

**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

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

CIVIL APPEAL NO. 531 OF 2023

JCDECAUX TANZANIA LIMITED APPELLANT

VERSUS

COMMISSIONER GENERAL (TRA) RESPONDENT

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

(Ngamilanga - Vice Chairman)

dated the 15th day of March, 2023

in

Tax Appeal No. 17 of 2022

JUDGMENT OF THE COURT

23rd July & 5th August, 2025

MWAMPASHI, J.A.:

This appeal originates from the decision of the Tax Revenue Appeals Tribunal (the TRAT) in Tax Appeal No. 17 of 2022 dated 15.03.2023. In that appeal, the decision by the Tax Revenue Appeals Board (the TRAB) which confirmed the issuance by the respondent of a Value Added Tax Notice of liability with Tax Debit Number 444493228 demanding payment of TZS. 263,615,519.66 by the appellant, was upheld by the TRAT.

Before proceeding any further and for better appreciation of what underlies the instant appeal, a background giving rise to the appeal, *albeit* in brief, has to be recapitulated. The appellant is a limited company incorporated in Tanzania whose main business is indoor and outdoor

commercial advertising. In 2020, the appellant's tax affairs covering years of income 2018 to 2019 was audited by the respondent. From that exercise, discrepancies between the declared tax liability per VAT returns and actual liability were revealed. Consequently, as alluded to above, the respondent issued a notice of assessment with Tax Debit No. 444493228 amounting to TZS. 263,615,519.66. Aggrieved, the appellant lodged a notice of objection to the Commissioner General. Alongside the notice, the appellant requested for the waiver of depositing one third of the assessed tax amount for the admission of the objection as required by the law. The request for the waiver was declined and the objection was thus, not admitted.

Undaunted and despite the objection not being admitted and no decision having been made by the Commissioner General on the objection, the appellant lodged Tax Appeal No. 118 of 2020 before the TRAB. The appeal was predicated on a single ground, to wit, that the respondent wrongly issued the assessment without following the prescribed procedure. According to the Statement of Appeal reflected at page 7 of the record of appeal, the appeal before the TRAB was basically made under section 53 (1) of the Tax Administration Act, 2015 (the TAA) and section 7 of the Tax Revenue Appeals Act, Cap 408, R.E. 2010 (the TRAA).

It is also noteworthy that in her Statement in Reply lodged in the TRAB appearing at page 16 of the record of appeal, the respondent raised

a preliminary objection on the competency of the appellant's appeal. The objection hinged on the ground that the appeal was in contravention of section 15 (1) (a) of the TRAA as well as section 51 (9) of the TAA. In essence, the respondent's ground of complaint was to the effect that, since the objection by the appellant to the Commissioner General against the assessment was not admitted and as no decision was made thereof, no appeal lied to the TRAB. The notice of the preliminary objection was however, withdrawn by the respondent on 26.07.2021 before the hearing of the appeal could commence.

Whether the assessment and the penalty notice were legally issued and whether or not the assessment was objected to by the appellant, were the first two issues framed by the TRAB. While the first issue was determined in the affirmative, the TRAB determined the second issue in the negative. It was held that, as a matter of law, since the objection was not admitted, there was no objection lodged and the assessment issued by the respondent was thus, not objected to by the appellant. On appeal to the TRAT, the findings and decision by the TRAB were upheld. In particular, the TRAT agreed with the TRAB that, the appellant did not meet the requirement of section 51 (7) of the TAA by failing to deposit one third of the assessed tax or the undisputed tax whichever is greater for her objection to be admitted. As it was for the TRAB, the TRAT concluded that

the assessment was not objected to and the respondent was thus correct in confirming the assessment.

Discontented with the decision of the TRAT, the appellant, armed with three grounds of complaint, lodged the instant appeal before us. For reasons which will come to light in due course, we find no pressing need to reproduce the grounds raised in support of the appeal.

At the hearing of the appeal, the appellant was represented by a team of three learned advocates namely; Messrs. Wilson Kamugisha Mukebezi, Stephen Axwesso and Mahmoud Mwanga. On the other side, the respondent had the services of Ms. Grace Makoa and Mr. Hospis Maswanyia, both learned Principal State Attorney together with Messrs. Yohana Ndila and Urso Luoga, learned State Attorneys.

Before the hearing could commence, mindful of the provisions under section 16 (1) of the TRAA and bearing in mind the fact that the appellant's objection to the assessment in question was not admitted and hence no objection decision was made by the Commissioner General, we wanted to satisfy ourselves on the competency of the appellant's appeal before the TRAB. In that regard, we invited the counsel for both parties to address us on that issue.

In response to the above issue, it was Mr. Axwesso's stance that the appeal before the TRAB was competent. He argued that, under section 7 of the TRAA read together with section 53 (1) of the TAA, a tax payer aggrieved by any decision by the Commissioner General may appeal to the TRAB.

For the respondent, it was argued by Ms. Makoa that, because the appellant's objection was not admitted and as there was no decision made by the Commissioner General, the appeal before the TRAB was incompetent. She further submitted that section 53 (1) of the TAA is inapplicable unless section 16 (1) of the TRAA is complied with. On this position, Ms. Makoa placed reliance on the decisions of the Court in **Pan African Energy Tanzania Ltd v. Commissioner General (TRA) [2019] TZCA 170(PAN AFRICAN ENERGY I)** and **Pan African Energy Tanzania Ltd v. Commissioner General Tanzania Revenue Authority [2021] TZCA 287 (PAN AFRICAN ENERGY II)**. She thus urged the Court to invoke its power under section 4 (2) of the Appellate Jurisdiction Act (the AJA), nullify the proceedings before the TRAB and TRAT and quash the resultant judgments.

In his brief rejoinder, Mr. Axwesso disagreed with Ms. Makoa that the application of section 53 (1) of the TAA has to be preceded by compliance to section 16 (1) of the TRAA. He contended that such a position was not

discussed in the two cases cited by Ms. Makoa and further that the Court did not hold that an aggrieved tax payer cannot appeal to the TRAB under section 53 (1) of the TAA.

As we have alluded to earlier, the appellant's appeal before the TRAB was on the tax assessment issued against her by the respondent. It is also common ground, as also found by the TRAB and TRAT that, upon being aggrieved by the assessment and desirous of objecting before the Commissioner General, the appellant's application for waiver from depositing one third of the assessed tax amount as it is mandatorily required under section 51 (7) of the TAA, was refused. Consequently, the appellant's objection was not admitted and thus, there was no decision made by the Commissioner General in that regard.

In view of the above undisputed facts and having taken account of the submissions made by the counsel for the parties, the issue for our determination is whether in the absence of any objection decision having been made by the Commissioner General, the appellant's appeal properly found its way to the TRAB.

Before embarking on the determination of the above posed issue, we find it apposite to briefly revisit the procedure on resolution of disputes arising from tax assessment as provided for under Part VII of the TAA.

According to section 51 (1) of the TAA, a tax payer aggrieved by a tax assessment decision made by the Commissioner General, is required to challenge the assessment by filing an objection to the Commissioner General within 30 days of the date of service of the assessment. According to section 51 (7) of the TAA, the objection, will however, not be admitted unless the tax payer pays the amount of tax which is not in dispute or one third of the assessed tax, whichever amount is greater. If the objection is admitted, the Commissioner General, acting under section 52 (1) of the TAA, will make a decision by determining the objection and may either amend the assessment in accordance with the objection or refuse to amend it. Where the tax payer is dissatisfied with the objection decision he may, in terms of section 53 (1) of the TAA, appeal to the TRAB but such an appeal filed under that provision, should be so filed in accordance with the provisions of the TRAA.

The above being the procedure for an appeal against the assessment of tax made by the Commissioner General, to get its way to the TRAB, the imminent issue, in the instant case, and as we have alluded to earlier, is whether, in the absence of any objection being made to the Commissioner General and there being no objection decision, the appeal which was predicated on section 53 (1) of the TAA and section 7 of the TRAA, was properly before the TRAB.

First of all, we wish to state that, the position of the law where a tax assessment is issued and it is not objected to before the Commissioner General and where for that reason, no objection decision is made by him, is now settled. In such a situation, the TRAB has no jurisdiction to entertain an appeal which does not emanate from the objection decision of the Commissioner General. An appeal to the TRAB only lies against an objection decision made under the TAA by the Commissioner General. See- **PAN AFRICAN ENERGY I, PAN AFRICAN ENERGY II, Shana General Stores Limited v. Commissioner General** (TRA) [2021] TZCA 643, **Kilombero Sugar Company Ltd v. Commissioner General, Tanzania Revenue Authority** [2022] TZCA 314 and **Audax Kajana Kameja v. Commissioner General, Tanzania Revenue Authority** [2025] TZCA 49.

In the instant case, placing reliance on sections 53 (1) of the TAA and 7 of the TRAA, Mr. Axwesso argued that, regardless of there being no objection decision, the appeal before the TRAB was in order. With due respect, we are in a total disagreement with him. First of all, section 7 of the TRAA on which the appeal was predicated merely vests the TRAB with sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority. Furthermore, the jurisdiction vested in the TRAB by section 7 is

limited by section 7A of the TRAA which provides that, the TRAB shall not entertain any appeal arising from tax assessment unless Part VII of the TAA is complied with. See- **PAN AFRICAN ENERGY II**.

We also find the argument by Mr. Awxesso that, under section 53 (1) of the TAA, an appeal against tax assessment can be competently filed in the TRAB, not tenable. As the Court held in **PAN AFRICAN ENERGY I**, and also as rightly argued by Ms. Makoa, the provisions of section 53 (1) of the TAA makes a cross reference to the provisions of the TRAA. It is stated under that provision that:

*"A person who is aggrieved by an objection decision or other decision or omission of the Commissioner General under this Part **may appeal to the Board in accordance with the provisions of the Tax revenue Appeals Act**".*

[Emphasis added]

The position that section 53 (1) of the TAA is only applicable in accordance with the provisions of the TRAA, was underscored by the Court in **PAN AFRICAN ENERGY I**, thus;

"From the provisions [referring to sections 51 and 53 (1) of the TAA as well as to section 16 (1) of the TRAA], it is significantly discernible that an appeal to the Board is presently narrowed to an objection decision of the CG made under the TAA. It is

beyond question that, in the situation at hand, there is, so far, no objection decision of the CG and, to say the least, going by the specific language used in section 16 (1), the purported appeal before the TRAB which did not result from an objection decision of the CG was incompetent".

From what we have discussed above, we also find the argument by Mr. Axwesso that, in the two cases cited by Ms. Makoa, that is, **PAN AFRICAN ENERGY I** and **PAN AFRICAN ENERGY II**, the Court did not discuss the applicability of section 53 (1) of the TAA, baseless. The applicability of section 53 (1) was exhaustively discussed by the Court in both cases.

In view of what we have endeavoured to deliberate above, we firmly hold that the appeal before the TRAB was incompetent and the TRAB had no jurisdiction to entertain it. Since the appellant's objection against the tax assessment issued by the Commissioner General was not admitted for the appellant's failure to comply with the provisions under section 51 (7) of the TAA and as there was thus, no objection decision made, filing the purported appeal against the tax assessment in the TRAB was improper. As alluded to above, the TRAB had no jurisdiction to entertain the appeal and in entertaining it, the TRAB embarked in a nullity.

The incompetent appeal before the TRAB rendered not only the proceedings before the TRAB and its resultant decision, a nullity but also the proceedings and decision by the TRAT. In the event, invoking our revisionary powers under section 4 (2) of the AJA, we nullify the proceedings of the TRAB and the TRAT for being a nullity. We also quash the respective decisions of both the TRAB and TRAT and strike out the instant appeal which has stemmed from a nullity. Considering the circumstances of the case and particularly the fact that the issue in consideration was raised *suo motu*, we make no order as to costs.

DATED at **DODOMA** this 4th 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 5th day of August, 2025 in presence of Mr. Mahmoud Mwangia, learned counsel for the appellant and Mr. Abdillah Mdunga, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.


D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL