IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: GALEBA, J.A., MAIGE, J.A., And MASOUD, J.A.)

CIVIL APPEAL NO. 453 OF 2023

SERENGETI BREWERIES LIMITED .....APPELLANT

VERSUS

THE COMMISSIONER GENERAL, TANZANIA REVENUE AUTHORITY .....RESPONDENT

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

(Haji, VC)

dated the 23rd day of March, 2023

in

Tax Appeal No. 9 of 2021

.....

JUDGMENT OF THE COURT

23rd June & 3rd July, 2025

GALEBA, J.A.:

Serengeti Breweries Limited, the appellant in this appeal, is one of the business enterprises established to run breweries and produce alcoholic beverages in Tanzania. On the other hand, the Commissioner General of the Tanzania Revenue Authority, the respondent, is a statutory revenue collection authority established under the Tanzania Revenue Authority Act, whose one of the objectives is to administer, and give effect to the revenue laws in the country. In the year 2014, the respondent was

already one of the companies registered by the respondent, for purposes of Value Added Tax (VAT) under the Value Added Tax Act (the VAT Act).

It transpired that in the course of her usual operations, the respondent carried out a tax audit in the business affairs of the appellant for the years of income 2014 and 2015, and found out that receipts generated from Electronic Fiscal Devices (EFDs) revealed a significant discrepancy in the appellant's revenue collected, compared to the amount declared in her VAT returns. The respondent found out that, according to inhouse sales records, the unpaid tax for both years of income, was TZS. 5,474,272,964.85.

The respondent consulted the appellant on this aspect of the audit. The appellant's explanation was that, the discrepancy was a result of incentives which were being awarded to her distributors who attained certain sale targets, and those who were able to serve certain geographical coverages in distribution. According to the appellant, in giving the said incentives, she created and issued credit notes, recognized under regulation 11 of the Value Added Tax (General) Regulations, 1998 (the

VAT regulations), hence the justification for nonpayment of the above quantum of the tax revenue.

To the respondent on the other hand, awarding any incentives to the appellant's distributors was the latter's own corporate marketing or promotional initiative, which had nothing to do with her VAT payment obligations. The respondent thus dismissed the explanation, and issued an additional tax assessment, demanding payment of the tax revenue in the above amount.

The appellant successfully challenged the decision of the respondent before the Tax Revenue Appeals Board (the Board). Dissatisfied with that decision, the respondent lodged Tax Appeal No. 9 of 2021 before the Tax Revenue Appeals Tribunal (the Tribunal), to challenge it. In its judgment, the Tribunal set aside the decision of the Board, reasoning that the credit notes issued under regulation 11 of the VAT regulations, met none of the conditions listed under sub regulation (1) of that regulation. This appeal is essentially challenging that reasoning of the Tribunal, and is based on the following five grounds of appeal:

"1. That the Tax Revenue Appeals Tribunal erred in law in holding that the Value Added Tax assessment for 2014 and 2015 years of income issued by the Respondent under section 43 of the Value Added Tax Act, 1997, is correct in law.

2. *That the Tax Revenue Appeals Tribunal's interpretation of regulation 11 of the Value Added Tax (General) Regulations, 1998 on the facts and the evidence on record is misconceived.*

3. *That the Tax Revenue Appeals Tribunal erred in law by upholding the Value Added Tax assessment for 2014 and 2015 years of income issued by the Respondent based on the Respondent's contention that the credit notes issued by the Appellant reduced the value of the supplies, whereas the Tribunal found that there was no reduction of value of the supplies by the Appellant.*

4. *There is misapprehension of evidence by the Tax Revenue Appeals Tribunal on how the trade incentives by the Appellant work and on the Appellant's accounting for Value Added Tax thereby causing miscarriage of justice.*

5. *That the Tax Revenue Appeals Tribunal erred in law by failing to consider and give weight to the*

Respondent's witnesses admission that there is no loss of government revenue through the Appellant's distribution strategy of issuing incentives to its distributors and the Respondent's submission that the Appellant's distribution strategy issuing incentives to its distributors was not meant to reduce Value Added Tax payable."

In arguing the appeal, the parties filed written submissions, and at the hearing, Messrs. Alan Nlawi Kileo and Norbert Mwaifwani, both learned advocates appeared for the appellant, whereas teaming up for the respondent, were Mses. Juliana Ezekiel and Grace Makoa, both learned Principal State Attorneys, assisted by Messrs. Colman Makoi and Andrew Kombo, both learned State Attorneys.

It was Mr. Mwaifwani who started off his oral submissions challenging the Tribunal's holding that issuance of the credit notes by the appellant to her distributors was offensive of regulation 11 of the VAT regulations. The learned advocate made a couple of points all complementing the appellant's written submissions, and concluded by praying that we allow the appeal by reversing the decision of the Tribunal.

However, because of what transpired, as it will soon be noted, we will consider in details the arguments of the appellant, soon after we will have determined what we consider to be preliminary points, which were raised by Ms. Ezekiel, when she rose to reply to Mr. Mwaifwani's oral arguments. In that respect, the learned Principal State Attorney challenged this Court's jurisdiction to determined grounds three, four and five of the appellant's appeal, because the same were raising factual complaints, thus defeating the real intention of section 25 (2) of the Tax Revenue Appeals Act (the TRAA). In elaborating, she submitted that, all the three grounds were calling upon this Court to review the evidence tendered before the Board and evaluate it and come up with its own findings. She contended that, the Court of Appeal has no mandate to analyze evidence in tax appeals like the one at hand. The learned Principal State Attorney referred us to this Court's decision in **Atlas Copco Tanzania Ltd v. the Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 167 of 2019 (unreported). By way of conclusion, she beseeched us to refrain from determining the three grounds, because this Court is not clothed with jurisdiction to do so.

In rejoinder, we did not hear Mr. Mwaifwani raising any contention to the contrary. Thus, we took it that, he either found sense in the submission of his counterpart, or he just opted to leave the matter to the Court to determine whether it had jurisdiction, or it had not, the obligation we now undertake, ground by ground.

The complaint in the third ground of appeal, is that the Tribunal erred in law for upholding the respondent's contention, that the credit notes that were issued reduced the value of the business supplies, whereas the Tribunal found that there was no such value reduction. Our understanding of this complaint is that, we are called upon to review the credit notes, reevaluate them and find out whether there was any reduction in the value of the supplies to which they related, and make a decision based on the finding that we would come up with.

As for the fourth ground of appeal, to resolve it, it would be imperative for us, to thoroughly study an inhouse document of the appellant called the Marketing and Trade Spend (exhibit A8 at page 235 of the record of appeal), and make sense out of it, in terms of how its application affected VAT, if it did. This document contains formulars,

criteria and mechanisms of how trade incentives were being earned by distributors and handed out to them by the appellant. This is the document that the appellant was complaining that the Tribunal misapprehended, so we have to read and apprehend it, and make a decision on whether implementation of the strategies detailed in it, would result in any tax implication.

The complaint in ground five is in tandem with that in the fourth ground, because in it, the complaint is that the Tribunal was not justified to hold that the giving of incentives, which was a function of exhibit A8, and issuance of credit notes, amounted to reduction of the value of the business supplies in question.

Admittedly, courts and tribunals, being manned not by angels or all-knowing creatures, but normal human beings, in the course of justice administration, there are always chances of committing errors. The broad categories of the errors in court practice are primarily, two; namely, errors of law, and those of fact. The general rule is that, an aggrieved party by any errors in any decision, has a right of appeal. Nonetheless, in this jurisdiction and in many others, the right of appeal is not illimitable,

particularly when it comes to accessing the apex court, like this one. In tax matters, not all grievances come to the Court of Appeal in Tanzania. Only matters involving questions of law are appealable to this Court, and the relevant provision of the law is section 25 (2) of the TRAA, which provides that:

> *"Appeal to the Court of Appeal shall lie on matters involving questions of law only, and the provisions of the Appellate Jurisdiction Act and the rules made thereunder, shall apply mutatis mutandis to appeals from the decision of the Tribunal."*

Strictly therefore, as a matter of law not of choice, this Court has no jurisdiction to entertain grounds of appeal raising factual complaints. Presently, this Court has interpreted matters of law referred to at the above section as; **one**, issues of interpretation of the Constitution of the United Republic of Tanzania (the Constitution), the laws of Tanzania or relevant legal doctrines; **two,** the manner the Tribunal applies a relevant provision of the Constitution, or of the statute or a relevant legal doctrine, and; **three,** a question on a decision reached consequent to a complete failure to consider evidence, or its complete misconception culminating into a plain and clear failure of justice. See this Court's decisions in **Q-Bar**

Limited v. the Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 163 of 2021; **Jovet Tanzania Limited v. the Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 217 of 2019; and **Insignia Limited v. the Commissioner General, Tanzania Revenue Authority,** Civil Appeal No. 14 of 2007 (all unreported).

On the same subject, we wish to stress four more points; **one**, a complaint that evaluation of the evidence by the Board or Tribunal was improper, is not a question of law. **Two**, in view of section 25 (2) of the TRAA, this Court has no jurisdiction to determine a complaint raising a point of mixed both law and fact. The complaint must be a pure point or question of law. **Three**, the fact that a point raised is a point of law, must be apparent on the face of the memorandum of appeal, see this Court's decision in **Atlas Copco Tanzania Ltd** (supra). In other words, if the Court has to ask itself whether the point is the one of law or fact, or if determination of the nature of the complaint in order to discover whether it is a point of law or fact, has to be preceded by a long detailed process of reasoning and detailed arguments and counter arguments, the Court has no jurisdiction to determine such a point; it is not a pure point of law

under section 25 (2) of the TRAA. And **four**, to be a question of law, the complaint must not be one that invites the Court to re-open factual issues in order to support the appeal.

In short, the framers of section 25 (2) of the TRAA had nothing like evidence or facts in mind, that is why they even never mention the word fact or evidence in that section, implying that, tax revenue accounting and practice being a specialized discipline and a technical area, disputes of practical management, and administration in terms of paper work, computations and compliances, are to be sorted out at the Board level and if one is not satisfied, then has a chance to challenge the Board's decision at the Tribunal, where all issues to do with documentation and factual disputes have to end by all means. So, section 25 (2) of the TRAA, envisages that practical and factual aspects of the disputes must have been exhaustively delt with by experts in taxation and commerce either at the Board, or at the Tribunal.

Now back to the three grounds of appeal. The complaints in those grounds, we already observed, call for our reevaluation of the credit notes, exhibit A12 and exhibit A8. However, a thorough scrutiny of the record of

appeal, attests to the fact that, what this Court is called upon to do, boarders an impossibility, because there are only two copies of credit notes on record; the one at page 251 (exhibit A12), and another at page 314 both of the record of appeal. On a separate inquiry, Mr. Kileo had told us that the credit note at page 314 had nothing to do with this case, whereas the first one, that is A12 was included in the record of appeal, just as a sample, implying that there were many other credit notes relevant to the tax claim, which are not included in the record of appeal. To cut the long story short, although the three grounds of appeal are calling for reevaluation of the evidence, the evidence itself we are called upon to reevaluate, is not on record. That is the first huddle standing in our way, even if the law was to permit determination of those grounds of appeal.

The second impediment that we are unable to surmount, as submitted by Ms. Ezekiel, is the law we have just quoted above. None of the three grounds complained of, raise a pure question of law as provided under section 25 (2) of the TRAA. They raise matters which are all within the mandate of the Board or the Tribunal. In the circumstances, this Court

has no jurisdiction to determine grounds three, four and five of this appeal. We therefore refrain from resolving them.

The above observation, leaves on record grounds one and two, which we will now consider in view of the submissions of counsel, starting with ground two.

The complaint in the second ground of appeal is that, the Tribunal misinterpreted regulation 11 (1) (c) of the VAT regulations. The appropriate point to start from, is the consideration of the provisions of the contested regulation, which provide:

> *"**11. Tax credit notes***
>
> *(1) A registered taxable person who has issued a tax invoice in respect of a taxable supply shall, unless the Commissioner otherwise allows, issue a credit note if—*
>
> *(a) the supply is cancelled*
> *(b) the goods are returned to the registered taxable person.*
> *(c) **the value of the supply is reduced.***
> *(d) N/A"*

The above regulation provides for the circumstances in which a lawful credit note may be issued by a supplier. The relevant finding of the Tribunal on the lawfulness of the credit notes in this matter, may be traced from page 553 to 554 of the record of appeal, where it observed and finally concluded as follows:

> *"From our side, we learned that the arrangement between the respondent and its distributors is that, once the distributors sell the goods beyond a certain target, they get to purchase the subsequent consignment of the goods from the supplier at the price which is equivalent to [the value of] the incentive following [conversion] into monetary terms....To our understanding, this arrangement does not in itself reduce the value of the goods in question. This can be justified due to the following reasons.* ***One****, the distributor gets the incentive after the goods have been sold to the customers.* ***Two****, even if one was to consider the goods obtained by the distributor by utilizing the credit note, it is our view that the only difference is that the distributor does not pay cash of the goods, but obtains them on monetary terms calculated to be equivalent to the incentives.*

Considering the above scenario, we come to agree with the argument of the appellant that, ***from the said arrangement, there is no reduction of value of the supply, hence the issuance of the credit notes by the respondent [became] unjustifiable****. ...* ***In this regard, we have taken the view that the credit notes issued by the respondent were issued in contravention of regulation 11 (1) (c) of the VAT (General) Regulations, 2008. It implies therefore that, the issued credit notes did not meet any of the conditions set out in the said regulation.*** *Consequently, the act of the respondent to issue the credit notes has no legal back up, hence was invalid."*

[Emphasis added]

A critical analysis of the second ground of appeal and the submissions of the appellant's counsel to support it, demonstrate that the above quoted part of the Tribunal's decision is what the appellant is aggrieved with. Our task therefore is to investigate and find out whether in observing as above, the Tribunal had no evidence upon which to base that finding. The issue is therefore whether the Tribunal's holding that

there was no reduction of the value in the relevant taxable supplies was founded on evidence or not.

The summary of the appellant's contention was that, there was ample evidence including from the respondent's own witness, particularly from one Edmund Kawamala (RW1), that there was a reduction in value of the supplies, but the Tribunal in the above quotation held the other way round, that there was no evidence of reduction of the supplies in value, thereby misinterpreting regulation 11 of the VAT regulations. The appellant's other point was that, as there was no evidence that there was any loss in tax revenue, the Tribunal erred to hold that the credit notes were illegally issued. Of course, the appellant also relied on a certain decision of the Tribunal between **Tanga Cement Company Limited v. the Commissioner General, Tanzania Revenue Authority**, Tax Appeal No. 12 of 2012 (unreported). We do not consider that decision material to us in this matter because; **one**, this Court is not bound by any decision of any court, body or tribunal inferior to it, including the Tribunal, and; **two**, assuming that this Court was to adopt the reasoning in that decision, still the circumstances in that case and in this one, do not match. In that case, distributors were not billing Tanga Cement, they would take

cement bags, in lieu of their entitlements, but in this case, distributors were billing and issuing invoices and charging VAT for the service they rendered to the appellant. In this case, distributors were entitled to payment in money terms and the way they would spend it, was upon them. This implied that the supply of goods to the distributors by the appellant and the supply of the services to the appellant by the distributors were completely different transactions for completely different objects of the trade. The appellant was supplying alcoholic drinks to the distributors, and the distributors were supplying promotional and marketing services to the appellant. In each transaction, a supplier billed the consumer of their service.

In his submission Mr. Kileo referred us to page 64 of the record of appeal referring us to the response of the respondent's own witness. RW1, at that page 64 of the record of appeal, when responding to several questions stated:

> *"Appellant paid incentives to distributors. I recorded it.* ***Reduction of liability can involve payment or to accept lesser amount. The value of supply will go down.*** *We audited the appellant. I did not*

see any from Machare. Appellant did not use Machare invoice to claim input tax. I am familiar with [the Appellant's] business."

[Emphasis added]

Our understanding of the bold text of the quoted parts of the respondent's evidence above, is that it does not absolutely suggest that the witness was responding to hypothetical questions or to questions relating to the transaction in question. It is different with the other answers, which show that questions asked directly related to the case. So, we do not agree that the respondent's witness agreed that the value of the supply was reduced. In fact, at page 63 of the record of appeal the same witness stated:

*"**There was no reduction of the supply under that arrangement** because the appellant was deducting the amount payable to the distributor from the total [sales]. Appellant paid incentives to distributors. I recorded it."*

[Emphasis added]

The same is reflected in the letter dated 2nd February, 2018 which was admitted as exhibit P7 and contained at page 322 of the record of appeal, where the respondent stated:

"The option to offset debts or deposit the money received to get fresh orders ***cannot reduce the value of the supply which is the purpose of issuing the credit notes****....."*

[Emphasis added]

There was therefore no evidence that there was any reduction of the supply to justify issuance of the credit notes.

Before concluding this discussion on the second ground of appeal, the appellant's counsel also stated that there was no tax that was not paid, and if the appellant will lose this appeal, it will mean subjecting her to being taxed twice. This complaint falls short of sincerity, because it amounts to one pretending not to know how the dispute started. This matter, started with the respondent's tax audit which revealed that the unpaid tax for the years of income 2014 and 2015, was TZS. 5,474,272,964.85. The appellant's explanation was that she issued credit notes through which incentives were paid which was equivalent the tax claimed. We fail therefore to understand how the appellant is likely to pay the tax twice. The issue of being charged tax twice would have arisen if there was evidence that the appellant paid the above tax at some point, which was not the case. In this case, the appellant's submission has been,

that she did not pay the tax because, the money went into payment for the incentives. In other words, we are unable to fault the Tribunal on how it interpreted regulation 11 (1) (c) of the VAT regulations. That said, the second ground of appeal fails, we thus dismiss it.

Finally, is the first ground of appeal. This ground was a complaint that the respondent had no mandate of the law to impose the tax under section 43 of the VAT Act. The appellant's submission was that the respondent imposed the tax based on perceived risk of revenue loss, because there was no proof that there was any tax due. This argument of the appellant is defeated by the very reason for the existence of the dispute between the parties. The origin of the case, was the findings of the tax audit which discovered an unpaid tax claim of TZS. 5,474,272,964.85. The appellant disputed the liability stating that the amount was used to give incentives in line with her marketing strategy document (exhibit P8), by issuance of credit notes. In resolving ground two above, we upheld the Tribunals position that issuance of the credit notes, ought not to have affected any of the appellant's VAT obligations or liabilities. In our view therefore, the respondent was justified in law, to charge the tax, which was the difference between the tax amount as per

the sales records compared with that in the VAT returns. Thus, the first ground of appeal also fails.

In summary, this appeal has no merit, we thus dismiss it with costs.

DATED at **DODOMA**, this 3rd day of July, 2025.

Z. N. GALEBA
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

B. S. MASOUD
JUSTICE OF APPEAL

The Judgment delivered this 3rd day of July, 2025 in the presence of Mr. Mahamoud Mwangia, learned counsel for the Appellant and Mr. John Mwacha, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.

A. S. CHUGULU
DEPUTY REGISTRAR
COURT OF APPEAL