IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: KEREFU, J.A, FIKIRINI, J.A. And MASOUD, J.A.)

CIVIL APPEAL NO. 189 OF 2022

COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY..... APPELLANT

VERSUS

COCA-COLA KWANZA LIMITED..... RESPONDENT

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

(Haji, Vice-Chairperson)

dated the 1st day of April, 2022

in

Tax Appeal No. 36 of 2021

.....

JUDGMENT OF THE COURT

14th & 26th February, 2025.

FIKIRINI, J.A.

The respondent, Coca-Cola Kwanza Limited (CCKL), a Tanzanian subsidiary of Coca-Cola Beverages Africa, imported refined white industrial sugar under the duty remission scheme between July, 2014 and June, 2017. In 2017, the appellant, the Commissioner General Tanzania Revenue Authority (TRA), conducted a verification exercise, alleging that CCKL had failed to account for 5,067 metric tons of sugar. As a result, a demand note for unpaid duties amounting to TZS

7,310,524,825.45 was issued. Although CCKL provided reconciliations from its Systems, Applications, and Products in Data Processing (SAP) accounting system, showing that the disputed sugar was in transit, stored, or used in subsequent financial periods, the appellant rejected the reconciliation, contending that the duty remission period required importation and sugar usage within twelve (12) months.

In response, CCKL appealed to the Tax Revenue Appeals Board (the Board), which ruled in favour of CCKL. The Board held that the appellant was not justified in considering the unexplained quantity of 5,067 metric tons of sugar as consumed in violation of the duty remission conditions. Thus, the appellant could not assess the respondent on this basis. Consequently, the appeal was allowed.

Disgruntled, the appellant approached the Tax Appeals Tribunal (the Tribunal) with eight (8) grounds of appeal, challenging the Board's decision. The Tribunal, besides concluding that the appellant had no grounds to reassess the respondent based on matters that had already been verified and closed during a post-clearance audit, upheld the Board's decision and dismissed the appeal, finding no justifiable reason to overturn the Board's findings.

This led to the current appeal, which contains six (6) grounds, paraphrased to read as follows:-

1. *The Tribunal failed to re-evaluate the evidence from the Board regarding the usage of industrial sugar under the duty remission scheme.*
2. *The Tribunal improperly consolidated seven grounds of appeal into two without addressing each ground independently.*
3. *The Tribunal erred by failing to apply section 119 of the East African Community Customs Management Act, 2004 (EACCMA) and Regulation 7(2) of the East African Customs Management (Duty Remission) Regulations, 2008 (EACDRR), which require manufacturers to pay duty on any imported goods not used in manufacturing.*
4. *The Tribunal wrongly held that some of the sugar could be used beyond the remission period despite evidence showing that the respondent imported more than it utilized.*
5. *The Tribunal misinterpreted the law by holding that the twelve (12) months period applied only to importation, not consumption.*
6. *The Tribunal erred in ruling that the appellant was not justified in reassessing the respondent despite reasonable grounds for auditing the importation and sugar usage.*

Through learned counsel for the parties, respective written submissions for and against the appeal were filed under Rule 106(1) and (7) of the Tanzania Court of Appeal Rules, 2009, on 20th June and 20th July 2022, along with their list of authorities.

During the appeal hearing, the appellant's team consisted of Mr. Moses Kinabo, learned Principal State Attorney; Ms. Consolatha Andrew,

learned Principal State Attorney; and Messrs. Yohana Ndila and Hance Mmbando, learned State Attorneys. The respondent's legal representation was provided by Messrs. Alan Nlawi Kileo, Wilson Kamugisha Mukebezi, and Norbert Mwaifwani, all learned advocates.

Counsel adopted their written submissions to form part of their oral arguments. Likewise, few clarifications were made. We will not reproduce the submissions *verbatim* but refer to them as necessary throughout this judgment.

Starting with Mr. Kinabo, he explained to us that under Regulation 6 (1) of EACCMA, duty remission granted to manufacturers is valid for twelve (12) months unless an extension is requested and granted for an additional six (6) months. Without such an extension, the respondent must pay import duty for unused goods under the scheme.

When the Court inquired what would happen if unused goods were under duty remission and a period of twelve (12) months had expired? He responded that under Regulation 7(2), duty must be paid for any unused goods. He, however, admitted that the regulations do not explicitly address this issue. He, nevertheless, maintained that under Regulation 7(2) (b), duty must still be paid for unused goods.

The counsel for the appellant further contended that no stock of unused sugar was found; thus, the excess sugar was assumed to have been used for other purposes. He challenged as incorrect, the Tribunal's decision that the excess amount could be carried over to the next financial year. Finally, he invited us to consider and allow the appeal, quash the Tribunal's decision and set aside the orders.

Mr. Kileo, on his part, argued that it was unrealistic to expect the entire stock of sugar to be consumed within the relevant period. He also rejected the appellant's presumption that the sugar was used for other purposes, stating that such a presumption was not supported by law. Illustrating on what the law says on payment of taxes, the learned counsel referred us to our previous decision in **Insignia Limited v. Commissioner General of Tanzania Revenue Authority**, Civil Appeal No. 14 of 2007 (unreported), in which the Court stated that taxpayers like the respondent in this instance should not be required to pay taxes based on assumptions. In the present appeal, the contentious issue is whether the provision relied on by the appellant included the term "usage." The appellant presumes it did while the respondent categorically refuted that it did not. Based on his submissions, Mr. Kileo prayed that the appeal be dismissed for lack of merit.

Before proceeding, the Court had to satisfy itself if it could interfere with the concurrent findings of the Board and the Tribunal, and if so, under which circumstances.

It is a well-established principle in our jurisprudence that the first appellate court, such as the Tribunal, has a duty to re-evaluate the evidence on record and critically analyze it to arrive at its own decision. Several authorities have elucidated this principle, including **The Registered Trustees of Joy in the Harvest v. Hamza K. Sungura** (Civil Appeal No. 149 of 2017) [2021] TZCA 139 (28th April, 2021; TANZLII).

Also, this Court is limited in what it can do. As stated in the case of **Peters v. Sunday Post Ltd.** (1968) E. A 424 and others, the Court will not readily disturb concurrent findings unless they are demonstrably wrong or clearly unreasonable. Restating the principle, the Court in the case of **Wankuru Mwita v. R**, Criminal Appeal No. 19 of 2012 (unreported), emphasized that:-

> *"The law is well settled that on second appeal, the court will not readily disturb the concurrent findings by the trial court and the first appellate court unless it can be shown that they are perverse, demonstrably wrong or clearly unreasonable or are a result of complete*

misapprehension of the substance, nature and quality of the evidence; misdirection or non-direction on the evidence: a violation of some principle of law or procedure or have occasioned a miscarriage of justice."

Again, in its recent past decision of **Elias Mwangoka @ Kingoli v. R**, (Criminal Appeal No. 96 of 2019) [2022] TZCA 31 (17th February, 2022; TANZLII), pages 17-18, the Court held that: -

> *"It is settled law that a second appellate court as this one should not lightly interfere with the concurrent findings of the fact by the two courts below except where it is evident that such concurrent findings of fact, were a result of misapprehension, misdirection or non-direction of the evidence or omission to consider available evidence."*

See also: **Asajile Henry Katule & Another v. R,** (Criminal Appeal No. 30 of 2019) [2021] TZCA 753 (8th December, 2021; TANZLII, in which the case of **Julius Josephat v. R**, (Criminal Appeal No. 03 of 2017) [2020] TZCA 1729 (18th August, 2020; TANZLII) and **Juma Mzee v. R,** (Criminal Appeal No. 19 of 2017) [2019] TZCA 519 (21st February, 2019; TANZLII) were referred. Though most cases referred were criminal cases, the principle is equally relevant in civil cases.

In short, the second appellate court can, in terms of section 25 (2) of the Tax Revenue Appeal Act, Cap. 408 Revised Laws (the TRAA) only interfere with the findings of fact by the two lower courts if it finds a misapprehension of the evidence or if the decision violated principles of law or procedure, resulting in a miscarriage of justice.

Another pertinent guiding factor considered is the concept of the burden of proof, which is vital. Section 110 of the Tanzania Evidence Act, Cap. 6 Revised Laws (TEA) outlines this principle. A similar provision is found in Section 18 (2) (b) of the Tax Revenue Appeals Act, Cap. 408 Revised Laws (the TRAA). Section 18 (2) (b) of the TRAA states:-

> *"In every proceeding before the Board and before the Tribunal, the onus of proving that the assessment or decision in respect of which an appeal is preferred is excessive or erroneous shall be on the appellant."*

This principle was well captured in our previous decisions, including **Alliance One Tobacco Tanzania Ltd v. Commissioner General** (Civil Appeal No. 118 of 2018 [2019] TZCA 242) and **Insignia Limited** (supra).

After laying the background it is significant to reproduce the grounds of appeal placed before the Tribunal for ease of reference. The grounds are as follows:

1. *The Board erred in law by holding that the referred period of twelve months in Regulation 6(1) of the EACCM (Duty Remission) Regulations, 2008 applies only to importation and not usage (consumption) of the imported goods under the duty remission.*
2. *The Board misinterpreted Regulation 6(3) of the EACCM (Duty Remission) Regulations, 2008, concluding that goods imported in one financial year could be carried forward to another despite no evidence proving that the respondent had applied for an extension per Regulation 6(3).*
3. *The Board failed to base its judgment on Section 119 of the EACCM Act, 2004, and Regulation 7(2) of the EACCM (Duty Remission) Regulations, 2008, which stipulate that manufacturers must pay duty on imported goods not used in the manufacture of approved goods.*
4. *The Board erred in law and fact by concluding that goods imported in one financial year could be carried forward to the following year, contrary to Regulation 7(2)(a) read with Regulation 6(1) of the EACCM (Duty Remission) Regulations, 2008.*
5. *The Board erred in law and fact by holding that industrial sugar imported in one financial year could be carried forward to the following year, disregarding the Sugar Industry Regulations, 2010, which require annual applications for import licenses.*
6. *The Board misinterpreted the regulations by ruling that consuming goods imported in one financial year in the following year does not violate duty remission conditions.*

7. *The Board wrongly held that the appellant was not justified in assessing the respondent on 5,067 metric tons of excess industrial sugar consumed contrary to duty remission conditions, despite the legal requirement for import duty after the 12-month remission period.*
8. *The Board erred in law and fact by holding that the appellant was not justified in assessing the respondent on matters already verified and closed during the Post Clearance Audit.*

Based on those eight grounds as well as the written and oral submissions lodged, we are now going to examine the following paraphrased issues generated from the six (6) grounds of appeal preferred by the appellant: -

1. *Whether the Tribunal failed to properly evaluate the evidence regarding imported white industrial sugar usage.*
2. *Whether the Tribunal erred by consolidating the grounds of appeal rather than addressing them separately.*
3. *Whether the TRA's tax assessment was justified under the applicable laws and regulations.*
4. *Whether the Tribunal correctly interpreted the scope of the twelve-month duty remission period.*
5. *Whether TRA was legally justified in reopening the audit (Post Clearance Audit).*

On the first issue, the appellant argues that the Tribunal failed to re-evaluate the evidence as the law requires and come out with its own findings.

We have reviewed the record of appeal, it does not show a specific ground on re-evaluation of evidence placed before the Tribunal for its determination. In the case of **Mwajuma Bakari v. Julita Semgeni & Another** (Civil Appeal No. 71 of 2022) [2022] TZCA 266 (12th May, 2022; TANZLII), the Court pronounced itself that: -

> *"In the first place, an appellate court is not expected to answer the issues as framed at the trial court. That is the role of the trial court.* ***It's, however, expected to address the grounds of appeal before it****. Even then, it does not have to deal seriatim with the grounds as listed in the memorandum of appeal."* [Emphasis added]

Reverting to the record of appeal, we find that of all the eight (8) grounds of appeal placed before the Tribunal, none was on re-evaluation of evidence in particular. As contended by the respondent in their written submission, since none is reflected, it cannot be said that the Board failed to appreciate the weight of the evidence adduced regarding the usage of industrial sugar under the duty remission scheme or that the Tribunal was invited to re-evaluate the evidence but could not.

Going by our previous decisions, such as **Mbeya Cement Company Limited v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 160 of 2017 (unreported), we held that:-

> *"We have considered this argument. Having done so, we dismiss it because that point was not decided upon by the Tribunal, and the appellant did not raise it at all. ... "*

Kindred to the situation in the present appeal, re-evaluation of evidence was never a ground for determination or decided upon by the Tribunal to warrant this Court to deal with it. Assuming that was the case, which was not, the Tribunal did examine the respondent's SAP accounting records, which indicated that the disputed sugar was adequately accounted for. The Tribunal also considered the appellant's rejection of these records but found no supporting evidence as to why they were rejected. All this shows that the Tribunal addressed and determined the issues before it; this includes the claim that section 18 (2) (b) of the TRAA was contravened. In this regard, there is no point for us to determine on appeal. This issue lacks merit.

On the second issue, the appellant contends that the Tribunal wrongly consolidated seven grounds of appeal into two instead of addressing each ground independently. Contesting the consolidation of several grounds of appeal, the appellant referred us to two cases in her

submissions: **Mosi Chacha @ Iranga and Another v. R** (Criminal Appeal No. 508 of 2019) [2021] TZCA 598 (22nd October, 2021; TANZLII) and **Stanislaus Rugaba Kasusura and Another** [1982] T. L. R. 338. It was the appellant's contention like what occurred in the two cited cases, that the Tribunal's decision suffered from irregularity due to its failure to consider the appellant's grounds of appeal and denied the appellant their fundamental right to a fair hearing.

While that could be correct in some instances, it is not the case in the present appeal; first and foremost, we took the liberty of reproducing all the eight (8) grounds of appeal presented before the Tribunal for determination, and second, out of eight (8) grounds, seven (7) were on the usage of imported sugar under the duty remission scheme, if it could be used beyond the importation period. It is well-established law that appellate courts have the discretion to consolidate issues arising from the same subject matter. The discretion may lead to addressing and resolving complaints either separately or jointly, depending on the circumstances, as affirmed in the case of France **Michael Nyoni v. R** (Criminal Appeal No. 505 of 2020) [2022] TZCA 679 (7th November, 2022; TANZLII).

Specifically, our observation is that before the Tribunal, the core issue for determination was the interpretation of the duty remission

period within which imported industrial sugar could be used. On multiple grounds raised, the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th grounds were all related to interpreting the provisions governing the importation of white industrial sugar under duty remission and whether the use of unused sugar can be forwarded to the following financial year. While the appellant takes the position that the usage should be within the period of the duty remission, the respondent contends that the law does not provide so.

From our reflection, we do not concur that the Tribunal decision suffered from irregularity for failing to consider the appellant's grounds of appeal, rendering the decision defective and, in essence, denying her the right to a fair hearing.

We have a different view. After reading the record of appeal and the evidence, we find that the Tribunal painstakingly examined the materials placed before it, answering the issues framed for determination before the Board. Nowhere has it been indicated or submitted that the appellant was not heard. Besides the oral account and exhibits admitted, the Board examined the provisions referred to and made its findings. The Tribunal went through the same process of reviewing the record of proceedings before it and ultimately concluded by upholding the Board's decision. Guided by the case of **National**

Bank of Commerce Ltd v. Commissioner General, Tanzania Revenue Authority, (Civil Appeal No. 109 of 2020) [2022] TZCA 143 (24th March, 2022; TANZLII), we in this appeal alike, hold that the Tribunal acted on the materials and questions it was asked to resolve and could not go beyond that so long as there was no legal point requiring addressing. Thus, we do not think the consolidation of grounds prejudiced the appellant. This issue fails.

On the third issue, the appellant argued that the respondent failed to comply with the East African Community Customs Laws, particularly Section 119 of the EACCMA, 2004, and Regulation 7(2) of the 2008 Duty Remission Regulations, which require payment of duty on unused imported goods. This argument was not backed by any supporting evidence that the disputed sugar was unaccounted for. Moreover, the Board interpreted Regulation 6 (1) of the EACCDR Regulations to mean that the twelve (12) months period only applies to importation and not usage as suggested by the appellant. Adding to this is that when Mr. Kinabo was probed by the Court, he admitted that the relevant law was silent on sugar usage. Both the Board and Tribunal accepted the respondent's reconciliation of records, which the appellant did not adequately refute.

This is not the first time the Court finds itself in such a situation. However, following in the footsteps of our previous decisions such as **Bulyanhulu Gold Mine Limited v. Commissioner General (TRA)** (Consolidated Civil Appeal No. 89 & 90 of 2015) [2016] TZCA 571(8th March, 2016; TANZLII); **Commissioner General (TRA) v. Ecolab East Africa (Tanzania) Limited** (Civil Appeal No. 35 of 2020) [2021] TZCA 283 (2nd July, 2021; TANZLII] and **Commissioner General v. Mamujee Products and 2 Others** (Civil Appeal No. 10 of 2018) TZCA 27 (2nd August, 2018; TANZLII). In all three cases, the language is no tax can be levied and collected without the authority of the law. In **Commissioner General v. Mamujee** (supra), the Court pronounced itself when it stated: -

> "*In taxing act one has to look at what is clearly said. There is no room for intendment. There is no equity about tax.* ***There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.***" [Emphasis added]

Going back to the appeal before us and as the learned Principal State Attorney admitted, the provision relied on is silent on the imported duty remission sugar usage. For the appellant to invite us to overturn the concurrent finding of the Board and later Tribunal on the

controverted issue without sufficient evidence to do so, in our view, is a hard road to travel. The issue lacks merit.

The Tribunal discussed and interpreted the twelve-month duty remission period on the fourth ground. According to the appellant, the remission period should also apply to consumption, the assertion refuted by the respondent. This prompted us to revisit section 119 of the EACCMA, which states: -

> *"Where any goods liable to import duty have goods imported duty been imported, or purchased prior to entry for home consumption, by or on behalf of any person, either free of import duty or at a reduced rate of import duty and such goods are subsequently disposed of in any manner inconsistent with the purpose for which they were granted any relief from import duty, the goods shall on disposal be liable to import duty at the rate applicable to goods of that class or description at the time of disposal."*

Our understanding of the provision is that goods imported must be used for the approved purpose. There is nothing that can be interpreted beyond that. Stressing on the principle, the Court, in the case of **Ecolab East Africa (Tanzania) Limited** (supra), underlined that:-

"The Courts are enjoined to look at what is clearly said in the language used in the tax statute and interpret the statute in the letter of the law because there is no room for looking at the intention of the statute....

The **Mamuajee Products and 2 Others** (supra) also reflected the same stance. We thus agree with the Tribunal's decision that the law does not explicitly require usage within twelve (12) months. The appellant's failure to demonstrate that usage beyond twelve (12) months is legally impermissible renders this issue not proved, and it thus fails.

The final issue concerns the appellant's reassessment, which is justified under Section 45(3) of the Tax Administration Act (TAA), allowing audits to be reopened under certain circumstances. Section 45 (3) of the TAA reads as follows: -

"Where a person has been audited or investigated for any particular period, such audit or investigation shall not preclude that person from being audited or investigated in the following period if there are reasonable grounds for auditing or investigating that person."

However, the assessment must be based on reasonable grounds. In the present appeal, the respondent failed to provide sufficient

justification for reassessing the respondent, having previously closed the audit. Therefore, the Tribunal correctly rejected the appellant's reassessment. The issue consequently failed.

In conclusion, we find that the appeal is without merit and dismiss it with costs.

DATED at **DODOMA** this 26th 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 26th day of February, 2025, in the presence of Mr. Moses Kinabo, learned Principal State Attorney for the Appellant and Mr. Norbert Mwaifwani, learned counsel for the Respondent linked via Video Conference from Dar es Salaam, is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL