

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: LILA, J.A., KENTE, J.A. And MWAMPASHI, J.A.)

CIVIL APPEAL NO. 145 OF 2022

WILBERT BASILIUS KAPINGA.....APPELLANT

VERSUS

COMMISSIONER GENERAL OF TANZANIA

REVENUE AUTHORITY.....RESPONDENT

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

(Hon. A. Haji, Vice Chairman.)

dated 18th January, 2022

in

Tax Appeal No. 98 of 2020

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JUDGMENT OF THE COURT

6th November, 2025 & 5th February, 2026

KENTE, J.A.:

This appeal stems from the decision of the Tax Revenues Appeals Tribunal (the TRAT), in Tax Appeal No. 98 of 2020. By the said decision, the TRAT confirmed the decision by the Tax Revenue Appeals Board (the Board) which had decided that it had no jurisdiction to entertain an appeal lodged by the appellant against the respondent, the Commission General Tanzania Revenue Authority.

The main issues arising out of this appeal will best be understood in the light of the background facts that are as follow: At the time which is material to the occurrence of this dispute, the appellant was disputably a

representative of Wallis Trading Inc (Wallis), a non-resident company that at that time, had an aircraft leasing contract with Air Tanzania Company Limited.

On 9th June 2020, the respondent, issued to Wallis a jeopardy income tax assessment for a net tax due of TZS 434,351,495.00 for the year of income 2010 which was later on reviewed and reduced to TZS 387,603,186.50. In support of the assessment, the respondent contended that the appellant was acting as Wallis' dependent agent thus creating its permanent establishment in the United Republic of Tanzania as to bring it squarely within the ambit of the Tanzanian law and make it amenable to local taxes. The jeopardy assessments were addressed to Wallis Trading Inc. in Lebanon and copied to the appellant who was designated in that respect as its local representative.

In defence of his position, the appellant denied being Wallis' representative, and because of this, on 6th August 2019 he lodged a notice of objection in terms of section 51(1) (now section 62 (1) of the Tax Administration Act, seeking to challenge the aforesaid assessment. On the same day, pursuant to section 51(6) (now section 62 (8)), the appellant submitted to the respondent an application for full waiver of payment of the amount of tax which was then stipulated under section 51(5) (now Section 62(7) of the Tax Administration Act as a condition for admission

of the objection. The grounds in support of the application for waiver were captured in the appellant's very telling affidavit that was attached to the application.

However, through its letter (with Reference No. TRA/LTD/101-809-439/WAIV/BB) dated 25th September 2019, the respondent issued an inordinately belated reply rejecting the appellant's application on the grounds that he was not eligible for waiver as the time within which the application for waiver ought to be filed had elapsed.

Disenchanted with the respondent's belated decision, and, in a quest to further assert his rights to waiver, by way of appeal, the appellant referred his grievances to the Board. That was pursuant to the then section 53(1) of the Tax Administration Act, sections 7,16(1) and 16(3) (a) of the Tax Revenue Appeals Act; and Rules 5(2) and 6(2) of the Tax Revenue Appeals Board Rules, 2018 (Government Notice No. 217 of 2018). Before the Board, the appellant advanced two grounds of appeal which contested the decision by the respondent rejecting his application for waiver.

The first ground challenged the respondent's refusal to grant the application for waiver which, according to the appellant, was made within the prescribed timeline. In the second ground, the appellant challenged

the respondent's decision by contending that, it was invalid in view of the fact that it was made out of the prescribed period and allegedly in violation of Regulation 96 of the Tax Administration (General) Rules, 2016. To that end, the appellant implored the Board to set aside the decision made by the respondent and grant him the waiver so as to pave the way for the respondent to hear and determine the objection on merit.

In response to the appellant's grievances, among other things, the respondent raised a preliminary objection contending that, the Board had no jurisdiction to entertain the appeal because the respondent's decision refusing waiver was not a decision on an objection to tax. Accordingly, during the hearing before the Board, and upon appeal to the TRAT, the issue was whether the Board was clothed with the requisite jurisdiction to entertain the dispute between the parties.

To put it in a wider spectrum as Mr. Alex Mgongolwa, learned counsel who appeared before us representing the appellant correctly did, the issue was whether the omission contemplated under the then section 53(1) of the Tax Administration Act and the general scheme of the said Act, are caught by the rule established in the earlier decisions of this Court in the cases of **Pan African Energy Tanzania Limited v Commissioner General TRA**, Civil Appeal No. 121 of 2019 and **Pan African Energy Tanzania Limited v Commissioner General TRA**,

Civil Appeal No. 172 of 2020. It is worthwhile to note at this point that, in these two cases, we guided, but as we will explain later, only to the particular facts of the said two cases that, it is only the decisions on tax objections made by the Commissioner General of the TRA that are appealable to the Tax Revenue Appeals Board.

After hearing the parties, in its ruling which, as it was before the TRAT, is essentially the subject of the present appeal, the Board declined to entertain the appeal preferred by the appellant. It reasoned that, it had no jurisdiction to entertain the appellant's appeal as there was no tax objection to the respondent that could be said to have been finally determined so as to qualify for the purposes of appeal.

Aggrieved by the Board's decision, the appellant further appealed to the TRAT. However, upon considering the main and decisive ground of appeal together with the arguments canvassed by parties, by parity of reasoning, the TRAT went on dismissing the appeal for what was called "the lack of merit".

As regards the appellant's contention that the respondent's inordinate delay to determine his application for waiver amounted to an omission that was eligible to be challenged by way of appeal, the learned Vice Chairman and the members of the TRAT who sat with him, took the

unanimous view that, even if the respondent had overly delayed to respond, that delay could not in any way constitute an appellable omission as envisaged in section 53(1) of the Tax Administration Act.

The TRAT went along with the counsel for the respondent and the position taken by the Board that, in view of the established principle in the two cases of **Pan African Energy Tanzania Limited**(supra), the Board was indeed on firm ground to hold that, it had no jurisdiction to entertain the appeal filed by the appellant. Citing the celebrated case of **Dodhia vs National & Grindlays Bank Limited and Another** (1970) 1 EA 195, the TRAT underscored the well established principle that, under the doctrine of precedent, the courts and tribunals below this Court, are bound by its decisions regardless of their correctness. In the event, the TRAT concluded that, since the respondent had responded to the appellant's application for waiver by rejecting it, the concept of an omission which is appealable to the Board as alleged by the appellant, could not arise. Premised on the above reasoning, the appellant's appeal was, in the like manner, dismissed for want of merit.

Those are the concurrent decisions of the Board and the TRAT that brought the appellant who has proven that he does not easily back off from a fight, on appeal to this Court. As stated earlier, the appellant's main contention is clear that, the respondent's decision rejecting his

application for waiver of the amount of tax payable in terms of section 51 (5) now 62 (7) of the Tax Administration Act, was invalid for having been made beyond the prescribed period.

Submitting in support of the appeal, Mr. Mgongolwa contended that, both the Board and the TRAT misdirected themselves in holding that the decision by the respondent was still valid notwithstanding an indubitable truth that it was made in total violation of the principles of timeliness. Moreover, Mr. Mgongolwa took the argument further and submitted that, the omission by the respondent to determine the appellant's application for waiver within the specified period amounted to a legal omission which could be challenged on appeal to the Board. In support of his stance, the learned counsel cited section 53(2) of the Interpretation of Laws Act, (Chapter 1 of the Revised Laws) which stipulates that, where a written law uses the word "shall" in conferring a function, it means that the function must be performed. To that end, the learned counsel submitted correctly so in our view that, it was imperative and mandatory upon the respondent and not discretionary for them to determine the appellant's application for waiver within the period specified by the law. In conclusion, the learned counsel posited that, if a statutory time limit in the context of the instant case is considered mandatory as it should, any action that is taken after expiration of the prescribed period must be invalid or unlawful.

With regard to the decision in the cases of **Pan African Energy Tanzania Limited** (supra) to which both the Board and the TRAT alluded and placed reliance, Mr. Mgongolwa submitted that, the said cases were distinguishable from the instant case as in those cases, there were valid decisions made by the respondent while in the present case, there was virtually no decision at all. He also contended that, as opposed to the present case, the two cases were decided exclusively on the basis of section 16(1) of the Tax Revenue Appeal Act.

In response, Mr. Baraka Mwakyalabwe learned State Attorney who appeared along with her fellow State Attorneys namely, Ms. Adelina Ngugi and Mr. Marcely Kanoni to represent the respondent, begun by observing that, it is not every decision that is made by the Commissioner General of the Tax Revenue Authority that is appellable to the Board. He pointed out that, it is only the decisions relating to objections to tax that can be challenged by the aggrieved tax payer to the Board. As already stated, the learned State Attorney drew our attention to our earlier decisions in the two cases of **Pan African Energy Tanzania Limited** (supra) in which we held that, it is only the decisions made by the respondent on tax objections that are appealable to the Board. In this regard, Mr. Mwakyalabwe was emphatic that, the decisions relating to waiver that are made by the respondent pursuant to section 16(1) of the Tax Revenue

Appeals Act are not decisions relating to tax objections. This being the case, the learned State Attorney further submitted that, both the Board and the TRAT were correct to hold as they did that, the Board had no jurisdiction to entertain the appeal preferred by the appellant.

On the appellant's argument that the respondent's decision was a nullity for having been made beyond the prescribed period, the learned State Attorney submitted that, the fact that the decision by the respondent refusing the appellant's application for waiver was made out of the prescribed period did not, *ipso facto*, confer jurisdiction on the Board to entertain appeals not arising from the respondent's decision on objections to tax as that would be against section 16 (1) of the Tax Revenue Appeals Act.

Responding to the appellant's mainstay argument that, the omission by the respondent to determine his application for waiver within the prescribed period amounted to an omission that was appealable to the Board in terms of section 53 of the Tax Revenue Appeal Act, Mr. Mwakyalabwe submitted that, the omission, if any, was not in relation to a tax objection as it was in respect of an application for waiver whose rejection resulted into an incompetent appeal over which the Board had no jurisdiction. In further response, the learned State Attorney had a second string to his bow. He contended that, even if for argument's sake,

it is to be said that the decision by the respondent was made very long after expiry of the prescribed period, it was still a valid decision in the eyes of the law. In other words, in as much as Mr. Mwakyalabwe conceded that the decision by the respondent was inordinately delayed, that in his view was not to say it was an invalid decision.

Considering the above, the learned State Attorney submitted that, the appellant's contention is based on a wrong interpretation of the law particularly regarding the nature of the jurisdiction conferred on the Board. Upon the above arguments, we were urged by Mr. Mwakyalabwe to follow suit and dismiss the appeal for the lack of merit.

In considering this appeal, we would like to begin by dispelling a myth created by Mr. Mwakyalabwe in this matter and most probably shared by some other adherents of the same school of thought that, in dealing with applications for waiver or objections to tax assessments, the respondent enjoys unfettered power that goes almost against all sense of public accountability allowing the respondent to sit on the applications or objections until the deadline galvanised them into action or, as it happened in the instant case, without any limit. We say this because public officers like the respondent in the present case, are generally required to make some of their decisions within a reasonable period or a prescribed timeframe.

Needless to say, the above requirement ensures, among other things, good administration in public affairs preventing affected parties from being left in suspense indefinitely. At this stage, we digress for a moment as we feel compelled to observe what is increasingly obvious that, if a public officer fails or omits to follow mandatory procedures in service delivery which could include observing the time limits prescribed by the law as was required in this case, their decision might be declared invalid. We will get back to the implication of that observation and proceed to demonstrate, albeit very briefly that, the above discourse goes to support Mr. Mgongolwa's argument to which we totally subscribe that, the duty imposed by the law on the Commissioner General of the Tanzania Revenue Authority to act in some cases within a specified period, is a key component of public accountability and tax administrative efficiency. That being the case, we will underscore the most important point that, failure to adhere to these timelines is a breach of the relevant statute that should not be allowed to pass with impunity and immunity which cannot be used to shield manifest irresponsibility.

As the crux of the present appeal revolves around the interpretation of section 53(1) of the Tax Administration Act, 2015 whose grammatical meaning of what is set out therein is clear for all and sundry to see, we start by quoting it as it provided at the time, thus:

"A person aggrieved by an objection decision or other decision or omission of the Commissioner General under this part may appeal to the Board in accordance with the provisions of the Tax Revenue Appeal".

Now, the main argument advanced by Mr. Mgongolwa in support of the appellant's stance which we need to say, in this regard is consistent with ours is that, irrespective of the fact that the respondent had not made an objection decision in the instant case, upon a proper interpretation of the above quoted law, taking into consideration the whole scheme of the Tax Administration Act, read together with the Tax Revenue Appeals Act, and particularly in the light of its section 7, an aggrieved tax payer is given the right to appeal to, and nothing else but to the Board against three types or lack of decisions thereof by the Commissioner General of the TRA namely, objection decisions, other decisions and omissions.

Up to this stage, we find ourselves unable to disagree with Mr. Mgongolwa in his brief but thorough argument and this inevitably means that we go along with him. While we accept for purposes of this appeal the respondent's argument that under section 16(1) of the Tax Appeals Act, there is no specific mention of the category of the omissions by the respondent that are appealable to the Board, it must immediately be said that it is perfectly true and indeed inferential to say as the appellant's

counsel contended that the respondent's omission to determine the appellant's application for waiver within the period specified by the law, is an omission which, in terms of section 53 (1) of the Tax Administration Act could be challenged by way of appeal to the Board.

What is also worthy of note is that, the above discourse goes to answer a very pertinent question arising from this matter. That is whether the Board and the TRAT were bound by the principle enunciated in our earlier decisions in the two cases of **Pan African Energy Tanzania Limited** (supra).

On this point, we wish to clarify that, there must always be an impressive judicial consensus concerning the jurisprudential nuances of our various decisions which should not be applied holistically in the field of case law techniques but each of which must be read and understood in its own context. This means that, the clear and unambiguous meaning of the court's decision must be considered in its context and not just semantically without regard to the surrounding circumstances. We say this because we are mindful and this is trite knowledge among the legal fraternity that, as opposed to the position taken by Mr. Mwakyalabwe, judicial decisions that are intended to oust courts' jurisdictions are not impulsively made but typically based on statutes that provide for finality of the decisions sought to be challenged in court. Otherwise, if a statute

or constitution expressly confers on a specific court or tribunal the jurisdiction to hear a particular type of case, that court cannot surrender or lose that jurisdiction by issuing a ruling in one case.

In this regard, while all of the counsel appearing before us on appeal were understandably unable to refer to any authority that is directly in point dealing with something analogous to the present situation, and we have to admit that this Court has no precedent in this regard, the take away as distilled from the existing legal literature in the common law jurisdictions which is segmented into three tenets, is that: **One**, a court's jurisdiction primarily flows from the constitution and statutes enacted by the Parliament, not from its own or any other Court's precedents or decisions in specific cases. **Two**, ousting jurisdiction conferred by law would be not only constitutionally dissonant but would essentially allow the judiciary to override the explicit will of the Parliament or the people (in the case of a constitution) as to amount to the dilution of the principle of separation of powers, and **finally**, at all times, the court's or quasi-judicial bodies' scope of jurisdiction need to be stable, clear to the litigants and predictable, ensuring consistent application of the law rather than being dependent on individual case outcomes or the higher court's will and whims of the moment. As Benjamin N. Cardozo a lawyer and former Associate Justice of the Supreme Court of the United States put it in his

book titled "**The Growth of The Law**", Universal Law Publishing Company PVT LTD 2008, one of the twofold needs that the law of our day faces, is the need of some restatement that will bring certainty and order out of the wilderness of precedent. Being the highest court of the land, we would not root any interpretation of the law that contradicts the established constitutional principles which remain in force and have hitherto not been subverted.

Obviously, it is beyond the scope of this judgment to discuss how the courts of law strictly interpret ouster clauses but suffice it to say that, under the same spirit of strictness, even in common law fields where the Judge's legislative power is usually thought to reach its zenith, a court of law will rarely make a decision that attempts to oust its own or any other court's or tribunal's fundamental jurisdiction as jurisdictional boundaries are typically defined by constitutions and statutes and not the courts of law. An approach by a distinguished and experienced American legal scholar and retired United States Circuit Judge Richard Allen Posner in his book titled "**How Judges Think**" Universal Law Publishing C. PVT Ltd, Second Indian Print 2011, clearly reflects the above sentiments.

Upon the foregoing discussion, we find the concurrent positions taken by the Board and the TRAT, to the effect that in view of our earlier decisions in the cases of **Pan African Energy Limited**, the Board had

no jurisdiction to entertain the appeal preferred by the appellant, rather overreaching and erroneous. Clearly, the precedential value that the two cases hold for future similar cases is being overstated. By placing much and undue reliance on these authorities, the respondent is, either knowingly or unknowingly attempting to procure a judicial pronouncement which, if we were to accept the respondent's argument too easily, would practically have the effect of finally locking out of the Board many tax payers who, it seems odds-on and, we cannot avoid the inference that, they will be adversely affected by the respondent's delayed decisions or inactions. This is a reality which this Court cannot ignore in its endeavour to do justice to the present and future tax litigants.

It is needless to say, that the complaints by such taxpayers whether supported by the facts and the law or being part of their traditional lingua grievances over tax assessments, cannot just be simply swept under the carpet as Mr. Mwakyalabwe appeared to ineptly suggest when, while acting *ex mero motu*, we probed him. A further indication which strongly militates against the learned State Attorney's position is that no authority was quoted to us by him which would support his argument that the omission by the respondent in this case was an injustice for which there was no remedy in the current laws.

Going forward, another thing to be observed here is that, as some of the most well intentioned ideas such as the vesting of discretionary powers in the respondent that are designed and fashioned for its efficiency, turn to be misapplied as it happened in the present case, it is also worthy of note that, it was certainly not in the contemplation of the Legislature and indeed the Legislature could not predict that in the exercise of its discretionary powers under section 51 (6) of the Tax Administration Act, and in an efficient and transparent tax administration system which we must continue to strive for, the respondent or any one acting on its behalf would just sit on the tax payers' applications for waiver or objections intentionally or accidentally thereby keeping them in suspense. And when this regrettably happens as in the instant matter, the respondent's counsel cannot be heard to say that, in terms of our current jurisprudence, after receiving the appellant's application for waiver, the respondent was home and dry as the Board had no jurisdiction to entertain the tax payers' grievances arising out of the respondent's delayed decision or the omission to decide.

Clearly, the above discussion shows beyond any peradventure that, the jurisdiction vested in the Board by Section 7 of the Tax Revenue Appeals Act to hear and determine all disputes of a civil nature arising from revenue laws administered by the TRA cannot be simply ousted by

any court's decision irrespective of such court's level in the judicial hierarchy. Otherwise, as we have already pointed out, if the lower courts' reasoning is followed through to its logical conclusion, and if this were to be the case, this Court would be on the verge of making it much harder if not totally impossible for the tax payers to make use of their statutory right to object tax assessments which are repeatedly the subject of contentious judicial debates. All in all, we have no misgivings whatsoever in holding that, it is not in the domain of the respondent to sit on the grievances referred to them by the tax payers thereby keeping the tax payers in limbo with no clear time line for final solution.

That said, we find merit in Mr. Mgongolwa's argument which accords with our position that, the two cases of **Pan African Tanzania Energy Limited** are indeed distinguishable as they present a quite different scenario from the instant case. Moreover, for another reason and definitely for good measure, we have to bear in mind that the two cases do not, in the circumstances of the present matter, assist the case sought to be made on behalf of the respondent. If properly analysed and understood, the said cases were decided on the exclusive interpretation of section 16 (1) of the Tax Revenue Appeals Act. That is in our view, is what the Board and the TRAT failed to take into account in the instant matter. To put it plainly, these authorities did not state nor were they

intended to cast in stone a general proposition that the Board has no jurisdiction to entertain the tax-payers' grievances regarding the respondent's inactions or omissions unless there is already in place a decision on a tax objection.

We also wish to make it clear that, having regard to the particular facts and the legal issues obtaining in the present case, and in any case of the present nature, as of right, the appellant was entitled to appeal to the Board which, as amply demonstrated, was not bound to follow our earlier decisions in the aforementioned cases. In this connection, it must as well be very elementary for the entire legal fraternity to recall and indeed, there is a wealth of authority of which we need not cite any to support the proposition that, within the common law system, analogy is considered flawed when, in a situation akin to the instant one, the differences between the cases sought to be equated outweigh the similarities in the context of the argument being made. Put in simple terms and in view of the present dispute, what appears clear to us is that the present case does not share the same facts and legal characteristics with the **Pan African Energy Tanzania Limited** cases upon which the lower court's impugned decisions were anchored. In these circumstances, we retain the latitude to reach a different conclusion in the present matter, as we hereby do.

In the ultimate event, we take the view that, as the dispositive ground of appeal advanced by the appellant has succeeded, consideration of other grounds proffered by the appellant would be rather otiose. In the result, the entire appeal is hereby allowed with costs. The concurrent decisions of the Board and the TRAT are quashed and set aside. Instead, the Board is directed to hear and determine expeditiously the appellant's appeal on merit.

It is so ordered.

DATED at DODOMA this 4th day of February, 2026.


S. S. LILA
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

A. M. MWAMPASHI
JUSTICE OF APPEAL

Judgment delivered this 5th day of February, 2026, via Virtual Court, in the presence of Mr. Kennedy Mgongolwa, learned counsel for the Appellant, Mr. Baraka Mwakyalabwe, learned counsel for the Respondent, and Mr. John Gervas Court Clerk; is hereby certified as a true copy of the original.




D. P. KINYWAFU
DEPUTY REGISTRAR
COURT OF APPEAL

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