IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

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

CIVIL APPEAL NO. 446 OF 2022

COMMISSIONER GENERAL OF
TANZANIA REVENUE AUTHORITY.....APPELLANT

VERSUS

ST. ANNE MARIE TRUST.....RESPONDENT

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

(Kamuzora, Vice Chairperson.)

dated the 17th day of August, 2022
in
Tax Appeal No. 78 of 2021
.....

JUDGMENT OF THE COURT

26th & 28th February, 2025

MASOUD, J.A.:

The controverse in the instant appeal rests on the interpretation of section 7 (1) (g) of the Urban Authorities (Rating) Act, Cap. 289 and its applicability to the respondent, an educational institution providing full time education service in Tanzania, in relation to its entitlement for exemption for payment of property rates. The provision reads thus:

> *7(1) All property within a ratable area shall be rateable. Provided that the following property shall not be rateable property-*

(d) Property comprising land laid out and used for sporting purposes and which is used solely by a full-time educational institution.

It all started on 13th June, 2018 when the appellant issued property rate tax demand notices to the respondent for the 2017/2018 financial year. The same was in respect of the respondent's properties designated as rateable for purposes of levying property rates. The total property tax demanded amounted to TZS 57,727,287.17.

Aggrieved, the respondent objected to the assessment. The basis of the objection was that the respondent was a full-time educational institution whose properties are exempted from being rateable for purposes of levying property tax under section 7 (1) (a) of Cap. 289 which has to be read together with section 22 (1) (b) (iii) of the Local Government Finance Act, Cap. 290. The appellant rejected the objection. As a result, the respondent appealed against the objection decision of the appellant to the Tax Revenue Appeals Board (the Board). After hearing the parties, the Board decided against the respondent. Dissatisfied, the respondent successfully appealed to the Tax Revenue Appeals Tribunal (the Tribunal).

It is worthwhile to recall that before the Tribunal as was before the Board, the key issue was on the interpretation of section 7 (1) (g) of Cap.

289. Whereas the respondent argued that the provision exempts all properties owned and used by a full-time educational institution like the respondent, not just those used for sports by those institutions; the appellant was of a different view maintaining that it is only property used for sports purposes by full time educational institutions that is under that provision exempted from property tax and other properties remain taxable.

Our perusal of the judgment of the Tribunal on how it dealt with the issue and vacated the Board's finding and conclusion revealed that in its finding against the position taken by the appellant and the Board that the respondent is not exempted, the Tribunal's conclusion was at pages 842 to 844 of the record of appeal informed by the following reasoning:

> *"I however have a different interpretation of the provision from that of my respectable members, the respondent and the Board as well. In my view, while interpreting the said provision, they have ignored the purpose of the conjunction "and" as used in the provision. I agree with the appellant's idea of unpacking the sentence for a clear reason that, the word "and" used in the sentence really intended to define property in different types. The larger word here is the "property" which is qualified by the following word "comprising". The word "comprising" as used in the above provision*

intended to qualify the larger word/group which is the "property" meaning that, the property which is exempted is the land laid out, the property used for sporting purposes and property used solely or exclusively by a full-time educational institution. In other words, full time educational institutions are exempted from paying property tax for all properties which are used solely for education purposes and that includes land, property used for sports and any other property used solely by a full-time education institution. I therefore do not agree with the Board's conclusion that, the legislature did not exempt other properties owned by a full-time educational institution as it did for properties owned by government, government agencies, and other similar institutions which are not used for commercial purposes or economic profit gain under the provision of section 7 (1) (j) of Cap. 289....I do not agree with the respondent's suggestion that the evidence by AW1 should be ignored as he is not an ex-parte in interpreting law. Whether the interpretation by AW1 fits in legal crafting or not, it remains the duty of the Board or Tribunal to make a proper interpretation in respect of the opinion made by any witness."

The evidence of one, Viva Ogada, an English teacher (AW1), appearing at page 224 to 225 of the record of appeal, which was given

with reference to the provision of section 7 (1) (g) of Cap. 289 and which was relied on by the Tribunal, in part reads thus:

> *As an expert of language, this is a sentence, it is a compound sentence. It is a compound sentence because it is made up of three independent clauses that if they are separated, they do communicate a complete idea. The first independent clause reads as follows: "**Property comprising land laid out**". The second clause reads as follows: "**The Property used for sporting purpose**". The third clause reads as follows: "**Property used solely by a full-time educational institution**."...The sentence...is a compound sentence having three independent clauses which are joined by a coordinating conjunction, specifically coordinating conjunction "a".* [Emphasis is added]

The appellant is aggrieved by the Tribunal's decision. She has approached this Court with six grounds of appeal. To paraphrase and condense the grounds, the appellant complained as follows:

One, the Tribunal erred in holding that section 7 (1) (g) of Cap. 289 exempt full time educational institutions from paying property taxes for all properties that are used solely for education purpose; **two**, the Tribunal erred in relying in evidence of AW1 to interpret section 7 (1) (g) of Cap.

289 contrary to section 7 of the Evidence Act; **three**, the Tribunal erred in holding that section 16 of Cap. 290 also impose property rate; **four**, the Tribunal erred in holding that section 22 of Cap. 290 exempt property rate; **five**, the Tribunal erred in holding that section 7 (1) (g) of Cap. 289 and section 22 (1) (b) (iii) of Cap. 290 should be construed harmoniously; and **six**, the Tribunal erred in holding that Cap. 289 and Cap. 290 gives exemption for property tax for educational institution.

In their totality, the grounds of appeal in our view focus on the manner in which the Tribunal interpreted section 7 (1) (g) of Cap. 289 and applied it with a view of exempting the respondent from liability of paying property tax in respect of the properties that she owns and uses for full-time education services. They, essentially, seek to fault the interpretation of section 7 (1) (g) of Cap. 289 accorded by the Tribunal.

At the hearing, the appellant was represented by Ms. Juliana Ezekiel, who was accompanied by Ms. Grace Makoa, and Mr. Hospis Maswanyia, all learned Principal State Attorney and Mr. Victor Mhana, learned State Attorney. On the other hand, the respondent was represented by Mr. Dickson Ngowi, learned advocate. At the outset, the learned counsel for both sides confirmed orally the fact that the controverse in this appeal primarily lies on the interpretation of the provision of section 7 (1) (g) of Cap. 289. This was also apparent in the

rival written submissions that they lodged earlier on pursuant to rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009 and adopted at the hearing.

Elaborating on the appellant's written submission, Ms. Ezekiel's oral account had it that, the Tribunal wrongly interpreted the provision. Instead of invoking the strict rule of interpretation of tax statutes to interpret the provision of section 7 (1) (g) of Cap. 290 on the basis of its plain meaning, the Tribunal in line with the evidence of AW1 appearing at page 222 to 223 of the record of appeal and taken contrary to the provision of section 8 of Cap.6 created three separate sentences from the provision and read in the word "*property*" in each of the sentence created contrary to the scheme of the provision. In so doing, it was contended, the Tribunal capitalized on the word "*and*" whilst totally ignoring the import of the words "*and which*" used in the provision. Ms. Ezekiel supported her submission by the case of **Pan African Energy Tanzania Limited v. Commissioner General, TRA** (Civil Appeal No. 81 of 2019) [2020] TZCA 54 (6 March 2020, TANZLII); and **Cape Brandy Syndicate v. Inland Revenue Authority** [1921] 1 KB 64.

Besides the above, Ms. Ezekiel submitted that section 22 of Cap. 290 does not provide exemption on property rates because the said Act does not establish and impose property rates but Cap. 289 which is the

specific statute for that purpose. The only significance of Cap. 290 is that under section 31A of the same, the respondent is empowered to collect property rate. On the other hand, section 22(1)(b) of Cap. 290 provides for exemption on assessment and rating which are imposed by the local government authorities through By-Laws and which are to be paid by inhabitants or categories of inhabitants in connection with services, things, matters, or acts that such authorities may prescribe.

With that submission, Ms. Ezekiel argued that the exemption under Cap. 290 does not apply and cover the rates, such as property rates which are specifically imposed under a different law. It, therefore, means that, section 7 (1) (g) of Cap. 289 and section 22 (1) of Cap. 290 should not and cannot be construed harmoniously as erroneously done by the Tribunal. To bolster this argument, Ms. Ezekiel relied on the case of **James Sendema v. Republic**, Criminal Appeal No. 279 B of 2013 (unreported) to the effect that a statute of general application, as is the case with Cap. 290, would not apply where there is a specific law, such as Cap. 289, in existence on a specific subject, unless the wording of the particular provision suggests otherwise.

Replying, Mr. Ngowi had it that the application of the strict rule of interpretation shows that the provision is a compound sentence as evidenced by AW1. That, given its nature, it contains three independent

clauses joined together by coordinating conjunction "*and*" together with controlling word or larger word "*property*". In a nutshell, all what the learned advocate was contending in his submission was in line with the reasoning and conclusion of the Tribunal as to the interpretation of section 7 (1) (g) of Cap 289 by unpacking it based on the evidence of AW1.

Mr. Ngowi blamed the appellant's counsel for reading out words in the provision and for their failure to appreciate the important conjunction in the provision, namely, "*and*" which omission resulted in erroneous conclusion. He further contended that it is not true that in its interpretation, the Tribunal read in the provision words, such as "*property*" that were, according to the appellant, not there. He added, seemingly in the alternative that, even if the provision at stake is found to have any ambiguity, the same has, by virtue of the case of **North Mara Gold Mine Ltd v. Commissioner General, TRA** (Civil Appeal No. 78 of 2015) [2016] TZCA 751 (1 March 2016, TANZLII), to be resolved in favour of the respondent as the tax payer and thus against imposition of the property tax.

Arguing against the submission by the learned counsel for the appellant that faulted the harmonious interpretation of section 7 (1) (g) of Cap. 289 and section 22 (1) of Cap. 290, Mr. Ngowi's submission was

hinged on the meaning of the word "*rate*" as per the **Black's Law Dictionary**, the import of the provision of section 3 of Cap. 289, as well as the provision of sections 16 (1) of Cap. 290. In so doing and in relation to reference to the foregoing, Mr. Ngowi submitted in the end that harmonious interpretation of section 7 (1) (g) of Cap. 290 and section 22(1) (b) of Cap. 289 was necessary in order to capture the extent of exemption on property rates applicable to educational institutions.

Mr. Ngowi agreed with Ms. Ezekiel that Cap. 289 was the general law. He, however, added that the cross-referencing under section 31A (2) and (5) of Cap. 289 to Cap. 290 is nothing but a requirement that, the appellant must apply the two Acts simultaneously and harmoniously. On the latter argument, he relied on the case of **Pan African Energy Tanzania Limited v. Commissioner General, TRA** (Civil Appeal No. 121 of 2018) [2019] TZCA 170 (12 June 2019, TANZLII) and contended that the circumstances in the instant matter are distinguishable from the case of **James Sendama** (supra) and the principle therein is thus inapplicable. He urged us to dismiss the appeal in the end.

On our part, we have thoroughly considered the provision of section 7 (1) (g) of Cap. 289 in the light of the competing submissions of the learned counsel for both sides. It seems to us that the learned counsel for both parties are not at issue that it is the strict rule of interpretation that

has to be invoked in interpreting the provision as the provision is free from any ambiguity.

Whilst the appellant's position is that the provision was erroneously interpreted by the Tribunal when it wrongfully relied only on the evidence of AW1 as to the nature of the provision of section 7 (1) (g) of Cap. 29 and faulted the finding of the Board; the respondent's position is that the Tribunal correctly interpreted the provision by using the strict rule after harmoniously considering it in the light of the relevant provisions of Cap.290 and the evidence of AW1 on the structural nature of that provision.

Having looked at the evidence of AW1 in relation to the findings of the Tribunal, we are satisfied that the Tribunal was heavily influenced by the evidence with regard to the manner in which it construed the provision by splitting it into two three separate sentences and imposing the word "*property*" in each of the sentence contrary to the scheme of that provision. We say so because the provision by the nature of its structure and scheme it is a provision containing one sentence which is, by its very nature, not at all ambiguous.

We noted also that at no time did the Tribunal consider as relevant to the interpretation of the provision, the relative pronoun "*which*" which before it there is a word "to" hence "*to which*", and which in our

considered view introduced the relative clause in the provision and also referred to the "*property*" in the provision by giving further information about the property referred to in that provision which is in respect of being used by a full-time educational institution. We think that had the Tribunal paid attention to the words "*to which*" in the provision, it would not have only capitalized in the conjunction "*and*" in isolation of "*to which*" in the provision and would not have blindly taken the evidence of AW1 which explicitly ignored the import of the words "*to which.*"

There was likewise no dispute that Cap. 289 is a specific statute in relation to property rate which also vest powers to the respondent on those rates. In that respect, we also agree with the learned counsel for both sides that indeed, Cap. 289 is, in the circumstances, a statute of specific application, whereas Cap. 290 is a statute of general application as regard to rates. We, however, do not agree with Mr. Ngowi that despite Cap. 289 being a statute of specific application, Cap. 290 would still apply in interpretation and application of section 7 (1) (g) of Cap. 289.

We are of the above view because, having considered the two statutes in the light of the competing arguments by the learned counsel, we are settled that: **One**, the cross-referencing to Cap. 290 which Mr. Ngowi relied upon is in respect of specific matters provided for under the

provisions of section 31A (2), and (5) of Cap. 289 and not section 7 (1) (g) of Cap. 289. We hold therefore that the principle obtaining in **Pan African Energy** (supra) in relation to cross-referencing of section 53 (1) of the Tax Administration Act, 2015 to section 16 (1) of the Tax Revenue Appeals Act, Cap. 408 does not apply in the instant matter. **Two**, the provision of section 7 (1) (g) of Cap. 289 does not make a cross reference to the effect that the envisaged exemption under that provision has to be in accordance with the provisions of section 22(1) (b) and/or section 16 of Cap. 290. And **three**, the provisions of Cap. 290 and in particular section 16, have to do with other rates other than property rate as the latter is a subject of Cap. 289 which is a specific statute. Indeed, by virtue of section 16 of Cap. 290, the rates which may be imposed by by-laws made under Cap. 290 are those which are in connection with services, things, matters, or acts that a local government authority may describe or specify in the relevant by-law.

In all, we agree with the appellant's learned counsel that the Tribunal incorrectly interpreted the provision of section 7 (1) (b) of Cap. 289. Had the Tribunal strictly applied the rule without omitting words as it did with the words "*to which*" and without reading in words and things which are not found in the very provision but in the testimony of AW1, such as, the creation of three separate sentences, and the introduction of

the word "*property*" as a starting word of each sentence that it created; it would have arrived at a correct interpretation of the provision and it would have agreed with the finding of the Board and therefore upheld its decision.

We further find that the course taken by the Tribunal in interpreting the provision was against the rule of construction to be invoked in the interpretation of the provision of section 7 (1) (g) of Cap. 289. It is settled law that the courts are enjoined to look at what is clearly said in the language used in tax statute and interpret the statute in the letter of the law because there is no room to look at the intention of the statute, there is no equity about tax, no presumption as to tax, and nothing is to be read in, and nothing is to be implied. The contrary is indeed what the Tribunal did with regard to its purported interpretation of the provision section 7 (1) (g) of Cap. 289. See for instance, **Pan African Energy Tanzania Ltd v. Commissioner General, Tanzania Revenue Authority** (Civil Appeal No. 172 of 2020) [2021] TZCA 287 (9 July 2021); **Commissioner General (TRA) v. Mamujee Products Ltd & Others** (Civil Appeal No. 10 of 2018) [2018] TZCA 27 (2 August 2018); and **Commissioner General Tanzania Revenue Authority v. Ecolab East Africa (Tanzania) Limited** (Civil Appeal 35 of 2020) [2021] TZCA 283 (2 July 2021).

In view of what we have stated herein above, the appeal is merited and we allow it with costs. Accordingly, we quash and set aside the judgment and decree of the Tribunal and uphold the decision of the Board.

It is so ordered.

DATED at **DODOMA** this 28th day of February, 2025.

R. J. KEREFU
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

B. S. MSOUD
JUSTICE OF APPEAL

The Judgment delivered this 28th day of February, 2025, in the presence of Mr. Athuman Mruma, learned State Attorney for the Appellant and Dickson Ngowi, 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