LIBRARY FB ATTORNEYS

**IN THE COURT OF APPEAL OF TANZANIA**

**AT DODOMA**

**(CORAM: LEVIRA J.A., J.A., GALEBA, J.A., And ISMAIL, J.A.)**

**CIVIL APPEAL NO. 220 OF 2022**

**MOBISOL UK LIMITED..... APPELLANT**

**VERSUS**

**COMMISSIONER GENERAL,**

**TANZANIA REVENUE AUTHORITY.....RESPONDENT**

**[Appeal from the Decision of the Tax Revenue Appeals Tribunal at Dar es Salaam]**

**(Haji, VC)**

**dated the 17th day of January, 2022**

**in**

**Tax Appeal No. 68 of 2020**

.....

# JUDGMENT OF THE COURT

*18th & 28th February, 2025*

## GALEBA, J.A.:

This appeal emanates from a heated litigation at both the Tax Revenue Appeals Board (the Board), and the Tax Revenue Appeals Tribunal (the Tribunal). The controversy before the two tax revenue dispute resolution fora, was whether or not, solar television sets and solar radios were tax exempted imports, in view of the East African Community Customs Management Act, (the EACCMA) and the Value Added Tax Act, (the VAT Act).

According to the record before us, Mobisol UK Limited, a limited liability company existing under the laws of England and Wales, sometime between 2013 and 2017, imported certain solar energy powered appliances called, the Solar Home Systems (the SHS), into the country from the Federal Republic of Germany. According to the record of this appeal, the SHS was a home product composed of an assortment of solar components assembled together to form the said electrical system. Such components included solar panels, solar batteries, solar controllers, solar cables, solar lights, solar TV sets and solar radios. However, the dispute between the parties was not on all the above components of the SHS, but the last two, that is, the solar TVs and the solar radios. Although before the Board and the Tribunal, issues were a bit wider, the issues relevant to this appeal were whether; **one**, were the solar TVs and radios import exempted from payment of import duties? and; **two,** were the items exempted under the VAT Act?

At the beginning, the respondent determined that the disputed products were not exempted from payment of import duties and value added tax (VAT). The appellant's appeal to the Board to challenge that determination was dismissed in its entirety with costs. And like the Board, the appellant's appeal to the Tribunal was not spared. It was dismissed for want of merit. This appeal is challenging the decision of

the Tribunal, and it is based on 5 grounds of appeal, which may be paraphrased as follows:

> *"1. The Tribunal erred in law in holding that the solar TVs and the solar radios were not entitled to enjoy the exemption to duty under the provisions of paragraph 26 of Part B of the 5th Schedule to the EACCMA, 2004.*
>
> *2. The Tribunal erred in law by misinterpreting the provision of paragraph 26 of Part B of the 5th Schedule to the EACCMA 2004 in relation to the application of the phrase including accessories and deep cycle batteries which use and or store solar power. The Tribunal failed to appreciate the aid to interpretation of this provision as provided by the Exhibit A10.*
>
> *3. The Tribunal erred in law in applying the principle of estoppel against the guidelines provided by the Respondent and the East African Community Secretariat on the application of exemptions provided by paragraph 26 of Part B of the 5th Schedule to the EACCMA, 2004.*
>
> *4. Upon accepting the definition of a "module" as put forward by the Appellant, the Tribunal erred in law in holding that the exemption provided by item 22 Part I of the Schedule to the VAT Act 2014 did not apply to the Appellant Solar TV and Solar Radio which is sold as an integral part of the SHS.*

*5. The Tribunal erred in law in holding that the Appellant's SHS was not entitled to enjoy the relief provided by section 14 of the VAT Act 2014."*

At the hearing of this appeal, the appellant was represented by Mr. Gaspar Nyika, learned advocate, and teaming up for the respondent were, Mr. Hospis Maswanyika and Ms. Juliana Ezekiel both learned Principal State Attorneys. The latter were assisted by Mr. Athumani Mruma, learned State Attorney, who later eloquently argued the appeal.

At the very outset, Mr. Nyika requested and was permitted to alter the first ground of appeal in order to omit the phrase "*solar cables, solar panels, solar lights, solar batteries, solar charger controllers and other items that complemented the appellant's Solar Home System (SHS)*" and retain only the solar TVs and the solar radios as the only contested items in this appeal. The above first ground is as altered and rewritten. Thereafter the learned advocate adopted his written submissions in support of the appeal and was ready at our invitation to clarify a couple of points which we would raise. As the respondent filed no written submissions, we will consider only the oral submissions by Mr. Mruma. We will start with the first two grounds of appeal.

The single issue arising from those grounds, is whether under the provisions of paragraph 26 of the 5th schedule to the EACCMA, solar TVs

and solar radios were exempted from payment of import duties. That is to say, resolution of the grounds depends on the interpretation of the said provision as regards the stated items. We will therefore start with the very provision which is paragraph 26 of the 5th schedule to EACCMA providing that:

> ***"26. Specialized Solar and Wind Energy Equipment.***
>
> *Specialized equipment for development and generation of Solar and Wind Energy, including accessories and deep cycle batteries which use and or store solar power."*

In support of the two grounds of appeal, Mr. Nyika maintained a double-edged approach. **First,** he submitted that the above provision refers to two groups of the *specialized equipment.* One category covering specialized equipment which are ***for development and generation*** of the solar power on one hand, and the other group is comprised of specialized equipment which ***use solar power or store it***. His contention was that as solar TVs and radios were using solar power, then the items were exempted imports.

Mr. Nyika's **second** point was based on exhibit A10 which was the guidance from the East African Community Directorate of Customs to

the Permanent Secretaries of the Ministries responsible for Community affairs in the partner states dated 1st December, 2016. According to learned counsel, in terms of that guidance, solar TVs and solar radios were integral parts of the equipment designed for ***development and generation*** of solar power. So, to him the items were accessories and as such, exempted imports. He thus moved us to allow the two grounds of appeal.

To resist the grounds on behalf of the respondent, was Mr. Mruma. His contention was that for any solar item to qualify as exempted, its function must be development or generation of solar power. End use items like solar TVs and radios are not for development or generation of any solar power, he submitted. His construction of the preposition *"including"* in the above quoted provision meant that all items mentioned after it, must first belong to the larger category of *development and generation* of solar power. On this he quoted the case of **Pan African Energy Tanzania Ltd v. Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 172 of 2020 (unreported).

As for exhibit A10 from the EAC Directorate of Customs, Mr. Mruma submitted that reading that communication with another letter

from the same Directorate clarifying the same point dated 4th April 2016, no accessory or electrical item is exempt if it does not develop or generate solar power. Either way, Mr. Mruma argued, the solar TV and the solar radios were not exempted imports.

The matter we are called upon to deal with is to harmonize the conflicting positions maintained by counsel on the import of paragraph 26 of the 5th schedule to EACCMA in the context of exemption on import duty in respect of solar TVs and solar radios. The specific areas we will address are the phrases, *development or generation* on one hand and the preposition, *including*, on the other as used in paragraph 26 of the 5th schedule.

We will start with development and generation, and we take it that the words do not have any special or scientific meaning, such that we will apply their plain meaning. According to **Oxford Advanced Learner's Dictionary International Student**s, 9th Edition; the term generate is defined thus:

> *"**to produce or create something**; to generate electricity / heat / power; to generate income / profit. We need somebody to generate new ideas. The proposal has generated a lot of interest."*

[Emphasis added]

Admittedly, we are not electrical engineers or even solar energy experts, so we requested Mr. Nyika to simplify for us on how a TV set or a solar radio could be able to generate solar power. His reaction was that, if other solar equipment like solar panels could generate the solar power needed to run certain electrical appliances like a solar TV or a solar radio, then the power generated would be useless, without such end use appliances being in place. To learned counsel, consumption of the generated power was the participation of the said end use equipment in the generation of solar electricity.

Mr. Nyika's reasoning is convincing on one hand, but it does not on the other. It is indeed perfect that, without there being an electric appliance to consume or use the electricity, the power generated will certainly be inert with no use value. However, we do not agree with learned counsel's contention that availability of an end use appliance which is for purposes of only consuming the power, makes that appliance part of the equipment that generated the electricity consumed.

In basic terms, the simplified mechanical function of a television set in a home, is to electronically receive images and sounds in the form

of electric signals from a camera at the remote scene, and reconvert them back into pictures and sounds capable of being perceived by human senses. It would be incorrect therefore to equal that function of a television to development and generation of any kind of solar power. If a television cannot develop or generate solar power, certainly it is much more unlikely that a solar radio can perform that function.

The other point, which seems to be an alternative to the above, as per Mr. Nyika, was that according to the wording of the law, the solar TV and radio were exempt items because they were for using the solar power, even without having to have developed or generated any. The learned advocate relied on the part of the contested provision stating "*...including accessories and deep cycle batteries which use and or store solar power.*" On this point, he also relied on the guidance that was issued by the EAC Directorate of Customs we referred to earlier on. We will in turn, discuss the two points, one by one.

First, the preposition "*including.*" When that preposition is used in a statute starting with the general premise, ending with the specific or specific premises, the specifics must first qualify in the general wider category.

That is to say, where the law says, specialized equipment for development and generation of solar and wind energy, *"including"* accessories and deep cycle batteries which use and or store solar power, it does mean that such accessories and deep cycle batteries, *must first* have the ability to develop or generate power. That is how we interpreted the preposition *"including,"* in the case of **Pan African Energy** (supra), and we are not aware of an alternative interpretation.

Next is consideration of the guidelines from the Directorate of Customs of the EAC. We will go straight to the letters clarifying to the Partner States officials as to what was covered and what was not. First was exhibit R1 which is a letter dated 4th April, 2016 from the Directorate of Customs of the EAC to the Commission of Customs in Uganda. The relevant part of the letter, states:

> *"Item 26 Part B of the Fifth Schedule to the EAC Customs Management Act provides for exemption of duty on "Specialized equipment for development and generation of Solar and Wind Energy, including accessories, spare parts and deep cycle batteries which use and/or store solar power". **The catch word in the provision is 'generation' which means the equipment under exemption cannot extend to distribution equipment, accessories or***

***spare parts.*** *We agree with you that all other components used after the generation point are excluded from the exemption.*

***The policy intention behind this decision was to grant incentive to enable production of solar power. Otherwise, the electrical and electronic articles that use solar power were not covered.***

[Emphasis added]

The other letter subsequent to the above from the same Directorate, is exhibit A10 dated 1st December, 2016. It was addressed to Permanent Secretaries in the Ministries responsible for the Community Affairs in all Partner States. The relevant part of the letter states:

*"It was however noted that the terms "accessories" and "spare parts" were ambiguous and constituted a wide range of end use appliances and items that may not form integral parts of development and generation equipment. In addition, it created an administrative challenge for customs to distinguish eligible solar equipment and those that use other sources of power. Spare parts are also equally difficult to differentiate particularly if they relate to end use*

*appliances such as solar powered fridges, cookers, water heaters etc.*

***The Council at the same time decided to grant duty remission to inputs and raw materials used in the manufacture of solar and wind equipment to encourage local manufacturing including assembly such that there is value addition in this area.***

*In our opinion specialized equipment is extensive enough to cater for the basic equipment for development and generation of energy solar and wind energy. We also note that some solar equipment particularly for home use are imported as a complete sets constituting of a mixture of development, generation and even end use units. In such cases the General Interpretation Rules for the Classification of Goods should apply as specific in the EAC CET. It is also our view that items like specialized solar cables and lights are an integral part of the equipment for solar development.* ***However, end use appliances which are not integral parts of development and generation are considered as accessories hence subject to taxation."***

[Emphasis added]

Briefly, we find nothing suggesting that a solar TV or a radio is clarified as an exempted import. What is clear is that end use appliances are subject to taxation.

In conclusion, we have considered the import of both letters above, coupled with what we have discussed above on item 26 Part B of the 5th Schedule to EACCMA, and our decision is this; as there was no satisfactory written, verbal or technical explanation as to how the solar TVs or solar radios can develop or generate solar power, the items were not exempted imports, hence subject to taxation. We thus dismiss the first and second grounds of appeal for want of merit.

The complaint in the third ground of appeal was that the Tribunal wrongly held that the respondent was not estopped by the explanation it had earlier given to the appellant that, solar TVs and solar radios were exempted from payment of import duties upon their importation, in view of item 26 Part B of the 5th Schedule to the EACCMA.

In supporting the above ground of appeal Mr. Nyika submits as follows in the appellant's written submission:

> *"Honourable Justices of Appeal, in the present appeal, the Respondent made a representation to the Appellant when on* ***25 August, 2015*** *the appellant sought clarification from the*

*Respondent on whether the imported solar energy items such as Solar radios, solar TVs, solar cables, solar panels, solar lights, solar batteries, solar charger controllers and other items that complement the Appellant's Solar Home System were exempted from import duty as specialized solar powered equipment.*

***According to the Exhibit A9 which can be found at page 254 to 256 of the record of appeal which is a letter dated 28 August, 2015*** *from the Respondent to the Appellant that most of the items listed in the Appellant's letter dated 25 August, 2015 were exempted as specialized solar powered equipment as provided for under paragraph 26 of Part B of the 5th schedule to the EACCMA, 2004. The Respondent's letter was a representation that the Appellant's Solar TV and Solar radios which form part of the Appellant's Solar Home System (SHS) were covered by the exemption."*

Included in the submissions by Mr. Nyika is a prayer that the Court be pleased to depart from its former decision in **Roshan Meghjee & Co. Ltd v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 49 of 2008 (unreported), where it was held that the

doctrine of promissory estoppel cannot be invoked in order to defeat a written law.

In his oral reply, Mr. Mruma dismissed every point including an invitation to depart from the above **Roshan Meghjee** case (supra). He submitted that the Tribunal was right on the way it dealt with the issue of estoppel.

The doctrine of estoppel was enunciated by Lord Denning of the High Court of England in 1947 in a celebrated case of **Central London Trust Ltd v. High Trees House Ltd** [1947] KB 130, which came to be known famously as the High Trees case. Simply put, the doctrine in that case is that if A represents to B that certain facts are true, and then B acts on such facts, believing them to be true, A cannot deny the consequences of B's acting on the facts as true following his own (A's) representation. Twenty years later in 1967, the doctrine was domesticated in this jurisdiction by the enactment of section 123 in our Evidence Act which provides as follows:

> *"123. When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor his representative shall be allowed, in any suit or*

*proceedings between himself and that person or his representative, to deny the truth of that thing."*

Thus, the doctrine has since become an integral part of the law of this country. We will now focus our full attention to the application of the doctrine to the ground of appeal under discussion.

In terms of the above submissions of the appellant, on 25th August, 2015 she wrote a letter to the respondent seeking to confirm whether or not the solar TVs and solar radios were exempt items under the EACCMA. The appellant further contended that on 28th August, 2015, she received a letter from the respondent confirming to her that indeed, the items were exempt. According to Mr. Nyika relying on that respondent's representation, the solar TVs and radios were imported, only to be informed by the very respondent that the items were taxable imports. His point being that the respondent in the circumstances was estopped from charging any taxes, and that both the Board and the Tribunal were wrong to have held that the respondent was not estopped from charging the tax in the circumstances.

The appellant's arguments took us straight to pages 254 to 256 she made reference in her written submissions quoted above. However, those pages of the record contain exhibit A9 which is a letter from the

Minister for Finance and Economic Planning of the Republic of Rwanda to the attention of the tax collection authority of that country, detailing solar items that are VAT exempted under the tax laws of that country. In the matter before the Board ten exhibits were tendered, nine from the appellant and one from the respondent. The exhibits are contained in the record of appeal between pages 208 and 263. Our attentive perusal of each of the exhibits, revealed none of letters, the one dated 25th August 2015, or the other dated 28th August 2015.

That being the case, the third ground of appeal suffers the following serious setbacks; **one,** exhibit A9 which Mr. Nyika moved us to rely upon as a guarantee from the respondent that solar TVs and solar radios were exempted from payment of import duty has nothing to do with that contention, for the same is a communication between two public institutions of a foreign country. **Two**, the two letters alleged to exist are not among the documents that were attached with the statement of appeal to the Board from page 14 to 81 of the record of appeal; and **three,** there is nothing to suggest that such letters, if any, were part of the dispute at the Board, for all documents that were received are listed at page 151 of the record of appeal, but the letters are not included.

As the said letters are not anywhere from page 1 to page 563 which is the last page of the record of appeal, we take the contentions of counsel for the appellant in that respect, as arguments from the bar, for they have no backing of the record. In the circumstances, there is no way the doctrine of promissory estoppel could have arisen, both at the Board and the Tribunal, because for it to be invoked there must be a clear representation that the maker seeks to deny after the recipient of the information has acted on it, believing the same to be true or authentic. In this matter, we have abundantly demonstrated that, it was not the case. We thus find no merit in the third ground of appeal.

In the fourth ground of appeal, the appellant complains that the Tribunal erred for failure to hold that the solar TVs and radios, were *"modules"* as defined under item 22 Part I of the schedule to the Value Added Tax Act (the VAT Act).

According to Mr. Nyika, the Tribunal having made a finding, at page 546 of the record of appeal, that a module is a pertinent component in a functioning system, without which the system can neither be complete nor work, the Tribunal erred when it held that solar TVs and solar radios were not modules, while if those components are not made part of the SHS, the latter would be an incomplete system and

would not function. In reply, Mr. Mruma contended that solar items that are exempted from VAT are clearly listed at item 22 Part I of the schedule to the VAT Act, and that solar TVs and radios are not listed there. He concluded that a module is neither a solar TV nor a solar radio for purposes of VAT exemption.

In this ground of appeal, the issue that presents itself for our determination is whether the term "*module*" as referred to at item 22 Part I of the schedule to the VAT Act, includes a solar TV and a solar radio. And the starting point, we think, should be the very item 22 Part I of the schedule to the VAT Act, which provides as follows:

> *"SUPPLIES AND IMPORTS EXEMPT FROM VALUE ADDED TAX*
>
> *1 to 21 N/A*
>
> *22. Supply of solar panels,* ***modules****, solar charger controllers, solar inverter, solar lights, vacuum tube, solar collectors and solar battery."*
>
> [Emphasis added].

In this ground what makes the appellant to believe that the solar TVs and the radios were "modules" is only because, they are integral parts of a functioning SHS. This reasoning is not, in our view, self-sufficient or clear enough to really make a solid believable point. That is

so because, if that reasoning be right, then what prevents every other item which is an integral part of the SHS like solar panels, solar charger controllers, solar inverter, solar lights, vacuum tube, solar collectors and solar batteries also to be "*modules*", because like the solar TVs and solar radios, the mentioned items are integral parts of the SHS, without which the system would not be able to function.

So, we are not at one with Mr. Nyika that the legislators of the contested item 22 Part I of the schedule to the VAT Act, intended that, solar TVs and solar radios be hidden in the term "*modules*" and other items be listed in their clear identifying names. In our view, had the legislators of that provision wanted to exempt solar TVs and solar radios, they would not have concealed them in the term "*module*", they would have listed them as they did for solar panels and other items.

In the circumstances, we agree with Mr. Mruma that, because the items were not listed, the same were not intended to be exempted imports. That said we dismiss the fourth ground of appeal.

In the fifth ground of appeal, the appellant faults the finding of the Tribunal which dismissed her position that the SHS was supposed to be considered as a single component hence a single supply in terms of section 14 of the VAT and thus, an exempt supply as per item 22 Part 1

of the schedule to the VAT Act. That was Mr. Nyika's contention in a two-paragraph submission at page 20 of the appellant's written submissions.

On his part, Mr. Mruma contended that the supply of the SHS was not a single supply, because, according to him, each component of the said system had its distinct Harmonized Systems code also called HS code, in marine shipping. In such a case, for purposes of custom duties, each component is considered independent of other components of the system. Thus, he concluded, the issue of the SHS being a single supply for purposes of taxation could not arise, as it happened. He moved the Court to dismiss the fifth ground of appeal for want of merit.

Section 14 of the VAT Act 2014 provides for standards to be adopted when ascertaining whether or not a single supply consists of more than one element. The law reads: -

> ***"14****. Where a supply consists of more than one element, the following criteria shall be taken into account when determining how this Act applies to the supply-*
> *(a) every supply shall normally be regarded as distinct and independent;*

*(b) a supply that constitutes a single supply from an economic, commercial, or technical point of view, shall not be artificially split;*

*(c) the essential features of the transaction shall be ascertained in order to determine whether the customer is being supplied with several distinct principal supplies or with a single supply;*

***(d) there is a single supply, if one or more elements constitute the principal supply, in which case the other elements are ancillary or incidental supplies, which are treated as part of the principal supply; or***

***(e) a supply shall be regarded as ancillary or incidental to a principal supply if it does not constitute for customers an aim in itself but is merely a means of better enjoying the principal thing supplied."***

*[Emphasis added]*

In this appeal, admittedly, the SHS was a singly home system with multiple home uses including TVs shows, listening to radio programs, and lighting. Nonetheless, reading the record and even having attentively listened to the arguments raised by learned advocates for both parties, one notes that the SHS was not a single supply. It was a composition of multiple parts, with distinct components including solar panels, solar charger controllers, solar inverters, solar lights, vacuum

tubes, solar collectors, solar TVs, solar radios and solar batteries. These items each has a distinct HS code for purposes of taxation.

Thus, unless there was proof that one or more components of the SHS constituted the principal supply, and some other components were ancillary or incidental to the SHS, in terms of section 14 (d) of the VAT Act, or that the SHS was a single supply as envisaged at section 14 (c) of the VAT Act, we do not find any usefulness of referring to the SHS as a single supply.

Even assuming that the SHS was to be treated as a single supply, and not its components each with a distinct HS code, there is no section of the VAT Act that was drawn to our attention either on the written submissions of the appellant or orally that at the hearing, which provides that had the SHS been considered as such, it would, as a whole be an exempt import or supply.

So, we agree with Mr. Mruma that the plausible and convenient way to consider taxability of the SHS, was to treat each component of the system individually because even the law (item 22 Part 1 of the schedule to the VAT Act) treats the components as separate items. Based on the above considerations, the fifth ground of appeal has no merit, it is hereby dismissed.

Finally, as all grounds of appeal have failed, we consider the entire appeal baseless and hereby dismiss it. Considering the nature of the dispute we make no order as to costs.

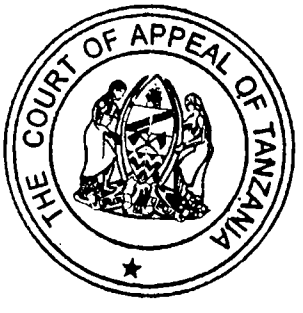
**DATED** at **DODOMA**, this 28th day of February, 2025.

M. C. LEVIRA
**JUSTICE OF APPEAL**

Z. N. GALEBA
**JUSTICE OF APPEAL**

M. K. ISMAIL
**JUSTICE OF APPEAL**

The Judgment delivered this 28th day of February, 2025 in the presence of Mr. Gasper Nyika, learned counsel for the Appellant and Mr. Yohana Ndilla, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.




O. H. KINGWELE
**DEPUTY REGISTRAR**
**COURT OF APPEAL**