IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA

(CORAM: KEREFU, J.A., MDEMU, J.A. AND MANSOOR, J.A.)

CIVIL APPEAL NO. 160 OF 2025

TANGA CEMENT PUBLIC LIMITED COMPANY.....APPELLANT

VERSUS

COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY .....RESPONDENT
(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal at Dar es Salaam)

(Ngimilanga, Vice Chairperson.)

Dated the 14th day of March, 2025
in
Tax Appeal No. 67 of 2024

JUDGMENT OF THE COURT

5th & 12th November, 2025

KEREFU, J.A.:

The main issue of controversy between the parties to this appeal is the interpretation of Article 7 of the Double Taxation Agreement (the DTA) entered between the United Republic of Tanzania (the URT) and the Republic of South Africa read together with section 128 (1) of the Income Tax Act, Cap. 332 of the Revised Laws (the ITA). Thus, the appellant, Tanga Cement Public Limited Company, is challenging the decision of the Tax Revenue Appeals Tribunal (the Tribunal) in Tax Appeal No. 67 of 2024 which was decided in favour of the Commissioner General, Tanzania Revenue Authority (the TRA), the respondent herein.

The material background facts obtained from the record of appeal are straight forward and mostly not in dispute. They go thus: The appellant is a company incorporated in Tanzania whose primary activities include manufacturing, distribution and sale of cement and clinker. The respondent, on the other hand, is the head of the Tanzania Revenue Authority being a Government entity vested with powers of collecting revenue and related matters in the URT.

That, sometimes in 2022, the respondent in exercising her mandate conducted an audit assessment on the tax affairs of the appellant's income for the years 2019 and 2020. The respondent found that the appellant had not paid withholding tax on the service fees in respect of services rendered to her by South African resident service providers (the entities) and the interest paid to South African Government Pensions Fund (the SAGPF). The respondent also found that there was late payment of the said taxes in the said years of income. Subsequently, on 24th May, 2022, the respondent issued two notices of Withholding Tax Certificates Nos. 554581037 and 554581177 demanding withholding tax on non-residents service fees and interest to the tune of TZS 442,986,679.19 and TZS 3,291,766,800.34 for the years 2019 and 2020, respectively.

On 30th June, 2022, the appellant filed an objection on the said notices on the grounds that, (i) the respondent incorrectly subjected withholding tax on service fees in respect of services rendered to the appellant by the South African entities. That, such fees are not supposed to be subjected to withholding tax as per Article 7 of the DTA read together with section 128 (1) of the ITA; and (ii) that, the respondent incorrectly subjected withholding tax on interest paid to SAGPF while the appellant was granted status of a strategic investor by the URT under section 19 of the Tanzania Investment Act (the TIA) where the Government granted exemption of withholding tax on interest on the loan provided by the SAGPF. In addition, the appellant objected the interest assessed for the late payment of withholding tax.

The respondent contended that, notwithstanding the DTA, such payment was liable to deduction because it did not constitute part of business profits of the foreign payee service provider falling within the scope of Article 7 of the DTA but instead, and pursuant to Article 20 of the DTA, they are gross payments of service fees under other incomes. Therefore, the respondent insisted that the issue of payment of service fees to South African entities has nothing to do with business profits but payments for the work performed by the said entities which has its source in the URT, hence withholding tax is applicable.

With regards to interest, the respondent contended that general statutory exemptions are provided under the 2nd Schedule of the ITA. That, the exemption under section 82 (2) (e) of the ITA does not apply, in the circumstances, as the payment was not paid to the bank but a related party and that there was no Government Gazette issued in that respect.

Dissatisfied, the appellant lodged two statements of appeal in the Board which were later consolidated into Income Tax Appeal Case Nos. 79 and 81 of 2023. The appellant's grounds of appeal before the Board in each appeal were:

(1) That, the respondent's decision to impose withholding tax on payments made for service fees rendered by South African entities is wrong in law and in fact;

(2) That, the respondent's decision to impose withholding tax on interest payable to the SAGPF is wrong in law and in fact; and

(3) The respondent decision to impose interest for late payment of tax is wrong in law and in fact.

The respondent disputed the said grounds and the Board determined the appeal based on parties' submissions on the following three issues: -

(1) Whether the respondent's decision to impose withholding tax on payments made for service rendered by South African entities is correct in law and fact;

(2) *Whether the respondent's decision to impose withholding tax on interest payable to the SAGPF is correct in law and fact;*

(3) *Whether the respondent's decision to impose interest for late payment of tax is correct in law and fact; and*

(4) *To what reliefs are the parties entitled.*

Having considered parties' submissions on the above issues, the Board decided the appeal in favour of the respondent. Specifically, the Board, at pages 537 to 541 of the record of appeal, while relying on the decisions of this Court in **Kilombero Sugar Company Limited v. Commissioner General Tanzania Revenue Authority,** Civil Appeal No. 218 of 2019 [2021] TZCA 213 (**Kilombero I**) and **Mlimani Holdings Limited v. Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 265 of 2021 [2022] TZCA 437 (**Mlimani I**) concluded that:

> *"Therefore, it is now settled law that, service fee by a South African entity for provision of professional services to a Tanzanian entity do not form part of business profits provided under Article 7 of the DTA which is not taxable in Tanzania but fall under Articles 20 and 21 of the DTA and thus subject to withholding tax in terms of section 83 (1) (b) of the ITA 2004...Therefore, the respondent's decision to impose withholding tax on payment made for service*

rendered by South African entities is correct in law and fact."

Undaunted, the appellant appealed to the Tribunal vide Tax Appeal No. 67 of 2024. The Tribunal, like the Board, by applying the doctrine of *stare decisis* and relying on the above decisions of the Court found that the Board's decision was consistent with the established principles of Tanzanian tax law and the provisions of the DTA between the URT and South Africa. After making those observations, the Tribunal upheld the decision of the Board and also dismissed the appellant's appeal.

Undeterred, the appellant has preferred the current appeal to the Court with three grounds of complaint:

1) *That, the Tribunal erred in iaw by failing to interpret the provisions of sections 8 (1), (2) (a) and 128 (1) of the ITA and Article 7 of the DTA between Tanzania and South Africa and erroneously concluded that service fees do not form part of the business profits hence subject to withholding tax;*
2) *That, the Tribunal erred in law in failing to interpret the provisions of section 19 of the TIA read together wlth section 82 (2) (e) and section 10 (1) and (3) of the ITA and wrongly held that the appellant's exemption of tax incentives is invalid due to the absence of a Government Notice; and*
3) *That, the Tribunal erred in law in failing to interpret the provisions of section 76 of the Tax Administration Act and the*

evidence on record in concluding that the respondent was correct to impose interest for late payment of tax.

At the hearing of the appeal, Mr. Wilson Kamugisha Mukebezi, learned counsel represented the appellant whereas the respondent was represented by Ms. Grace Makoa and Carlos Mbingamao, learned Principal State Attorneys assisted by Messrs. Colman Makoi and Trofmo Tarimo, both learned State Attorneys. It is noteworthy that, the learned counsel for the parties had filed their respective written submissions in compliance with Rule 106 (1) and (8) of the Tanzania Court of Appeal Rules, 2009. Therefore, during their oral submissions, they adopted their written submissions and by way of emphasis, highlighted some of the points which they considered to be of vital importance in support of their positions. We appreciate the learned counsel for the parties for their submissions which have clearly elaborated, at length all grounds of appeal and have been instrumental in composition of this judgment. However, for the purposes of our determination, we will mainly summarize and consider the relevant part of the same.

In his submission, after having made a brief reference to the factual background of the parties' dispute, Mr. Mukebezi, on the first ground, faulted the Tribunal for failure to properly interpret the provisions of sections 8 (1), (2) (a) and 128 (1) of the ITA and Article 7 of the DTA

between the URT and South Africa and erroneously concluded that service fees paid by the appellant to the South African entities do not form part of business profits to warrant invocation of Article 7 of the DTA, hence subject to withholding tax. According to him, the said fees form part of business profits in terms of Articles 3 (2) and 7 of the DTA read together with section 8 (2) (a) of the ITA because, **one**, section 128 (1) of the ITA gives effect to the DTA to override the provisions of the ITA; **two**, the interpretation of the DTA treaty is in accordance with the Vienna Convention on Law of Treaties 1969 (the VCLT) under the principle of '*pacta sunt servanda*' which means 'agreements must be kept.' That, Article 31 of the VCLT requires the terms in the Treaty to be given ordinary meaning in their context; the purpose of treaty being avoidance of double taxation and prevention of fiscal evasion in respect to taxes on income; **three**, the interpretation of Article 7 of the DTA as opposed to Article 20 exempts taxation on business profits unless the profits are attributed to permanent establishment. According to him, the profit/income could only be taxable in Tanzania if South African entities had permanent establishment in Tanzania. The learned counsel impressed upon the Court by referring to Article 71 of the OECD Commentary that the DTA traces its origin to the OECD Model Tax Convention and UN Model Treaties and thus their interpretation of the

relevant articles by the courts in other jurisdiction has based on the Model Conventions and Commentaries having a persuasive guidance to the interpretation of the relevant articles in the DTA. It was his argument that a proper interpretation of the DTA should have followed the approach taken in other jurisdictions which have interpreted similar double taxation agreements.

Therefore, and being mindful of the decisions in **Kilombero I** (supra) and **Mlimani I** (supra), Mr. Mukebezi urged us to consider departing from them because the interpretation of Article 7 of the DTA in the said decisions did not take into account the object and purpose of the VCLT as the Court relied on domestic law. He thus beseeched us to rely on **Kilombero Sugar Company Limited v. Commissioner General, Tanzania Revenue Authority,** Civil Appeal No. 443 of 2020 [2022] TZCA 636 **(Kilombero II**) as, in that appeal the Court held that the service fees paid to Zambia by Kilombero Sugar Company Limited under Article IV of the Double Taxation Agreement, which is in *parimateria* with Article 7 of the DTA, were business profits not subject to withholding tax. It was his further argument that, since there are conflicting decisions, we should rely on the most recent one (**Kilombero II** supra). He thus urged us to allow the first ground.

On the second ground, Mr. Mukebezi faulted the Tribunal in holding that the respondent was correct in imposing withholding tax on interest payable to SAGPF. He contended that since the appellant under the performance agreement was granted, under section 19 of the TIA, a status of a strategic investor which was given various incentives, the same could not have been withdrawn before the completion of the agreement. To buttress his proposition, he cited the case of **Commissioner General, Tanzania Revenue Authority v. CRJE Estate Limited**, Civil Appeal No. 370 of 2021 [2022] TZCA 614. He then insisted that the appellant's exemption granted through the tax incentives cannot be invalid in the absence of the Government Notice issued at the discretion of the Minister under sections 10 (1) (3) and 82 (2) (e) of the ITA, as the word used in section 10 (1) is '*may*,' which connotes that, the same is not mandatory. Therefore, according to him, the exemption granted to the appellant is automatic. Finally, and based on his submission, he prayed for the appeal to be allowed with costs and the judgment and decree of the Tribunal be quashed and set aside.

In response, Ms. Makoa who addressed the Court on behalf of her colleagues, declared the respondent's stance of not supporting the appeal. Starting with the first ground, she strongly disputed Mr. Mukebezi's submission by arguing that, the decision reached by the

Tribunal is correct in law as it accords with the binding interpretation of provisions of the DTA in the decisions of the Court in **Kilombero I** (supra) and **Mlimani I** (supra). She further challenged the submission made by Mr. Mukebezi that the decisions in the above two cases are in conflict with the decision in **Kilombero II**. It was her argument that, there is no conflict in the said decisions, as the same are distinguishable. That, in **Kilombero II**, the Court considered Article IV of the Double Taxation Agreement between the URT and Zambia which is different from Article 7 of the DTA which was the subject matter in **Kilombero I** and also in this appeal. She therefore insisted that, there was no any conflict as despite the fact that the Court in **Kilombero II** observed that Article IV of the DTA was applicable to service fee which was part of commercial profits, but the very same Court, finally concluded that the service fee paid to the Zambian entity was subject to withholding tax.

However, in the alternative, and upon further reflection, Ms. Makoa argued that, if the Court will find that there is a conflict in the said decisions, should take into account that the appellant has wrongly moved the Court for failure to comply with the procedures indicated under rule 4A of the Court of Appeal Rules, 2009.

As regards the VCLT, although, Ms. Makoa acknowledged that, Article 31 of the VCLT requires the international treaties to be interpreted

in good faith and in accordance with ordinary meaning of the respective treaty, she argued that, the same was properly adhered to by the Tribunal which finally found that Article 7 of the DTA requires contracting states not to tax the profit of enterprises that do not have permanent establishment. She argued further that, Article 7 of the DTA is applicable only where actual profit has been made by an enterprise. As service fee is not mentioned in Article 7 of the DTA, it falls under the category of other incomes in terms of Article 20 of the DTA. She added that, since Article 128 (1) of the ITA gives overriding effect to the DTA where there is inconsistence between the ITA and the international treaty and as there was no inconsistence in the matter at hand, the argument by Mr. Mukebezi is misconceived. In conclusion, and while emphasizing on the applicability of the doctrine of *stare decisis*, Ms. Makoa argued that, both, the Board and the Tribunal were correct to rely on the decisions of the Court in **Kilombero I** (supra) and **Mlimani I** (supra) together with other similar decisions of the Court and found that, service fees by a South African entity for provision of professional services to a Tanzanian entity do not form part of business profits provided under Article 7 of the DTA, but fall under Articles 20 and 21 of the DTA read together with section 83 of the ITA. She thus urged us to find that the first ground of appeal is devoid of merit.

On the second ground, Ms. Makoa also blamed her learned friend for, again, attempting to persuade the Court to improperly depart from its binding position in **Statoil Tanzania v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 372 of 2020 [2022] 651 and **Mlimani Holdings Limited v. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 505 of 2022 [2025] TZCA 339 (Mlimani II)**, where the Court while considering the applicability of the provisions of section 82 (1) (2) (e) of the ITA stated categorically that strategic investors must secure a Government Notice issued by the Minister under section 10 (1) (3) of the ITA for withholding tax exemption on foreign loan interest. She thus distinguished the case of **Commissioner General, Tanzania Revenue Authority v. CRJE Estate Limited** (supra) relied upon by Mr. Mukebezi by arguing that, the facts and the circumstances in that case are not relevant to the current appeal. She therefore, equally urged us to find the argument by Mr. Mkebezi that the exemption granted to the appellant is automatic, untenable. Finally, and on that basis, she urged us to dismiss the appeal, in its entirety, with costs.

In a brief rejoinder, Mr. Mukebezi reiterated his earlier submission and added that, the term 'service fees' should be given a wider interpretation to be accommodated under the realm of business profits

within the scope of Article 7 of the DTA. He thus insisted for the appeal to be allowed with costs.

Having carefully considered the submissions made by the learned counsel for the parties in the light of the record of appeal before us, we wish to state that, as we intimated above, the main dispute between the parties is centered on the interpretation of Article 7 of the DTA. For easy of reference, the said Article 7 provides that:

> *"The profits of an enterprises of a contracting state shall be taxable only in that state unless the enterprise carries on business in the other contracting state through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profit of the enterprise may be taxed in the other state but only so much of them as it is attributable to that permanent establishment."*

The interpretation of the above Article is not new, in several occasions, this Court has pronounced itself on the applicability of the same in our jurisdiction. See for instance the cases of **Tullow Tanzania BV v. Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 24 of 2018 [2018] TZCA 82, **Mantra (Tanzania) Ltd v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 430 of 2020 [2021] TZCA 657, **TPC Limited v. Commissioner General, Tanzania Revenue Authority,** Civil Appeal No. 455 of 2021

[2025] TZCA 349, **Kilombero I** (supra) and **Mlimani I** (supra). Specifically, in **Kilombero I,** where the appellant challenged the decision of the Tribunal which, like in the instant appeal, made a similar interpretation of Article 7 of the DTA. In that appeal, the dispute between the parties was over the liability to remit withholding tax on service fees paid to Illovo Project Services Limited, a South African entity who had provided management services to her. As in the instant appeal, Kilombero was caught up in a demand for withholding tax which it failed to deduct from the service fees it had paid to her foreign service provider. As it is the case herein, the appellant argued that the service fees it had paid constituted part of the business profits of the South African consultant payee which were not liable to withholding tax. The Court, having considered the parties' arguments and mindful of Articles 7 and 20 of the DTA made the following observations that:

> *"..., as service fee is an item which does not feature anywhere in the Double Taxation Agreement, Article 20 becomes handy...it is our considered view that, as per the Double Taxation - Agreement, service fees by a South Africa entity for provision of professional services to a Tanzanian entity, do not form part of business profits as provided for under Article 7 of the Double Taxation Agreement which is not taxable in Tanzania but fall under Article 21 of the*

Double Taxation Agreement and thus subject to withholding tax in terms of section 83 (1) (b) of the ITA, 2004"

Again, in **TPC Limited** (supra), when we were confronted with an akin situation, we emphasized that:

"All in all, as already hinted earlier on, we find that the service fee paid by the appellant to south African entities for services rendered in Tanzania did not amount to business profit within the scope of Article 7 of the DTA. Nevertheless, since the appellant is a resident of Tanzania and carries her business in Tanzania and has no permanent establishment in another contracting state (South Africa), as per Article 7 of the DTA, it is our view that it out to withhold tax."

Now, being guided by the above authorities and taking into account that in the instant appeal, there is no dispute that the appellant made payment of service fee to the South African entities for services rendered to her in Tanzania, we find no justification to fault the decision of the Tribunal.

We are, however mindful that in his submission Mr. Mukebezi referred us to Article 31 of the VCLT and Article 71 of the OECD Commentary where the DTA traces its origin on the OECD Model Tax Convention and UN Model Treaties and urged us to follow the approach taken in other jurisdictions in interpreting Article 7 of the DTA. It was his

concern that the term service fees should be given a wider interpretation to be accommodated under the realm of business profits within the scope of Article 7 of the DTA and Article 31 of the VCLT. However, having perused our previous decisions in **Kilombero I** (supra), **Mlimani I** (supra) and **TPC Limited** (supra), it is clear to us that the Court, before arriving to the above settled position, it considered the provisions of the VCTL, OECD Model Tax Convention and UN Model Treaties which Mr. Mukebezi wanted us to consider. Besides, the Court in **Mliman I** (supra), considered the OECD commentaries as well as the book titled: '*International Tax Policy and Double Taxation Treaties*,' 2nd Edition 2014 by Kelvin Homes, but endorsed the Tribunal's decision which had held that the service fees were outside the scope of Article 7 of the DTA. Furthermore, in the instant appeal, having perused the impugned decision of the Tribunal, specifically at pages 1014 to 1015, also, correctly in our view, the Tribunal observed that the provisions of the OECD Commentary and the South African Income Tax Act, did not alter the legal interpretation of the DTA in the context of Tanzania tax law. In the circumstances, and with profound respect, we find the argument advanced by Mr. Mukebezi, on this aspect, unwarranted.

The other concern raised by Mr. Mukebezi is the issue of conflicting decisions of the Court in **Kilombero I** (supra) and **Kilombero II**

(supra). According to him, the Court in **Kilombero II** interpreted the service fees paid by the appellant to Zambian entity under Article IV of the DTA to be business profit which was not subject to withholding tax. In her response, Ms. Makoa, apart from assailing **Kilombero II** for being distinguishable to the appeal at hand, she argued that there is no conflict between the two decisions. On our part, having duly perused the decision in **Kilombero II**, we, again, with profound respect unable to agree with Mr. Mukebezi that there is conflict with **Kilombero I.**

It is our considered view that, in **Kilombero II,** although, the Court, at page 20 of that decision, made observations (*obiter dictum),* that, *...business includes provision of service for gain or profit and the latter is a commercial transaction motivated by obtaining a profit,* but ultimately, at page 26 of the same decision, the Court, concluded that the service fee paid to the Zambian entity was subject to withholding tax and the respondent properly issued to the appellant a notice for payment of the same. Therefore, in the light of the above settled position of the law, we agree with Ms. Makoa that there is no conflict in the said decisions as Mr. Mukebezi would want us to believe. In the event, we find the first ground of appeal devoid of merit.

Moving to the second ground on the appellant's complaint that the appellant having been granted a strategic investor status under section

19 of the TIA is entitled to an automatic exemption which cannot be invalid in the absence of the Government Notice issued at the discretion of the Minister under sections 10 (1) (3) and 82 (2) (e) of the ITA. It is our view that, this is a straight forward matter that need not detain us. In **Statoil Tanzania** (supra) and **Mlimani II** (supra), when we were faced with an akin situation, we stated categorically that, for a strategic investor to qualify for the said exemption, there must be a Government Notice issued by the Minister under section 10 (1) (3) of the ITA for withholding tax exemption on foreign loan interest.

Similarly, in the instant appeal, the exemption on the appellant is not automatic as argued by Mr. Mukebezi. There must be a Government Notice issued by the Minister in accordance with the law. As such, we agree with Ms. Makoa that, the appellant's criticism of the Tribunal's finding is, with respect, without any justification. We equally find the case of **Commissioner General, Tanzania Revenue Authority v. CRJE Estate Limited** (supra) relied upon by Mr. Mukebezi, on this aspect, distinguishable and not applicable in the circumstances of this appeal. That, said we also find the second ground of appeal with no merit.

Since the appellant has not submitted on the third ground, as he indicated that it is consequential, there is nothing to be considered by the Court.

In the circumstances, we do not find cogent reasons to vary the decision of the Tribunal. Consequently, we hereby dismiss the appeal in its entirety with costs.

DATED at **DODOMA** this 11th day of November, 2025.

R. J. KEREFU
JUSTICE OF APPEAL

G. J. MDEMU
JUSTICE OF APPEAL

L. A. MANSOOR
JUSTICE OF APPEAL

The Judgment delivered this 11th day of November, 2025 in the presence of Mr. Stephen Axwsso, learned counsel for the Appellant, Mr. Trofmo Tarimo, learned counsel holding brief for Mr. Achileus Kalumuna, learned counsel for the Respondent and Harida Hamisi, Court Clerk, is hereby certified as a true copy of the original.

C. M. MAGESA
DEPUTY REGISTRAR
COURT OF APPEAL