

CIVIL APPEAL NO. 485 of 2023

COMMISSIONER GENERAL

TANZANIA REVENUE AUTHORITY (TRA) APPELANT

VERSUS

VODACOM TANZANIA

PUBLIC LIMITED COMPANY..... RESPONDENT

(Appeal from the decision of the Tax Revenue Appeal Tribunal at
Dar es Salaam)

(Mjemmas, J. - Chairman)

dated the 21st day of June, 2023

in

Tax Appeal No. 6 of 2022

JUDGMENT OF THE COURT

10th March, & 8th April, 2025

ISSA, J.A.:

The dispute between the parties to this appeal is centred on the interpretation of section 82 (1) of the Income Tax Act, Cap. 332 (the ITA) addressing the issue of withholding tax. The background facts leading to this appeal are that, the respondent took loans from her sister companies, namely: Vodacom Group and Mirambo. From Vodacom Group, she took loans in 2004, 2007 and 2009 while the loan from Mirambo was granted in 2009. The respondent had a duty to pay interest annually, but did not pay. Instead, the payment of interest to the Vodacom Group was made

from the year 2015 onwards and the withholding tax was paid to the appellant on 2015. With respect to the loan from Mirambo, the payment of interest was made from 2009, but the withholding tax was paid in 2017.

The appellant conducted an audit into the tax affairs of the respondent for the years of income 2011 to 2012, in order to satisfy itself on the respondent's compliance with tax laws. The audit culminated into issuance of withholding tax certificate No. WHT/BI/01/10/2014, communicating the assessment and liability of withholding tax in the amount of TZS. 7,779,581,441.00 which includes the principal tax of TZS. 6,290,902,580.00 and interest thereon of TZS. 1,488,678,861.00 in respect of the said years of income. Therefore, the dispute between the parties is with respect to the interest which was charged for the late payment of the withholding tax of interest on loan.

In fact, the parties are at one on the obligation to pay withholding tax of interest on loan. Their point of divergence is about when the said withholding tax is payable to the appellant. The appellant argues that the company which is paying withholding tax of interest on loan is required to pay the tax when it accrues while the respondent argues that the withholding tax should be paid when the said interest is paid and not when it accrues, hence, no late payment would arise. The respondent filed an objection to the assessment, which the appellant considered and rejected.

Aggrieved, the respondent appealed to the Tax Revenue Appeal Board (the Board) vide Income Tax Appeal No. 50 of 2018 of which the Board decided in favour of the respondent. The Board was of the view that, the withholding obligation arises when the interest is paid and not when it accrues. Hence, since the respondent paid and remitted the withholding taxes to the appellant as required under section 82(1) and 84(1) of the ITA, the imposition of interest for the late payment was not correct in law.

Dissatisfied with the decision of the Board, the appellant appealed to the Tax Revenue Appeal Tribunal (the Tribunal) which upheld the decision of the Board. Undaunted, the appellant approached this Court armed with three grounds of appeal followed by written submissions. The grounds of appeal go thus:

- 1. The Honourable Tax Appeals Tribunal erred in law by upholding the decision of the Tax Revenue Appeals Board which held that, section 82(1) of the Income Tax Act, 2004 is a specific provision which overrides section 3, 21(3) and 23(1)(a) and (b) of the Income Tax Act, 2004 as general provisions.*
- 2. The Honourable Tax Appeals Tribunal erred in law by interpreting the word pays and misconstruing section 82(1) of the Income Tax Act, 2004 to mean withholding tax obligation arises where interest is actually paid and not on accrual basis.*

3. The Honourable Tax Appeals Tribunal erred in law by holding that, the imposition of interest on loan for late payment has no legs to stand.

At the hearing of the appeal, the appellant was represented by Mr. Hospis Maswanyia and Ms. Juliana Ezekiel, learned Principal State Attorneys assisted by Mr. Octavian Kichenje and Mr. Nicodemus Agweyo, learned State Attorneys. The respondent, on the other hand, had the services of Mr. Yohanes Konda and Mr. Thompson Luhanga, learned advocates.

Mr. Maswanyia started his submission by adopting his written submissions filed earlier on. On the 1st ground of appeal, he submitted that the Board and Tribunal erred in their finding that, the withholding obligation arises when the interest is paid and not when it accrues. He added that, they also erred in their finding that section 82(1) of the ITA is a specific provision which overrides section 3, 21(3) and 23 (1)(a) and (b) of the ITA. He argued that section 82(1) should be read harmoniously with sections 3, 21(3) and 23 (1)(a) and (b) of the ITA. He concluded that, the view taken by the Board and Tribunal was incorrect and will bring absurdity in the application of the Act.

Mr. Maswanyia then explained the doctrine of harmonious construction which entails that, the provision of one section should not be

used to defeat the provision contained in another. Further, he contended that the Court should avoid a head on clash and must construe the contradictory provision in a harmonious way. He bolstered his argument by citing the Court's decision in **Ngasa Kapulu @ Segerema v. The Republic**, Criminal Appeal No. 160" B" of 2014 (unreported) and **Barclays Bank Tanzania Ltd v. Phylisiah Hussein Mcheni** [2021] TZCA 202, TANZLII.

With respect to the 2nd ground of appeal, Mr. Maswanyia submitted that the Board and Tribunal erred to give the word "pay" a literal meaning contrary to the definition which is found in the ITA. He cited section 6 and 7 of the Interpretation of the Laws Act, Cap. 1 and argued that, it guides on how the words are to be interpreted when used in the statute. He added that since the word "payment" has been defined in section 3 of the ITA, the word "pays" in section 82 of the ITA should be given the meaning corresponding to the word payment. Furthermore, he argued that the word payment is defined in section 3 of the ITA to include creation of an asset in another person; therefore, the respondent is obliged to withhold tax on interest on accrual basis as provided by section 21(3) and 23(1) of the ITA in which companies have obligation to account income and expenses on accrual basis. Hence, the person entitled to payment shall account at the time she becomes entitled to such payment.

The 3rd ground of appeal flows from the second and Mr. Maswanyia faulted the Board and the Tribunal for holding that the imposition of interest on loan for late payment has no leg to stand on. He submitted that since the interest on loan is accounted on accrual basis, the respondent was liable to pay for late payment of withholding tax.

Lastly, in the alternative, Mr. Maswanyia urged the Court to apply purposive approach in interpreting section 82(1) of the ITA in case the Court agrees with the findings of the Board and Tribunal. He sought solace in our decision in **Tullov Tanzania BV v. The Commissioner General Tanzania Revenue Authority**, [2018] TZCA 82, TANZLII.

Responding to the 1st ground of appeal, Mr. Konda submitted that withholding obligation is not imposed under section 3, 21 or 23 of the ITA; rather it is section 82(1) of the ITA that imposes a withholding obligation on a resident person who pays interest or rent. He argued that section 3 of the ITA is the interpretation section while sections 21 and 23 of the ITA were enacted with the intention to give guidance to the tax payer in the preparation of accounts such as tax returns before presenting the same to the appellant. To support this argument Mr. Konda cited the Court's decision in **National Bank of Commerce v. Commissioner General Tanzania Revenue Authority** [2018] TZCA 83, TANZLII. Further, he argued that section 82(1) is a specific provision that requires

a resident person who pays interest to withhold taxes and the correct way of interpreting it is that the tax on interest on loan is due on actual payment. Hence, the Board and Tribunal were right on that aspect.

With respect to the 2nd ground of appeal, Mr. Konda argued that the word pays in section 82(1) should be strictly interpreted and should be accorded its plain meaning. He cited Black's Law Dictionary, 5th Edition which defines the word pays as to discharge a debt by tender of payment due; to deliver to a creditor the value of the debt either in money or in goods for his acceptance. He concluded that pays therefore means a discharge of liability. He cited the Court's decision in **National Bank of Commerce** (supra) where the Court reiterated the need to employ a plain meaning of the words to discover the intention of the Legislature. He concluded that the strict interpretation of the word pays imposes a withholding obligation at the time of discharging a liability.

Responding to the third ground of appeal, Mr. Konda submitted that since the withholding tax of interest on loan is due when the interest is paid, the issue of late payment therefore does not arise and thus the appellant erred to require the respondent to pay an interest for late payment, he contended.

It is now the Court's time to examine and analyse the rival arguments of the legal counsel representing the parties. Before we

embark on this journey, we think it is opportune to recapitulate the principles that will guide the Court in this task. These are the principles that govern the interpretation of statutes in general, and the tax statute in particular. In the interpretation of a statute in general, one of the following rules may be applied where appropriate: the literal rule, the golden rule, and the mischief rule. There are also some principles which are applied in interpreting tax statute such as purposive approach and harmonious construction. The appellant's advocate has urged us to apply the doctrine of harmonious construction, and in the alternative to apply the purposive approach. The respondent's advocate, on the other hand, has implored us to apply the literal meaning.

The doctrine of harmonious construction is based on the cardinal principle that, every statute has been formulated with a specific purpose and intention and thereby should be read as a whole. Therefore, the provision of one section cannot be used to defeat the provision contained in another unless the court despite all its effort is unable to find a way to reconcile their differences. In **Barclays Bank Tanzania Limited v. Phylisiah Hussein Mcheni** (supra) the Court citing its earlier decision of **Ngasa Kapulu @ Sengerema** (supra) stated:

"The first general rule, is that, if the words of statute are clear the duty of the court is to give

effect to their natural ordinary meaning unless it finds that to do so, would lead to hardship, serious consequences, inconvenience, injustice, absurdity or anomaly. If that is so, then preference should be given to that construction which would avoid such results. The second principle is that a statute must be read as whole. One provision of section should be construed with reference to other provisions in the Act so as to make consistent enactment of the whole statute. In that way any inconsistency, or repugnancy either in the section or between a section and another part of the statute would be avoided... the last third principle is the rule of construction in favour of presumption of constitutionality."

Further, it is trite law that the taxing statute must be interpreted strictly. See – **Commissioner General Tanzania Revenue Authority v. Pan African Energy Tanzania Ltd**, [2016] TZCA 807, TANZLII and **Commissioner General Tanzania Revenue Authority v. Mamujee Products Ltd and Others**, [2018] TZCA 27, TANZLII.

In the determination of this appeal, the Court will deal with all three grounds of appeal together as the matters in issue are related. The issues for our determination, therefore, are two: **one**, whether sections 3, 21, 23 and 82 of the ITA can be construed harmoniously or whether

section 82 overrides sections 3, 21, and 23. **Two**, whether there is any ambiguity in the meaning of the word payment in section 3 of the ITA.

Starting with the first issue, for the sake of convenience we will reproduce the provisions of sections 3, 21, 23 and 82 of the ITA at convenient places. On this issue, section 82 of the ITA which is at the epicenter of the controversy between the parties provides:

"(1) Where a resident person

- (a) pays a dividend, interest, natural resource payment, rent or royalty; and*
- (b) the payment has a source in the United Republic and is not subject to withholding under section 81,*

The person shall withhold income tax from the payment at the rate provided for in paragraph 4(b) of the First Schedule.

(2) This section shall not apply to

- (a) payments made by individual unless made in conducting a business;*
- (b) interest paid to a resident financial institution*
payments that are exempt amounts
- (c) Rent paid to a resident person for the use of an asset other than aircraft, land or building or*

(d) interest payable to a non-resident bank by a strategic investor except for interest payable on any loan taken by a strategic investor from an associated or related company."

This provision lays down a withholding obligation of a resident person. Glancing at the provision as a whole, the word "pay" has been used in different forms; such as pays, payment, paid, and payable. The ITA has not defined all these forms, it only defines the word "payment" in section 3 of the ITA which provides:

"In this Act, unless the context requires otherwise "payment" includes the transfer of assets or money, the transfer or decrease of a liability, the provision of services, the use or availability for use of money or an asset and the creation of an asset in another person;"

The word payment in this provision has been given a technical meaning and not a literal one as argued by Mr. Konda. The above definition has wider implications, it includes the transfer of assets or money, the transfer or decrease of liability, the provision of services, the use or availability for use of money or an asset, and the creation of an asset in another person. The word asset has been used a lot in the above provision and under the same section it was defined as follows:

*"Asset means a tangible or intangible asset and includes currency, goodwill, know-how, property, **a right to income or future income** and a part of an asset."* (emphasis supplied)

Therefore, the definition of the word payment in section 3 of the ITA encompasses technical meanings which do not necessarily imply there was a transfer or exchange of money from one person to another. The word asset includes a right to income or future income. Therefore, the application of the word 'pays' should be taken as stipulated by the ITA and since there is no ambiguity in that provision we are of the view that there was no necessity of borrowing from other sources. The Court in Kenya was faced with a similar matter in **The Engineers Board of Kenya v. Jesse Waweru Wahome and Others**, Civil Appeal No. 240 of 2013 cited in **Kenya Revenue Authority v. Republic (Ex Parte: Fintel Ltd)**, Civil Appeal No. 311 of 2013 and it held:

"The Income Tax Act has given the word "paid" a technical as opposed to an ordinary definition. Tax law is ever changing complicated and highly technical. That is why we, with respect disagree with the learned Judge for instituting that "upon payment" must only convey the meaning that money or some valuable thing was delivered. He gave the phrase a very narrow construction. In the context of the Income Tax Act, payment is

deemed to have been made even when no money has passed over."

On the issue of using different forms of word 'pay' in section 82, section 7 of the Interpretation of the Laws Act, as correctly argued by Mr. Maswanyia provides guidance in the interpretation of statutes. Section 7 provides:

"Where a word or phrase is defined in a written law, other parts of speech and grammatical forms of that word or phrase have corresponding meanings."

Therefore, since the word payment has been defined in the ITA, the words 'pays, paid and payable' will have corresponding meaning assigned to the word payment. Hence, in interpreting section 82, the word "pays, payment, paid and payable" used therein shall all have meaning as prescribed in section 3 of ITA. In that light, the Board and the Tribunal erred in giving the word pays a narrow interpretation that, it is a discharge of liability while the word "pays" has been used in a technical sense. A discharge of a liability is just one mode of effecting payment.

The next relevant provision is section 21 of the ITA and for our purposes subsections 1, 2, and 3 are relevant and provides:

"(1) Subject to this Act, a person shall account for his income according to generally accepted accounting principles.

(2) Notwithstanding the provisions of subsection (1), an individual shall account for income tax purposes on a cash basis in calculating the individual's income from an employment or investment.

(3) A corporation shall account for income tax purpose on an accrual basis."

(Emphasis supplied)

This provision lays down the basis for accounting for income tax purposes. It prescribes cash basis for individuals and the accrual basis for corporations. Therefore, the corporation such as the respondent in the instant appeal is required to deal with its tax issues on the accrual basis. Section 21(3) has been couched in a mandatory term that a corporation shall account its income tax on accrual basis. Withholding tax as one of the taxes the corporation is obliged to pay, follows the same principle that it should be paid on an accrual basis.

The next question is whether section 82 of the ITA has laid down an exception to the rule in section 21(3) of the ITA. We do not think so and we shall explain. The language of section 82 (1) is very clear and does not provide exceptions, hence we should not read them into it. The

exceptions with regard to the obligation to withhold tax have been provided in paragraphs (a) to (e) of section 82(2). In this subsection there is no obligation to withhold tax paid from an interest paid to a resident financial institution or to a non-resident bank by a strategic investor on any loan taken by a strategic investor except where the strategic investor borrowed from an associated or related company. If the Legislature wanted to exempt the corporation from paying withholding tax on accrual basis, it would have clearly specified so. Otherwise, the rule in section 21 is clear that the accounting of income tax shall be on accrual basis.

In the instant appeal, it has been argued by the appellant that there was a creation of an asset in another person. The respondent was required to pay interest on loan to Vodacom Group and Mirambo annually when it became due. The respondent did not pay as required until 2015 and 2017, but the Vodacom Group and Mirambo recorded the interest from the respondent in their account books on accrual basis, thereby creating an asset to them. The word asset has been defined in section 3, as we have seen above, to include a right to income or future income.

Therefore, taking the word pays to mean only discharging of liability is a narrow interpretation of the word. It is not what was intended by Legislature in enacting section 3 of the ITA. In **Commissioner**

General Tanzania Revenue Authority v. Pan African Energy Tanzania Ltd (supra), the Court stressed that:

"Once words in a statute are clear, then courts of law which are guided to interpret tax statutes strictly cannot create a situation in the statute that was not intended by the legislature."

Section 23, on the other hand, describes the accrual basis accounting and of relevance is subsection (1), (2), and (3) which provide:

"23. (1) Subject to this Act, a person who accounts for income tax purposes on an accrual basis –

- (a) derives an amount when it is receivable by the persons;*
- (b) incurs expenditure when it is payable by the person.*

(2) Subject to this Act, an amount is receivable by a person when the person becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable by instalments.

(3) Subject to this Act, an amount shall be treated as payable by a person when all the events that determine liability have occurred and the amount of the liability can be determined with reasonable accuracy, but not before economic performance with respect to the amount occurs."

This provision lays down the procedure for accounting in the accrual basis. On this basis, a corporation is obliged to pay the withholding tax of interest on loan when that interest is payable and not when she actually paid the interest. In the instant case, the respondent acknowledged that the interest on loan was payable immediately on taking the loan. The fact that interest was paid in 2015 and the respondent paid the withholding tax in that year does not absolve her of the liability to pay the withholding tax for the year of audit, which was 2011 to 2012. The failure to pay the tax when it was due will attract the payment of interest for the delay in accordance with section 76(1) of the Tax Administration Act, Cap. 438.

Therefore, the Board and Tribunal erred in their findings that the imposition of interest on loan for late payment has no leg to stand on. They erroneously reached that conclusion after making a wrong finding on the 1st ground of appeal that the withholding tax of interest on loan should be paid when the interest is paid and not when it accrues. We are of the settled view that, it was a wrong approach as we have explained above. Therefore, the late payment of withholding tax like other forms of taxes will attract interest as well. Hence, the appellant was entitled to claim interest on the delayed payment.

In the upshot, it is our findings that reading the Income Tax Act as a whole section 3, 21, 23 and 82 of the ITA can be applied harmoniously

without causing any harm. Further, it is our finding that there is no ambiguity in section 3 of the ITA which defines the term payment in a technical sense. Therefore, we find the grounds of appeal have merits and the appeal is allowed. The proceedings and judgments of the Board and Tribunal are hereby quashed and set aside. The respondent is ordered to pay the interest in accordance with the assessment made by the appellant.

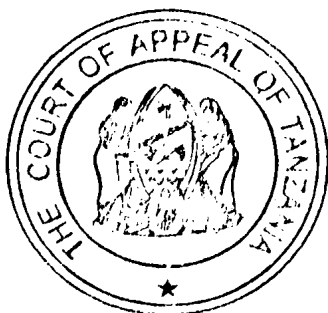
DATED at DODOMA this 26th day of March, 2025.


W. B. KOROSSO
JUSTICE OF APPEAL

S. M. RUMANYIKA
JUSTICE OF APPEAL

A. A. ISSA
JUSTICE OF APPEAL

The Judgment delivered this 8th day of April, 2025 through video conference in the presence of Ms. Juliana Ezakiel, Principal State Attorney, Mr. Octavian Kichenje, learned State Attorney, and Mr. Chizaso Minde, learned State Attorney for the Appellant, and Mr. Yohanes Konda and Ms. Butogwa E. Mbuki, learned counsel for the Respondent, is hereby certified as a true copy of the original.




D. P. KINYWAFU
DEPUTY REGISTRAR
COURT OF APPEAL