

**IN THE COURT OF APPEAL OF TANZANIA  
AT DODOMA**

**(CORAM: KEREFU, J.A., FIKIRINI, J.A. AND MASOUD, J.A.)**

**CIVIL APPEAL NO. 144 OF 2022**

**AUDAX KIJANA KAMEJA.....APPELLANT**

**VERSUS**

**COMMISSIONER GENERAL  
TANZANIA REVENUE AUTHORITY .....RESPONDENT**

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

**(Haji, Vice Chairperson.)**

**Dated the 18<sup>th</sup> day of January, 2022  
in  
Tax Appeal No. 96 of 2020**

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**JUDGMENT OF THE COURT**

*14<sup>th</sup> & 21<sup>st</sup> February, 2025*

**KEREFU, J.A.:**

The appellant, Audax Kijana Kameja, has lodged this appeal challenging the decision of the Tax Revenue Appeals Tribunal (the Tribunal) which dismissed his appeal against the decision of the Tax Revenue Appeals Board (the Board) in favour of the Commissioner General Tanzania Revenue Authority (the TRA), the respondent herein.

For better understanding of what transpired, the following brief background of the matter will suffice. On 31<sup>st</sup> May, 2019, the respondent served on the appellant a notice of adjusted assessment No. F

422316655 for the payment of tax of TZS 402, 192,237.10 for the year of income 2010. Subsequently, on 7<sup>th</sup> June, 2019, the appellant lodged an application for an extension of time to file a notice of objection on the said notice under section 51 (2) of the Tax Administration Act, 2015 (the TAA). The said application was duly received by the respondent on 11<sup>th</sup> June, 2019.

Again, on 31<sup>st</sup> July, 2019, while an application for extension of time was still pending for determination by the respondent, the appellant was served with another demand notice dated 19<sup>th</sup> July, 2019 under Ref. No. TRA/101-790-185/MDM/027 for payment of Personal Income Tax, adjusted assessment of TZS 379,912,382.10 for the year of income 2010.

Dissatisfied by the said notice, the appellant, on 6<sup>th</sup> August, 2019, simultaneously, filed a notice of objection against the aforementioned demand notice and an application for a full waiver of payment of tax deposit of one third of the assessed tax. The appellant stated further that, upon being served with the demand notice on 31<sup>st</sup> July, 2019, the time limit for lodging the application for waiver was on 14<sup>th</sup> August, 2019 in accordance with Regulation 95 of Tax Administration (General) Regulations, 2016 (the Tax Regulations) which requires an application of that nature to be made within fifteen days before the expiration of the time limit for lodging the notice of objection. That, the objection period

against the respondent's demand notice served on the appellant on 31<sup>st</sup> July, 2019 was up to 29<sup>th</sup> August, 2019.

It was the further assertion by the appellant that, in contravention with Regulation 96 of the Regulations, the respondent, through his letter dated 23<sup>rd</sup> September, 2019, purportedly rejected the appellant's application for waiver arguing that, the same was time barred. It was the appellant's argument that the respondent omitted to perform his duty as he was required under the law, to determine the applicant's application for waiver by 29<sup>th</sup> August, 2019, but opted to do so, after lapse of 28 days.

Therefore, aggrieved with the said refusal of waiver, on 8<sup>th</sup> October, 2019, the appellant appealed to the Board under section 53 (1) of the TAA, sections 7, 16 (1), (3) (a) of the Tax Revenue Appeal Act, Cap. 408 (the TRAA) and Rules 5 (2) and 6 (2) of the Tax Revenue Appeals Board Rules, 2018 (the Board Rules) on the following grounds:

- (a) *That, the respondent erred in law and fact in refusing to grant the appellant's application for waiver of requirement to pay a tax deposit on the purported ground that the application was made out of time; and*
- (b) *That, the decision of the respondent made on 23<sup>rd</sup> September, 2019 as contained in his letter with Ref. No. TRA/LTD/101-790-185/WAIV/BB is invalid.*

Before the Board, the appellant's appeal was confronted with a notice of preliminary objection premised on one ground that, '*the Board has no jurisdiction to entertain the appeal under the Tax Revenue Appeal Act, Cap. 408 or any other law.*

Having heard the parties on the said objection raised by the respondent, the Board was satisfied that it has no jurisdiction to entertain the matter as the appellant's appeal did not result from objection decision but from the respondent's refusal to grant waiver of payment of tax deposit of one third of the assessed tax. Specifically, the Board, at page 423 and 424 of the record of appeal, while relying on the decision of this Court in **Pan African Energy Tanzania Limited v. Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 121 of 2018 [2019] TZCA 671: [17 June 2019: TanzLII] (**Pan African I**), observed that:

*"The respondent's preliminary objection hinges on the fact that under the recent decision of the Court of Appeal in **Pan African Energy** case, this Board is only seized with jurisdiction to hear and entertain appeals against respondent's objections and the appellant in his submissions showed clearly on what amount to objection decisions are those in which the respondent makes determination of those notices of objection filed by a taxpayer; 'other decisions' or 'omissions' are*

*those which the respondent makes or fails to make on matters left to his discretion, judgment, direction, opinion, approval, consent, satisfaction or determination under a tax law that directly affects a person as contemplated under section 50 (1) of the TAA. It is well settled that the present appeal was lodged under section 53(1) of the TAA and section 16 (1) of the TRAA Cap. 408, which means is not an objection decision as it is agreed by both sides. Under such a situation, we have to work out and conclude what is this. Having looked on the nature of the matter at hand, this appeal resulted from the respondent's omission to decide within the statutory time limit the appellant's application for waiver to pay a tax deposit upon its objection to the respondent's demand notice, that is to say even objection was not yet admitted, which means what was responded by the respondent to the appellant was not objection decision.*

Then, the Board, at page 425 of the same record, concluded that:

*"Based on the fact that the present appeal has not reached even to the objection decision, we are of the view that this Board as subordinate to the Tribunal and Court of Appeal has to follow the Court of Appeal decision and thus it is our conclusion that this Board has no jurisdiction to*

*entertain the present matter as it is not resulted from the objection decision."*

Finally, and based on the above finding, the Board sustained the preliminary objection raised by the respondent and struck out the appellant's appeal for being premature thus, incompetent.

Again, and undaunted, the appellant appealed to the Tribunal vide Tax Appeal No. 96 of 2020. The Tribunal, like the Board, by applying the doctrine of *stare decisis* and relying on the decisions of this Court in **Pan African I** and **Pan African Energy Tanzania Limited v. Commissioner General of Tanzania Revenue Authority**, Civil Appeal No. 172 of 2020 [2021] TZCA 287: [9 July 2021: TanzLII] (**Pan African II**), had the view that the Board has no jurisdiction to entertain a matter which does not emanate from the objection decision. After making those observations, the Tribunal upheld the decision of the Board and also dismissed the appellant's appeal with costs.

Undeterred, the appellant lodged the current appeal containing one ground of complaint:

*"That, the Tribunal erred in law in refusing to entertain the appellant's appeal on the basis that it considered the appellant's appeal to have similar circumstances as those in the Court of Appeal decisions in **Pan African I** and **II** as unlike the appellant's case those decisions did not*

*involve a challenge of respondent's omission contemplated under section 53 (1) of the Tax Administration Act, 2015."*

At the hearing of the appeal, Mr. Alex Mgongolwa, learned counsel represented the appellant whereas the respondent was represented by Ms. Consolata Andrew, learned Principal State Attorney assisted by Messrs. Hance Mmbando, Athuman Mruma and Yohana Ndila, all learned State Attorneys. It is noteworthy that the learned counsel for the appellant had earlier on filed his written submissions in accordance with rule 106 (1) of the Court of Appeal Rules, 2009 (the Rules) the contents of which he adopted before addressing us orally. On the other side, the learned counsel for the respondent did not file any written submission and thus, addressed us under rule 106 (10) (b) of the Rules.

When invited to amplify on the grounds of appeal, Mr. Mgongolwa faulted the Tribunal's decision for having relied on the decision of the Court in **Pan African I** and confirmed the Board's decision that the Board had no jurisdiction to entertain the appeal because the respondent's decision appealed against was not an objection decision.

He clarified that, the Court, in **Pan African I**, while interpreting the provisions of section 53 (1) of the TAA treated an 'objection decision' or 'other decisions' to mean an 'objection decision' contemplated under section 16 (1) of the TRAA as the said section made cross reference to

the provisions of the TRAA, but the Court did not specifically, mention section 16 (1) of the TRAA as claimed by the respondent. He added that, in **Pan African I**, the Court did not express any view on any other provisions of the TRAA, other than section 16 (1). He insisted that, the respondent's omission contemplated under section 53 (1) of the TAA was not dealt with by the Court in **Pan African I**.

In a bid to distinguish the circumstances in **Pan African I** and the current appeal, Mr. Mgongolwa argued that, in that case there was a decision by the respondent refusing to grant waiver, while in the current appeal there is no decision as the respondent did not act within the prescribed time, hence an 'omission' contemplated under section 53 (1) of the TAA. He clarified that, the appellant in **Pan African I**, had a problematic appeal before the Board as it purported to appeal against the respondent's refusal for waiver by relying on section 16 (1) of the TRAA which by its terms only provides for appeals against respondent's objection decision. That, in that case the appellant never cited or relied on section 53 (1) of the TAA which vests substantive jurisdiction on the Board to hear and determine appeals against 'objection decisions,' 'other decisions' and 'omissions' by the respondent.

He emphasized that, the legislature's intention to cross reference section 53 (1) of the TAA to procedural aspects of an appeal under the TRAA was to enable an appellant, before appealing to the Board, to

comply with other procedural requirements under section 16 (3) (a), (b) of the TRAA read together with rules 5 (2) and 6 (2) of the Board Rules. He then submitted, at length, on the legislative history of section 16 (1) of the TRAA which was originally enacted in 2000 and then the TAA in 2015.

Mr. Mgongolwa went on to argue that, the respondent, while exercising his jurisdiction, is required to comply and observe all procedural rules expressly laid down in tax laws. To support his proposition, he cited the case of **Bukoba Gymkhana Club v. Liquor Licensing Board** [1963] 1 EA 473. Finally, and based on his submission, he prayed for the appeal to be allowed with costs and the judgment and decree of the Tribunal be quashed and set aside.

In his response, Mr. Ndila, who addressed the Court on behalf of his colleagues, strongly disputed Mr. Mgongolwa's submission by arguing that, the only law which confers jurisdiction and which regulates procedures of appeal before the Board is section 16 (1) of the TRAA. The said provision confers jurisdiction to the Board to only determine appeals against objection decisions of the respondent against the taxpayer's objection on tax assessment. He contended that, since the decision of respondent appealed against in this appeal is not an objection decision, then the Board did not have the prerequisite jurisdiction to entertain it, as envisaged under section 16 (1) of the TRAA.

Mr. Ndila also challenged the submission made by Mr. Mgongolwa of trying to distinguish the circumstances of this appeal and **Pan African I**. It was the argument of Mr. Ndila that, the Court in **Pan African I**, considered an appeal from a refusal by the respondent to grant waiver of payment of tax deposit of one third of the assessed tax which is similar in this appeal. He elaborated that, in this appeal, having been issued with a demand notice on the tax assessment and prior to the lodging of notice of objection with the respondent, the appellant lodged an application for waiver of payment of one-third of the assessed tax required to be deposited to validate an objection against the issued demand notice. That, the respondent determined the said application and issued his decision in respect of the waiver application as it was decided in **Pan African I**.

Mr. Ndila argued further that, the Court in **Pan African I** considered section 53 (1) of TAA and found that, it is a cross-reference section. Thus, it considered other provisions of TRAA including sections 7 and 16 (1) and concluded that '*a purported appeal before the Board which did not result from objection decision of the respondent was incompetent.*' To justify his argument, he referred us to pages 7 to 12 of that decision and urged us to disregard the submission made by his learned friend as it is not supported by the record. As for the alleged

'omission', Mr. Ndila argued that there was no omission claimed by Mr. Mgongolwa but, a delay by the respondent to determine that application.

In addition, and while emphasizing on the applicability of the doctrine of *stare decisis*, Mr. Ndila argued that, both, the Board and the Tribunal were correct to rely on the decision of the Court in **Pan African I** and other similar decisions of the Court which found that the Board had no jurisdiction to entertain the appellant's appeal. He thus distinguished the case of **Bukoba Gymkhana Club** (supra) relied upon by Mr. Mgongolwa by arguing that the facts and circumstances in that *mandamus* and *certiorari*'s case are not applicable to the current tax appeal. Based on his submissions, Mr. Ndila urged us to dismiss the appeal with costs.

In a brief rejoinder, Mr. Mgongolwa reiterated his earlier submission and insisted for the appeal to be allowed with costs.

Having carefully perused the record of appeal and considered the arguments by the learned counsel for the parties, there is no doubt that the issue of controversy is on the jurisdiction of the Board to entertain the appellant's appeal on respondent's 'omission' and or refusal to grant waiver of payment of tax deposit of one third of the assessed tax.

At the outset, we wish to point out that jurisdiction of a court or Tribunal is a creature of statute and not otherwise. The term

“Jurisdiction” is defined in Halsbury’s Laws of England, Vol. 10, paragraph 314 to mean:

*“...the authority which a court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decision. **The limits of this authority are imposed by the statute; charter or commission under which the court is constituted, and may be extended or restrained by similar means.** A limitation may be either as to the kind and nature of the claim, or as to the area which jurisdiction extended or it may partake of both these characteristics.”*  
[Emphasis added].

This Court, in several occasions, has pronounced itself on this position. Specifically, in **Isihaka Mzee Mwinchande v. Hadija Isihaka**, Civil Appeal No. 99 of 2010 (unreported), the Court stated that:

*“The term jurisdiction connotes the limits which are imposed by statute upon the power of a validly constituted court to hear and determine issues between parties seeking to avail themselves of its process...”*

Now, in the matter at hand, the issue for our determination is whether the Tribunal was correct to rely on the decisions of this Court in

**Pan African I** and **II** to conclude that the Board had no jurisdiction to entertain the appellant's appeal which emanated from 'omission' and or refusal by the respondent to grant waiver of payment of tax deposit of one third of the assessed tax.

We are aware that, in his submission, Mr. Mgongolwa stated that, facts and circumstances in those two cases (the **Pan African I** and **II**) relied upon by the Tribunal are distinguishable from the facts of this appeal. That, in those two cases the appellants appealed against the respondent's refusal for waiver by relying on section 16 (1) of the TRAA which by its terms only provides for appeals against respondent's objection decision, while in this appeal, the appellant relied on section 53 (1) of the TAA, which vests substantive jurisdiction on the Board to hear and determine appeals against 'objection decisions,' 'other decisions' and 'omissions' by the respondent. That, in **Pan African I** there was a decision for refusal of waiver, while in the current appeal there is no decision but an 'omission' envisaged under section 53 (1) of the TAA.

With profound respect, having scrutinized the record of appeal, and specifically the appellant's statement of appeal before the Board together with our previous decisions in **Pan African I and II**, we find the submission by Mr. Mgongolwa wanting and not supported by the record. The record bears out at page 4 that, the appellant submitted his

appeal to the Board under section 53 (1) of the TAA, sections 7 and 16 (1) and (3) (a) of the TRAA and not only under section 53 (1) of TAA as argued by Mr. Mgongolwa.

It is also not disputed that the appellant's appeal before the Board was on the refusal by the respondent to grant waiver of payment of tax deposit of one third of the assessed tax. As eloquently, argued by Mr. Ndila, in **Pan African I and II**, we considered a similar matter and discussed at length the applicability of the above provisions relied upon by the appellant in this appeal. In the said cases, having considered the above provisions together with other relevant provisions of tax laws regulating on the jurisdiction of the Board, we concluded that the Board has no jurisdiction to entertain an appeal from the respondent's 'omission' and or refusal to grant waiver of payment of tax deposit of one third of the assessed tax. For the sake of clarity, at page 12 of our decision in **Pan African 1**, after we have considered the legislative history of the above provisions and the applicability of the section 53 (1) of the TAA and section 16 (1) of the TRAA, we stated clearly that:

*"...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 the 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."*

Again, in **Pan African II**, when faced with an akin situation and having also considered the applicability of sections 50, 52 and 53 (1) of the TAA, Rules 2 and 6 of the Board Rules read together with sections 2, 7, 16 (1) and (3) of the TRAA, we stated that:

*"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'... 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 realms of what constitutes a tax decision and neither it is an objection decision.**"*  
[Emphasis added].

In the light of the above two decisions, we agree with the submissions made by Mr. Ndila that, the circumstances in the two cases are in all fours with the current appeal. That, in all cases, the appellants appeals are from a refusal by the respondent to grant waiver of payment of tax deposit of one third of the assessed tax.

With profound respect, we find the argument by Mr. Mgongolwa that in **Pan African I** the Court did not express any view on any other provisions of the TRAA, other than section 16 (1) to be misconceived. We equally find the case of **Bukoba Gymkhana Club** (supra) he relied upon, distinguishable and not applicable in the circumstances of this appeal. In the event, and taking into account that the Court had already pronounced itself on that matter, it was correct for the Tribunal to invoke the doctrine of *stare decisis* and find that the Board had no jurisdiction to entertain the appellant's appeal.

We are mindful of the fact that, in his argument, Mr. Mgongolwa stressed that, in **Pan African I** there was a decision while in this appeal there was no decision because the respondent acted out of the prescribed time limit, hence an 'omission.' Again, we find the argument by Mr. Mgongolwa to be misconceived. It is on record that, the appellant lodged his appeal before the Board after he was issued with the respondent's decision to refuse to grant waiver of payment of tax deposit of one third of the assessed tax. It is also not in dispute that, it is the said refusal decision by the respondent which formed the basis of the appellant's appeal before the Board. Therefore, the said decision having been taken out of time does not, in itself, amount to an 'omission' envisaged under section 53 (1) of the TAA as Mr. Mgongolwa would want us to believe. In our considered view what was done by the

respondent was a delay rather than an 'omission.' By any standard, the 'omission' envisaged under section 53 (1) of TAA had already been addressed by this Court in the above two cases.

In the circumstances, we do not find cogent reasons to vary the decision of the Tribunal. Consequently, we hereby dismiss the appeal in its entirety with costs.

**DATED** at **DODOMA** this 20<sup>th</sup> day of February, 2025.

R. J. KEREFU  
**JUSTICE OF APPEAL**

P. S. FIKIRINI  
**JUSTICE OF APPEAL**

B. S. MASOUD  
**JUSTICE OF APPEAL**

The Judgment delivered this 21<sup>st</sup> day of February, 2025, in the presence of Anselim Mwampoma holding brief for Mr. Alex Mgongolwa, learned counsel for the Appellant and in the presence of Ms. Agnes Makubha and Mr. Yohana Ndila, both learned State Attorney for the Respondent, is hereby certified as a true copy of the original.



*[Handwritten signature of C. M. Magesa]*  
C. M. MAGESA  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**