

IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

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

CIVIL APPEAL NO. 40 OF 2024

GA INSURANCE TANZANIA LIMITED APPELLANT

VERSUS

COMMISSIONER GENERAL,

TANZANIA REVENUE AUTHORITY RESPONDENT

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

(Nqimilanga, - Vice Chairperson)

dated the 14th day of September, 2023

in

Tax Appeal No. 05 of 2023

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JUDGMENT OF THE COURT

1st & 11th August, 2025

MGEYEKWA, JA:

The appellant, GA Insurance Tanzania Limited lodged this appeal challenging the decision of the Tax Revenue Appeals Tribunal (the Tribunal), which dismissed its appeal against the decision of the Tax Revenue Appeals Board (the Board) in favour of the respondent, the Commissioner General Tanzania Revenue Authority.

Briefly, the background of the appeal is as follows: in 2017, the respondent conducted a tax audit of the appellant's business operations for the year of income 2017. Arising from that exercise, the respondent observed a discrepancy between the sales figures declared by the appellant in its financial statements and those reflected in the VAT returns for the same period. The sales declared in the VAT returns were notably lower than those appearing in the audited financial statements. Following those findings, the respondent formed the view that the appellant had under-declared its sales for VAT purposes, resulting in an underpayment of VAT for the year in question. Consequently, the respondent proceeded to issue an additional VAT assessment for the year of income 2017.

Aggrieved, the appellant unsuccessfully lodged an objection challenging the additional assessment. Following further correspondence between the parties, the respondent issued a final determination reaffirming its earlier position.

Dissatisfied, the appellant preferred an appeal to the Board. In its determination, the Board identified certain shortcomings in the respondent's reconciliation, most notably the failure to take into account reinsurance premiums and claims paid components which, being integral to

insurance business operations, are relevant under regulation 35 (1), (5), and (6) of the Value Added Tax (General) Regulations, 2015. Notwithstanding those observations, the Board held that the appellant had failed to substantiate the VAT component related to a net premium amounting to TZS 1,550,456,000.00 for the year of income 2017. Accordingly, it upheld the respondent's assessment.

Still dissatisfied, the appellant pursued a second appeal to the Tribunal. However, the Tribunal dismissed it.

Undeterred, the appellant has appealed to the Court, raising four grounds of complaint as follows:

- 1. That, the Tax Revenue Appeals Tribunal erred in law by failing to determine the issues raised by the parties and by discussing different matters which were not the subject of the appeal.*
- 2. That, the Tax Revenue Appeals Tribunal erred in law by failing to consider that the Tax Revenue Appeals Board faulted the Respondent's reconciliation of sales in the financial statement and sales reported in the VAT returns, but did not consider that error in its final verdict.*
- 3. That, the Tax Revenue Appeals Tribunal erred in law and in fact by failing to hold that the Tax Revenue Appeals Board erred when it*

concluded that the Appellant was not accountable even after the Respondent failed to consider ceded premium on reinsurance and claim paid in the year 2017 contrary to section 11 (1) (b) of the VAT Act.

4. That, the Tax Revenue Appeals Tribunal erred in law by failing to analyse all the grounds raised and by failing to hold that the Tax Revenue Appeals Board erred when it failed to consider that the Respondent did not discharge the burden of proof under section 18 (2) of the Tax Revenue Appeals Act.

At the hearing of the appeal, the appellant was represented by Messrs. Stephen Axwesso and Mahamoud Mwangia, both learned advocates. The respondent was represented by Ms. Grace Makoa, learned Principal State Attorney assisted by Mr. Hospis Maswanyia, also learned Principal State Attorney, and Mr. Nicodemus Agweo, learned State Attorney. Both parties filed written submissions in support of their respective positions.

At the outset, Ms. Makoa took the floor and with commendable candour, conceded to the first and second grounds of appeal. She submitted that the Tribunal's decision did not meet the threshold of a judgment properly so called, as it failed to address and determine the

appellant's grounds of appeal. Accordingly, she urged this Court to hold that the impugned decision does not amount to a judgment in law.

On the appropriate remedy, Ms. Makoa invited the Court to exercise its power under rule 38 of the Tanzania Court of Appeal Rules, 2009 (the Rule), to quash and set aside the impugned decision and remit the record to the same panel for composing a judgment in accordance with the law.

In response, Mr. Axwesso welcomed the concession but took issue with the proposal to remit the matter to the same panel. He submitted that, in the interests of justice and to preserve the integrity and impartiality of the process, the judgment should be composed by a differently constituted panel.

Having heard the oral submissions advanced by both parties, we are of the settled view that the pivotal issue calling for our determination is whether the appellant's grounds of appeal were considered and determined by the Tribunal. It is settled principle of law that a judgment must identify the issues for determination, make findings on those issues, and provide reasons for those findings. This is more so in appellate adjudication, where the issues arise directly from the grounds of appeal filed by the aggrieved party.

After a close scrutiny of the record of appeal, it is clear that, in challenging the decision of the Board, the appellant lodged a statement of appeal comprising four grounds of appeal which we reproduce below for ease of reference:

- 1. The Board erred in law and fact by inadequately evaluating the evidence, leading to the conclusion that GA Insurance failed to justify the VAT related to the net premium of TZS 1,550,456,000 for 2017.*
- 2. The Board acknowledged errors in the TRA's reconciliation between the financial statements and VAT returns but failed to consider these errors in its final decision.*
- 3. The Board erred in law by upholding the TRA's imposition of interest, despite the flawed reconciliation process.*
- 4. The Board misinterpreted the relevant tax laws concerning the treatment of reinsurance premiums and claims paid, which should have been considered in the VAT assessment.*

The above grounds of appeal formed the basis upon which the Tribunal was called upon to exercise its appellate jurisdiction. It is apparent that the appeal before the Tribunal was conducted through written submissions. It is equally clear from the record of appeal that both parties

addressed all four grounds comprehensively in those submissions. Yet, a further reading of the Tribunal's decision, spanning from pages 426 to 444 of the record of appeal, reveals that the Tribunal confined itself to a recitation of the background, reproduction of the grounds of appeal, and a summary of the respective submissions. What is notably absent is a reasoned engagement with the actual grounds of appeal raised. To compound matters further, our reading of the impugned decision at pages 445 to 453 of the record of appeal, shows that the Tribunal veered off into extraneous matters namely; issues relating to withholding tax and the regulatory functions of the Tanzania Insurance Regulatory Authority. With respect, these issues did not arise from the grounds of appeal or the submissions thereon. As such, they had no bearing on the issues before the Tribunal.

It is cardinal rule of adjudication that a court or tribunal must confine itself to the matters properly brought before it. We therefore agree with both learned counsel that, the Tribunal's failure to determine the appellant's grounds of appeal placed before it was fatal irregularity rendering the Tribunal's judgment a nullity. This position has been consistently reiterated by this Court in a line of authorities, notably, in

Simon Edson @ Makundi v The Republic, Criminal Appeal No. 5 of 2017 [2020] TZCA 1730, **Ahadi Burton v. Republic**, Criminal Appeal No. 94 of 2021 [2022] TZCA 523 and **Nyakwama Ondare @ Okware v. Republic**, Criminal Appeal No. 507 of 2019 [2021] TZCA 592. In the latter case, the Court stated that:

"We therefore agree with Mr. Byamungu that failure to consider appellant's grounds of appeal was a fatal irregularity rendering the first appellate court's judgment a nullity. In this regard, we wish to emphasise that though it is not the duty of the first appellate court to resolve the issues as framed by the trial court, yet it is expected and bound to address and resolve the complaints in the grounds of appeal either separately or jointly depending on the circumstances of each case."

We are therefore satisfied that the failure by the Tribunal in this case to consider and pronounce itself on the appellant's grounds of appeal constituted a fundamental irregularity. The judgment rendered in such circumstances cannot be allowed to stand.

In the end, the appeal succeeds. Consequently, we quash and set aside the impugned decision. On the way forward, under rule 38 (1) of the Rules, we remit the proceedings to the Tribunal with a direction that a

fresh judgment be composed based on the written submissions already on record. We further direct that the fresh judgment shall be rendered by a differently constituted panel of the Tribunal. Given the circumstances of this appeal, we make no order as to costs.

It is so ordered.

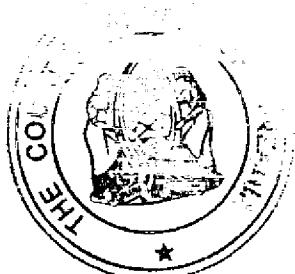
DATED at **DODOMA** this 7th day of August, 2025.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Judgment delivered this 11th day of August, 2025 in the presence of Mr. Mahmoud Mwangia, learned advocate for the Appellant and Mr. Yohana Ndila, learned State Attorney for the Respondent, via virtual Court, is hereby certified as a true copy of the original.



D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL