

IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: SEHEL, J.A., RUMANYIKA, J.A. And ISMAIL, J.A.)

CIVIL APPEAL NO. 10 OF 2024

COMMISSIONER GENERAL- TRA..... APPELLANT
VERSUS

VILLAGE SUPERMARKET LIMITED..... RESPONDENT

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

(Ngimilanga, Vice-Chairperson)

dated the 14th day of September, 2023

in

Tax Appeal No. 14 of 2022

.....
JUDGMENT OF THE COURT

5th & 26th November, 2025

ISMAIL, J.A.:

The appeal before us has been instituted by the Commissioner General, Tanzania Revenue Authority, a successive loser, in the Tax Revenue Appeals Board (TRAB) and the Tax Revenue Appeals Tribunal (TRAT), both of which held that the transfer of shares in the respondent company did not constitute a change in the underlying ownership capable of triggering the applicability of section 56 of the Income Tax Act, 2004 (ITA). The concurrent findings were that, the appellant's attempt to claim a deemed realisation of the assets was erroneous and unjustified.

The dispute arose when, on 7th September, 2017, Village Supermarket Group (VSG), a company with its registered office in Mauritius, acquired 52,495 shares in Village Supermarket Limited. The acquired shares belonged to Jamila Jamani (20%), Nazira Abdul Jamani (30%) and Abdul Jamani (50%). The nominal value of each share was TZS. 10,000.00. The new shareholding structure saw VSG become an absolute majority shareholder with 99.9%, while 5 shares retained by Mr. Jamani represented a paltry 0.1%. Subsequent to the said transfer, the appellant filed a declaration of gain from transfer of shares for the appellant's determination.

On 27th November, 2017, the appellant made a determination of gain from realization of interest which culminated in the corporate tax assessment. The assessment settled on TZS. 168,557,337.60 as the amount due to the appellant. This assessment was objected to by the respondent, vide a notice of objection dated 1st of February, 2018. An exchange of correspondence and a meeting between the parties subsequent thereto could not deter the appellant. As a result, on 24th December, 2018, a confirmation of the assessment was issued to the respondent.

Aggrieved by the assessment, the respondent instituted an appeal to TRAB, raising two grounds of dissatisfaction. These grounds took an exception to the applicability of section 56 of the ITA which was invoked to deem that there was a change in underlying ownership of the respondent from which the assessment was made. The TRAB concluded that there was no change of underlying ownership as rights and control of the respondent company remained within the parent company. In the end, TRAB allowed the appeal.

The decision by TRAB did not amuse the appellant. Feeling hard done by the finding, the appellant preferred a four-ground appeal all of which decried TRAB's interpretation of section 56 of the ITA. The appellant's contention is that TRAB erred in not holding that, since the change of ownership by more than 50% did not constitute the change of underlying ownership, then the appellant was not justified in invoking the provisions of section 56 of the ITA. The TRAT was unfazed by the appellant's contention. It, instead, upheld TRAB's finding and conclusion. In dismissing the appeal, the TRAT reasoned as follows:

"This Tribunal finds that the transfer was made but there is no evidence that the same resulted to change of underlying ownership of the company. For, it is in record that the ownership of the Company continued to be in the hands of the same three shareholders as per Exhibits A4 and A8 which was tendered before the Board. The evidence through the two mentioned Exhibits show that membership in the Company remained to be owned by three shareholders despite the transfer of shares to the Village Supermarket Group Company. In other words, there was no change in underlying ownership of the Company as the same underlying ownership remained in the control of the same shareholders in the Village Supermarket Group Company... From the above analysis this Tribunal finds that the Appellant was not justified to impose deemed income tax on the respondent under section 56 of the Income Tax Act, 2004.

.... section 56 of the Income Tax, as it reads, is not automatic in its operation, there has to be sufficient evidence to establish that the transfer of shares or sale transactions involved has resulted in the change of underlying ownership of the entity concerned by more than 50%. This

is due to the fact that, transfer or sale transactions of shares and change of underlying ownership are two different things with different means of achieving the same.”

Not unexpectedly, the decision on the second appeal was nothing less than a bitter pill to swallow for the appellant. It bred an appeal which is before us. The memorandum of appeal that instituted the appeal has raised four grounds of appeal, paraphrased as hereunder:

- 1. The Tribunal erred in holding that there was no change in underlying ownership of the company as the shareholders in it remained the same shareholders in the Village Supermarket Group Company.*
- 2. The Tribunal erred when it held that mere transfer of shares above 50% would not trigger section 56 of ITA unless there is change in the underlying ownership of the company.*
- 3. The Tribunal erred by confining underlying ownership to membership interest owned in an entity which is the right to participate in any income or capital of the entity while excluding other types of membership interest as provided under section 3 of the ITA.*

4. The Tribunal erred in holding that the appellant was not justified in imposing deemed income tax on the respondent under section 56 of the ITA.

At the hearing of the appeal, the appellant was represented by Mr. Amandus Ndayeza, learned Principal State Attorney, assisted by Mr. Baraka Mwakalyabwe, learned State Attorney, whilst the respondent was represented by Ms. Yusta Kibuga, learned counsel. Both sets of counsel were given an opportunity to elaborate on the issues raised in their respective written submissions.

Mr. Ndayeza kicked off the discussion by submitting that the appeal revolves around the interpretation of section 56 of the ITA. The appellant's counsel argued that the crucial question for determination of grounds one, two and three is whether the sale of shares of previous shareholders, constituting 99.9% of VSG's ownership in the respondent company amounted to the change of underlying ownership which triggered the deemed income tax under section 56 of the ITA. He argued that, applicability of the said provision is triggered once the change of control in underlying ownership hits the 50% and more threshold. The learned counsel contended that, in the instant matter, there can hardly be any dispute

that the change of ownership from the previous owners to the new shareholder exceeded 50% of the total ownership. This constituted the change of underlying ownership which calls for realization of deemed tax.

Mr. Ndayeze contended that, realization is achieved upon establishment of two key ingredients, namely: underlying ownership of the shares of the company; and change of ownership by more than 50% of the shares of the company. Since the acquisition by VSG was 99.9% then this constituted the change in the underlying ownership.

The learned counsel invited us to look at the definition of underlying ownership enshrined in section 3 of the ITA, which provides that an underlying interest involves change of underlying ownership and that, such ownership may be direct or indirect, arguing further that, in such circumstances the obligations under section 56 of the ITA were triggered. Mr. Ndayeze was firmly of the contention that, change of ownership of the shares was actually the change of underlying control of the assets and liabilities of the respondent company, hence eligible to tax liability. This, he said, represented the change of membership interest. The learned counsel

argued that transfer of shares happens simultaneously with the change of underlying ownership and that, the ascertainment of the liability that comes with such change, requires reading sections 56 and 39 of the ITA.

Mr. Ndayeze scoffed at the TRAT's holding that the question of underlying ownership was an issue of evidence and that such evidence would say if the transaction fell under section 56 of the ITA. The appellant's counsel took a swipe at the TRAT's reasoning which held that the underlying ownership remained in the hands of the previous shareholders who were also the shareholders of the new owner i.e. VSG. In the appellant's contention, the law treats a shareholder and a company as two distinct persons, imploring us to be guided by the holding in the legendary case of **Salomon v. Salomon Co. Ltd** [1897] AC 22.

Ms. Kibuga began by submitting, that the issue in the matter that bred the instant appeal was a narrow one. It revolved around the interpretation and applicability of section 56 of the ITA, and that the singular question here was whether, following the transfer of shares to VSG, there was a change in the ownership within the meaning of section 56 (1) of the ITA. The learned counsel was of the

contention that, underlying ownership, as defined in section 3 of the ITA, refers to ownership interest, and it may be direct or indirect. She argued that, as rightly held by TRAB and TRAT, there was no change of underlying ownership as persons in both companies continued to remain the same and they continued to be beneficial owners of the respondent company. This, she argued, excepted the applicability of section 56 of the ITA.

Ms. Kibuga expressed her awareness of the corporate personality as propounded in the famous **Salomon v. Salomon** (supra) but she was quick to contend that the tax regime, that is the ITA, intended to include members of a company and treat the members as inseparable from the company itself. She argued that, the principle distilled in that case is irrelevant in this case as the issue at stake is not about corporate personality of a company. Rather, it is all about membership interest of the shareholders and that, in the present case, the membership interest of VSG, which is a holding company in the respondent company, a subsidiary, represented the indirect underlying ownership of Jamila, Nazira and Abdul.

Delving into the heart of grounds one, two and three of the appeal, the respondent's counsel was insistent that a mere direct

transfer of shares above 50% which does not change the underlying ownership in the company is not a change that is envisioned in section 56 of the ITA, and that, additional tax cannot be assessed and levied on the transaction. She argued that, underlying ownership defined in section 3 of the ITA should be considered alongside the definition of membership interest whose existence is what creates underlying ownership of a person in a company. The learned counsel further contended that the law recognizes that underlying ownership can be direct or indirect through entities or individuals. The respondent's counsel leapt to the defence of the TRAB and TRAT which held a unanimous view that, since the membership and interest in the respondent company remained the same even after the transfer of shares, then there was no change in the underlying ownership. What changed is that, subsequent to the transfer, the transferors' membership interest through underlying ownership was indirect through VSG. The learned counsel added that change of underlying ownership must first change before the assessment of the percentage of the change.

From the counsel's splendid but rival submissions, the issue to be resolved is whether the transfer of shares in the respondent

company fell within the description that justifies invocation of section 56 (1) of the ITA. To be able to appreciate the import of the said provision, it behoves us reproduce the substance of the said provision, as hereunder:

*"56.-(1) Where the **underlying ownership** of an entity **changes by more than fifty percent as compared with that ownership at any time during the previous three years**, the entity shall be treated as **realising any assets owned** and any liabilities owed by it immediately before the change. [Emphasis is added]*

Our reading of cited provision conveys the message that, where the holder of the shares in an entity transfers his shares, such transfer involves a change in the underlying ownership and that, where it involves more than 50% of stakes, if it is compared with the ownership status at any time during the period of three years previous thereto, the entity is treated as having realised assets owned and so are the liabilities owed by the entity in respect of which the change has occurred. In our considered view, section 56 (1) of the ITA sets out two conditions precedent for the tax man to treat the person who owns an asset as realising such asset. **One**, there must be a change of underlying ownership in the transfer in which

he is involved; and **two**, that such transfer must exceed 50% of the ownership, if such ownership is compared to any in the three years that preceded the change in question.

Both counsel unanimously agree that, 99.9% of the shares in the respondent company changed hands and were concentrated in the hands of a new owner, VSG. Whereas this change is undisputedly higher than 50% ownership change, the variance in opinion resides in whether this transfer constitutes a change in an underlying ownership. The respondent does not think so, while the appellant is avidly of the contention that it does. To unlock this stalemate, it compels us to understand what an underlying ownership entails. Section 3 of the ITA defines this term in the following words:

*"(a) in relation to an entity, **means membership interests owned in the entity, directly or indirectly through one or more interposed entities, by individuals or by entities in which no person has a membership interest.**"* [Emphasis is supplied].

Applying this definition to the facts of the instant matter, the interest talked about here refers to membership interests that previous owners of the respondent company had, prior to 7th September, 2017, and which have since been acquired by or

transferred to VSG at the proportion that far exceeds 50%. These interests are, as defined in section 3 of the ITA, a VSG's "*right, including a contingent right and whether of a legal or equitable nature, to participate in any income or capital of the entity and includes the interest of a partner in a partnership, the interest of a beneficiary in a trust and shares in a corporation.*" They are not the right of Abdul Jamani, Nazira Jamani and Jamila Jamani subsequent to the transfer which was sealed on 7th September, 2017. Theirs, as far as the respondent company is concerned, died with the completion of the transfer on 7th September, 2017, and it does not matter if, subsequent to this transfer, they acquired or retained any interest in VSG. It matters less, as well, if VSG holds part or the whole of the stakes in the respondent company. We, in turn, find plausibility in the appellant's contention that the change of ownership of the respondent company from its previous shareholders was a change of underlying ownership which exceeded the threshold that entitled the appellant to invoke section 56 (1) of the ITA and treat VSG as having realized the assets owned and liabilities owed.

It is with profound respect, we think, that both TRAB and TRAT misconceived the entire arrangement when they looked at the

composition of the VSG to conclude that the underlying ownership remained unchanged simply because the transferors of the ownership in the respondent company doubled as the owners of the transferee company which is new underlying owner, VSG. As the appellant alluded to, rightly so, in our view, their involvement in VSG had 'firewalls', created through **Salomon v. Salomon** (supra), that kept its shareholders distinct from the company that they hold stakes in.

We think that, the words "***underlying ownership***" whose definition we reproduced herein above are clear and present a clear and unambiguous meaning, and that, the judicial inquiry in respect thereof is complete. It follows that, its interpretation by TRAT ought to have been plain, keeping in mind the enduring canon of statutory construction which is to the effect that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. With regard to tax statutes, the rule of the thumb is that such statutes must be interpreted strictly, without any need for interpolation - see: **Commissioner General, Tanzania Revenue Authority v. Ecolab East Africa (Tanzania) Limited [2021]** TZCA 283; and **Kilombero Sugar Company Limited v.**

Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 444 of 2020 (unreported). This is what TRAB and TRAT ought to have kept in mind, when they were invited to give a sense of the words ***"underlying ownership"*** and ***"membership interest"***.

Equally disquieting is the holding by TRAT that establishment of whether there is change of underlying ownership required evidence besides that of transfer of shares in a proportion that exceeds 50%, or that applicability of section 56 of the ITA, is not automatic even where change of underlying ownership was sufficiently evident.

We entertain no doubt, as the appellant's counsel submitted, that the definition of membership interest that was given by TRAB and TRAT was a little skewed, if not restrictive and narrow, as it excluded other rights such as interests of beneficiaries in trusts and shares in a corporation which factor in interests in entities such as the respondent company. We, in consequence find merit in grounds one, two and three and we allow them.

Next for our determination is ground four of the appeal. The complaint raised in this ground is that TRAT was erroneous in its

finding and holding that the appellant was not justified to impose income tax under section 56 of the ITA. The contention by the appellant is that, having transferred 99.9% of the stakes in the respondent company to VSG, which represented a change of underlying ownership, the respondent company was deemed or treated to have realised assets and liabilities. This is what triggered section 56 of the ITA and imposed an obligation to the respondent to pay tax. The argument is that there was a realisation of asset in terms of section 39 of the ITA and of liabilities in terms of section 40 of the ITA.

The respondent maintained that there was no change as there was no evidence that the transfer of shares resulted in the change of underlying ownership of the company, and that the TRAT was quite spot on in its decision to dismiss the appellant's contention. The learned counsel saw nothing to suggest that the respondent realised any assets as to allow applicability of section 36 of the ITA. She urged us to uphold the concurrent findings of the lower tribunals on this point.

We think that our work has been cut down significantly in the disposal of this ground. We say so because, we are settled in our

minds, that the transfer of shares, the subject matter of these proceedings, was a change of underlying ownership within the meaning of section 56 (1) of the ITA. Since it surpassed the threshold set under the law, this had the qualities of being treated as a realization of assets and the owner of such assets is accorded the treatment set out in section 39 of the ITA which stipulates as follows:

"39. A person who owns an asset shall be treated as realising the asset-

(a) subject to paragraph (b), when the person parts with ownership of the asset including when the asset is sold, exchanged, transferred, distributed, cancelled, redeemed, destroyed, lost, expired or surrendered."

What we gather is that the previous owners parted with ownership of their assets through sale and transfer effected on 7th September, 2017. This means that, effective the date of the disposition, the ownership with which the previous owners parted became the assets was VSG. In other words, all what constituted the assets of the previous owners became realised assets whose treatment must conform to section 39 of the ITA. Such treatment subjected the assets and liabilities (if any) to the 'vagaries' of section 56 of the ITA. We are in agreement with the appellant that it was a

little wayward for the TRAT to censure the appellant's decision to apply section 56 of the ITA and impose a tax obligation on the respondent. In our considered view, there was nothing untoward in the appellant's decision. We, as a result, find this ground merited and allow it.

In sum, we find the appeal meritorious and allow it with costs.

DATED at **DODOMA** this 25th day of November, 2025.

B. M. A. SEHEL
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

M. K. ISMAIL
JUSTICE OF APPEAL

The Judgment delivered this 26th day of November, 2025 in the presence of Mr. Emmanuel Medalakeni, learned State Attorney for the Appellant, Ms. Yusta Kibuga, learned Counsel for the Respondent, via virtual Court and Mr. Issa Bakari Issa, Court Clerk; is hereby certified as a true copy of the original.


O. H. KINGWELE
DEPUTY REGISTRAR
COURT OF APPEAL