

**IN THE COURT OF APPEAL OF TANZANIA
AT DODOMA**

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

CIVIL APPEAL NO. 161 OF 2025

TANGA CEMENT PUBLIC LIMITED COMPANY.....APPLICANT

VERSUS

COMMISSIONER GENERAL

TANZANIA REVENUE AUTHORITY.....RESPONDENT

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

(Herbert, Vice Chairman)

Dated the 17th day of December, 2024

in

Tax Appeal No. 78 of 2023

JUDGMENT OF THE COURT

6th & 13th November 2025

MANSOOR, J.A.:

Tanga Cement Public Limited Company “the appellant” deals with manufacturing, distribution and sale of cement and clinker. The respondent, the Commissioner General, who is the executive officer of the Tanzania Revenue Authority “TRA”, responsible for administration of taxes, had on 29th June, 2020 issued a Pay as You Earn “PAYE” Certificate

for the years 2016 to 2018 for payment of TZS 181,868,227.04, in respect of the appellant's PAYE taxable amount.

The appellant objected the amount demanded in the certificate on three grounds, **one**, the certificate incorrectly subjected to PAYE housing benefits instead of considering the housing allowance included in the management payroll, **two**, the certificate did not deduct the employees' pension contributions on the allowances received by the employees in the calculation of the payable PAYE, and **three**, late payment of interests was incorrectly assessed as it based on an incorrect principal amount.

The objection was assessed but overruled by the TRA in terms of section 52 (3) of the Tax Administration Act, R: E 2009 (the TAA), and the amounts of tax demanded in the certificate were confirmed. Still aggrieved, the appellant filed Tax Appeal No. 214 of 2021 before the Tax Revenue Appeals Board "the TRAB", whereupon the second ground on failure of the respondent to deduct the employees' contribution to the pension fund on the allowances was allowed. The decision of the TRAB was based on exhibit A-6 which was the email correspondences between the parties herein together with the appellant's payroll report for August, 2016 to August, 2017 and the TRA calculation on the appellant's non-management PAYE payable for 2016 to 2020.

The admission of exhibit A-6 by the TRAB is the centre of dispute in the appeal before the Court.

It is from the record that, during the hearing of the appeal by the TRAB, the respondent took an objection on the admissibility of exhibit A-6 contending that these documents were not submitted to the TRA at the time the objection against the Certificate of PAYE assessment was lodged by the appellant, thus these documents could not be admitted as evidence by the TRAB at an appellate stage. The respondent contended that the admission of the said documents at an appeal stage was contrary to rule 16(5) of the Tax Revenue Appeals Board Rules, 2008, (the TRAB Rules) read together with section 51 (5) and (6) of the TAA.

The TRAB overruled the objection and admitted the documents as exhibit A-6, and extensively relied on the said exhibit in its final determination of the appeal. At page 175 of the record of appeal, the TRAB gave a ruling stating the following:

"...the fact that the documents were referred by the respondent even in the final determination, we are convinced with the appellant's argument as it is not convincing that the referred computation in his final determination is the one in their system. However, this is not shown in the said document.

Basing on the contents of the proposal to settle the objection and findings, we agree with the appellant that the same were availed. That being the case, the respondent's preliminary objection is overruled and the tendered documents are admitted...."

Aggrieved by the decision of the TRAB, the respondent appealed to the Tax Revenue Appeals Tribunal "the TRAT", vide Tax Appeal No. 78 of 2023, in which, amongst the six grounds raised, the first ground was on the procedural irregularities on the admission of exhibit A-6 by the TRAB. In its judgment delivered on 17th December, 2024, the TRAT made a decision only on the first ground of appeal holding that it was decisive in determining the entire appeal without considering the rest of the grounds raised. It thus held at page 407-408 of the record of appeal that:

"Parties are at one that the respondent did not submit the objected documents at the time of lodging the objection but alleged to have submitted them at the audit stage. The appellant submitted that the tax dispute resolution starts at the objection stage as per Part VII of the TAA whereas the respondent contended that it is not limited to the objection stage only but covers all the stages from audit up to the time in which the final determination of the objection is made.

Reading the above rule, it is apparent that the appellant (respondent herein) was barred from adducing any evidence other than the evidence which was previously made available to the commissioner general. It is our view that since the documents were not accompanied with the notice of appeal against the appellant's final determination, it follows that, in terms of the above rule, the respondent could not adduce the said documents during the hearing. That being the position of the law, it follows that the Board erred in allowing the documents to be tendered during the hearing and relying on it to determine the dispute between the parties. As such, we find merit on the first ground of appeal."

Aggrieved, the appellant filed the appeal before the Court raising only one ground that:

"Whether the Tax Revenue Appeals Tribunal was correct in law in holding that the documents admitted by the Board as exhibit A-6 were contrary to rule 16(5) of the Tax Revenue Appeals Board and section 51 (5) and (6) of the Tax Administration Act as amended by section 71 of the Finance Act, 2020".

In support of the appeal, Mr. Wilson Kamugisha Mukebezi, learned advocate, filed the written submissions. He also appeared for hearing on

behalf of the appellant. In the written submissions as well as amplifying his position orally, Mr. Mukebezi relying heavily on the provisions of rule 16 (5) of the TRAB Rules, argued that, the phrase "*shall not adduce any evidence other than the evidence which was previously made available to the Commissioner General*", in rule 16 (5) of the TRAB Rules, did not limit the production of documentary evidence only at the stage of the determination of the objection, rather, the rule permits the production of documentary evidence before the TRAB, as long as such documents were made available to the Commissioner General regardless of the stage at which they were availed. He argued that, when the documents have been made available to the Commissioner General at the audit stage, rule 16 (5) of the TRAB Rules permits the production of such documentary evidence before the TRAB at the hearing of the appeal. He argued further that, there is no dispute that the documents in question were submitted to the Commissioner General during the audit stage and were used or referred to by the Commissioner for the determination of the objection.

Mr. Mukebezi urged us to take note that, in 2018, rule 16 (5) was amended to widen its scope, and the effect of the amendment was that the documents which were made available to the Commissioner General at any stage could be admitted as evidence by the TRAB during the appeal. Mr. Mukebezi appears to suggest that, even when a document

has not been produced during the determination of the objection to the assessment by the Commissioner General, but which was produced to the Commissioner General before the objection stage, the TRAB is empowered under rule 16 (5) of the TRAB Rules to admit the documents as evidence. He submitted that, before the amendment of rule 16 (5) of the TRAB Rules, the words "*which was made available to the Commissioner General in the notice of objection*" were replaced with the words "*which were made available to the Commissioner General*", and the words "***in the notice of objection***" were deleted so as to allow the taxpayer to produce the documents at the appeal stage. He argued that, following the deletion of the words "***in the notice of objection***" from rule 16 (5) of the TRAB Rules, the intention was to widen the scope of the applicability of that rule to enable the taxpayer to rely on documentary evidence even when the documents were not submitted to the Commissioner General at the objection stage, as long as they were made available to the Commissioner General at any stage, even at the audit stage.

He also objected the applicability of section 51 (5) and (6) of TAA by the TRAB when admitting the documentary evidence produced before it, arguing that the applicability of sections 51 (5) and (6) of the TAA ends

at the stage of lodging and determination of the notice of objection before the Commissioner General, and not beyond that.

The arguments by Mr. Mukebezi were vehemently opposed by Mr. Thomas Buki, learned Senior State Attorney who appeared for the respondent, together with Mr. Michael Taragwa, Mr. Chizaso Minde, and Mr. Achileus Kalumuna, all learned State Attorneys. In their written submissions as well as in the oral submissions, they emphasised that rule 16 (5) of the TRAB Rules cannot be read in isolation of sections 51 (5) and (6) of the TAA as amended by section 71 of the Finance Act of 2020.

Mr. Buki argued further that, since section 51 (5) and (6) of the TAA require the objector to the assessment to submit to the Commissioner General at the stage of lodging the notice of objection, all documents he intends to rely upon in establishing and proving his case, the taxpayer or the appellant in the matter, is barred to produce fresh evidence on appeal under rule 16 (5) of the TRAB Rules, unless he obtains leave of the TRAB.

Mr. Buki submitted further that, the tax dispute starts or is initiated by the tax payer at the objection stage as shown in Part VII of the TAA, and that, section 51 (5) and (6) of the TAA requires the objector to lodge a formal objection before the Commissioner General, accompanying it with all the documents he intends to rely upon in establishing and proving

his case, and failure to submit the documents at the stage of lodging the notice of objection, the taxpayer, is barred from producing fresh documents at the appellate stage. Mr. Buki therefore urged the Court to find the appeal unmeritorious and dismiss it with costs.

Mr Mukebezi made a brief rejoinder stating that, the issue determined by the TRAB in the preliminary objection on admission of exhibit A-6 was on non-compliance of Section 51 (5) and (6) of TAA, and not an issue of whether the Commissioner General had acknowledged to have seen the documents admitted as the said exhibit, as there was an email found at page 127 of the record of appeal in which the Commissioner General had acknowledged the receipt of the said documents.

Regarding section 50, 51 and 52 of TAA, the counsel insisted that, the provisions in the TAA cannot defeat the legal procedure deployed by the TRAB when dealing with the admission of documents, insisting that the TRAB is governed by its own procedures on admission of documentary evidence. He also argued that the application for leave under rule 16(5) of the TRAB Rules was not necessary, as the documents were availed to the Commissioner General before the appeal was lodged.

Having heard the counsels' submissions on the issue, the question that requires determination is whether the documents which were not

produced at the objection stage can be admitted by the TRAB when determining an appeal. In order to be able to determine this issue, it is imperative to understand the wording of rule 16 (5) of the TRAB Rules, which reads as follows:

"Except with the consent of the Board, and upon such terms and conditions as the Board may determine, the appellant shall not rely on any ground other than the grounds stated in the appeal and shall not adduce any evidence other than the evidence which was previously made available to the Commissioner General".

Essentially, rule 16 (5) restricts parties to an appeal before the TRAB from raising new grounds of appeal and fresh evidence that were not initially provided to the Commissioner General, unless they obtain the consent of the TRAB to introduce them. The restriction is procedural, and essentially, under this rule, the TRAB has been empowered to admit fresh evidence under specific terms and conditions upon being requested. It is not in dispute that in the matter at hand, such consent was not sought by the appellant and not granted by the TRAB to allow the appellant to introduce fresh evidence which were not made available to the Commissioner General. An admission of such fresh evidence, without first

granting the consent was in total violation of the procedure required under rule 16 (5) of the Rules.

No doubt that the TRAB had powers to take additional evidence or fresh evidence under rule 16 (5) of the TRAB Rules had the appellant sought and granted leave to do so. The position on the power of the TRAB to take additional evidence or to receive fresh evidence was discussed in detail in the case of **Alliance One Tobacco Tanzania Limited vs Commissioner General (TRA)** (Civil Appeal No. 118 of 2018) [2019] TZCA 208 (7 August 2019), in which we held:

"In this regard we think that during the submissions of the counsel before the TRAB it was plain that the dispute between the parties on the issue was on the lack of evidence on supporting invoices of which the appellant had claimed to possess, it is only the requisite evidence which could have guided the proper decision on the issue. In the circumstances the appellant would have requested the TRAB to take the fresh evidence concerning the actual costs she incurred to prove that the respondent's assessment on the disallowed direct sales was erroneous as the burden of proof was still squarely on her part. In the event she could have urged the TRAB to allow

her to tender that evidence under the provision of section 17 (1) (2) of the TRAA...."

Since the appellant did not take advantage of the exceptions given in rule 16 (5) of the TRAB Rules during the appeal, the documents admitted as exhibit A-6 were admitted in total violation of section 51 (5) and (6) of the TAA as well as Rule 16 (5) of the TRAB Rules.

The second limb of the argument by Mr. Mukebezi is that, the appellant did not need such leave or consent of the TRAB under rule 16 (5) since the documents or the documentary evidence admitted as exhibit A-6 were not fresh evidence or new documents as the documents were availed to the Commissioner General at the audit stage, and that he had made reference to them in his final determination of the objection. In other words, Mr. Mukebezi admits to not having furnished the documents to the Commissioner General at the objection stage, but argued that the documents were made available to the Commissioner General at the audit stage and it were these documents that were referred to in the final determination of the objection. Thus, Mr. Mukebezi implores us to find that the documents admitted as exhibit A-6 by the TRAB, were made available to the Commissioner General at the audit stage, and that the TRAB was right to overrule the objection raised by the respondent.

Having heard the rival submissions of the counsel on this issue, and the written submissions filed by the parties, and the laws cited therein, firstly, it is not a disputed position of the law that section 51 (5) and (6) of the TAA requires the tax payer to mandatorily accompany the relevant document or information when lodging an objection before the Commissioner General, which information or document must be submitted at the time of lodging the notice of objection. Section 51 (5) and (6) of the TAA provide:

51. (5) " an objection to a tax decision shall be accompanied by relevant document or information which the tax payer intends to rely upon to support his objection."

51 (6) "the information or document which the taxpayer intends to rely upon shall be submitted at the time of lodging the notice of objection".

On record, Mr. Mukebezi admits that he did not submit the documents admitted as exhibit A-6 to the Commissioner General at the time when the appellant lodged the notice of objection, and of course, he is actually admitting that, the appellant was not in compliance of section 51 (5) and (6) of the TAA. He however argued that sections 51 (5) and (6) of the TAA are applicable only at the stage of determination of the objection by the Commissioner General, and could not be stretched to

apply before the TRAB on the procedures for admission of fresh evidence as the procedure applicable by the TRAB for admission of fresh evidence is rule 16 (5) of the TRAB Rules.

We find no confusion in what is provided in sections 51 (5) and (6) of the TAA and the procedures for admission of fresh evidence provided in rule 16 (5) of the TRAB Rules, as one follows the other, just like one must stand up before he starts to walk. It is plainly clear that sections 51 (5) and (6) of TAA require the appellant to submit the documents he intended to rely upon for proof of his objection to the Commissioner General at the time of lodging the notice of objection, and if he did not submit them, rule 16 (5) of the TRAB Rules prohibits him from the use or production of such documents unless he sought leave to submit them as fresh evidence before the TRAB. As discussed above, the appellant did not take advantage of the exceptions provided in rule 16 (5) of the TRAB Rules as he did not seek leave of the TRAB to adduce additional or fresh evidence.

It is as clear as a crystal ball that a tax dispute begins when the taxpayer objects to a tax decision, thus a trial of a tax dispute starts during the stage of lodging the notice of objection before the Commissioner General. It is during this stage when a tax payer is required to adduce all

the information and evidence, he intends to rely upon for establishing and proving his case. It would be absurd to hold that a document which was produced during the auditing of a taxpayer's tax liability can be used as evidence by the TRAB in the determination of the appeal just because the words used in rule 16 (5) of the TRAB Rules omitted to mention the words *in the notice of objection*. Obviously, during the time of audit, the tax dispute had not yet arisen, and perhaps so much documents were exchanged between the Commissioner General and the tax payer. The essence of limiting the TRAB to consider only the grounds and documents presented and determined by the Commissioner General at the objection stage is obvious that the TRAB would not be in a position to assess which documents formed a dispute determined by the Commissioner General, if those documents were not submitted at the stage of determination of the objection.

It is not in dispute that the trial of a tax dispute is conducted by the Commissioner General when he determines the objection, and the TRAB determines an appeal which emanated from the decision of the Commissioner General. The Commissioner General sits as the first instance tribunal or quasi tribunal in the hierarchy of determination of tax disputes as provided in sections 51 and 52 of the TAA. Therefore, it goes without saying that the TRAB would only determine the appeal using the

evidence presented before the Commissioner General, and can only depart from the general rule when it is moved to grant the leave or consent under rule 16 (5) of the TRAB Rules. The procedure shown and provided under the rule is to seek for consent of the TRAB to be able to adduce fresh evidence which were not determined or presented to the Commissioner General at trial, such leave or consent is to be granted with such terms and conditions as may be decided by the TRAB. Rule 16 (5) clearly prohibits a party to an appeal before the TRAB from introducing new or fresh information or evidence which were not adduced before the Commissioner General during the determination of the objection. Stretching the applicability of rule 16 (5) below the trial stage is to invite chaos and randomness in the rules of procedure before the TRAB when determining the appeals. We therefore hold that, the TRAT's decision on the scope of the applicability of rule 16 (5) of the TRAB Rules cannot be disturbed.

Now, on the issue raised by Mr. Mukebezi, which appears to be an alternative ground of appeal that the Commissioner General had the knowledge of the documents admitted as exhibit A-6 or has used the documents supplied to him during the audit stage to determine the objection, we have carefully perused the letter dated 10th February, 2021 which is the final determination of the objection by the Commissioner

General found at page 124 of the record of appeal and an email communication found at page 127 of the record of appeal as invited by Mr. Mukebezi. At page 124, there is the determination of the objection by the Commissioner General, in which the Commissioner General stated at paragraph 2 that the objection raised was not supported by law or fact.

The Commissioner General stated:

*"We have gone through the computation and observed that portion of the employee contribution was deducted in arriving at the correct taxable amount contrary to the company claim. **We are of the view that this is a mere argument not supported by law or fact.**"*
(Emphasis ours).

With due respect to Mr. Mukebezi, from the extract of the determination of the objection by the Commissioner General, there is nowhere the Commissioner General acknowledged to have either received the documents exhibited as A-6 by the TRAB or that he had determined the objection based on exhibit A-6 as suggested by Mr. Mukebezi. The Commissioner General said in that letter that, whatever was submitted by the appellant during the objection proceedings were mere arguments not supported by law or fact, meaning that there was no evidence or document submitted to the Commissioner General by the appellant for

proving the objection raised. Even when the Commissioner was referring to computation, he did not specifically mention the documents exhibited as A-6 by the TRAB, and to hold otherwise would amount to speculation.

Again, we have looked at page 127 of the record of appeal and found that these were the email communications between one Casmir J. Mwacha of TRA and Isaac Lupokela of Simba Cement, exchanging documents on Tanga Cement. In fact, the email shows that the unspecified documents were sent to an officer of Simba Cement by the officer of TRA. Apart from the fact that the documents which were sent by TRA to Simba Cement were not identified but also the recipient therein is an officer of Simba Cement, a person who is not a party in these proceedings and under no circumstances the emails cannot amount to compliance with section 51 (5) and (6) of TAA, as proof that the documents at issue were furnished to the Commissioner General when the appellant lodged the notice of objection.

We therefore hold that the documents admitted as exhibit A-6 by the TRAB were not supplied to the Commissioner General when the appellant lodged the notice of objection, and the Commissioner General did not make any reference to exhibit A-6 in the determination of the objection before him. Consequently, we uphold the decision by the TRAT

that the TRAB erred to admit exhibit A-6 as documentary evidence under rule 16 (5) of the TRAB Rules.

Based on the above, we find the appeal is lacking merit, and we hereby dismiss it with costs.

DATED at **DODOMA** this 12th 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 virtually this 13th day of November, 2025 in the presence of Ms. Suleina Salum, learned counsel for the Appellant, Mr. Trofmo Tarimo, together with Mr. Achileus Karumuna, learned State Attorneys for the Respondent and Mr. Leopard Mabugo, Court Clerk; is hereby certified as a true copy of the original.

