IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: KEREFU, J.A., KHAMIS, J.A. AND NANGELA, J.A.)

CIVIL APPEAL NO. 197 OF 2025

JUBILEE INSURANCE COMPANY OF 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)

(Ngimilanga, Vice Chairperson.)

Dated the 20th day of August, 2021
in
Tax Appeal No. 92'A' of 2020

JUDGMENT OF THE COURT

1st & 11th December, 2025

KEREFU, J.A.:

The appellant, Jubilee Insurance Company of Tanzania Limited, has lodged this appeal challenging the decision of the Tax Revenue Appeals Tribunal (the Tribunal) in Tax Appeal No. 92'A' of 2020 which was decided in favour of the Commissioner General, Tanzania Revenue Authority (the TRA), the respondent herein.

The material background facts obtained from the record of appeal are straight forward and mostly not in dispute. They go thus: The appellant is a company incorporated under the laws of Tanzania. It is licensed under the Insurance Act, Cap. 487 of the Revised Laws and transacts in all major classes of general insurance business. Prior to

2015, the appellant was carrying out both, general and life insurance businesses. In terms of insurance law of that particular time, a person carrying out insurance business was required to set aside and maintain contingency reserve. However, in December, 2014, new insurance regulations were introduced requiring insurers to separate general and life insurance businesses. Thus, the appellant was no longer allowed to carry on both businesses under the same entity.

Subsequently, and in order to comply with the new law, the appellant established the Jubilee Life Insurance Corporation of Tanzania Limited (the JLICT) to carry on the life insurance business. The existing shareholders of the appellant were allocated shares in the JLICT at a reduced value and additional bonus shares were issued to meet capital requirements for the newly established entity. Therefore, at the time of split, each company retained the same number of total shares and the contingency reserves were allocated between the two businesses. Thus, a contingency reserve amounting to TZS 2,443,711,000.00 was transferred by the appellant to establish a share capital in the JLICT.

In 2015, the respondent conducted a tax audit of the appellant's tax affairs for 2013 and 2014 years of income. In the said audit, the respondent found, among other things, that the transactions made by the appellant to the JLICT constituted a distribution by an entity as

defined under section 3 (a) (iii) of the Income Tax Act, [Cap. 332, R: E 2004] (the ITA) and was therefore subject to withholding tax. Therefore, on 22nd April, 2016, the respondent issued to the appellant, a withholding tax certificate No. WHT/IRMD/02/04/16 containing a total tax liability at the tune of TZS 274,075,709.00 being principal tax of TZS 244,371,100.00 and the late payment interest of TZS 29,704,609.00.

On 19th May, 2016, the appellant filed an objection on the said notice, on the ground that, such transfer was not subject to withholding tax. The respondent and the appellant exchanged several correspondences to iron out their differences on the appellant's tax dues without success. Subsequently, on 8th May, 2017, the respondent issued its final decision on the appellant's objection by maintaining its previous position of disallowing the said expenses.

Aggrieved, the appellant successfully challenged the decision of the respondent before the Tax Revenue Appeals Board (the Board). In its decision, found at page 404 of the record of appeal, the Board stated that:

> *"...this Board is satisfied that the appellants' shareholders did not receive any value or benefit out of what was issued and the entire process was purposely done with oniy one aim in mind, to wit, satisfaction of the requirements of the new*

law Insurance Regulations. Thus, we are of the considered opinion that the transfer of contingency reserves as shown above did not amount to a distribution by an entity or it was not a re-investment of dividends or capitalization of the profits as envisaged under section 3 (i), (ii) and (iii) of the ITA, 2004."

Dissatisfied with the Board's verdict, the respondent preferred an appeal to the Tribunal which reversed the Board's decision and allowed the respondent's appeal in terms of what is reflected at pages 591 to 592 of the record of appeal, where the Tribunal concluded that:

"As indicated in the analysis there was capitalization of profit by way of crediting profits to a capital reserve i.e contingent reserve of the JLICT an entity owned by same shareholders of the respondent. This by itself, is a distribution by an entity which attracts withholding tax in terms of section 84 (1) as read together with paragraph 4 (b) of the First Schedule to the ITA, 2004 of which the respondent was required to withhold amount of tax at the tune of TZS 274,075,709.00 as assessed through exhibit A-5 and remit the same to the appellant."

Undaunted, the appellant has preferred the current appeal to the Court with the following seven grounds of complaint.

1) *That, the Tribunal erred in iaw in holding that the appellant transferred contingency reserves which were used as capital in formation of JLICT and the contingency reserves were converted into share capital and awarded to shareholders as shares without supporting evidence;*

2) *That, the Tribunal erred in law in holding that contingency reserves are retained earnings which are part of profits and that the amount of contingency reserves which was transferred from the appellant to the newly formed company was transfer of profit therefore there was capitalization of profit in terms of section 3 of the ITA by way of crediting profits to a capital reserve;*

3) *That, the Tribunal erred in law in holding that in terms of section 3 (a) (iii) of the ITA, the transfer of contingency reserves is treated as distribution by an entity equal to payment of dividend and therefore subject to withholding tax under section 82 (1) of the ITA without due regard to the context of regulation 27 (1) (c) of the Insurance Regulations, 2009 and evidence on record;*

4) *That, the Tribunal erred in law in holding that the appellant was required to withhold income tax in terms of section 84 (1) and paragraph 4 (b) of the First Schedule to the ITA for the spilt of contingency reserve between the appellant and the new company;*

5) *That, the Tribunal erred in law by misdirecting itself on the evidence on record and failing to properly interpret section 3 of the ITA in the circumstances of the appeal in holding that the Board's decision that the appellant's shareholders did not*

receive any value or benefit out of what was issued to by the appellant to the new entity was incorrect;

6) *The Tribunal erred in law in holding that the Board failed to properly evaluate and analyze the evidence on record as it did not take into account the admission by the appellant; and*

7) *The Tribunal erred in law in holding that the respondent was correct in imposing interest for late payment in terms of section 76 (1) read together with section 81 (1) of the Tax Administration Act, [Cap. 438 R.E. 2019].*

When the appeal was placed before us for hearing, Mr. Norbert Mwaifwani, learned counsel who entered appearance for the appellant prayed to abandon the fifth and sixth grounds of appeal and intimated that he would argue the second, third and fourth grounds conjointly. The first and seventh grounds separately.

On the other side, the respondent Republic was represented by Messrs. Moses Kinabo and Emmanuel Medalakini together with Ms. Juliana Ezekiel, learned Principal State Attorneys assisted by Mr. Arnold Simbo, learned State Attorney. At the outset, Mr. Kinabo declared the respondent's stance of opposing the appeal and intimated that, they would argue the grounds of appeal in the manner proposed by their learned friend. That, it was Mr. Medalakini who will respond to the grounds of appeal.

It is noteworthy that, the learned counsel for the parties had, earlier on, filed their respective written submissions in compliance with Rule 106 (1) and (8) of the Tanzania Court of Appeal Rules, 2009. As a result, during their oral submissions, they adopted the same and by way of emphasis, highlighted some of the points which they considered to be of vital importance in support of their positions. We appreciate for their submissions which have clearly elaborated, at length grounds of appeal and have been instrumental in composition of this judgment. However, for the purposes of our determination, we will mainly summarize and consider the relevant part of the said submissions.

Submitting in support of the first ground, Mr. Mwaifwani faulted the Tribunal for having misdirected itself and thereby arriving at an erroneous finding of facts and ultimately concluded that, the appellant transferred contingency reserves which were used as capital in the establishment of the JLICT. That, the Tribunal also incorrectly held that the same shareholders of the appellant became shareholders of the JLICT and the contingency reserves were converted into share capital and awarded to those shareholders as shares, while there was no evidence to support such finding. It was his argument that, the decision of the Tribunal lacks evidential basis and it is contrary to the record of appeal.

Mr. Mwaifwani also blamed the Tribunal for failure to appreciate that the spilt was a direct consequence which was necessitated by change in the law, thus compelled the appellant to restructure its business. He therefore insisted that, the transfer of contingency reserves to the JLICT was not a capital injection but a regulatory compliance measure. To clarify, Mr. Mwaifwani referred us to exhibit A-6 and argued that, the said exhibit clearly indicated that contingency reserves were not used as capital in establishing the JLICT nor were they converted into shares. Instead, the spilt paid -up share capital was used, alongside bonus shares issued to shareholders. To support his proposition, he cited the case of **Insignia Limited v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 14 of 2007 [2011] TZCA 246 and insisted that, the Tribunal ought to have determined the appeal in favour of the appellant.

Responding on the first ground, Mr. Medalakini challenged the submission advanced by his learned friend by arguing that, before the Board and the Tribunal there was no dispute that the appellant transferred contingency reserves at the tune of TZS 2,443,711,000.00 to the establishment of the JLICT. To clarify further, he referred us to the appellant's statement of appeal lodged before the Board together with exhibits A-1, A-3 and A-10. According to him, the remained issues of

controversy between the parties were on whether the said contingency reserves transferred were used as capital in the formation of the JLICT and whether the same were converted into shares and awarded to shareholders. It was his further argument that, having revisited the evidence on record, the Tribunal correctly answered the two issues in the affirmative. To amplify, he referred us to page 581 of the record of appeal where the Tribunal stated that:

> *"In the present appeal, the respondent (the appellant herein) transferred 'contingency reserves' which were used as capital in formation of Jubilee Life insurance where, the same shareholders in the respondent company became shareholders in Jubilee Life Insurance and the contingency reserves which converted into share capital was awarded to the said shareholders as shares."*

Based on the above factual finding of the Tribunal, Mr. Medalakini blamed Mr. Mwaifwani for having raised those factual issues at this stage contrary to section 26 (2) of the Tax Revenue Appeals Act, Cap. 408 of the Revised Laws (the TRAA). To buttress his proposition, he cited the cases of **Serengeti Breweries Limited v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 453 of 2023 [2025] TZCA 685 and **Atlas Copco Tanzania Limited v. The Commissioner**

General, Tanzania Revenue Authority, Civil Appeal No. 167 of 2019 [2020] TZCA 317.

Having perused the record of appeal and considered the argument by the learned counsel for the parties on this ground, we wish to state that, we are not losing sight that, although a right of appeal to the Court is a creature of statute, under section 26 (2) of the TRAA, the Court is mandated to entertain and determine questions of law only, because the task of conclusively resolving factual questions ends at the Tribunal. We shall be guided by this statutory principle in resolving this appeal. See also our previous decisions in **Geita Gold Mining Limited v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 132 of 2015 [2019] TZCA 177; **Insginia Limited v. Commissioner General, Tanzania Revenue Authority,** Civil Appeal No. 14 of 2007 [2011] TZCA 246; **Serengeti Breweries Limited** (supra); and **Atlas Copco Tanzania Limited** (supra).

It is clear to us that, the appellant's main complaint on the first ground, is mainly on the failure by the Tribunal to properly evaluate the evidence on record, thus erroneously found that the appellant had transferred contingence reserves which were used as a capital in the establishment of the new entity. It was the argument of Mr. Mwaifwani that, if the Tribunal could have properly evaluated the entire evidence on

record and critically analyze exhibit A-6 would have found that the contingency reserves were not used as capital in the formation of the JLICT, nor were they converted into shares. As such, he invited us to re-evaluate the evidence on record together with the said exhibit to arrive to an appropriate conclusion. With respect, we decline the invitation, as going through the record and specifically, the decision of the Tribunal, we are satisfied that, the appellant's complaint on this ground was sufficiently dealt with by the Tribunal and the same being on factual matters, it ought to end there. In **Insginia Limited** (supra), when faced with an akin situation, we stated that:

> *"It is therefore evident that appeals to this Court from the Tribunal should involve only questions of law. The appellant is not permitted to reopen factual issues in support of the appeal. The appeal should be decided upon a consideration of the law only and nothing else. We are therefore not persuaded that the first and fourth grounds of appeal concern points of law. The first and fourth grounds of appeal relate to an evaluation of the fact in exhibits RE 2; RE 3 and RE 4. For instance, exhibit RE 2 concerns a determination of whether or not the figures therein are actual sales or projections."*

In the above appeal, we declined to consider the first and fourth grounds of appeal, as they raised factual issues as opposed to questions of law. Similarly, in the instant appeal, since the appellant is inviting us to re-evaluate the evidence on record and specifically, exhibits A-1, A-3 A-6 and A-10 to arrive at an appropriate conclusion, we decline the invitation. Consequently, we find the first ground of appeal misconceived.

On the second, third and fourth grounds, Mr. Mwaifwani faulted the Tribunal in holding that the contingency reserves form part of profit and were transferred to a newly formed company, thereby amounting to a capitalization of profit under section 3 (a) (iii) of the ITA. That, the Tribunal also erred in finding that the transfer of contingency reserves amounted to a distribution by an entity (i.e dividend) and was therefore subject to withholding tax under sections 82 (1) and 84 (1) of the ITA read together with paragraph 4 (b) of the First Schedule to the ITA. To support his assertion, he referred us to page 582 of the record of appeal where the Tribunal observed that contingency reserves were 'retained earnings' set aside to guard against possible future losses, and therefore part of profit. The retained earnings were net profits left over after payment of dividends and an entity cannot retain earnings if it makes losses. He contended that the Tribunal findings on the nature of

contingency reserves were erroneous and speculative as were not supported by evidence on the record. To clarify further, he referred us to regulation 27 (1) (c) of the Insurance Regulations, 2009 where an insurer is required to maintain contingency reserves to cover fluctuations in securities and variations in statistical estimates. He also cited regulation 27 (2) (b) of the same Regulations which provides that, for non-life insurance business, the reserve shall not be less than 3% of total premium or 20% of net profit whichever is greater and that the amount shall accumulate until it reaches the minimum paid -up capital or 50% of net premium whichever is greater. He thus insisted that the contingency reserves are not part of profit. That, net profit is a benchmark to determine the required amount of contingency reserves. He therefore urged us to adopt the Board's analysis and conclusion found at pages 402 to 404 of the record of appeal. According to him, the contingency reserves used for the newly established corporation was only TZS 68,711,000.00.

Upon being referred to pages 313 and 332 of the record of appeal, where the appellant categorically admitted that the total sum of TZS 2,443,711,000.00 contingency reserves was transferred to the JLICT as opposed to TZS 68,711,000.00 the only amount the appellant claimed to have for the contingency reserves before the split. In his response,

although, Mr. Mwaifwani conceded that the appellant in the financial statement indicated that amount of 2,443,711,000.00 as the amount in the contingency reserves transferred to the JLICT, he still insisted that the contingency reserves transferred to the JLICT was only TZS 68,711,000.00. He thus urged us to find that the second, third and fourth grounds of appeal are meritorious.

Responding to these grounds, Mr. Medalakini challenged the submission made by his learned friend by arguing that, before the Board the appellant admitted to have used its contingency reserves at the tune of TZS 2,443,711,000.00 to acquire shares in the JLICT. That, based on the appellant's admission, the Board, at page 398 of the record of appeal stated that:

> *"Having summarized the parties' submissions, we realized that the appellant is admitting to use contingency reserves to acquire shares in JLICT, but he does not agree these contingency reserves to be distribution by entity hence liable for withholding tax as it is alleged by the respondent."*

It was his argument that, since the above factual finding of the Board was never challenged or appealed against by the appellant before the Tribunal, it was improper for the appellant to challenge the same before this Court in terms of section 17 (3) of the TRAA which requires a

party who is aggrieved by the decision of the Board to appeal to the Tribunal within thirty (30) days from the date of service of the decision. To support his proposition, he cited the case of **Martin Kikombe v. Emmanuel Kunyumba**, Civil Appeal No. 201 of 2017 [2020] TZCA 224 and insisted that, since the appellant did not appeal to the Tribunal on that aspect, the Court, cannot consider the same at this stage.

By way of emphasis, Ms. Ezekiel added that, even if the Court decide to consider the said issue, it will find that, in order for the appellant to transfer its contingency reserves of TZS 2,443,711,000.00, it first awarded the same to its shareholders as shares (dividends) and thereafter, the said shareholders transferred their shares to be used as capital in the formation of the JLICT, hence a distribution by an entity, subject to withholding tax, as correctly decided by the Tribunal. Based on their submission, she implored us to find that the appellant's complaint under these grounds is unfounded.

Having closely considered the rival arguments by the learned counsel for the parties, the record of appeal together with the decision of the Tribunal, we find no difficulty to agree with the submission made by Mr. Medalakini and Ms. Ezekiel that, indeed, before the Board, the appellant readily admitted to have transferred the contingency reserves of TZS 2,443,711,000.00 to the JLICT. That, based on the appellant's

admission together with the appellant's financial statement found at page 332 of the record of appeal, the Tribunal, at page 590 of the same record, correctly in our view, stated that:

> *"We have seen that, at one point, the appellant admitted that the contingency reserves is withholding tax, as per exhibit A-2, therefore, the Board was supposed to take into consideration the said admission by the appellant. Apart from that, we have seen that, the Board concentrated only on exhibit A-6 which is the notice of objection and leaving out all the pointed out that the contingency reserves amounting to TZS 2,443,711,000.00 was transferred to Jubilee Life Insurance Company Limited. If the Board would have properly evaluated the evidence tabled before it there, would have come with the different conclusion. So, at this point, we agree with the respondent that, the Board failed to properly evaluate and analyze the tendered evidence to it, as it did not take into account the admission by the appellant."*

In the event, and in terms of the definition of '*capitalization of profits*' under the provisions of section 3 (a) (iii) of the ITA read together with the provisions of sections 82 (1), 84 (1) of the same law and paragraph 4 (b) of the First Schedule to the ITA, we do not find cogent

reasons to vary the decision of the Tribunal. As such, we also find the second, third and fourth grounds devoid of merit.

On the last ground, Mr. Mwaifwani argued that, since the appellant did not convert contingency reserves into shares, it was erroneous for the Tribunal to find that the respondent was justified to impose interest for late payment under section 76 (1) read together with section 81 (1) of the TAA. That, in the absence of any actual tax liability arising from the split of contingency reserves, the imposition of interest and penalty for late payment was legally unfounded. Mr. Mwaifwani submission on this ground was strongly disputed by Mr. Medalakini who contended that, pursuant to the cited provisions, it is a legal requirement that interest shall be imposed upon the tax payer to any amount of tax which remains unpaid after a due date. That, since the withholding tax amount of TZS 274,075,709.00 remains unpaid, the Tribunal was correct to find that the respondent was justified to impose interest for late payment on the appellant. Based on his submissions, Mr. Medalakini urged us to dismiss the appeal in its entirety, with costs.

In a brief rejoinder, Mr. Mwaifwani reiterated his earlier submission and insisted for the appeal to be allowed.

It is our view that, this is a straight forward matter that need not detain us. In view of what we have demonstrated above, and taking into

account that this matter is consequential, we find that there is nothing much to be considered by the Court. On that basis, we equally find the seventh ground with no merit.

In the circumstances, we uphold the decision of the Tribunal and order the appellant to pay the demanded withholding tax at the prescribed rate plus the interest thereon. Consequently, we hereby dismiss the appeal, in its entirety, with costs.

DATED at **DODOMA** this 11th day of December, 2025.

R. J. KEREFU
JUSTICE OF APPEAL

A. S. KHAMIS
JUSTICE OF APPEAL

D. J. NANGELA
JUSTICE OF APPEAL

The Judgment delivered this 11th day of December, 2025 in the presence of Mr. Mahmoud Mwangia, learned counsel for the appellant and Ms. Juliana Ezekiel, learned Principal State Attorney for the respondent both through Virtual Court and Mr. Shafii Kassim, Court Clerk; is hereby certified as a true copy of the original.

W. A. HAMZA
DEPUTY REGISTRAR
COURT OF APPEAL