**IN THE COURT OF APPEAL OF TANZANIA**

**AT MWANZA**

**(CORAM: MKUYE, J.A., GALEBA J.A. AND AGATHO J.A.)**

**CIVIL APPEAL NO. 08 OF 2025**

**TANRUSS INVESTMENT LIMITED T/A DAR ES SALAAM SERENA HOTELS ..... APPELLANT**

**VERSUS**

**COMMISSIONER GENERAL TRA ..... RESPONDENT**

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

**(Ngimilanga, Vice Chairperson.)**

**Dated the 2nd day of May, 2024**

**in**

**Tax Appeal No. 47 of 2023**

.....

# JUDGMENT OF THE COURT

3rd & 8th December, 2025

## MKUYE, J.A:

In this appeal, the appellant, Tanruss Investment Limited, trading as Dar es Salaam Serena Hotel, is appealing against the decision of the Tax Revenue Appeals Tribunal (the Tribunal) in Tax Appeal No. 47 of 2021 which upheld the decision of the Tax Revenue Appeals Board (the Board) in Tax Appeal No. 95 of 2021.

Basically, the dispute between the appellant and the respondent Commissioner General Tanzania Revenue Authority is centered on the respondent's final determination of the appellant's objection against

withholding tax on imported services for the years of income 2013 to 2015 amounting to TZS. 150,332,821.00 which the respondent held a view that was a legal obligation for the appellant to collect and remit.

The appellant, lodged a notice of appeal on 20/1/2021 followed by statement of appeal arguing that she did not receive imported services requiring withholding tax and that taxes in respect of all services received were withheld and remitted accordingly. The appeal before the Board was unsuccessful. Likewise, her appeal to the Tribunal proved futile.

Still aggrieved by the decision of the Tribunal, the appellant has preferred this appeal on two (2) grounds of appeal as hereunder:

***(1)*** *The Honourable Tax Revenue Appeals Tribunal erred in law by holding that the appellant* ***failed to provide evidence proving that withholding tax on imported services was deducted and remitted as required under section 18 (2) (b) of the Tax Revenue Appeals Act, Cap. 408.***

(2) *The Honourable Tax Revenue Appeals Tribunal erred in law in holding that withholding tax on imported services during the disputed years was undercharged at the rate of 5% or 10% contrary to sections 80 (1) (e) and 83 (1) (c), (i) and (d) of the Income Tax Act, Cap 332, Revised Edition 2019.* [Emphasis added]

At the hearing of the appeal, the appellant was represented by Ms. Butogwa Eliezer Mbuki, learned advocate whereas Ms. Consolata Andrew, learned Principal State Attorney teaming up with Mr. Taragwa Nyang'anyi and Mses. Jackline Chacha together with Rose Sawaki, all learned State Attorneys appeared representing the respondent.

Before the hearing of the appeal could commence in earnest, we required the parties to first address us on whether the grounds of appeal were incompliance with the provisions of section 26 (2) of the Tax Revenue Appeals Act, Cap 408 R.E. 2023 (Tax Revenue Appeals Act).

Responding to the Court's question, Ms. Mbuki submitted that, she believed that both grounds were on point of law as per section 18 (2) (b) of the Tax Revenue Appeals Act. The learned advocate elaborated that the appellant discharged her duty by proving the case as per section 18 (2) (b) of the Tax Revenue Appeals Act contrary to what was decided by the Tribunal as shown at page 495 of the record of appeal.

Regarding ground no. 2, it was submitted by Ms. Mbuki that, it was on point of law as they charged withholding tax rate of 5% or 10% instead of 15% as there were no imported services. She added that, both local and imported services rendered to her were paid for.

In reply, Ms. Andrew prefaced her address by stating that the two grounds of appeal are not on point of law. She pointed out that, the

manner the ground of appeal is framed that the Tribunal erred to find that the appellant failed to bring evidence or rather failed to find that the appellant discharged her burden of proof as per section 18 (2) of the Tax Administration Act, such ground is factual because the Court cannot determine it without looking at the evidence on record and evaluate it. To support her argument, she referred us to the case of **Atlas Copco Tanzania Limited v. Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 167 of 2019 (unreported) in which the Court considered the provisions of section 25 (2) of the Tax Revenue Appeals Act and propounded the matters constituting points of law (See also: **Serengeti Breweries Limited v. Commissioner General Tanzania Revenue Authority,** Civil Appeal No. 453 of 2023 page 10.)

The learned Principal State Attorney insisted that looking at the issue that was involved in the dispute, that is whether the appellant deducted withholding tax or not, and the finding by the Tribunal that there was no sufficient evidence to prove it, the Court cannot determine ground no. 1 without looking into the evidence.

Elaborating her stance in ground no. 2 in which the appellant complains that the Tribunal erred in holding that withholding tax on imported services was undercharged at the rates of 5% or 10% contrary to section 80 (1) (e) and 83 (1) (c) (i) and (d) of the Income Tax Act, Cap.

332, she submitted that it was equally not on point of law as its determination would require revisiting the evidence record.

In this regard, she urged the Court to refrain from entertaining the said grounds.

In rejoinder, Ms. Mbuki reiterated her submission in chief. In justifying the existence of the point of law, she insisted that the Tribunal misdirected itself and reached at improper conclusion.

Although the parties relied on their respective written submissions in support and against the appeal on merit, we are of the view that, the issue we had raised is sufficient to dispose of the matter and, therefore, we shall not deal with the appeal on merit.

Having heard and considered the rival submissions, we think, the issue for this Court's determination is whether the grounds of appeal in this case are incompliance with section 26 (1) of the Tax Revenue Appeals Act.

In our jurisdiction, the right to appeal is constitutional. This position is emphasized by this Court in numerous cases including the case of **Ahmed Mbarak v. Mwananchi Engineering & Contracting Co. Ltd,** Civil Application No. 229 of 2014 (unreported), where the Court stated that:

*"The Constitution is clear that any litigant is entitled to appeal. The Constitution is supreme".*

This is as per Article 13 (6) (e) of the Constitution of the United Republic of Tanzania. The litigant has the right to appeal from the lower level of court up to the apex Court if he/she so wishes. Though the Constitution gives such a wide right of appeal, specific legislations have given guidance that such appeals may be on matters of facts or law or both facts and law. See: the Criminal Procedure Act, Cap. 20 R.E. 2023, the Civil Procedure Code, Cap. 33 R.E. 2023 and many others. When it comes to the appeals to this Court (Court of Appeal) some pieces of legislation have restricted the parameters on the matters to be appealed against. For instance, in matters relating to tax administration, appeals to this Court are only on points of law as provided for under section 26 (2) of the Tax Revenue Appeals Act which states as follows:

> ***"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 the appeals from the decision of the Tribunal".* [Empasis added]

Our understanding of the above cited provision, is that it mandates the Court to deal with appeals on matters of law only. It has, therefore, no jurisdiction to entertain appeals based on factual matters. Luckily

enough this provision has been discussed in numerous decisions of this Court. Just to mention a few, they include; **Insignia Limited v. Commissioner General, Tanzania Revenue Authority**, [2011] TZCA 246 where it was emphasized that it is not allowed to reopen factual issues to support the appeal and that the appeal should be decided upon consideration of law only and nothing else. Also, in **Jovet Tanzania Limited v. Commissioner General, Tanzania Revenue Authority**, [2021] TZCA 94, it was stressed that, the Court is mandated to decide tax revenue matters involving points of law only as provided for under section 25 (2) [now section 26 (2)] of the Tanzania Revenue Appeals Act, Cap. 408 R.E. 2010. Moreover, in the recently decided case of **Serengeti Breweries Limited v. Commissioner General Tanzania Revenue Authority,** [2025] TZCA 685, the Court discussed akin scenario and after citing section 25 (2) of the Tax Revenue Appeals Act, it had this to say:

> *"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 or clear failure of justice...".*

The Court also emphasized on among others that under section 25 (2) of the Tax Revenue Appeals Act, this Court has no jurisdiction to determine a complaint raising a point mixed of law and fact and that the complaint must be on pure point or question of law which must be apparent on the face of the memorandum of appeal.

Now, looking at the grounds of appeal at hand, we think, they require the Court to re-evaluate evidence much as Ms. Mbuki insisted that the Court does not need to do so.

In ground no. 1 as quoted earlier on, the Tribunal is being faulted for holding that the appellant failed to provide evidence proving that withholding tax on imported services was deducted and remitted as required under section 18 (2) (b) of the Tax Revenue Appeals Act, Cap. 408.

In the first place, the manner this ground of appeal is framed is confusing. It cannot be easily understood. The first impression that one may get is as if the withholding tax on imported services is deductible and remitted to the respondent in accordance with section 18 (2) of the Tax Revenue Appeals Act which is not the case. It must be noted as the second

and correct impression that section 18 (2) (b) referred to in the ground of appeal imposes the burden of proof on tax matters relating to assessment on the tax payer. It states as follows:

> *"The onus of proving that the assessment or decision in respect of which an appeal is preferred is excessive or erroneous shall be on the appellant'.*

As it can be gathered from the above provision, it imposes a duty or obligation on the appellant to prove how the assessment was excessive or erroneous on him.

In order to convince us that the ground of appeal is on point of law, Ms. Mbuki took us to the judgment in particular at page 495 of the record where she said, we could glance it. A portion of the said judgment that she reffered us to reads as follows:

> *"Under exhibit A3, the evidence shows that the same covers the month of December, 2015 while the disputed years of income cover 2014 and 2015. Under such situation the evidence through Exhibit A3 cannot in anyway be considered to be sufficient as claimed by the appellant. The appellant was required to provide other documentary evidence or reasonable explanation to prove the fact that he did not receive any imported services for which withholding tax would apply, and that he properly withheld the withholding tax in respect of all disputed years of income and remitted the same to the respondent. The appellant failed to provide*

*such proof as demanded under section 18 (2) (b) of the Tax Revenue Appeals Act, Cap. 408 which imposes such duty on the appellant. Since the appellant failed to provide evidence to prove that the WHT on imported services were deducted and remitted as required by the law, the Board had no option than to disregard the appellant's evidence and treat the same as insufficient."*

Looking at the above excerpt, we are unable to glean where a point of law can be extracted. We think, the manner the excerpt is couched, defeats the learned counsel's proposition because what is vividly clear is that the Tribunal evaluated the evidence, in particular Exhibit A3 and found that it was not sufficient to prove the fact in issue. We do not see how such quotation carries any point of law as was stated in **Serengeti Breweries Limited case** (supra).

As we said earlier on, we could note the learned counsels' difficulty in bringing her point home. She even took us to pages 59 to 62 of the record of appeal where Exhibit A3 is, which clearly suggest that it was not a pure point of law apparent on the face of the record but required a lot more information from the evidence.

In relation to ground No. 2 in which the appellants' complaint is geared towards faulting the Tribunal for holding that the withholding tax on imported services during the disputed years was undercharged at the

rate of 5% or 10% contrary to section 80 (1) (c) and 83 (1) (c) (i) and (d) of the Income Tax Act, we are of the view that, it is equally not on point of law.

According to the record of appeal, during the audit process for the years of income in dispute, years 2013 to 2015, the respondent observed that the appellant consumed imported services but undercharged the withholding tax contrary to sections 80 (1) (e) and 83 (1) (c) (i) and (d) of the Income Tax Act, at the rate of 5% or 10% instead of the required rate of 15%.

On her side, the appellant refuted importing services contending that she received services from resident entity and, therefore, the withholding tax was properly charged in accordance with the law. The appellant contended further that during the years under dispute there were no imported services that attracted withholding tax at the rate of 15% as claimed by the respondent and stands unpaid. Relying on Exhibit A1 and A3 she maintained that all withholding taxes due had been properly withheld and timely remitted to the respondent for all years in dispute.

The Tribunal, as shown at page 497 of the record of appeal, held that the respondent properly imposed the withholding tax on imported services at the rate of 15% in terms of sections 80 (1) (e) and 83 (1) (c) (i) and (d) of the Income Tax Act for the foreign services as the appellant

decided to use different rates not recognized by the law without any justification. In other words, the Tribunal held that the appellant failed to provide sufficient evidence to that effect.

As it can be observed from the holding by the Tribunal, it is crystal clear that the alleged point of law does not came clearly. Much as there are provisions of the law mentioned, they were cited for testing them against the evidence that was placed before the Board. As it is, raising the same issue that was determined by both the Board and the Tribunal at this stage, is tantamount of attracting the Court to re-open the facts contrary to the provisions of section 26 (2) of the Tax Revenue Appeals Act. The Court would be required to revisit and analyse Exhibits A1 and A3 in order to resolve that ground.

In this regard, testing the two grounds of appeal against the provisions of section 26 (2) of the Tax Revenue Appeals Act, we find that, they raise no question of law as per the said section. What is gathered from the grounds of appeal is that they invite the Court to consider matters which are within the mandate of the Board and the Tribunal which, as we have hinted earlier on, this Court lacks jurisdiction to entertain or determine them. Hence, we are constrained to refrain from determining them.

In the result, the effect of this scenario is to render the appeal incompetent before the Court – See: **Atlas Capco Tanzania Limited,** (Supra). Hence, as we have no jurisdiction to determine this appeal, we hereby strike it out with costs.

Order accordingly.

**DATED** at **MWANZA** this 8th day of December, 2025

R. K. MKUYE
**JUSTICE OF APPEAL**

Z. N. GALEBA
**JUSTICE OF APPEAL**

U. J. AGATHO
**JUSTICE OF APPEAL**

Judgment delivered this 8th day of December, 2025 in the presence of Ms. Butogwa Mbuki, learned counsel for the Appellant, Mr. Taragwa Nyang'anyi, learned State Attorney for the Respondent. and Mr. Fahmi Karemwa, Court Clerk; is hereby certified as a true copy of the original.

C. M. MAGESA
**DEPUTY REGISTRAR**
**COURT OF APPEAL**