 12th day of December, 2025.

R. J. KEREFU
JUSTICE OF APPEAL

A. S. KHAMIS
JUSTICE OF APPEAL

D. J. NANGELA
JUSTICE OF APPEAL

Judgment delivered this 15th day of December, 2025 via Virtual Court in the presence of Mr. Jovin Ndungi, learned counsel for the Appellant, Mr. Olais Mollel, learned State Attorney for the Respondent and Musa Amry, Court Clerk is hereby certified as a true copy of the original.



A. S. CHUGULU
DEPUTY REGISTRAR
COURT OF APPEAL