

IN THE COURT OF APPEAL OF TANZANIA
AT MOROGORO

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(CORAM: WAMBALI, J.A., MAIGE, J.A. And FELESHI J.A.)

CIVIL APPEAL NO. 181 OF 2025

MHINGARA BUREAU DE CHANGE LIMITED APPELLANT
VERSUS

COMMISSIONER GENERAL, TRARESPONDENT

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

(Ngimilanga, Vice- Chairperson)

dated the 30th day of April, 2025

in

Tax Appeal No. 143 of 2024

JUDGMENT OF THE COURT

5th & 10th December, 2025

MAIGE, J.A.:

The appellant is an incorporation duly existing under the laws of Tanzania dealing with Bureau De Change business. For the reasons which may not be relevant in this appeal, her business was, in March, 2019, closed by the respondent in collaboration with the Bank of Tanzania and, in August, 2019, she was served with an audit report from the respondent which was followed by an adjusted tax assessment for the years 2014 and 2015 against which she appealed to the Tax Revenue Appeals Board (the Board). In its decision, the Board allowed the appeal and ordered the respondent to vacate the assessment in question. Be it noted, while in the statement of appeal the appellant had prayed for the appeal to be allowed

with costs, the Board ordered each party to bear its own costs, the finding which aggrieved the appellant and hence appealed to the Tax Revenue Appeals Tribunal (the Tribunal). The appeal was, however, dismissed and the decision of the Board upheld. Once again aggrieved, the appellant initiated the current appeal. Though in the memorandum of appeal the appellant had raised three grounds, at the hearing she, through her counsel, abandoned the last two grounds as a result of which, the appeal remained with one ground that:

1. The Tax Revenue Appeals Tribunal erred in law by wrongly interpreting the provisions of section 17(1) (d) of the Tax Revenue Appeals Act, Cap. 408, and Rule 23(e) of the Tax Revenue Appeals Board Rules, 2018, as empowering the Board merely to make an order for costs without the obligation to provide reasons for either granting or denying costs to the party who specifically prayed for them.

In the conduct of the appeal, the appellant enjoyed the services of Messrs. Respicius Mwijage and Amon Rwiza, learned advocates, whereas the respondent enjoyed the services of Mr. James Igakinga, learned Principal State Attorney and Ms. Namsifu Mchomvu, learned State Attorney. Notably, the counsel from both sides had, before the date of hearing, lodged their relevant written submissions to support their respective

positions in the appeal which, at the hearing, they each adopted with some clarifications.

As the ground of appeal speaks, the contention between the parties is limited into the interpretation of the provisions of section 17(1) (d) of the Tax Revenue Appeals Tribunals Act, Cap. 408, R.E. 2019 (the G.N. No. 408) and rule 23(e) of the Tax Revenue Appeals Board Rules, 2018, G.N. 217 of 2018 (the G.N. No. 217 of 2018). The former provisions empower the Board and the Tribunal *"to order payments of costs in relation to any matter referred to the Board or the Tribunal"* while the latter require decisions of the Board to contain *"an order as to costs."*

As per the record of appeal, in her appeal to the Board, the appellant prayed for costs of prosecution of the appeal and submitted in details in justification thereof. In its decision, however, the Board, as it appears in the record of appeal, just stated that; *"no order as to costs"*. In the appeal before the Tribunal, the appellant faulted the Board for unreasonably refusing to award costs to the appellant despite her extensive submissions through her counsel that she had incurred considerable costs in the prosecution of the appeal to the Board. In the contention of the counsel for the appellant, the decision was in violation of the provisions just referred. In relation to section 17 (1) (d) of the Tax Revenue Appeals Act, the Tribunal observed that the same does not compel the Board or Tribunal to order for payment of costs. It further remarked that:

"As correctly stated by the Respondent the issuance of orders under paragraph (d) of the said section is the exercise of the discretionary powers of the Board or Tribunal depending on the circumstances of the matter referred to it."

In relation to rule 23(e) of Tax Revenue Appeals Board Rules, the Tribunal was of the contention that, the same does not mandatorily require the Board to award costs but only requires the decision of the Board to contain such an aspect. It further opined that *"under the said Rule the Board is not legally required to provide reasons for issuance of an order as to costs as the Board is only required to ensure the order as to costs is contained in its decision."*

In his submission in support of the ground of appeal, Mr. Mwijage argued that, as he understands the law, the general rule in civil litigation is that a victorious party is, unless otherwise, entitled to the costs of the case. In line with that, the counsel cited the case of **Abubakar Khalid Haji and Another v. ZamZam Yusufu Mushi and Others** (Civil Appeal No. 388 of 2022) TZCA 466 (14 June 2024, Tanzlii) where we stated:

"It bears reaffirming that, in civil litigation, the general rule is that costs must follow the event. Costs are a panacea that soothes the souls of litigants that, in the absence of sound reasons, the Court will not be prepared to deprive the successful litigant of."

While in agreement with the opinion of the Tribunal that whether to award costs or not is within the discretion of the Tribunal, Mr. Mwijage does not agree with the Tribunal's finding that such discretion can be exercised without assigning any reasons. In his humble opinion, the Board being a quasi-judicial board chaired by a learned chairperson, must, in exercise of such discretion, act judiciously. He submitted therefore that, the Tribunal was wrong in holding that the Board was not, in denying costs to the appellant, obliged to assign reasons therefor. He submitted further that, as the appellant expressly prayed for costs and submitted extensively therefor, the Board was obliged, in refusing the prayer, to consider that submission. To cement his contention, the counsel referred us to a decision of the Tribunal in **Sky Bureau de Change v. Commissioner General, TRA**, Tax Appeal No. 144 of 2024 (unreported) as per Mtungi, Chairperson, where it was held that, in a situation where costs is specifically pleaded and argued, the Board or Tribunal cannot give an order refusing costs without assigning reasons.

In rebuttal, Mr. Igakinga fully supported the findings and reasoning of the Tribunal. He submitted further that, the case of **Abubakar Khalid Haji and Another v. ZamZam Yusufu** (supra) relied upon by the counsel for the appellant is distinguishable in that: one, it was based on land dispute while the current matter pertains to tax dispute; two, while the current case involves a company and a public authority, the cited cases

involve individuals; and three, in the said case, the Court having considered that the proceedings were nullified and remitted to the High Court to be tried afresh, it refused to award costs.

Mr. Igakinga submitted further that the requirement to assign reasons for a decision applies on a decision on the merit of the appeal and not in respect of an award of costs. The counsel referred us to our decisions in **Madeline Levson Muhumha v. Fredy Henely Nyamhokya** (Civil Appeal No. 641 of 2023) [2025] TZCA 1088 (13 October 2015, Tanzlii) and **Chikira Laurence Jahari v. Higher Education Students' Loans Board and Others** (Civil Appeal No. 39 of 2022) [2025] TZCA 998 (25 September 2025, Tanzlii), where, in his contention, the Court refused to award costs without assigning any reasons.

In conclusion, it was Mr. Igakinga's submission that since the provisions just referred in their ordinary and natural meaning do not impose obligations to the Board to give reasons, they should be strictly construed. In this regard, reliance was placed on our decisions in **Pan African Energy Tanzania LTD v. Commissioner General, TRA** (Civil Appeal No. 81 of 2019) [2020] TZCA 54 (6 March 2020, Tanzlii) and **Pan African Energy Tanzania LTD v. Commissioner General, TRA**, Civil Appeal No. 172 of 2020 (unreported).

Having carefully followed the rival submissions, we agree with the counsel for both sides that; while section 17(1) (d) of Cap. 408 empowers the Board and Tribunal to award costs and rule 23 (c) of G.N. No. 217 of 2018 requires their decisions to contain an order as to costs, neither of them oblige the Board or Tribunal to award costs. The line of contention is whether the Board was obliged to assign reasons for refusal to award costs.

For the appellant, it was submitted that, the answer should be in the affirmative. It was submitted that, where an order for the costs is, though pleaded and addressed at hearing, refused, the Board or Tribunal is obliged to assign reasons. The counsel has assigned two reasons to support his contention. **First**, as a matter of principle, discretion must be exercised judiciously; and **Two**, in accordance with the authority in **Abubakar Khalid Haji and Another v. ZamZam Yusufu** (supra), it is a well-established principle in civil litigation that, the winner has to be awarded costs unless there be sound reasons to the contrary.

For the respondent, the answer should be in negative because the two provisions under discussions in their ordinary and natural meaning, do not impose obligation to the Board or Tribunal to assign reasons. The pieces of legislation involved being on tax law, it was further submitted, literal rule of interpretation must, in view of the two decisions above involving **Pan African Energy Tanzania LTD v. the Commissioner**

General, TRA (supra) be applied. In addition, it was submitted, making reference to **Madeline Levson Muhumha v. Fredy Henely Nyamhokya** (supra) and **Chikira Laurence Jahari v. Higher Education Students' Loans Board and Others** (supra) that, it has been the practice of the Court to refuse costs without assigning any reasons.

Much as it is true, as the counsel for the respondent submitted that, the award of costs is within the discretion of the Board or Tribunal, we cannot agree with him that such discretion can be exercised based on personal whim. As the exercise of the discretion falls under the judicial functions of the Board and Tribunal, the same must be exercised judiciously with sound judicial principles. Therefore, in **UAP Insurance Tanzania Ltd v. Noble Motors Limited** (Civil Application No. 260 of 2016) [2017] TZCA 1332 (30 May 2017, Tanzlii), we observed:

"Judicial discretion signifies the exercise of the judicial powers judicially which means the decision based on sound reasons."

Since, as we held in **Abubakar Khalid Haji and Another v. ZamZam Yusufu** (supra), the general rule in civil litigation is such that costs must follow event and that, in the absence of sound reasons, the court is not expected to deprive the successful litigant of them, we are of the view that, where, like here, the court or tribunal decides not to award the same, reasons for refusal is inevitable. In the absence of express

provision to the contrary, we have no doubt that the principle applies in all civil proceedings, including tax proceedings. On this, we are also persuaded by the decision of the Tax Revenue Appeals Tribunal in **Sky Bureau De Change v. Commissioner General, TRA** (supra) where it was observed, correctly in our view that:

"The law, as articulated by the Court of Appeal, requires that a successful party is entitled to costs unless there is good cause for departure from that position in Hossein Janmohamed & Sons, Mohamed Salmin. No such good cause was recorded by the Board. The omission to provide reasons rendered the exercise of the discretion arbitrary. It is not the mere existence of discretion that shields a decision from appellate scrutiny, it is the manner in which that discretion is exercised. Discretion must be exercised judiciously, based on relevant considerations, and must be seen to have been so exercised".

We, therefore, do not agree with Mr. Igakinga that, the requirement to assign reasons for refusal to award costs does not apply in tax proceedings.

Mr. Igakinga has referred us to the cases of **Madeline Levson Muhamha v. Fredy Henely Nyamhokya** (supra) and **Chikira Laurence Jahari v. Higher Education Students' Loans Board and Others** (supra), in support of the proposition that it has been the practice of the

Court to refuse costs without assigning reasons. We have read both of them and noted that, unlike in **Abubakar Khalid Haji and Another v. ZamZam Yusufu** (supra) where the principle that a decision refusing costs must be supported by reasons is stated, in the said two decisions no principle was enunciated or discussed in support of the alleged proposition. Seemingly, the counsel has placed reliance on an order refusing costs as if it was by itself a principle of law. In any event, in **Madeline Levson Muhamha v. Fredy Henely Nyamhokya**, the appellant was not the absolute winner, as it is apparent that the appeal partly succeeded and partly failed, meaning that, there was no winner. Besides, contrary to the expression by the counsel for the respondent, the refusal to grant costs by the Court in **Chikira Laurence Jahari v. Higher Education Students' Loans Board and Others Chirika Laurence Jahari**, was not without reasons. The Court clearly stated that it was based on the circumstances of the case. That was by itself a reason for the decision to refuse costs.

In view of the foregoing discussions, we find that the Tribunal was wrong in holding that the Board was entitled to refuse costs to a successful litigant without assigning reasons. We, therefore, allow the sole ground of appeal. Consequently, we set aside the decision of the Tribunal which confirmed that of the Board to the extent of refusing costs to the appellant. Moreover, having considered the circumstances of the appeal before the Board, we entertain no doubt that the appellant was entitled to costs. We

therefore, order that the appellant be paid costs for prosecution of the appeal to the Board and the Tribunal.

In the final analysis, we allow the appeal to the extent as aforesaid and grant the appellant costs for prosecution of this appeal.

DATED at **MOROGORO** this 8th day of December, 2025.

F. L. K. WAMBALI
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

E. M. FELESHI
JUSTICE OF APPEAL

Judgment delivered this 10th day of December, 2025 in the presence of Mr. Respicius Mwijage assisted by Mr. Amon Rwiza, both learned advocates for the Appellant, Mr. Abdallah Mdunga, learned State Attorney and Ms. Jasmin Kazi, Court Clerk through Visual Court; is hereby certified as a true copy of the original.


A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL

