IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

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

CIVIL APPEAL NO. 201 OF 2025

PUMA ENERGY TANZANIA LIMITED ..... APPELLANT

VERSUS

THE COMMISSIONER GENERAL OF TANZANIA

REVENUE AUTHORITY ..... RESPONDENT

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

(Ngimilanga - Chairperson)

dated the 24th day of February, 2025

in

Tax Appeal No. 54 of 2024

.....

JUDGMENT OF THE COURT

8th & 17th December, 2025

MGEYEKWA, JA:

The appellant, Puma Energy Tanzania Limited was aggrieved by the decision of the Tax Revenue Appeals Tribunal (the Tribunal) in Tax Appeal No. 54 of 2024, delivered on 24th February 2025, which affirmed the ruling of the Tax Revenue Appeals Board (the Board).

The background to the appeal is briefly as follows: on 20th May 2022, the Ministry of Finance and Planning introduced a subsidy intended to moderate import duties on petroleum products entering the country as

part of a broader policy response to the prevailing global energy crisis. The subsidy was operationalised with effect from 21st May 2022 and applied only to consignments imported thereafter. The appellant averred that the fuel held in its inventory as at the date of the directive had been imported earlier and had already been charged with import duty at the then applicable rates. With the implementation of the Minister's directive and the consequent adjustment of the regulated pricing regime, the appellant found itself constrained to dispose of its pre-existing stock at controlled prices that incorporated the subsidised structure. It contended, therefore, that it incurred an unrecoverable loss of TZS 10,421,054,718.00, which could not be passed on to the ultimate consumer.

It was against that backdrop that the appellant lodged a claim for refund, initially by its letter of 8th July 2022 and later through a formal reminder addressed to the respondent. By its correspondence of 17th August 2022, the respondent declined the claim asserting that the relief sought could not, as a matter of law, extend to consignments imported prior to the cut-off date stipulated in the Minister's directive. On that basis, the respondent concluded that the appellant was not eligible for any compensation in respect of the import duties already paid.

Discontented, the appellant being out of time to institute a review, applied for extension of time on 15th November 2022 pursuant to section 229 (3) of the East African Community Customs Management Act (EACCMA) and lodged the application on 17th January 2023. The respondent, however, refused the application by a letter dated 17th February 2023 reiterating its earlier substantive position without addressing the request for extension of time.

Undeterred, the appellant lodged an appeal before the Board challenging the respondent's decision on two grounds namely;

1. *That, the respondent erred by applying a subsidy for fuel that was already in stock as of 21st May, 2022.*
2. *That, the respondent erred by rejecting the appellant's request for a refund of unrecoverable import duties following the Minister's directive.*

The respondent, in response, lodged two preliminary objections: **first**, that the Board lacked jurisdiction within the meaning of section 230 (1) of the EACCMA; and **second**, that the appeal was premature in the absence of a review decision. The Board considered the objections and held that, under sections 230 (1) and 231 of the EACCMA, an appeal did not lie where no review decision has been rendered by the Commissioner.

On that footing, it upheld the objections and dismissed the appeal for want of jurisdiction.

Aggrieved, the appellant appealed to the Tribunal, challenging the Board's decision on four grounds. Its central contention was that the Board erred in holding that the respondent's decision of 17th February 2023 was not a decision on the merits and that the appellant was thereby denied the right to be heard. The Tribunal, however, was not persuaded. It upheld the Board's position and dismissed the appeal.

Still aggrieved, the appellant filed the present appeal on a single ground that:

> *That, the Tax Revenue Appeals Tribunal erred in law by denying the Appellant a right to be heard following the Respondent's foreclosure of the avenue to obtain a review decision under Section 230(1) of the East African Customs Management Act, 2004.*

At the hearing of the appeal, the appellant was represented by Mr. Alex Mianga, learned counsel, while the respondent enjoyed the services of Mr. Hospis Maswanyia, learned Principal State Attorney, assisted by Mr. Baraka Mwakyalabwe and Ms. Catherine Kiiza, both learned State Attorneys. The appellant's written submissions were countered by the

respondent's written submissions in reply both of which were adopted at the hearing.

In arguing the grounds of appeal, learned counsel for the appellant structured his submissions around three broad but interrelated issues, namely: whether the appellant's constitutional right to a fair hearing was violated; whether the respondent unlawfully foreclosed the statutory review mechanism provided under section 229 of the EACCMA; and whether the Board and the Tribunal correctly construed section 230 (1) of the EACCMA.

On the first issue, Mr. Mianga submitted that the right to be heard is a foundational principle of natural justice constitutionally entrenched under Article 13 (6) (a) of the Constitution of the United Republic of Tanzania, 1977. He argued that the respondent's letter dated 17th February 2023 which purported to respond to the appellant's application for extension of time, failed entirely to address the grounds upon which the extension was sought. According to counsel, by ignoring the application for extension of time and instead reverting to the substantive merits of the refund claim, the respondent effectively denied the appellant an opportunity to be heard on the only matter properly before him. This conduct, counsel contended, rendered the statutory right of review illusory and the subsequent right of appeal a nugatory. Reliance was

placed on **Salhina Mfaume & Others v. Tanzania Breweries Limited**, Civil Appeal No. 111 of 2017 [2021] TZCA 209, and **Mbeya-Rukwa Auto Parts & Transport Ltd v. Jestina George Mwakyoma** [2003] T. L. R 251.

The learned counsel for the appellant further submitted that the respondent's failure to determine the application for extension of time under section 229 (3) of the EACCMA amounted to an unlawful foreclosure of the appellant's statutory rights and a clear breach of procedural fairness. Citing **Shana General Store & Another v. Commissioner General, TRA**, Civil Appeal No. 369 of 2020 [2021] TZCA 643, counsel argued that where a statute confers discretion, such discretion must be exercised judiciously, transparently, and in conformity with the rules of natural justice.

On the construction of section 230 (1) of the EACCMA, Mr. Mianga criticized both the Board and the Tribunal for adopting a rigid and overly technical interpretation of the provision. He submitted that insufficient regard was paid to section 229 (5) of the EACCMA, which contemplates situations where a review decision may be deemed to have been made. Invoking the authority of **Attorney General v. Lohay Akonaay & Another** [1995] TLR 80, counsel urged the Court to adopt a purposive

and justice-oriented approach to statutory interpretation, particularly in fiscal matters where access to remedies is at stake.

In response, learned Principal State Attorney fully associated himself with the reasoning of the Tribunal. He submitted that, in the absence of a formal review decision, the Board was correctly divested of jurisdiction under section 230 (1) of the EACCMA. On the alleged violation of the right to be heard, he argued that the Tribunal properly found none, emphasizing that, it was incumbent upon the appellant to comply strictly with the statutory requirements governing review and appeal. According to Mr. Maswanyia, the respondent acted squarely within the powers conferred by section 229 of the EACCMA, and no evidence was placed before the Tribunal to demonstrate any denial of the appellant's right to be heard. To buttress his argument, he cited the cases of **Pan African Energy (T) Ltd v. Commissioner General, TRA**, Civil Appeal No. 121 of 2018 [2019] TZCA 170, and **Lakairo Investment Ltd v. Commissioner General, TRA**, Civil Appeal No. 452 of 2021 [2023] TZCA 18021.

It was his further contention that the respondent had rejected the appellant's application for extension of time a finding which the Board itself acknowledged at page 155 of the record of appeal. Consequently, upon such rejection, no right of appeal could accrue to the appellant under

section 230 (1) of the EACCMA and the Board was therefore precluded from entertaining the matter. The learned Principal State Attorney distinguished the authorities of **Salhina Mfaume** (supra) and **Shana General Store** (supra), relied upon by the appellant, contending that while the right to be heard is indeed fundamental, the burden lies on the party alleging its violation to demonstrate, by cogent evidence, that such violation occurred. In the end, he urged the Court to find the appeal devoid of merit and dismiss it with costs.

We have considered the rival submissions of learned counsel, and taken into account the oral and written arguments advanced for and against the appeal. In our considered view, the pivotal issue in this appeal is whether the Tribunal was correct in affirming the Board's finding that it lacked jurisdiction to entertain the appellant's appeal for want of a review decision under section 229 of the EACCMA.

Before resolving this question, it is apposite to delineate the matters that are common ground from those that remain contentious. It is not disputed that, **one**, the appellant's Statement of Appeal before the Board did not expressly raise any ground on extension of time, and **two**, the Commissioner's letter dated 17th February 2023 did not address, either expressly or by necessary implication the appellant's application for

extension of time, nor did it furnish reasons for granting or refusing the same.

The parties are, however, divided on three material questions: **one**, whether the letter of 17th February 2023 constituted a decision for purposes of sections 229 and 230 of the EACCMA; **two**, whether the appellant was denied the right to be heard; and t**hree**, whether the respondent was entitled to rely on substantive considerations pertaining to the refund claim in the circumstances where the matter before him was solely for extension of time.

The record of appeal reveals that the matter which was placed before the Commissioner was an application for extension of time. Yet, as the appellant's counsel correctly submitted, the Commissioner never addressed that matter at all. Instead of assessing whether reasonable cause was shown for the delay as stipulated under section 229 (3) of the EACCMA, the Commissioner strayed into the substantive merits of the refund claim namely; the contention that the tax relief applied only to fuel imported from 21st May 2022 onwards. With respect, nothing in the record supports such an approach. To place matters in its context, we find that it is necessary to reproduce the Commissioner's response:

> *" Re: Application for extension of time to file an application for customs review. Reference is made*

to the above subject. We acknowledge receipt of your unreferenced letter dated 17th January, 2023 in relation to your letter dated 15th November 2022. ***In reply thereof, we wish to inform you that our office had responded to your letter of 25th July 2022, having the same intention via our letter of 17th August 2022 with reference CA89/354/01/298. We still stand by the decision as stipulated in the mentioned letter.*** *Please be informed". [Emphasis added]*

A fair reading of this response reveals that the Commissioner did not determine the application for extension of time; he merely reaffirmed a prior substantive position. It is against this backdrop that the appellant framed his grounds of appeal before the Board which challenged the Commissioner's insistence on its earlier decision.

It is evident that the appellant's grounds of appeal reproduced earlier on articulated grievances stemming from the Commissioner's insistence on his earlier decision on tax refund claims. In our considered view, the appellant was driven to engage with the substantive issues only because the Commissioner had failed to indicate whether the application for extension of time had been granted or refused. The respondent's silence on the application for extension of time speaks louder than any subsequent argument. Had the Board dirceted its mind to the nature of

the application before the Commisisoner, it would inevitably have discerned that the appellant's application for extension of time was not determined by him. Instead the Commisisoner assumed jurisdictional issues which was not placed before him.

We further observe that, in disposing of the fourth ground of appeal, the Tribunal fell into the same misdirection by holding that it was the obligation of the applicant to observe all legal requirements and file a proper application for consideration and determination. With respect, as mentioned earlier, the conclusion overlooked a material and dispositive fact that the appellant lodged an application for extension of time under section 228 (3) of the EACCMA which the respondent rejected summarily and without according the appellant the right to be heard. Our reading of the decision of the Commisisoner, reveal that there is no indication either expressly or by necessary implication, that the appellant was ever heard on the application. Further, it cannot, by any stretch of interpretation, be regarded as a decision on review, for no application for review had been made. What the Commissioner did, by merely stating that he stood by his earlier decision, was an act undertaken without jurisdiction. In the result, the appellant was indeed not heard.

The law is settled that the right to be heard is fundamental, and any decision reached in violation of that right cannot stand. The

authorities of **Raza Somji v. Amina Salum** [1993] T.L.R. 208, **OTTU on Behalf of P.L. Asenga & Others v. Ami Tanzania Limited,** Civil Application No. 44 of 2012 [2013] TZCA 474, and **Abbas Sherally and Another v. Abdul S.H.M Fazalboy,** Civil Application No. 133 of 2002 [2005] TZCA 105, put this principle beyond peradventure. As was emphatically stated in **Abbas Sherally & Another** (supra): -

> *"The right to be heard before adverse action or decision is taken against such a party has been stated and emphasized by courts in numerous 18 decisions. That right is so basic that a decision which is arrived at in violation of it will be nullified even if the same decision would have been reached had the party been heard because the violation is considered to be a breach of natural justice".*

In the circumstances, we are satisfied that both the Board and the Tribunal misapprehended the legal effect of the Commissioner's failure to determine the application for extension of time. The appellant's right to be heard under section 229 (3) of the EACCMA was unjustly curtailed contrary to the principles of natural justice. Accordingly, we allow the appeal.

Consequently, in the exercise of the Court's revisional powers vested in it under section 6 (2) of the Appellate Jurisdiction Act, we hereby quash and set aside the judgments of the Board and the Tribunal. We further

remit the matter to the Commissioner to determine the appellant's application for extension of time in accordance with the law. Costs shall follow the event.

Order accordingly.

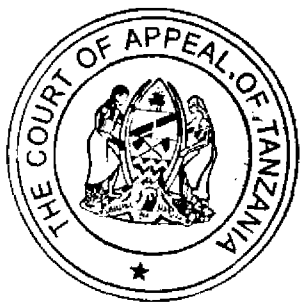
DATED at **DODOMA** this 16th day of December, 2025.

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

G. J. MDEMU
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

The Judgment delivered virtually this 17th day of December, 2025 in the presence of Mr. Alex Mianga, learned counsel for the Appellant, Mr. Richard Gida, learned State Attorney for the Respondent and Mr. Julias Kilimba, Court Clerk; is hereby certified as a true copy of the original.



R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL