IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

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

CIVIL APPEAL NO. 529 OF 2023

JACK'S (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)

(Kamuzora, J. - Chairperson)

dated the 16th day of March, 2023

in

Tax Appeal No. 142 of 2021

.....

JUDGMENT OF THE COURT

23rd July & 6th August, 2025

MGEYEKWA, JA:

This appeal arises from the decision of the Tax Revenue Appeals Tribunal (the Tribunal) dated the 16th March 2023, which reversed the decision of the Tax Revenue Appeals Board (the Board) and upheld the respondent's assessment of additional Value Added Tax (VAT) and penalties against the appellant.

Briefly, the background to the appeal is as follows: in the year 2019,

the respondent conducted a tax audit of the appellant's business operations for the years of income 2014 to 2016, with a purpose of determining the appellant's compliance with tax obligations. Following the audit, the respondent formed the view that the appellant had included fictitious purchases in its VAT returns thereby making improper claims for input tax on VAT. On that basis, the respondent proceeded to disallow the input tax claims. Consequently, on 27th September 2019, the respondent issued an additional VAT assessment against the appellant vide Debit No. 442524261, in the principal sum of TZS 225,382,272.00. It also raised a penalty assessment through Debit No. 442524264, in the amount of TZS 115,656,544.00. Both assessments related to the years of income 2015 and 2016, as evidenced by Exhibits A1 and A2. The total amount assessed stood at TZS 371,038,816.00.

Resenting the assessments, the appellant filed a notice of objection seeking amendment of the assessment. After reviewing the materials submitted by the appellant in support of the objection, the respondent declined to amend the assessments. It maintained that the documents provided did not satisfactorily establish the identity or existence of the alleged supplier. The respondent concluded that the supporting

documentation was insufficient and inconsistent, thereby reinforcing its earlier position that the supplier did not exist and that the VAT transactions relied upon by the appellant were fictitious. Accordingly, it rejected the objection.

The appellant successfully challenged the respondent's decision before the Board which held that the respondent had failed to substantiate its claims and that the appellant had furnished sufficient documentation to support the validity of the transactions. Dissatisfied with that decision, the respondent appealed to the Tribunal. It is pertinent to note that the respondent's statement of appeal before the Tribunal contained three substantive grounds, namely: **first**, that, the Board erred in holding that the appellant had engaged in genuine VAT transactions; **second**, that, the burden of proof regarding the accuracy of the tax assessment had been wrongly placed on the appellant; and **third**, that, the Board failed to properly apply section 8 of the Tax Administration Act, Cap.438 (the TAA). As hinted earlier, the Tribunal overturned the Board's decision and concluded that the respondent had failed to prove the validity of the impugned transactions and affirmed the validity of the VAT assessments.

In this Court, the appellant has filed a memorandum of appeal raising

six grounds of grievance as follows:

1. *That, the Honourable Tax Revenue Appeals Tribunal erred in law by holding that the issue of genuineness of the VAT transaction was not a new issue, while the said issue was not among the issues framed to be determined by the Tax Revenue Appeals Board.*
2. *That, the Honourable Tax Revenue Appeals Tribunal erred in law in determining the subject matter of the Appeal based on the new raised issue of validity of VAT transaction by the respondent.*
3. *That, the Honourable Tax Revenue Appeals Tribunal erred in law in holding that failure to submit the stores record, job cards, and payment proof presupposes that the Appellant knew or had reason to know that the VAT transactions were not genuine.*
4. *That, the Honourable Tax Revenue Appeals Tribunal erred in law by holding that the Tax Revenue Appeals Board erred in disregarding the application of section 8 of the Tax Administration Act. Cap. 438 RE 2019.*
5. *That, the Honourable Tax Revenue Appeals Tribunal erred in law in holding that the respondent was correct to deny the input tax relief claimed by the appellant.*

6. *That, the Honourable Tax Revenue Appeals Tribunal erred in law by failing to consider the appellant's submissions and the evidence tendered before the Tax Revenue Appeals Board in arriving to its judgment.*

At the hearing of the appeal, the appellant appeared through Mr. Nasri Hassan and Lucy Kiangi, both learned advocates. Teaming up for the respondent were Ms. Juliana Ezekiel, learned Principal State Attorney assisted by Messrs. Thomas Buki and Athumani Mruma, both learned Senior State Attorneys, and Mr. Urso Luoga, learned State Attorney. The counsel for the parties had earlier on filed their respective written submissions in accordance with rule 106 (1) and (7) of Tanzania Court of Appeal Rules, 2009, the contents of which each adopted before addressing us orally.

When invited to amplify on the grounds of appeal, Mr. Hassan abandoned the third ground of appeal. He canvassed the first and second grounds of appeal conjointly and the remaining grounds were argued separately. The essence of the appellant's counsel arguments in grounds one and two in the written submissions and the oral arguments is that the Tribunal determined an issue on the validity of the VAT transaction which

was neither raised by the respondent nor determined by the Board. According to him, the matter in contention before the Board related to the issue whether the appellant dealt with a non-genuine person or non-existent person for VAT transactions, and both parties submitted on the said issue to prove and disprove the fact on the said issue. To bolster his submission, he referred the Court to the judgment of the Board appearing at pages 215 to 219 of the record of appeal which referred and determined to the three issues; one, whether the appellant dealt with a non-genuine or non-existent person on VAT transactions, two, if the first issue will be answered in affirmative whether the additional tax assessment of VAT was validly made and three, What relief were the parties entitled.

Mr. Hassan further submitted that, upon a proper reading of the issues framed for determination, it becomes evident that the Tribunal veered off course by introducing a new issue namely; the genuineness of the VAT transactions which was neither pleaded nor contested before the Board, and thus fell outside the scope of the original dispute. To fortify his argument, Mr. Hassan placed reliance on the decisions of this Court in **Joel Mwangambako v. Republic**, Criminal Appeal No. 516 of 2017 (unreported), and **Galus Kitaya v. Republic**, Criminal Appeal No. 196 of

2015 [2016] TZCA (TanzLII), wherein the Court underscored the settled principle that an appellate court ought not to determine matters which were not raised, canvassed, or adjudicated upon by the trial or lower court. He thus urged the Court to find that the Tribunal acted in error in determining an extraneous issue.

In rebuttal, Mr. Buki submitted that the issue framed and determined by the Tribunal was neither new nor outside the scope of the matters previously raised before the Board. To clarify this position, he referred the Court to page 218 the record of appeal where the Board addressed the question whether the appellant dealt with a non-genuine or non-existent person on VAT transaction and to pages 444 to 445 of the record of appeal where the Tribunal merely rephrased the same issue as whether the Board erred in law and fact in holding that the respondent dealt with a genuine VAT transaction.

Expounding on the meaning of a non-genuine person in the context of VAT transaction, he asserted that, input tax is the VAT incurred on the purchase of goods and services that are liable for VAT, and that a taxable person must account for any pay VAT by reference to its prescribed accounting period to credit for input tax only to the extent allowable under

section 68 (1) of the Value Added Tax Act. To fortify his submission, Mr. Buki sought inspiration from the decision of the Kenya Tax Appeals Tribunal in **Osho Drappers Ltd v. Commissioner of Domestic Taxes**, Tax Appeals Tribunal No. 159 of 2018 which held that:

> *"...for one to claim input VAT, there must be a purchase of a taxable supply. It is not enough to have the documentation. The documentation must be supported by an underlying transaction, and the taxpayer must furnish proof that there was an actual purchase."*

Expounding on that legal position, Mr. Hassan contended that the statutory framework governing input tax credit imposes an obligation beyond mere procedural compliance. According to him, a tax payer seeking to assert such a claim must furnish cogent proof of the underlying transaction, including, but not limited to, evidence of payment through banking channels, delivery notes, original purchase orders, job cards, contact particulars of the supplier's representative, and confirmation that the goods were in fact delivered at the tax payer's premises. In the absence of such supporting documentation, he maintained, the claim for input tax is legally untenable.

In addressing the contention that the question of the genuineness of the VAT transactions was a new matter, Mr. Buki drew our attention to page 218 of the record of appeal and submitted that, the said issue was not foreign to the proceedings, as it reflected the matter adjudicated upon by the Board. To that extent, he contended that the Tribunal did not exceed its limit but rather confined itself within the boundaries of the issues raised and determined at the first appellate stage. Accordingly, it was his firm submission that the Tribunal acted properly in law in upholding the decision of the Board.

A close reading of the judgment of the Board reveals that the respondent's appeal before it was on the genuineness of the VAT transaction, with the central issue being whether the appellant dealt with a non-genuine or non-existent person on VAT transaction. The Tribunal, in determining the appeal before it, determined the issue whether the Board erred in law and fact in holding that the respondent dealt with a genuine VAT transaction. The record discloses no departure from the matters raised and adjudicated upon by the Board. For clarity, it is instructive to reproduce the relevant portion of the Tribunal's findings at page 444 of the record of appeal:

> *"On the respondent argument that the issue on genuineness of the transaction was new, we find it not correct. The record of appeal and exhibits A5, A6 and A9 show that the appeliant requested documents from the respondent to prove the genuineness of the transaction to no avail and that was the basis of disallowance."*

Upon that premise, the Tribunal concluded:

> *"Thus, it cannot be said it was a new issue. We find merit in the first and second grounds of appeal. We maintain that the Honorable Board erred in holding that the respondent dealt with genuine VAT transactions...."*

In the light of the above excerpt, we are inclined to agree with Mr. Buki's submission that both the Board and the Tribunal were seized with the same substantive issue, namely; the genuineness of the VAT transactions upon which the appellant's claim was predicated. It follows, therefore, that the Tribunal did not venture beyond the scope of the appeal as framed and determined by the Board. On the contrary, it remained firmly within the same factual and legal question that was squarely in issue at the earlier stage.

Moreover, it bears emphasis that it is settled principle that a VAT transaction purportedly undertaken with a fictitious or non-existent party cannot attract legal recognition or give rise to enforceable rights or obligations. In the context of VAT, the question whether a transaction is genuine is inextricably linked to the existence and legal identity of the supplier. A transaction lacking such foundational elements is devoid of legal substance. We are therefore satisfied that the Tribunal's determination on the genuineness of the VAT transactions did not introduce a new issue, rather, it addressed a matter that lay at the core of the dispute from its inception.

With respect, the appellant's contention that a VAT transaction retains its validity even when concluded with a fictitious or non-existent party cannot be sustained. The argument is not only inconsistent with settled principles of tax law, but it also offends basic legal logic. As a matter of law, a transaction can only attract legal and fiscal recognition where it involves parties clothed with legal personality capable of acquiring rights and assuming obligations. Where one of the purported parties is non-existent, such a transaction is devoid of legal capacity and factual foundation. It is, in essence, a legal nullity incapable of generating

enforceable tax consequences, including entitlement to input tax credit. The statutory framework governing VAT does not contemplate recognition of transactions lacking a genuine commercial substratum. Accordingly, we find no merit in the first and second grounds of appeal. They are hereby dismissed.

The crux of the appellant's complaint in ground four is that the Tribunal erred in law in holding that the Board erred in disregarding the application of section 8 of the TAA. Mr. Hassan valiantly submitted that the Board was correct by not considering section 8 of the TAA in its judgment because the section deals with administrative powers of the Commissioner on the issue relating to tax avoidance or evasion thereby curbing acts of obtaining undue tax benefits. The appellant had no any arrangement, bought goods from the supplier and she obtained the fiscal receipt with valid VAT number which was accepted by the respondent at the time of filing VAT returns.

He continued to submit that the respondent failed to counter the evidence tendered by the appellant on the existence of the supplier. He contended further that, no evidence was provided by the respondent to show that the appellant claimed input reliefs from business transactions

with the supplier by the name of Plug and Play International which was involved in ghost transactions for purposes of gaining undue tax benefit as claimed. Therefore, he concluded that it was proper for the Board to disregard the applicability of section 8 of the TAA in its judgment.

In response, the learned Senior State Attorney fully subscribed to the Tribunal's application of section 8 of TAA. He asserted that the said section is an anti-avoidance provision intended to prevent the diminution of revenue from spurious tax arrangements. Elaborating, he submitted that section 8 of the TAA empowers the respondent to disregard the scheme carried out solely or mainly to obtain tax benefits.

Elaborating, Mr. Buki averred that in the instant case, the appellant claimed input tax credit arising from artificial transactions because he failed to prove to the satisfaction of the respondent whether the VAT transaction warranted input tax. He argued that, the ghost transition made by the appellant necessitated the respondent to disallow the deduction of input tax. Thus, he asserted that the respondent correctly invoked the application of section 8 of the TAA and came up with the assessment of tax payable.

The core issue for determination is whether the Tribunal correctly applied section 8 of the TAA. The resolution of this question inevitably calls for an interpretive exercise grounded in settled principles of statutory construction. For ease of reference, we reproduce the relevant provision hereunder:

> "8 (1) *Notwithstanding any provision of this Act, where the Commissioner General is satisfied that any scheme that has the effect of conferring tax benefit on any person was entered into or carried out-*
> *(a) solely or mainly for the purpose of obtaining that benefit; and*
> *(b) by means or in a manner that would not normally be employed for bonafide business purposes, or by means or in a manner of the creation of rights or obligations that would not normally be created between persons dealing at arm's length,*
> *the Commissioner General may determine the liability for any tax imposed by a tax law and its amount, as if the scheme had not been entered into or carried out, or in such manner as, in the circumstances of the case, he considers appropriate*

for the prevention or diminution of the tax benefits sought to be obtained by the scheme."

Properly construed within its statutory and contextual framework, section 8 (1) of TAA vests the Commissioner General with broad discretionary powers to disregard or re-characterise a transaction where there is credible evidence that such transaction constitutes part of a tax avoidance arrangement intended to secure an improper tax benefit. It functions as an anti-avoidance measure intended to uphold the integrity of the tax system by nullifying arrangements that, though legally structured, are devoid of genuine commercial substance. It is worth emphasizing that, although the provision confers broad powers upon the tax authority, such discretion is not without limit and must be exercised within the confines of the law. The Tribunal or Court, as the case may be, must ensure that the discretion is exercised reasonably, proportionately, and in adherence to principles of due process. The section was enacted to strike a balance, to deter abusive tax avoidance schemes without unduly infringing on legitimate commercial transactions.

Turning to the substance of the appellant's complaint, the record reveals that the dispute arose from the respondent's first ground of appeal

before the Tribunal. The respondent contended that the Board had erred in failing to consider the applicability of section 8 of the TAA in the particular circumstances. That omission appears to have been rooted in the Board's finding that the VAT transactions in question were genuine and thus did not trigger the need for an anti-avoidance analysis. However, the Tribunal reached a contrary conclusion. Upon examining the record, it was found that the supplier relied upon by the appellant was fictitious and the underlying VAT transactions lacked authenticity. On that basis, the Tribunal proceeded to consider the application of section 8 of the TAA, holding that the Commissioner General was empowered to disregard such sham transactions which bore the hallmarks of a tax avoidance scheme. Having determined that, the transactions were not supported by a genuine supplier and the VAT transaction was invalid. We, therefore, agree with Mr. Buki's submission that, in the circumstances of this case, the Tribunal correctly applied section 8 of the TAA. The appellant's contention to the contrary is, with respect, misconceived. It follows that this ground of appeal is devoid of merit and must fail.

The complaint in the sixth ground of appeal is that the Tribunal erred in failing to consider the appellant's submissions and evidence in

determining the dispute before it. Mr. Hassan asserted that the appellant had submitted sufficient proof of the VAT transactions to the respondent such as, VAT returns, the supplier's Tax payer Identification Number (TIN), Value Added Tax Registration Number (VRN) along with the corresponding Electronic Fiscal Device (EFD) receipts. To bolster his submission, he cited the case of **Damson Ndaweka v. Ally Saidi Mtera**, Civil Appeal No. 5 of 1999 (unreported), where the Court emphasized the need for the court or tribunal to consider the evidence adduced by both parties. He urged that, had the Tribunal properly evaluated the appellant's material, it would have been persuaded of the legitimacy of the transactions and allowed the appeal.

In response, Mr. Buki, at first, contended that, the sixth ground offends section 25 (2) of the Tax Revenue Appeals Act, Cap. 408 (the TRAA), which restricts appeals to this Court from the Tribunal to questions of law only. He submitted that the appellant's complaint involves a question of fact, namely the sufficiency or adequacy of the evidence, and is therefore incompetent.

In the alternative, the learned Senior State Attorney argued that even if the Court entertains the ground, the Tribunal did, in fact, consider the

evidence placed before it, including Exhibits A3 and A10, but found the same wanting in substance. He submitted that the Tribunal correctly held that the evidence failed to establish the genuineness of the VAT transactions and that its determination was well-grounded in law and the facts as presented.

We consider it appropriate to first address the preliminary issue raised by Mr. Buki predicated upon section 25 (2) of the TRAA which restricts appeals to this Court in appeals arising from the Tribunal is limited to questions of law. Upon careful consideration, however, we are satisfied that the appellant's complaint raises a point of law whether or not the Tribunal failed to consider the appellant's submissions and evidence altogether. That, in our respectful view, is a legitimate legal question touching upon the adjudicative process. It is not concerned with the evaluation evidence but with whether that evidence was considered at all.

Turning to the substance of the complaint, we are unable to accept the assertion that the Tribunal ignored the appellant's evidence. On the contrary, it is evident from the Tribunal's reasoning, particularly at pages 443 to 445 of the record of appeal, that the material placed before it was considered. The Tribunal found, however, that the evidence, specifically

the VAT returns bearing the supplier's VRN and TIN number, along with the corresponding EFD receipts was insufficient to demonstrate that actual taxable supplies had taken place. It is also in the record of appeal that in April, 2019, the respondent made further and specific requests for additional documents, including store records, job cards, and goods received notes to verify whether actual supplies took place. It is vivid from the record of appeal that, the appellant neither furnished the requested documents nor provided any explanation for the omission. This evidentiary gap formed the crux of the Tribunal's final findings and, in our view, rightly so. We are, therefore, in agreement with Mr. Buki that the complaint that the Tribunal did not fail to consider the appellant's submissions and evidence is misplaced. It is evident that, it considered that evidence and found it wanting. Therefore, the sixth ground of appeal is devoid of merit and is accordingly dismissed.

The appellant's grievance in the fifth ground of appeal related to the Tribunal's affirmation of the respondent's decision to deny input tax relief claimed by the appellant. The learned counsel for the appellant submitted that the Tribunal erred in finding that the appellant had failed to substantiate the input tax claim notwithstanding the submission of what he

considered to be adequate documentation, namely; tax invoices, fiscal receipts, and proof of payment. He contended that section 68 (1) of the Value Added Tax Act, imposes no statutory obligation on a taxpayer to provide further documentation such as job cards, store records, or goods received notes in support of an input tax claim. To support his submission, Mr. Hassan referred the Court to Exhibits A8 and A9, which, he argued, contained the respondent's acknowledgment of having received the requisite documents. He also drew our attention to page 18 of the Tribunal's decision, wherein the same fact is ostensibly recorded.

The learned counsel further submitted that the supplier involved in the disputed transactions was duly registered at the material time, as evidenced by VAT returns submitted through the respondent's electronic filing platform during the years 2015 to 2016, which, he argued, were accepted without objection. He also relied on Exhibits A3 and A10, purporting to show importation of Fast - Moving Consumer Goods (FMCGs) during the relevant period, as corroborative of the supplier's existence and operational legitimacy.

In response, the learned Senior State Attorney submitted that the

appellant's right to claim input tax under section 68 (1) of the Value Added Tax Act is not absolute but conditional, and must be supported by clear and credible evidence establishing that the tax in question was incurred in the course of a taxable supply. Mr. Buki referred us to pages 190 and 443 of the record of appeal where it is shown that the respondent made express requests for further documentation, including store records and job cards, but the appellant failed to comply with those requests. He contended that the burden lies with the taxpayer to demonstrate, beyond mere submission of invoices, that a real and taxable transaction occurred. To reinforce his submission, he referred the Court to the decision of the Supreme Court of India in the **State of Karnataka v. M/S Ecom Gill Coffee Trading Pvt Ltd**, Civil Appeal No. 230 of 2023, and **Osho Drappers Ltd v. Commissioner of Domestic Taxes** (supra).

The central issue for determination before us is whether the appellant discharged the burden imposed by section 18 (2) (b) of the TRAA which provides that:

> *"18 (2) In every proceedings before the Board and before the Tribunal-*

(b) the onus of providing that the assessment or decision in respect of which an appeal is preferred is excessive or erroneous shall be on the appellant."

This statutory burden is not novel. It has been judicially reaffirmed in **Insignia Ltd v. Commissioner General TRA,** Civil Appeal No. 14 of 2007 (unreported), where it was held that:

"The burden of proof in tax matters has often placed on taxpayer. This indicates how critical the burden rule is, and reflects several competing rationales; the vital interest of the government in getting its revenues; the taxpayer has easy access to the relevant information and the importation and the importance of encouraging voluntary compliance by giving taxpayers incentive to self-report and keep adequate records in cases of disputes. The evidence which settles the final liability lies solely within the knowledge and competence of the aggrieved taxpayer..."

We agree with Mr. Buki, that a mere possession of a VRN or participation in the VAT regime is not, of itself, conclusive proof of the validity of a transaction. Where the integrity of the transaction is called into question, the burden rests squarely with the taxpayer to produce cogent

evidence in support of his claim.

We further agree with Mr. Buki that, statutory compliance under section 68 of the Value Added Tax Act demands more than the mere production of prescribed documentation where, as it were, there is reason to believe that the transaction is doubtful. It requires evidence of substance, that is, proof that the input tax claim arises from an actual, completed, and taxable supply. The appellant's counsel's contention that there is no statutory obligation to furnish further documentary proof, such as job cards, store records, or goods received notes, is misconceived. These documents were essential where the veracity of the supply was disputed.

We are further persuaded that where it is established, based on objective factors, that a taxable person, by his purchase, knowingly participated in a transaction connected with the fraudulent evasion of VAT, the Commissioner General is under a duty to deny that person the right to deduct input tax. This principle finds clear expression from the judgment of the European Court of Justice in **Kittel v. Belgium** (Case C-439/04) [2008] STC 1537, relied upon by the Tribunal where the Court stated:

> *"...where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT, it is for the national court to refuse that taxable person entitlement to the right to deduct."*

A similar position was adopted by the Kenyan Tax Tribunal in **Osho Drappers Ltd v. Commissioner of Domestic Taxes** (supra), as cited by Mr. Buki, where it was reiterated that the right to deduct input tax cannot be sustained where the taxpayer is aware or ought reasonably to have been aware that the transaction was fraudulent.

We entirely subscribe to the above principles. They reflect a consistent judicial consensus which affirms that formal compliance with VAT documentation requirements is not, in itself, sufficient to establish a lawful input tax claim where the underlying transaction appears to be doubtful.

Accordingly, we are satisfied that the Tribunal rightly denied the appellant's claim for input tax relief. The denial was lawful, proper, and justified. We, therefore, find no merit in the fifth ground of appeal and hereby dismiss it.

The upshot of the matter is that the appeal is without merit. It stands dismissed with costs.

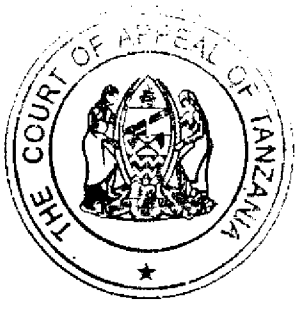
DATED at **DODOMA** this 05th day of August, 2025.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Judgment delivered this 6th day of August, 2025 in the presence of Ms. Lucy Kiangi, learned counsel for the Appellant via video link and Yohana Ndila, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.



D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL