IN THE COURT OF APPEAL OF TANZANIA
AT MWANZA

(CORAM: LEVIRA, J.A., KIHWELO, J.A. And NGWEMBE, J.A.)

CIVIL APPEAL NO. 146 OF 2025

TPC LIMITED ..... 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 8th day of November, 2024
in
Tax Appeal No. 31 of 2024

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JUDGMENT OF THE COURT

12th November, 2025 & 19th January, 2026

KIHWELO, J.A.:

This appeal arose from the decision of the Tax Revenue Appeals Tribunal (the Tribunal) dated 8th November, 2024 in Tax Appeal No. 31 of 2024 which upheld the decision of the Tax Revenue Appeals Board (the Board) that found the Commissioner General (the respondent) was justified in imposing withholding tax. Disgruntled by the impugned decision the appellant has approached this Court by way of an appeal.

The appellant is a private limited liability company incorporated under the laws of Tanzania and its principal business is sugarcane

growing and production in Moshi, Kilimanjaro Region, Tanzania. The dispute in the instant appeal is in relation to objection over tax affairs of the company arising from the audit conducted by the respondent in 2022 covering the years of income 2020 and 2021 in which the respondent found that, the appellant failed to withhold tax from the service fee payments made to South African entities. The appellant objected to the assessment on account that they are not subject to tax in Tanzania in terms of Article 7 of the Double Taxation Agreement (DTA) between Tanzania and South Africa.

Conversely, the respondent on his part, was of the view that payments made to South African entities for services provided to the appellant are subject to the withholding tax because Article 7 of the DTA is not applicable as the said payments are not covered by the DTA and maintained its applicability of withholding tax on the payment for services made to South African entities. Consequently, the respondent issued a confirmation of assessment.

The appellant, unamused by the respondent's decision approached the Board challenging that decision. The Board drew up three issues for determination as follows:

1. *Whether the respondent's decision to impose withholding tax on payments made to South African companies for services rendered to the appellant is correct in law and fact.*
2. *If the issue above is answered in the affirmative, whether the respondent's decision to impose interest for the late payment of tax is correct in law and fact.*
3. *To what reliefs are the parties entitled to.*

Upon full consideration of the parties' submissions, the Board answered the first issue in the affirmative that there was tax liability which remained unpaid on the appellant's side and unanimously the Board found the appellant's appeal to be devoid of merit and therefore, the appellant was ordered to pay the assessed tax with interest.

Aggrieved, the appellant lodged the appeal before the Tribunal seeking to reverse the decision of the Board. Upon hearing the parties, the Tribunal dismissed the appeal in its entirety which triggered the instant appeal before the Court.

The appellant presently seeks to impugn the decision of the Tribunal upon a Memorandum of Appeal which was initially predicated

on three grounds. However, when the matter was placed before us for hearing, Mr. Wilson Kamugisha Mukebezi who teamed up with Mr. Norbert Mwaifwani both learned counsel for the appellant, prayed and was granted leave to abandon them. Instead, Mr. Mukebezi sought and obtained leave in terms of rule 113 (1) of the Tanzania Court of Appeal Rules, 2009 ('the Rules') to argue an additional ground thus:

> *"The Tax Revenue Appeals Tribunal erred in law in failing to make a specific finding on the issue of whether the service fees amount to business profit".*

Arguing in support of this sole ground, Mr. Mukebezi was brief and focused. He contended that, the Tribunal was erroneous in its failure to make a specific finding on issues that were before it while referring us to the specific pages of the record of appeal whose gist is the applicability of Article 7 of the DTA and section 128 (1) of the Income Tax Act, 2004. He further drew our attention to the issues that were framed and recorded before the Board and agreed upon by the parties as found at page 309 of the record of appeal. He further referred us to the two grounds of appeal before the Tribunal found at pages 325 and 326 as enumerated in the statement of appeal and contended that what

is apparent on the record is the submission of the parties and nothing else. Put differently, Mr. Mukebezi was of the view that, the analysis, reasoning and findings of the Tribunal in its decision was conspicuously absent. He was thus, of the view that, failure to make specific findings is an error of law as the Tribunal abdicated its duty and therefore, making the decision nullity. The learned counsel fortified his argument by the authority in the case of **Joseph Ndyamukama v. N.I.C Bank Tanzania Limited and Others** [2020] TZCA 1889 TANZLII, in which the Court observed that failure to determine issues framed and agreed by the parties and recorded by the court is an error. Therefore, failure by the Tribunal to have made a specific finding on matters raised amounted to no decision at all. Reliance was placed in the case of **Wilfred Maro v. Sarah Lotti Mbise and Others** [2022] TZCA 728 TANZLII and **Mwenga Hydro Limited v. Commissioner General Tanzania Revenue Authority** [2022] TZCA 590.

As to the way forward, Mr. Mukebezi contended that, the case of **Mwenga Hydro Limited** (supra) provides guidance. In that case the Court invoked its revisional powers under section 4 (2) of the AJA now section 6 (2) of the R.E. 2023 to cure the anomaly by quashing and

setting aside the judgment of the Tribunal and remitting the case file to the Tribunal for it to compose a proper judgment.

In response, Mr. Igakinga too drew our attention to pages 325 and 326 of the record of appeal where the grounds upon which the Tribunal was moved are found, as well as, pages 582 and 583 of the record of appeal where in his view the determination of the Tribunal is found and contended that, looking at the grounds of appeal the Tribunal decisively resolved the controversy before it, citing rule 22 of the Tax Revenue Appeals Rules, 2018 which stipulates the contents of a decision of the Tribunal.

On our prompting as to whether there was any decision of the Tribunal at pages 582 and 583 of the record of appeal as intimated by Mr. Igakinga when compared to the respondent's written submission at pages 486 and 487 of the record of appeal Mr. Igakinga backpaddled and conceded that the decision of the Tribunal is wanting both in form and substance. He further argued that, the impugned decision lacked any analysis and did not decisively make any finding apart from merely reproducing parties' submissions. For that matter, he invited us to invoke our revisional powers under section 6 (2) of the AJA R.E. 2023

and quash the judgment and return the record to the Tribunal for it to compose a proper judgment by the same Vice Chairperson or a successor in office.

Based upon the foregoing discussions, it is our firm view that the sticking question which cries for our determination is whether the impugned decision is a decision in the eyes of law. The answer to this question lies in the provisions of rule 22 of the Tax Revenue Appeals Rules, 2018 which provides that:

> *"The decision of the Tribunal shall be in writing and shall contain:*
>
> *(a) a brief description of the nature of the appeal;*
> *(b) affirmation or varying or setting aside the decision of the Board;*
> *(c) the reasons for the decision;*
> *(d) the relief or remedy, if any, to which the parties are entitled; and*
> *(e) an order as to costs."*

In this appeal, records bear out that, the appellant in its statement of appeal raised two grounds of appeal as follows:

"1. That, the Tax Revenue Appeals Board erred in law and in fact by failing to take into consideration the provision of section 128 (1) of the Income Tax Act, 2004 and Article 7 of the Double Taxation Agreement between the United Republic of Tanzania and Republic of South Africa in holding that the respondent's decision to impose withholding tax on payment made to South African companies for services rendered to the appellant is correct in law and fact.

2. The Tax Revenue Appeals Board erred in law in holding that the respondent was correct to impose interest thereon."

In seeking to answer the question whether the impugned decision is a decision in the eyes of the law, we feel compelled to revisit the record of appeal particularly pages 582 and 583 of the record of appeal where there is what appears to be the decisive part of the Tribunal's decision. For clarity, those referred pages speak for themselves:

"The respondent submitted that the Double Taxation Agreement between Tanzania and South Africa is not applicable in the present appeal. Therefore, section 128 (1) of the Income Tax Act, 2004 is not applicable in

the present appeal. Thence (sic) section 83 (1) (c) of the Income Tax Act, 2004 is applicable to the appellant.

That therefore, the Board was right to hold that under section 83 (c) of the Income Tax Act, 2004 provides that, a resident person who pays to non-resident service fee with a source in the United Republic shall withhold income tax from the payment at the rate provided for in paragraph 4 (c) of the First Schedule and since there is no dispute that, the appellant being a resident paid to non-residents service fees with a source in the United Republic of Tanzania. That being the case the appellant had an obligation to withhold tax and this is mandatory requirement as the provision of section 83 (c) of the ITA, 2004."

The Tribunal then went ahead to deliberate on the second ground as follows:

"This Tribunal having found that the first ground of appeal has no merits, then this second ground is consequential as stated above by the respondent."

Clearly, from the record, there was neither discussion nor analysis of the grounds of appeal which were raised by the appellant. Quite surprising, and for an obscure cause, the Vice Chairperson resorted to a mere mechanical exercise of reproducing the respondent's submission as conspicuously seen at page 486 last paragraph and page 487 the first and second paragraphs. Unfortunately, the Vice Chairperson did not even assign reasons for the conclusion reached as required by rule 22 of the Tax Revenue Appeals Rules, 2018 and even the statement that this Tribunal having found that the first ground of appeal has no merits, is unfounded as there was no such finding of the first ground since that ground was left hanging by the Vice Chairperson having merely reproduced respondent's submission as earlier on alluded to.

To say the least, the Tribunal's judgment is not judgment in the eyes of the law. Luckily, this is not the first time we are confronted with this scenario, in the often-cited case of **Malmo Montagekonsult AB Branch v. Margret Gama** [2007] TZCA TANZLII, in which the High Court determined the appeal after consolidating several grounds of appeal into one, the Court had this to say:

"In the first place, an appellate court is not expected to answer the issues as framed at the trial. That is the role of the trial court. It is, however, expected to address the grounds of appeal before it. Even then, it does not have to deal seriatim with the grounds of appeal as listed in the memorandum of appeal. It may, if convenient, address the grounds generally or address the decisive ground of appeal only or discuss each ground separately."

The logical conclusion drawn from the above, is that, the appellate court is bound to consider the grounds of appeal presented before it and in the instant appeal this was not the case. With respect, the impugned judgment fell far below the required standard and for that matter, it was not a judgment known in law.

It bears reaffirming that, the duty of judicial officers and any other adjudicator to assign reasons for the decision given, needs no emphasis, rule 22 of the Tax Revenue Appeals Rules, 2018 is crystal clear. This is a mandatory requirement and a judgment which fails to comply with that requirement is null and void. There is a considerable body of case

law on this. See, for instance, the case of **Willy John v. R** [1956] EA 509.

We take inspiration from the passage by Asprey, JA in the decision of the New South Wales Court of Appeal in **Pettitt v. Duckley** [1971] 1 NSWLR 381, in which the court discussed at considerable lengthy the rationale of reasons which support judicial decisions and orders:

> *"The rights of appeal are statutory rights granted by the legislature to the parties and the failure of a trial judge in the appropriate case to state his findings and reasons amounts, in my view, to an encroachment upon those rights. The omission of the trial judge makes it impossible for an appellate court to give effect to those rights, either for one party to the appeal or another, and so carry out its own appellate function. It is unnecessary to stress the prime importance to a party to an appeal, whether he be appellant or respondent, of the findings and reasons at first instance and this is not limited to the acceptance or rejection of the evidence on the basis of demeanour for, in arriving at his conclusions, the trial judge may simply have preferred one possible view of the*

primary facts to another as being in his opinion the more probable, or he may have preferred the evidence of one witness to another for a variety of reasons, although both were considered by him to be telling the truth as they may have observed the facts to be....Just as it is impossible to confine the grounds upon which an appellate court will order a new trial within rigid categories....so the ambit of the difficulties confronting parties to an appeal will place the appellate court to which they look for the exercise of their statutory rights in many cases in a position which may prevent the court from giving effect to the paramount consideration of obviating a miscarriage of justice."

It is instructive to state that, the only exceptions to the duty to assign reasons is where a decision is "too plain for argument" or where a procedural decision is made and the reasons for it are clear from the context.

In the case of **Mwenga Hydro Limited** (supra) in which faced with analogous situation where the Tribunal's decision was surrounded by uncertainty, we held that:

> *"...it was incumbent for the Tribunal sitting as an appellate court ought to have determined the appeal to finality and with certainty. Thus, in the wake of the uncertainty surrounding the decision of the Tribunal, it cannot be safely vouched that the appeal was determined to finality.*

Equally so, in our recent decision in **GA Insurance Tanzania Limited v. Commissioner General, Tanzania Revenue Authority** [2025] TZCA 846, in which we were confronted with a similar situation, we observed that:

> *"Failure by the Tribunal in this case to consider and pronounce itself on the appellant's grounds of appeal constitute a fundamental irregularity. The judgment rendered in such circumstances cannot be allowed to stand."*

It follows therefore, that, given the above disquieting aspect of the judgment of the Tribunal, we are inclined to invoke our revisional powers under section 6 (2) of the AJA and hereby nullify the judgment and set aside orders made therein. Having nullified the judgment, we remit the record to the Tribunal for it to compose a fresh judgment in accordance with the law. For avoidance of doubts, the said judgment

shall be composed by the same Vice Chairperson who presided over the appeal, unless there is change of circumstances in which case the judgment shall be composed by the successor. The appeal is therefore allowed, but given the circumstances of this case, each party to bear own costs.

DATED at **DODOMA** this 15th day of January, 2026.

M. C. LEVIRA
JUSTICE OF APPEAL

P. F. KIHWELO
JUSTICE OF APPEAL

P. J. NGWEMBE
JUSTICE OF APPEAL

Judgment delivered this 19th day of January, 2026 in the presence of Mr. Mahmoud Mwangia, learned counsel for the appellant, Mr. John Mwacha, learned State Attorney for the Respondent, via virtual Court and Mr. Elias Nkwabi Court Clerk; is hereby certified as a true copy of the original.

D. P. KINYWAFU
DEPUTY REGISTRAR
COURT OF APPEAL