

AT DAR ES SALAAM

(CORAM: MWANDAMBO, J.A., MDEMU, J.A. And MGEYEKWA, J.A.)

CIVIL APPEAL NO. 173 OF 2025

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

VERSUS

SPECTRUM INSURANCE AGENCY LIMITED..... RESPONDENT

**(Appeal from the Ruling of the Tax Revenue Appeals Tribunal,
at Dar es Salaam)**

(Mutungi, Chairperson)

dated the 30th day of April, 2025

in

Tax Application No. 8 of 2025

.....

JUDGMENT OF THE COURT

1st & 12th December, 2025

MDEMU, J.A.:

On 15th January, 2025 in Tax Appeal No. 135 of 2024, the Tax Revenue Appeals Board (the TRAB) made a finding to the effect that, the appellant was not justified to disallow input value added tax credit claims for March 2022 to March 2023. Initially, the respondent claims in the notice of objection before the appellant on tax input credit assessment were dismissed on the ground that, they were suspicious and based on fictitious purchases. The Appellant was aggrieved by the TRAB's decision. It however did not appeal in time, thus invited the

Tax Revenue Appeals Tribunal (the TRAT) in an application for extension of time within which to lodge a notice of intention to appeal. According to paragraphs 4, 5 and 6 of the affidavit in support of the application, sickness of one Irene Appollnary, a legal counsel appointed by the appellant to prosecute the matter, became the sole ground for extension of time. Looking at this ground, and having in mind that the appellant is a public institution, the TRAT made the following findings in refusing extension of time:

"Second, this Tribunal notes that the applicant was represented before the Tax Revenue Appeals Board by a team of four State Attorneys. This Tribunal is inclined to agree with the respondent that no explanation has been provided as to why, upon the illness of one officer, the other counsel could not assume responsibility to ensure that the notice of intention to appeal was filed within time. Public institutions are expected to operate on a going concern basis. The failure to act in the circumstances demonstrates organizational negligence, not an unavoidable impediment. While this Tribunal sympathizes with the misfortune of illness, sympathy alone cannot substitute the legal requirement to diligently pursue statutory obligations, particularly where the Applicant

had sufficient internal capacity to mitigate the disruption”.

This decision again disturbed the appellant, thus sought the indulgence of the Court through a memorandum of appeal comprising of the following three grounds and one additional ground introduced by the appellant in the written submissions, namely:

- 1. That, the Honourable Tribunal erred in law by misconstruing the scope and application of sections 11 and 16 (5) of the Tax Revenue Appeals Act, Cap. 408 R.E 2019, by rigidly applying procedural timelines without due consideration to the tribunal’s discretionary power to extend time where sufficient cause is shown.*
- 2. That, the Honourable Tribunal erred in law by disregarding certified medical evidence submitted as sufficient cause for delay, failing to consider counsel’s disability as a valid justification for late filing, contrary to established jurisprudence.*
- 3. That, the Honourable Tribunal erred in law by prioritizing procedural technicalities over the appellant’s constitutional right to be heard, contrary to Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977.*
- 4. That, the decision of the Board for which the appellant seeks extension of time to file a notice of appeal is tainted with illegalities.*

We heard the parties in this appeal on 1st December, 2025. The appellant appeared through Messrs Octavian Kichenje and Achileus Kalumuna, learned Senior State Attorney (SSA) and learned State Attorney (SA) respectively. The respondent on the other hand had the services of Messrs Leyan Sabore and Helmes Mutatina, both learned advocates.

We note presence of written submissions for the parties in the record of appeal. We also heard submission of counsel present representing the parties during the hearing of the appeal amplifying and elaborating orally on a few matters.

Standing by the contents of the appellant's written submissions, Mr. Kichenje pegged his submissions on four issues. **One**, whether the TRAT erred in law for misconstruing the scope and application of sections 11 and 16 (5) of the Tax Revenue Appeal Act, Cap. 408 R.E 2019 (the TRAA) by applying procedural timeline without due consideration to the Tribunal's discretionary power to extend time upon sufficient cause. **Two**, whether the TRAT erred in law by disregarding medical evidence as sufficient cause for delay. Issue number **three** is whether the TRAT erred in law by prioritizing procedural technicalities over the appellant's constitutional right to be heard contrary to Article 13 (6) (a) of the Constitution of the United

Republic of Tanzania, 1977 (the Constitution) and **last**, the learned SSA invited us to determine whether the decision of the TRAB for which extension of time has been sought, is tainted with illegalities.

Submitting in resolving the raised issues in the affirmative, Mr. Kichenje stated in the first issue that, in terms of sections 11 and 16 (5) the TRAA, discretionary power of the TRAT to enlarge time is upon demonstrations of sufficient cause, which, in his argument, the appellant duly managed to establish. In the second issue, which is mainly on non-consideration of the medical evidence as a ground for delay, the learned SSA submitted that, in terms of section 16 (5) of the TRAA, the TRAT is legally mandated to extend time where sickness is pleaded as a ground for the delay. He made reference to paragraphs 4, 5 and 6 of the affidavit in support of the application to the TRAT being evidence for proof of that fact.

He added that, in case the medical evidence is insufficient, then the appellant should not be punished because it is not the maker of the alleged medical evidence. He cited to us the case of **Oketch Boaz Odhiambo & K & Company Limited v. Salama Iddi Kanyorota**, Civil Application No. 900/15 of 2021 (unreported) in support of that assertion. It was his further argument that, since the matter was exclusively assigned to Ms. Irene Appollnary, the findings

of the TRAT that any other State Attorney of the appellant could have been assigned to handle the matter, is without justification.

As to the third issue, the argument of Mr. Kichenje was that, denying extension of time basing on the absence of medical report holding that the sick sheet is disqualified, is a technicality which is against fair hearing within the precepts of Article 13 (6) (a) of the Constitution. Mr. Kichenje lastly submitted on illegalities endowed in the TRAB decisions. He mentioned them as, **one**, allowing input tax credit for fictitious VAT transactions contrary to section 68 and 86 of the Value Added Tax Act. **Two**, disregarding the burden of proof within the meaning of section 18 (2) (b) of the TRAA and **three**, violation of the principles of *stare decisis*. He cited to us the following cases arguing that, time may be extended where the impugned decision is clouded with illegality: **Principal Secretary, Ministry of Defence & National Service v. Devram P. Valambhia** [1992] T.L.R.185; **Attorney General v. Emmanuel Marangakisi** (Civil Application No. 138 of 2019) TZCA 63 (24 February 2023; TanzLII); **Attorney General v. Tanzania Zambia Railway Authority & Others** (Civil Application No. 14/01 of 2024 [2025] TZCA 740 (24 July 2025; TanzLII). As to failure to follow *stare decisis*, the learned State Attorney cited the case of **Tanzania Breweries Limited v.**

Anthony Nyingi (Civil Appeal No.119 of 2014) [2015] TZCA 3 (18 March 2015; TanzLII) imploring us to hold that a failure to abide by *stare decisis* constitute illegality in the impugned decision.

He finally concluded by citing to us the case of **Hawa Dada v. Hadija Yusufu**, Civil Appeal No. 1 of 2002 (unreported) arguing that, the appellant demonstrated sufficient cause, as such, the TRAT's decision to refuse extension of time was without justification.

In reply, along with the contents of the written submissions, Mr. Mutatina submitted in grounds one and two that the main contention is whether, in refusing extension of time, the TRAT exercised its discretion judiciously basing on unproven medical evidence. According to him, what appears to be medical report was in fact prepared by the learned SA assigned to handle the matter and not the respective hospital. Equally, the purported medical report is not in a headed paper and not dated. With such deficiencies in the purported medical evidence, Mr. Mutatina added that, it was proper for the TRAT to conclude that sickness of Ms. Appollnary was unproven. He cited to us the case of **Tanzania Harbours Authority v. Mohamed R. Mohamed** [2003] T.L.R. 76 and **Christina Alphonse Tomas v. Saamoa Masinga** (Civil Application No. 1 of 2014) [2016] TZCA 289 (22 April 2016; TanzLII) to bolster his argument.

He added further that, even if sickness was proven, yet the appellant was not diligent because, it being a public institution, would have assigned any other SA to lodge the notice of intention to appeal. He thus remarked that, the appellant lacked diligence and was negligent, thus lacked sufficient cause as was held in **Finca Tanzania Limited & Another v. Boniface Mwalukisa** (Civil Application No. 589 of 2018) [2019] TZCA 93 (16 May 2019; TanzLII) and also **Makori Wasaga v. Joshua Mwaikambo & Another** [1987] T.L.R. 88.

As to the alleged illegality, Mr. Sabore chipped in and argued that, much as nothing like illegality has surfaced in the TRAB's decision, it is not correct to allege that, illegality as a ground, can be raised at any time. He maintained that, illegality was not raised in the TRAT which was the first forum through which application for extension of time was determined. The case of **Lea Associates South Asia PVT v. Commissioner General (TRA)** (Civil Appeal No. 139 of 2025) [2025] TZCA 1222 (28 November 2025; TanzLII) elaborating that, there is no material on illegality within which extension of time may be grounded. He urged the Court to dismiss the appeal on that account.

Having considered counsel's written and oral submissions and the entire record of appeal, we wish to begin by stating that, matters for consideration in resolving the appeal before us is twofold. **One** whether the TRAT, judiciously, exercised its discretion in refusing extension of time on the ground of sickness and **two**, whether the impugned decision is clouded with illegalities.

What we entirely tie with the counsel, and indeed being the settled position of the law on the authorities referred to us by the counsel is that, **one**, extension of time to do an act exists where sufficient cause is demonstrated by a party seeking it. It is not automatic so to speak. And **two**, the mandate to extend time is purely at the exclusive discretion of the court. This being the settled position, we raised above whether the TRAT exercised its discretion judiciously in refusing enlargement of time to lodge the notice of intention to appeal. The ground for refusal, as we note, was failure by the appellant public institution to prove sickness of the officer assigned to handle the matter.

In advancing to this angle, the position we stated in **Tanzania Harbours Authority** (supra) that, proven illness constitutes sufficient cause to enlarge time, is still a good law. In the instant appeal, the TRAT rejected the purported medical report for being

suspicious. Messrs Sabore and Mutatina argued that, the purported medical report is not a medical report and in fact, it is suspicious if indeed it was ever prepared by the respective hospital which attended Ms. Appollnary. We ventured through the record of appeal and indeed it came to light that, page 1027 of the record of appeal is a sick sheet dated 27th January, 2025 being an annex to undated letter and not in a letter head purportedly prepared by Mwananyamala Hospital. The hand written letter is titled "to whom it may concern" with no address, but appending the name of Irene Appollnary in the right side of the letter, meaning that, she was the author of the letter. But the letter is purported to be signed by a medical practitioner. We agree with the counsel for the respondent that the said letter is not in a letter head, not dated, as such may not stand as medical evidence to prove illness of Ms. Appollnary.

Given the circumstances, we hold that, the TRAT was justified to disregard that evidence to constitute sufficient cause for enlargement of time in terms of the law. We are unable to agree with Mr. Kichenje that, what was purported to be unproven medical report be coined as a technicality which the TRAT should have ignored because it prevented fair hearing in terms of article 13 (6) (a) of the Constitution. We wish to point out that, the appellant's failure to

prove illness of the officer by adducing unsubstantiated document is what circumvented the matter.

We also note the other reason for refusing extension of time being grounded on the fact that the appellant, being a public institution, acted without diligence in pursuing the matter concerning notice of intention to appeal. The uncontroverted evidence in the counter affidavit at page 1029 of the record of appeal suggests that, besides Ms. Appollnary, other appellant's counsel co-jointly represented it at the TRAB, as such, sickness of one counsel could not have been an excuse for compliance with the law in filing the notice of intention to appeal. We therefore uphold the TRAT's findings that as the appellant was represented before the TRAB by a team of four State Attorneys, there is no explanation as to why, upon the illness of one officer, others present could not have assumed that responsibility.

Bureaucratically, operations of public institutions do not come to standstill on account of inaction of an officer assigned legal responsibilities allied to court business. This, as observed by the TRAT, demonstrates organizational negligence and lack of diligence. The first, second and third issues raised by the appellant's counsel are accordingly answered in the negative. This marks the conclusion of

grounds one, two and three of the appeal which are hereby dismissed.

Turning to illegality, if we understood well the learned counsel for the appellant, he stated two aspects surrounding it. **First**, is failure to adhere to principles of *stare decisis* and **second**, is disregarding the principles of burden of proof which we think is what constitutes paragraph 10 of the affidavit in support of the application for extension of time to the TRAT appearing at page 1024 of the record of appeal, that:

"The intended appeals involve serious points of laws, colossal amounts, fabrication of fake invoices and purchases to claim input tax on VAT rearing the imposition of VAT assessment to which the honorable Board erred in law and fact to decide in favour of the respondent".

To begin with the latter, we think the complained illegality should not detain us longer than necessary. We are saying so because both the application for extension of time before the TRAT and the decision which refused enlargement of time, the issue of illegality was neither raised by the appellant nor considered by the TRAT. We have so far, no jurisdiction to do so. Apparently, what appears in paragraph 10 of the affidavit is in fact not an illegality but rather a complaint on

failure to evaluate evidence. It is in that failure which the appellant now argues for non-observance of the law relating to burden of proof. We have stated in many decisions including **NBC Ltd. v. Superdoll Trailer Manufacturing Co. Ltd. & Others** (Civil Application No. 13 of 2002) [2002] TZCA 68 (21 March 2002; TanzLII) and worthy restating that, illegality must be apparent on the face of record and should not be established by long drawn arguments and or founded on further evidence. So, the complained burden of proof in the instant matter is not an illegality as argued by the learned SSA. Essentially, he calls upon us to see how the TRAB interpreted and applied the evidence which, to him, it was fabricated. He therefore wants us to clear and hold that the invoices were falsified and fabricated. We indeed decline the invitation on that account and more so as it was not raised in the TRAT which determined the application for extension of time.

The second component on the complained illegality as a ground for extension of time is grounded on inaction of the TRAT to abide to *stare decisis*. With respect, we do not agree with the learned counsel that failure to abide by *stare decisis* constitutes an illegality warranting the court to extend time in the manner contended. At best, it may constitute an error in the decision which is not the same

as illegality. We thus reject this complaint for being misconceived. The fourth ground is thus unmerited and we dismiss it.

In the light of the foregoing, the appeal before us is without merit, accordingly, it is dismissed with costs.

DATED at DAR ES SALAAM this 12th day of December, 2025.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

G. J. MDEMU
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Judgment delivered this 12th day of December, 2025 in the presence of Mr. Samwel Kaaya, learned State Attorney for the appellant and also holding brief for Mr. Leyan Sabore, learned counsel for the respondent, and Mr. Julius Kilimba, Court Clerk, is hereby certified as a true copy of the original.



R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL