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IN THE COURT OF APPEAL OF TANZANIA

AT MOROGORO

(CORAM: LEVIRA, J.A., MASOUD, J.A. And MLACHA, J.A.)

CIVIL APPEAL NO. 358 OF 2024

THE COMMISSIONER GENERAL,
TANZANIA REVENUE AUTHORITY .....APPELLANT

VERSUS

MSPH TANZANIA LLC .....RESPONDENT

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

(Ngimilanga, Vice Chairperson)

dated the 29th day of September, 2023

in

Tax Appeal No. 26 of 2022

.....

JUDGMENT OF THE COURT

1st & 15th December, 2025

LEVIRA, J.A.:

The main issue addressed in this decision is about tax exempt in relation to Skill Development Levy (SDL) and Pay As You Earn (PAYE) tax. The appellant, Commissioner General, Tanzania Revenue Authority was dissatisfied with the decision of the Tax Revenue Appeals Tribunal at Dar es Salaam (the Tribunal) which upheld the decision of the Tax Revenue Appeals Board at Dar es Salaam (the Board), in Consolidated Appeals No. 327, 328, 329, 330, 335 and 336 of 2019. Both, the Board and the Tribunal made concurrent findings and held that, the respondent being a non-profitable

organization is exempted from SDL for the years 2013 and 2014 and PAYE tax for the years 2015 to 2018 by virtue of the Bilateral Agreement (Lexis Treaty) between the United States of America (the USA) and the United Republic of Tanzania on Economic and Technical Cooperation (LEXSEE 19 UST 4614) of 1968; the Memorandum of Understanding (MOU) between the respondent (MSPH Tanzania LLC) and the Government of Tanzania through the Ministry of Health and Social Welfare in 2010 and 2018, respectively and section 19 of the Vocational Education and Training Act, Cap 82 (the VETA Act).

It is on record that in the year 2018, the appellant conducted an audit on the respondent's tax affairs covering years of income 2013 to 2018 on SDL and PAYE and issued tax assessments. The respondent was not satisfied with the assessments. As a result, she lodged notices of objection disputing them. However, the appellant refused the respondent's objections. Hence, appeals to the Board and later to the Tribunal, subject of the present appeal.

Noteworthy as far as the controverse between the parties herein is concerned, is the question as to whether the respondent being a Non-Governmental Organization operating in Tanzania with funding from the USA through the President's Emergency Plan For AIDS Relief (PEPFAR) through the USA Centre for Disease Control (CDC), is exempted from tax payment

following existence of the Lexis Treaty, MOUs, nature of projects carried out by the respondent (charitable organization) and section 19 of the VETA Act.

As intimated above, the Tribunal just like the Board, found that the respondent being a charitable organization (non-profit organization) as recognized by the MOU under consideration, was entitled to tax exemption; hence, the present appeal comprising three grounds as follows:

1. *That the Tax Revenue Appeals Tribunal erred in law in holding that the Respondent being a beneficiary of funds provided by the Government of the United States of America was exempted from payment of PAYE under Article 5 (b) and (d) of the Lexis Treaty contrary to Section 10 of the Income Tax Act, 2004.*
2. *That the Tax Revenue Appeals Tribunal seriously erred in law in holding that failure to procure the Government Notice under Section 10 of the Income Tax Act, 2004 is not fatal and that the allegedly tax exemption stipulated under the Memorandum of Understanding is valid.*
3. *That the Tax Revenue Appeals Tribunal erred in law in holding that the provision of section 19 of the Vocational Training and Education Act, Cap. 82 does not require an entity to apply for Ruling of the Commissioner General regarding the charitable organization status.*

At the hearing of the appeal, the appellant was represented by Mr. Thomas Buki, learned Senior State Attorney assisted by Mr. Nyamkingira Mgune, learned State Attorney, whereas the respondent had the services of Ms. Hellena Ignas, learned advocate.

Mr. Mgune adopted the appellant's written submissions and addressed the Court in support of the appeal. He argued the 1st and 2nd grounds of appeal jointly. In respect of these grounds, he challenged the Tribunal for relying on Article 5 (b) and (d) of the Lexis Treaty contrary to section 10 of the Income Tax Act, 2004 (the ITA) to hold that, the respondent being a beneficiary of funds provided by the USA Government was exempted from payment of PAYE. He went on arguing that it was equally wrong for the Tribunal to hold that, failure by the respondent to procure the Government Notice under that provision (section 10 of the ITA) is not fatal and the allegedly tax exemption stipulated under the MOU is valid. He referred us to page 985 through 986 of the record of appeal where the Tribunal made an observation that while before the Board, the appellant did not dispute the fact that the respondent was receiving funds from the USA (REPFAR) through the CDC under the Government of the USA in her reply to the statement of appeal. In her reply to the said statement, the appellant only noted the respondent's source of funds. Mr. Mgune argued that, it is not true that the appellant did not dispute the respondent's source of fund as it can be seen

at page 272 of the record of appeal where she categorically replied to the statement of appeal to the effect that, the respondent failed to prove that she received funds from USA Government and that the Lexis Treaty and the MOU exempt her from any tax liability. This he said, is due to the reason that the MOU between Government of Tanzania and the respondent committed Ministry of Health to facilitate exemption. He referred us to the case of **The Hellenic Foundation of Tanzania Ltd t/a St. Constantine's International School v. Commissioner General, Tanzania Revenue Authority** [2021] TZCA 648, TANZLII and argued that, 'noting facts' is not an admission of facts as held in that case. He contended further that, there is no evidence in the matter at hand proving that the respondent received funds from the USA Government. He made reference to the MOU at page 403 of the record of appeal which indicated that, the respondent corroborated with the University of Columbia, a private university to achieve their goals.

Again, Mr. Mgune referred us to the Notice of Discussion found at page 392 of the record of appeal where it was stated by the appellant that there was no proof from the respondent that the funds were received from the USA Government. The MOU only stated that the Government of Tanzania will facilitate tax exemption. He further referred us to paragraph 'c' of the Notice of Discussion to bring to our attention the fact that, the respondent failed to

produce even a letter from USA Embassy certifying that the project was under the USA Government arrangement. In support of his argument, he cited the case of **Insignia Limited v. The Commissioner General, Tanzania Revenue Authority** [2011] TZCA 246, TANZLII and **Sapna Electronics Limited v. Commissioner General, Tanzania Revenue Authority** [2025] TZCA 108, TANZLII. He insisted that the burden of proof lies on the respondent, that she received funds from the USA Government. He faulted the Tribunal for relying on Article 5 (b) and (d) of the Lexis Treaty to conclude that the respondent was exempted from paying PAYE tax in respect of his personnel. According to him, the said Treaty exempts all personnel accredited to the special mission paid from funds provided by the Government of the USA, which is not the case herein. He added that, knowing this fact, the respondent entered the MOU with the Ministry of Health, Community Development, Gender, Elderly and Children (MoHCDGEC) where it was stated that, all taxes shall be exempted in accordance with prevailing tax laws of the United Republic of Tanzania. He cited, particularly, section 10 of the ITA. To bolster his argument, he also cited **Mlimani Holdings Limited v. Commissioner General, TRA** [2025] TZCA 339, TANZLII and **Tanga Cement Public Limited Company v. Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 160 of 2025. He thus, urged us to allow the first and second grounds of appeal.

Submitting in respect of the third ground of appeal, Mr. Mgune faulted the Tribunal for holding that, section 19 of the VETA, Act does not require an entity to apply for Ruling of the Commissioner General regarding the charitable organization status. According to him, the Commissioner is vested with powers to conduct due diligence and establish whether or not the respondent was doing charitable activities. As such, he said, the respondent ought to have the Ruling of the Commissioner to show that she is a charitable organization in terms of section 19 (2) of the VETA Act, which is similar to section 64 (8) of the ITA.

In alternative, he argued, if the Court will find that there was no need of a Ruling from the Commissioner, then, he urged us to make a finding that the respondent did not prove that she is a charitable organization as indicated in the Commissioner's Determination in the Notice of Settlement of Objection on SDL certificates found at page 380 of the record of appeal. Finally, Mr. Mgune urged us to allow the entire appeal with costs.

In reply, Ms. Ignas who had adopted the contents of the respondent's written submissions opposed the appeal. She argued against all the grounds together. It was her firm submission that, the respondent proved that she received funds from the USA Government despite the fact that she did not produce any document to that effect. According to her, paragraph (a) of the Notes of Discussion found at page 392 of the record of appeal referred by

the counsel for the appellant, does not indicate any requirement of additional documents like bank statement contrary to what was stated by Mr. Mgune.

She added that, Article 5 (a) of the Lexis Treaty states clearly that exemption will be given to the beneficiaries or recipient of funds from a representative or agency of the USA Government which the respondent falls under the ambit of agencies. Apart from that, she said, Article 1 of the MOU indicates that the respondent has been successfully implementing HIV prevention project to provide comprehensive community-based HIV prevention services in Tanzania with funding from the PEPFAR through the CDC. Therefore, it shows that there was a link between the respondent and the USA Government as the source of fund was through the USA Government Agency, although it is not specifically stated in the MOU that, the CDC is one of the agencies. She referred us to page 412 of the record of appeal with a view of indicating that, as part of commitment, the USA Government through CDC entered into agreement with Columbia University to support the Ministry of Health in the implementation of its HIV/AIDS prevention, care and treatment and health programs. Therefore, the connection between the respondent and the USA Government has been shown and that the funds are from CDC, she added.

According to her, it is not true that funds were from Columbia University but that the said University was an agent and the respondent is an affiliate

of Columbia University. In that respect, Ms. Ignas insisted that the respondent proved the source of funds and that she was a beneficiary of the same under Article 5 of the Lexis Treaty. In addition, she stated that the employees of the respondent were covered under special mission; hence, covered under Article 5 (e) of the Lexis Treaty as shown in the notice of discussion at page 391 of the record of appeal. According to her, all cases cited by the counsel for the appellant are distinguishable. In particular, she argued, the issue of publication in the Government Gazette under section 10 (1) of the ITA, is inapplicable in this matter given the automatic right available under section 10 (3) of the same Act. She emphasized that since the respondent is a non-profitable organization, it cannot be said that she failed to prove that she is a charitable institution. She urged us to recognize that the respondent deals with charitable activities which entitle her to tax exemption.

As regards section 19 of the VETA Act, Ms. Ignas submitted that Ruling of the Commissioner is not a mandatory requirement in the present matter. In the circumstances, she prayed for the appeal to be dismissed with costs.

Mr. Mgune made a very brief rejoinder, insisting that the respondent failed to prove that the funds were from American Government and there

was no approval by the Cabinet. As a result, section 10 (3) of ITA will not apply in this matter.

Having heard the parties and carefully gone through the record of appeal together with the grounds of appeal, the issues for our determination are mainly two; to wit, whether publication of tax exempt order in the Gazette by the Minister in terms of section 10 of the ITA was mandatory to entitle the respondent to PAYE tax exemption; and whether the respondent was entitled to SDL exemption under section 19 of the VETA Act in absence of the Ruling of the Commissioner General setting out her charitable status.

In determining the first issue, whether under the prevailing circumstances of this matter publication of tax-exempt order in the Gazette by the Minister in terms of section 10 of the ITA was mandatory to entitle the respondent to PAYE tax exemption, we need to consider what the law provides. The provision under consideration reads:

> *"10.- (1) The Minister may, by order published in the Gazette, provide-*
>
> *(a) that any income or class of incomes accrued in or derived from the United Republic shall be exempt from tax to the extent specified in such order; or*
>
> *(b) that any exemption under the Second Schedule shall cease to have effect either generally or to such extent as may be specified in such order.*

(2) The Minister may, by order published in the Gazette, amend, vary or replace the Second Schedule.

(3) Notwithstanding any law to the contrary, no exemption shall be provided from tax imposed by this Act and no agreement shall be concluded that affects or purports to affect the application of this Act, except as provided for-

(a) by the provisions of this Act;

(b) by an agreement:

(i) on a strategic project; and

(ii) on public interest, as may be approved by the Cabinet."

In the present matter, there is no dispute between the parties that the Minister responsible did not publish any order in the Gazette as far as the respondent's tax exemption is concerned. The only dispute is on whether the publication was mandatory in the circumstances of the present matter. While the appellant insisted that since there was no such publication, the respondent is not entitled tax exemption, the respondent's position was that, publication of the Minister's exemption order was not necessary because the respondent is covered under the Lexis Treaty and the MOU in terms section 10 (3) of the ITA. We think, it is not insignificant at this juncture to point out that, in terms of Article 5 (a) of the said Treaty, for one to benefit tax exemption, she has to establish receipt of supplies, materials, equipment or funds from the USA Government. As intimated above, Columbia University,

a private institution through the respondent and the Government of Tanzania through Ministry of Health and Social Welfare entered the MOU to link the respondent and USA Government to justify tax exemption.

Nonetheless, we note that under the MOU, among the responsibilities of the signing parties, the Ministry of Health and Social Welfare agreed to facilitate tax exemption of income and social security as per the applicable law; see: Clause 3.2.2 and 3.2.3. It is apparent that, the MOU recognized and required abidance by the law and it tasked the Minister for Health to facilitate the exemption. In other words, be it as it may, the connection between the respondent and the Government of USA through Lexis Treaty or the MOU if at all did not give the respondent an automatic tax exemption right. We note at page 993 of the record of appeal that, the Tribunal while dealing with the requirement under section 10 of the ITA had the following to say:

> *"The Minister responsible for Health who was the party to the MOU on behalf of the Government of the United Republic of Tanzania, was obliged under the terms of the MOU to communicate with the Minister responsible for Finance to ensure that exemptions granted by virtue of the Lexis Treaty and MOU are effected in accordance with the requirement of section 10 of the Income Tax Act, 2004. The section as quoted above requires the Minister to provide*

exemption by order published in the Gazette. In the case at hand, no such order was published by the Minister in respect of the tax exemption granted under the Lexis Treaty or MOU. According to the appellant, this was due to the fact that, the Ministry of Health and Social Welfare which was supposed to facilitate the tax exemption did not provide such facilitation. In other words, there is no dispute that the Government through the Lexis Treaty and MOU has exempted the respondent as a none profitable organization from payment of taxes including PAYE and SDL. Under the circumstances at hand, what is missing is the exemption Order of the Minister (Government Notice) published in the Gazette to that effect as per section 10 of the Income Tax Act, 2004. It is our view that failure of the Ministry Responsible for Health to facilitate the publication of exemption should not be taken as a reason for imposition of ***taxes which are alredy exempted by the Government In terms of the Lexis Treaty and MOU.*** *That being the case, we join hand with the observation of the Board that the Ministry of Health be reminded to effect the facilitation as stated under Article 3.2.3 of the MOU entered between the respondent and the Ministry of Health and Social Welfare."*

[Emphasis added].

Much as we agree with the Tribunal as above that, indeed, it was agreed that the Ministry of Health and Social Welfare should facilitate tax exemption; with respect, we are unable to go along with its view that the taxes were already exempted by the Government in terms of the Lexis Treaty and MOU and thus the respondent has no responsibility. We say so because tax exemption in the circumstances of this matter, as we have alredy said, was not an automatic right but subject to requirements of the law. It has to be understood that, MOU with government agencies, as in the present matter, does not confer automatic tax exemption right. Rather the statutory process must be followed because MOU falls mainly under administrative arrangements which do not override statutory provisions or legal requirements. Besides, it is settled law that, tax statute must be strictly construed; see for instance, **Commissioner General of Tanzania Revenue Authority v. St. Anne Marie Trust**, Civil Appeal No. 446 of 2022.

Therefore, it is our finding that the effects of the publication are twofold. When it is effected, then PAYE tax is exempted. On the contrary, like in the present matter where publication was not effected, no tax was exempted. We take note that, the counsel for the respondent relied on subsection (3) of section 10 of the ITA to claim that the respondent was exempted to pay tax. With respect, we are not persuaded by her argument because the record

of appeal does not suggest that there was an approval of the agreement by the Cabinet. The first issue is thus answered in affirmative.

Turning to the second issue, whether the respondent was entitled to SDL exemption under section 19 of the VETA Act in absence of the Ruling of the Commissioner General setting out her charitable status. Generally, chargeability of SDL is governed by section 14 of the VETA Act. For ease of reference the said provision reads:

> *"14.- (1) Subject to the provisions of this Part, there shall be charged, levied and payable to the Commissioner at the end of every month, from every employer who has in his employment four or more employees, a levy to be known as the skills and development levy."*

The above provision provides for general position as far as payment of SDL by the employer who employs four or more employees is concerned. However, being a general provision, the above provision has exception under section 19 of the VETA Act to some organizations including charitable organizations, as in the matter at hand. In particular, subsection (1) (f) of the said provision provides:

> *"19 (1) The provision of section 14 shall not appiy to:*
> *(f)* ***Charitable organization***
>
> *(2) For purpose of this section,* ***charitable organization*** *means a resident entity of a public*

character registered as such and performs its functions solely for –

(a) N/A

(b) Provision of education or public health,

and the ***Commissioner General is upon due diligence making satisfied that the business conducted by such entity is for public good."***

[Emphasis added]

As it can be observed, although the provision above exempts charitable organizations from paying SDL, the exemption is not an open cheque. It went further to define who is a charitable organization. This means that, for the purposes and intents of that provision, determination of whether or not an entity falls under charitable organization to deserve exception is in the Commissioner General's authority upon being satisfied that, the business conducted by the entity is for public good. In this appeal, while Mr. Mgune argued that section 19 (2) of the VETA Act is similar to section 64 (8) of the ITA as far as the Ruling of Commissioner is concerned, on her side, Ms. Ignas opposed that argument. She stated that, the respondent is a charitable organization entitled to tax exemption without the Ruling of the Commissioner. Her argument is based on the fact that, the respondent is a Non-Governmental Organization (NGO) providing public health on implementing community-based strategies to identify and link HIV -positive individuals within targeted key and vulnerable populations. With respect, we

are unable to agree with her. In our considered view, had it been that for tax exemption purposes, the law intended the nature of functions performed by an entity alone to become a criterion for it to be categorized as charitable organization, it could have stated so. We say so because, it is trite that the language used in tax statute does not give room for speculation. At page 990 of the record of appeal, the Tribunal, while dealing with tax exemption under section 19 of the VETA Act made the following finding:

> *"We find that the section does not require an entity to apply for Ruling of the Commissioner regarding the charitable organization status. The section only requires the Commissioner to satisfy himself that the entity is for public good and not the requirement to apply for a charitable organization status Ruling under section 11 of the Tax Administration Act, Cap. 438."*

If we are to agree with the finding of the Tribunal, which we do not, that section 19 of the VETA Act requires only satisfaction of the Commissioner that the entity is for public good to deserve tax exemption, the pertinent question that follows is, how will the Commissioner become aware that a certain organization is functioning for public good; hence, entitled to tax exemption without being moved? Besides, it is not always the case that, every entity alleging to be a charitable organization is, indeed, a charitable

organization before the eyes of the law. In the ***Hellenic Foundation of Tanzania Ltd*** (supra), the Court dealt with an akin issue and held that:

> *"For a charitable organization to be so treated for the purpose of SDL exemption, the condition set out under section 19 (2) of the VETA Act has to be satisfied."*

Being guided by our decision above, we restate that, exemption from SDL payment is not automatic. There is nothing on the record of appeal indicating that, the Commissioner General was either moved by the respondent or on his own volition made due diligence to satisfy himself that the respondent's business or project was for public good to deserve exemption as a charitable entity under section 19 (1) (f) of the VETA Act. The respondent's reliance on the Lexis Treaty and MOU to justify her charitable status, in our view, could not form a base for SDL exemption under section 19 of the VETA Act. Contrary to the findings of the Tribunal, it is common ground and we so find that, section 19 of the VETA is applicable in the circumstances of this matter. The second issue is, as well, answered in affirmative.

In the final analysis, since we have already made findings that there was non-compliance with section 10 of the ITA Act and section 19 of the VETA

Act, we as well, find merit in this appeal and allow it. Having considered the prevailing circumstances of this matter, we make no order as to costs.

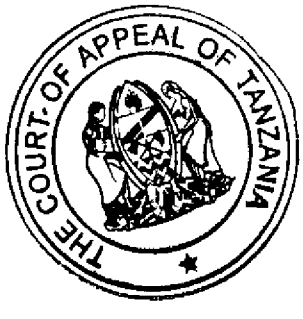
DATED at **DODOMA** this 12th day of December, 2025.

M. C. LEVIRA
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

L. M. MLACHA
JUSTICE OF APPEAL

The Judgment delivered virtually this 15th day of December, 2025 in the presence of Mr. Abdillah Mdunga Hussein, learned State Attorney for the Appellant, Ms. Hellana Ignas, learned counsel for the Respondent and Tabitha Daniel, Court Clerk, is hereby certified as a true copy of the original.



D. P. KINYWAFU
DEPUTY REGISTRAR
COURT OF APPEAL