

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. 200 OF 2025****THE REGISTERED TRUSTEES OF SOCIAL
ACTION TRUST FUND APPELLANT****VERSUS****THE COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY..... RESPONDENT****(Appeal from the Ruling of the Tax Revenue Appeals Tribunal,
at Dar es Salaam)****(Mutungi, Chairperson)****dated the 25th day of July, 2025****in****Tax Application No. 26 of 2025****.....****JUDGMENT OF THE COURT**8th & 12th December, 2025**MDEMU, J.A.:**

The appellant appeals against the refusal of the Tax Revenue Appeals Tribunal (the TRAT) to restore Application No. 17 of 2025 which was dismissed before it for non-appearance of the appellant. Initially, the appellant appealed unsuccessfully to the Tax Revenue Appeals Board (the TRAB) against the decision of the respondent demanding payment of Skills Development Levy (SDL) amounting to TZS 13,488,519.00 for the years 2009 to 2012. A further appeal to the TRAT was also fruitless.

The appellant thereafter invited the Court in her third appeal, which was unfortunately struck out on 24th February, 2025 for being incompetent following defects noted in the certificate of delay.

Following such state of affairs, the appellant moved the TRAT in Application No. 17 of 2025 for enlargement of time within which to lodge the notice of intention to appeal. In resisting the application, the respondent filed a counter affidavit accompanied by a notice of preliminary objection to the effect that:

"The present application is incompetent for containing facts which are not true as paragraph 5 of the affidavit of Ayoub Amos Mtafya cited the date of 30th June, 2024 instead of 30th June, 2022 reckoned by the Court of Appeal at page 4 and 5 of its ruling which struck out Civil Appeal No. 414 of 2022."

The application was then set for its first hearing on 8th April, 2025. It was, however, dismissed for non-appearance of the appellant. This led to the filing of Application No. 26 of 2025 before the TRAT aiming at restoring the dismissed application. The TRAT refused the restoration invitation on account that, the appellant did not demonstrate good cause for non-appearance. Dissatisfied further, the appellant is now before the Court armed with four grounds of appeal, but for reasons to follow soon,

we will only reproduce ground four of the appeal which reads as hereunder:

"In dismissing Application No. 26 of 2025, the honourable Tax Revenue Appeals Tribunal erred in law for failure to establish that the dismissal of application No. 17 of 2025 for non-appearance, was an error in view of the existence of the undetermined preliminary objection."

At the hearing of the appeal, Mr. Ayoub Mtafya, learned advocate, appeared to represent the appellant. On the respondent's side, Mr. Moses Kinabo, learned Principal State Attorney represented it assisted by Ms. Catherine Kiiza, learned State Attorney.

Parties filed their respective written submissions and amplified orally some key points during the hearing. Since we have reproduced the fourth ground of appeal, only the oral and written submissions of the parties in respect of the reproduced ground will be considered for and against the appeal.

Relying on both written and oral submissions in support of the appeal, Mr. Mtafya referred us to page 89 of the record of appeal contending that, the preliminary objection is still pending and as stated by this Court in **Thabit Ramadhan Maziku & Another v. Amina Khamis Tyela & Another** (Civil Appeal No. 98 of 2011) [2011] TZCA

223 (7 December, 2011; TanzLII), the said preliminary objection ought to have been disposed of first. He submitted on that account that, the TRAT acted without justification on 8th April, 2025 by dismissing the entire application for non-appearance while the raised preliminary objection was pending before it. Basing on this submission, Mr. Mtafya urged us to allow the appeal with costs.

Standing by the contents of the written submissions, Mr. Kinabo conceded on the pending preliminary objection but argued that, it neither precluded the respondent from praying for the dismissal of the application for non-appearance of the appellant nor denied the TRAT its statutory mandate to dismiss the application on that very ground in terms of rule 13 of the Tax Revenue Appeals Tribunal Rules, 2018 (the TRAT Rules). He thus urged us to dismiss the appeal with costs.

In rejoinder, besides reiterating what he submitted in chief, Mr. Mtafya added that, rule 13 of the TRAT Rules has nothing to do with the disposal of preliminary objection before going to the determination of the substance of the application. It was clear to him that, as long as the preliminary objection was yet to be determined, the prime role of the TRAT was to determine it first and not to shelve it and instead, assumed

the unprecedented procedure on the determination of the substantive part of the application.

On our part, we find it clear that, in terms of the law, the TRAT is mandated to dismiss an application or appeal for non-appearance of the applicant or appellant. Again, upon showing good cause, the TRAT is enjoined with discretionary power to readmit the dismissed application for non-appearance upon demonstration of sufficient and good cause on the part of the applicant. The question before us now is whether the TRAT exercised its discretion judiciously in rejecting the readmission of the application which was dismissed for non-appearance of the appellant in the pendency of the preliminary objection raised by the respondent.

As stated by counsel, which we also agree with, on 8th April, 2025 when the TRAT dismissed the appellant's application for extension of time to lodge the notice of appeal, there was a pending preliminary objection in the same tribunal raised by the respondent. However, they part ways on one aspect. It is that, whereas the counsel for the appellant stresses that the TRAT would have resolved the preliminary objection first, the respondent's counsel argued that, the pending preliminary objection neither precluded the respondent from inviting the TRAT to dismiss the application for non-appearance nor restricts the

TRAT from dismissing the said application for non-appearance. With much respect to the learned Principal State Attorney, that interpretation is not borne by a well-established principle by this Court on the role of the court faced with a preliminary objection in the proceedings before it.

In the case of **Thabit Ramadhan Maziku** (supra) cited to us by Mr. Mtafya, a preliminary objection must be determined first before a court proceeds to determine the substance of the matter before it. It held:

"The law is well established that a Court seized with a preliminary objection is first required to determine that objection before going into the merits or the substance of the case or application before it."

This being the legal position, we are not ready to side with Mr. Kinabo's line of argument. Unlike him, the pendency of a preliminary objection in a suit, an appeal or an application, precludes the court from determining the merits of the matter before it, save for when and where the said preliminary objection is determined to finality. In terms of the forestated principles in **Thabit Ramadhan Maziku** (supra), it all meant that, what was before the TRAT in the instant matter for hearing was the preliminary objection and not the substantive application. Therefore, even if the appellant was present, the role of the TRAT would have been

to determine the preliminary objection and not the substantive application.

In fact, the respondent was not procedurally mandated to request the TRAT to dismiss the application for non-appearance of the appellant while aware that the preliminary objection raised by her was yet to be determined. The best the respondent could have prayed before the TRAT was to proceed with determination of the preliminary objection in the absence of the appellant. This was not done. It thus takes us to the holding that, a court of law, by all means and standards, cannot dismiss a matter for non-appearance of a party, the appellant in the instant appeal, if the matter before it was not scheduled for hearing.

It was even worse in the case at hand that, much as the application was scheduled for the disposition of the preliminary objection, it was for the first time the matter was placed before the TRAT. We are aware of the well-established principles that justice delayed is justice denied, so do the principle that, justice hurried is justice buried. Well, in the manner the matter was handled, we think, much as speed is good, justice is better. This should have been comprehended by the TRAT. That concludes our findings in ground four of the appeal, which we allow.

In light of the foregoing, the appeal before us is accordingly allowed with costs. The dismissal order is thus set aside. The matter is henceforth remitted to the TRAT for the determination of the pending preliminary objection before it. Order accordingly.

DATED at **DAR ES SALAAM** this 11th 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 this 12th day of December, 2025 in the presence of Ms. Digna Jumanne holding brief for Mr. Ayoub Mtafya, learned counsel for the appellant and Mr. Moses Kinabo, learned Principal State Attorney for the respondent, and Ms. Stella Mlaponi, Court Clerk, is hereby certified as a true copy of the original.

[Signature]
R. W. CHAUNGU
DEPUTY REGISTRAR
COURT OF APPEAL

