IN THE COURT OF APPEAL OF TANZANIA

AT ARUSHA

(CORAM: NDIKA, J.A., FIKIRINI, J.A., And MGEYEKWA, J.A.)

CIVIL APPEAL NO. 139 OF 2025

LEA ASSOCIATES SOUTH ASIA PVT ..... APPELLANT

VERSUS

COMMISSIONER GENERAL (TRA) ..... RESPONDENT

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

(Hon. B.R. Mutungi, Chairperson., Mr. C.A Mashoko and Dr. N.K. Mssusa, Members)

dated the 27th day of February 2025

in

Miscellaneous Tax Application No. 37 of 2024

.....

JUDGMENT OF THE COURT

6th & 28th November 2025

NDIKA, J.A.:

Lea Associates South Asia Pvt, the appellant, challenges the ruling of the Tax Revenue Appeals Tribunal ("the Tribunal") dated 27th February 2025 in Tax Application No. 37 of 2024. By that decision, the Tribunal granted the Commissioner General of the Tanzania Revenue Authority, the respondent, a fourteen-day extension to file a statement of appeal in furtherance of his appeal to the Tribunal against the judgment of the Tax Revenue Appeals Board ("the Board") dated 11th February 2022 in

Consolidated Tax Appeal Nos. 117, 328, 329, 330, 331, 332, 333, and 334 of 2020.

The respondent, aggrieved by the judgment of the Board, expressed his intention to appeal to the Tribunal by submitting a notice of appeal on 18th February 2022, registered as Notice No. 207 of 2022. On 8th June 2022, the respondent received the pertinent documents for the intended appeal. According to section 16 (4) of the Tax Revenue Appeals Act, Cap. 408 RE 2019, he was obligated to submit his appeal within thirty days after obtaining the papers by filing a statement of appeal. It turned out that he dawdled for over thirty months until 10th December 2024 when he instituted Miscellaneous Tax Application No. 37 of 2024 in the Tribunal, seeking an extension of time to file his statement of appeal, which, as indicated earlier, was granted by the Tribunal.

It should come as no surprise that the respondent failed to provide an explanation for the nearly thirty-month delay before the Tribunal. He nevertheless argued, and the Tribunal agreed, that the Board's disputed decision was clearly illegal for holding that the appellant was entitled to asserted tax exemptions under section 10 (3) (b) (i) of the Income Tax Act, Cap. 332 ("the Act"), related to the Iringa-Dodoma Fufu Road Project. Notwithstanding the provision in section 10 of the Act that an exemption

can exclusively be granted by the Minister responsible for finance through an order published in the Gazette, the Board disregarded the absence of such a government notice that would have legitimised the claimed exemptions and ruled in favour of the appellant.

The Tribunal found that the illegality of the contested decision was both evident on the record and significant enough to warrant an extension of time, citing cases such as **Principal Secretary, Ministry of Defence and National Service v. Devram Valambhia** [1992] T.L.R. 185, **VIP Engineering and Marketing Limited, Tanzania Revenue Authority and Liquidator of Tri-Telecommunications (T) Limited v. Citibank (T) Limited** [2007] TZCA 165, and **Kalunga and Company, Advocates v. National Bank of Commerce Limited** [2006] T.L.R. 235.

The appellant, represented by Dr. Onesmo M. Kyauke, learned counsel, challenges the grant of extension, arguing that the Tribunal:

> *"wrongly applied the concept of illegality of the challenged decision."*

In support of the appeal, Dr. Kyauke asserts that the delay in this matter was excessively prolonged, incomprehensible, and unjustified, rendering it inexcusable. Although he does not contest the purported

illegality of the disputed judgment, he contends that the respondent should have acted swiftly or within a reasonable timeframe. He asserts that the circumstances of the case call into doubt the respondent's diligence, bringing up the Latin dictum *"vigilantibus non dormientibus jurat subveniunt,"* which means that the law aids the vigilant, not those who neglect their rights. That the legal system favours persons who move swiftly to safeguard their rights, rather than those who procrastinate or exhibit negligence in this regard. Finally, the learned counsel warns that if the concept of illegality were not clearly defined and circumscribed, it will undermine the public policy about finality of litigation.

The respondent firmly opposes the appeal through Messrs. Yohana Ndila and Andrew Kombo, together with Ms. Jackline Chacha, learned State Attorneys. It is argued that the asserted illegality is evident from the record and that it necessitates the correction of the contested decision to accurately reflect the record and the law on the matter. Referring to **Devram Valambhia** (*supra*) and **VIP Engineering** (*supra*), Mr. Ndila contends that it is of no consequence whether the respondent acted promptly given that the Board's decision was illegal for violating the law by blessing non-existent tax exemptions.

Let us start by mentioning the well-estabiished jurisprudence in cases like **Devram Valambhia** (*supra*) and **VIP Engineering** (*supra*) that an extension of time can be granted if a sufficiently important legal point, like the illegality of the decision being challenged, can be proven, even without accounting for the period of delay. On this basis, we concur with Mr. Ndila that once a claim of illegality is established, it is of no consequence whether the respondent acted promptly. Thus, Dr. Kyauke's contentlon that the respondent dawdled for an inordinate period is, with respect, of no moment.

It is pertinent to recall that in its ground-breaking decision in **Devram Valambhia** (*supra*), the Court created the concept of illegality as basis for extension of time:

> "... ***where, as here, the point of law at issue is the illegality or otherwise of the decision being challenged, that is of sufficient importance to constitute 'sufficient reason' within the meaning of rule 8 of the Rules*** *[now rule 10 of the 2009 Rules] for extending time. To hold otherwise would amount to permitting a decision, which in law might not exist, to stand. In the context of the present case this would amount to allowing the garnishee order to*

remain on record and to be enforced even though it might very weli turn out that order is, in fact a nullity and does not exist in law. That would not be in keeping with the role of this Court whose primary duty is to uphold the rule of law." Emphasis added]

However, in the above case the Court did not provide any definition of illegality. Subsequently, in **Lyamuya Construction Co. Ltd v. Board of Registered of Young Women's Christian Association of Tanzania** [2011] TZCA 4, a single Justice of the Court elucidated that a claim of illegality must be both significant and evident on the record:

"Since every party intending to appeal seeks to challenge a decision either on point of law or fact, it cannot in my view, be said that in ***VALAMBHIA's*** *case, the Court meant to draw a general rule that every applicant who demonstrates that his intended appeal raises points of law should as of right be granted extension of time if he applies for one. The Court there emphasized that* ***such point of law must be that 'of sufficient importance' and, I would add that it must be apparent on the face of the record, such as the question of jurisdiction; not one that would be***

discovered by long drawn argument or process." [Emphasis added]

Recently, in **Charles Richard Kombe v. Kinondoni Municipal Council** [2023] TZCA 137, this Court defined the term *"illegality"*, as *"an act that is not authorized by law"* or *"the state of not being legally authorized"*, quoting from Black's Law Dictionary, 11th Edition. Ultimately, the Court in that case finally concluded that:

> *"... for a decision to be attacked on the ground of illegality,* ***one has to successfully argue that the court acted illegally for want of jurisdiction, or for denial of the right to be heard or that the matter was time-barred."*** [Emphasis added]

The same stance was taken in **Ramadhani Omary Mbuguni (A Legal Representative of the Late Rukia Ndaro) v. Ally Ramadhani & Others** [2024] TZCA 344 and **Nathanael Mwakipiti Kigwila v. Magreth Andulile Bukuku** [2025] TZCA 849. In the latter decision, the Court stressed that a claim of illegality regarding any contested decision for the purpose of extension of time must demonstrate a grievous and substantial breach of law or procedure that affects the validity of the case's resolution and outcome. That illegality connotes a more substantial

violation of law or procedure, potentially rendering the decision in question a nullity.

In the present case, it is uncontested that, pursuant to section 10(1) of the Act, an exemption may solely be granted by the Minister responsible for finance through an order published in the Gazette. It is, therefore, arguable that the Board's conclusion that the appellant was entitled to the claimed exemptions, despite the lack of any gazetted order from the Minister authorising them, constituted an evident breach and misapplication of the law. In other words, it is open to contend that the purported exemptions do not exist in law as they have no legal basis under section 10 of the Act. Given that their existence is predicated on the existence of the contested judgment of the Board, they only exist as a matter of fact.

Perhaps, we should also observe that the present case is comparable to **Devram Valambhia** (*supra*) at least in two respects, the first one being that in both instances the applicant for an extension of time failed to take an essential step after commencing the appeal process by timely lodging a notice of appeal. Whereas the Principal Secretary, Ministry of Defence and National Service in **Devram Valambhia** (*supra*) did not serve the notice of appeal on the respondent within the prescribed

timeframe, the respondent in the present case also failed to file a statement of appeal within the required period after being served with the relevant documents.

Secondly, both cases involve an allegation of illegality arising from misconstruction or misapplication of the law. To be sure, **Devram Valambhia** (*supra*) raised an argument that the High Court had put a wrong interpretation on rule 2A of Order 21 of the Government Proceedings (Procedure) Rules, 1968, Government Notice No. 376 of 1968 and thereby arrived at the erroneous conclusion that the decree against the government could properly be executed by issuing a garnishee order when it could not. As alluded to above, the present instance questions the Board's interpretation and application of section 10 of the Act that led to the conclusion that the appellant was entitled to the claimed exemptions despite the lack of any gazetted order from the Minister.

Ultimately, as we did in **Devram Valambhia** (*supra*), we consider the issue of illegality raised by the respondent to be significant and accordingly uphold the Tribunal's decision in favour of the respondent. We do so while fully aware of the respondent's inexplicable omission of the essential step to lodge the statement of appeal in time. Nonetheless, we

believe that the legal point in the present matter takes precedence over the respondent's conduct and shortcomings.

In the final analysis, we hold that the appeal has no substance and dismiss it with costs.

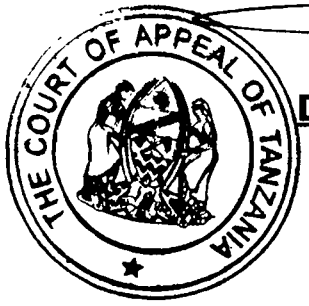
DATED at **DAR ES SALAAM** this 27th day of November 2025.

G. A. M. NDIKA
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

Judgment delivered this 28th day of November, 2025 in the presence of Mr. Daniel Yona Masaga, learned counsel for the Appellant, Mr. Emmanuel Ally, Mr. Andrew Kevela, both learned State Attorney for the Respondent and Janekisa Bukuku, Court Clerk is hereby certified as a true copy of the original.



J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL