IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LILA, J. A., MWANDAMBO, J.A, And KAIRO, J.A.)

CIVIL APPEAL NO. 444 OF 2020

KILOMBERO SUGAR COMPANY 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 (Hon. H.A. Haji, Vice Chairperson, Dr. S. Mzenzi and Ms. V. Mandari, Tribunal Members)

dated the 16th day of September, 2020
in
Tax Appeal No. 35 of 2019
.....

JUDGMENT OF THE COURT

10th & 30th May, 2022

MWANDAMBO, J.A.:

Before us in this appeal is a decision of the Tax Revenue Appeals Tribunal (the Tribunal) on appeal from the decision of the Tax Revenue Appeals Board (the Board). The Tribunal dismissed an appeal preferred before it by the appellant challenging the respondent's demand for payment of tax due post an unsuccessful challenge of final assessment of tax by the Tribunal in Tax Appeal No. 32 of 2013.

The brief facts giving rise to this appeal are as follows: In the year 2013, the appellant filed three appeals before the Board challenging the

respondent's final tax assessments for three consecutive years of income involving an amount of TZS 340,795,245.00 as the total tax due. The Board consolidated the appeals and determined as such allowing them on the disputed expenditure items that had been disallowed by the respondent in the computation of the income chargeable to tax for the relevant years of income. The aggrieved respondent appealed to the Tribunal which allowed the appeal with the exception of a few expenditure items thereby reducing the tax liability to a certain extent.

The appellant's attempt to challenge the Tribunal's decision on appeal before the Court hit a snag in Civil Appeal No. 5B of 2015, for the Court struck it out for being incompetent in a ruling delivered on 22/08/2016. Subsequently, the appellant commenced steps to institute a fresh appeal which entailed going back to the Tribunal with a view to applying for extension of time within which to lodge a notice of intention to appeal as a first step before accessing the Court.

Amidst the steps to institute a fresh appeal, on 15/02/2017, the respondent sent a letter to the appellant demanding payment of TZS 226,937,033 ostensibly the total tax due following the decision of the Tribunal. The respondent made the demand in view of the fact that the appellant had not yet reinstituted her appeal after the striking out of Civil Appeal No. 5B of 2015. According to the respondent, since there

was no any pending appeal to the Court any more, the tax involved was due and payable to him. Notwithstanding the appellant's plea with the respondent to halt the tax collection measures based on her explanation in a letter dated 24/02/2017 (part of exhibit A-6), the respondent could not be moved. On 11/05/2017, the respondent demanded immediate payment of the tax due reminding the appellant that in terms of section 24 (3) of the Tax Revenue Appeals Act, 2000 [Cap. 408], henceforth the TRAA, the decision of the Tribunal crystallised into an enforceable decree as if it was a decree issued by a court of law. Besides, the respondent maintained that, in terms of section 24 (4) of the same Act, even if there was any appeal, it could not operate as a bar to the execution of the Tribunal's decree.

Believing that the aforesaid demand constituted an apellable decision, the appellant filed before the Board Tax Appeal No. 67 of 2017.The appellant's case before the Board was that the respondent's decision demanding payment of the tax due was illegal in the absence of an application for execution as required by section 24 (3) of TRAA as well as rule 23 (1) of the Tax Revenue Tribunal Rules, 2001. Put it differently, the appellant's contention was that the respondent had no automatic right to recover the amount arising from the decision of the Tribunal.

The respondent's counsel had a different view contending that regardless of the fact that the amount demanded emanated from a decree of the Tribunal, the respondent was empowered to adopt any recovery measure to collect the tax due and so he was not bound to apply for execution before the Tribunal. From the contentions in that appeal, the Board framed one main issue for its determination, that is to say; whether the respondent's decision demanding payment from the appellant without lodging an application for execution was lawful.

Although the respondent's reply to the statement of appeal did not raise any issue touching on the jurisdiction of the Board, such an issue arose as an alternative argument in the respondent's written submissions in reply. It was argued for the respondent that the Board had no jurisdiction to entertain a fresh appeal from the execution of the Tribunal's decree and if the appellant had any issue with the execution of decree, it was open to her to challenge it before the Tribunal itself rather than the Board in as much as the Board had no power to execute the former's decrees. Nevertheless, the Board took the view that it had jurisdiction to determine the appeal under the Tax Administration Act, 2015 (the TAA) considering that section 7 of TRAA vests in it sole jurisdiction in all proceedings of a civil nature in disputes arising from revenue laws administered by Tanzania Revenue Authority (TRA).

Regarding the merit of the appeal, the Board sustained the respondent's argument that the demand for payment of the tax due dated 11/05/2017 from the respondent was made in the exercise of his statutory powers of administering the TAA the legality of which was being challenged by the appellant. It held that it was legally proper for the respondent to demand payment of the tax due without recourse to the Tribunal by way of an application for execution. The Board relied on the decision of the Tribunal in **Tullow Tanzania BV v. Commissioner General, TRA**, Tax Appeal No. 2 of 2013 in which the Tribunal held that the need to file an application for execution arises only when a decree holder seeks the assistance of the court in executing the decree. It thus dismissed the appeal hence the unsuccessful appeal before the Tribunal. Undaunted, the appellant is before the Court in the instant appeal predicated on two grounds.

Mr. Ayoub Mtafya, learned advocate from Nexlaw Advocates, appeared during the hearing of the appeal on 25/4/2022 representing the appellant as he did before the lower tribunals. The respondent had Mr. Juma Kisongo and Consolata Andrew, learned Principal State Attorneys along with Ms. Salome Chambai, learned State Attorney resisting the appeal. Before Mr. Mtafya rose to address the Court on the grounds of appeal, Mr. Kisongo raised an issue touching on the

jurisdiction of the Board to entertain the appeal which, according to him, did not arise from an objection decision in the light of section 16 (1) of TRAA. That aside, the Court too wanted to be addressed on the propriety of the appellant challenging the validity of the demand for payment of the tax due as she did before the Board instead of the Tribunal which made the decree. At the instance of Mr. Mtafya praying for an indulgence to allow him time to prepare on the two issues, the hearing of the appeal stood adjourned to 10/05/2022.

At the resumed hearing, we heard Ms. Andrew first in support of both issues before Mr. Kisongo chipped in. The gravamen of the respondent's argument on the first issue lies in section 16 (1) of TRAA which provides for appeals to the Board from objection decisions of the respondent. The learned Principal State Attorneys argued that the respondent's demand dated 11/05/2017 for payment of the tax due was not an objection decision from which an appeal could have lied to the Board. They argued thus that the Board had no jurisdiction to entertain an appeal from a non-objection decision pursuant to section 52 of the TAA. Elaborating, Mr. Kisongo argued that had the appellant wished to object the respondent's demand in exhibit A-1, she should have followed the legally prescribed procedure and channels for doing so. It was his further argument that in its decision, the Board did not address itself to

the dictates of section 16 (1) of TRAA as well as section 52 and 53 of TAA on the appellability of non-objection decisions determined by the respondent. The Court was referred to three of its decisions in **Pan Africa Energy Tanzania Limited v. Commissioner General (TRA)** Civil Appeal No. 12 of 2018 (*Pan African Energy I*), **Pan Africa Energy Tanzania Ltd v. Commissioner General (TRA),** Civil Appeal No. 172 of 2020 (*Pan African Energy II*) and **Shana General Stores Limited v. Commissioner General (TRA),** Civil Appeal No. 369 of 2020 (all unreported) to reinforce the argument that the Board's jurisdiction under section 7 of TRAA is limited to determining appeals from objection decisions of the respondent which was not the case in the instant appeal. The learned Principal State Attorneys urged the Court to sustain the issue raised and hold that the Board had no jurisdiction to hear and determine an appeal from the respondent's decision to demand payment arising from a decree of the Tribunal as that decision was not appellable to the Board.

Replying, Mr. Mtafya argued that the appeal before the Board was grounded on section 50 (1) of TAA which permits appeals from decisions of the respondent affecting the appellant. According to the learned advocate, the respondent's demand notice dated 11/05/2017 constituted an appellable decision covered by section 50 (1) of TAA since the

respondent issued the notice under the first schedule to TAA. The learned advocate implored us to desist from taking the same approach we took in ***Pan Africa Energy I*** and **Commissioner General TRA v. Barrick Gold PLC**, Civil Appeal No. 11 of 2020 (unreported) on what constitutes a decision and instead, we should determine the existence of a decision having regard to the functions of the respondent.

Next, Mr. Mtafya argued that section 16 (1) of the TRAA was not meant to disapply section 53 (1) of the TAA which confers jurisdiction on the Board to hear appeals from objection decisions or other decisions or omissions of the respondent except those excluded by section 15 of TRAA. He concluded his submissions on this issue by urging the Court to overrule the objection and proceed with the hearing of the appeal on merit.

In rejoinder, Mr. Kisongo contended that the appellant's letter dated 24/02/2017 was not an objection recognized by the law neither did it comply with the conditions for lodging of objections with the Commissioner General, amongst others, a deposit of 1/3 of the disputed tax pursuant to section 15 (1) TRAA. As to whether it was any other decision envisaged by section 53 (1) of TAA, the learned Principal State Attorney drew the Court's attention to ***Pan Africa Energy I & II*** on the jurisdiction of the Board to entertain appeals from objection

decisions of the respondent. He also drew our attention to **Shana General Stores Ltd** (supra) in which rejection of waiver to deposit 1/3 of the disputed tax as a condition for entertaining an objection to a final assessment was held not to be an objection decision appellable to the Board. He urged the Court to follow suit.

Arising from the arguments by the learned counsel for both parties, it is plain that the issue raised touches on the validity of the jurisdiction of the Board to entertain an appeal against the respondent's decision which the learned counsel have locked horns on whether or not it was an appellable decision. Mr. Mtafya would have the Court agree with him that the demand for payment of the tax due was a decision falling under section 50(1) of TAA primarily because it affected the appellant directly. The burden in Mr. Mtafya's argument lies in section 51 (1), (4) and (5) of TAA prescribing requirements which a tax payer aggrieved by a tax decision has to take in objecting it to the respondent. The argument by the respondent's learned counsel that the appellant's letter dated 24/02/2017 in response to exhibit A-1 was not an objection appears to be plausible. We say so because Mr. Mtafya did not succeed in persuading us that such a correspondence met the preconditions set out under section 51(1) of TAA neither was it in the form prescribed under the schedule XI of the Tax Administration (General) Regulations,

2016 force in 2017 when the respondent made the demand. Indeed, had there been any objection through the said letter, the respondent could not have admitted it without the appellant complying with the mandatory requirements under section 51 of TAA. That means that the respondent could not have made an objection decision capable of being appealed from in terms of section 16(1) of the TRAA.

From the foregoing it is plain that Mr. Mtafya's invitation to adopt an approach wider than what the Court took in ***Pan African Energy I & II*** and **Shana General Stores Ltd** (supra) in the interpretation of the respondent's letter dated 11/05/2017 and treat it as falling under the category of other decisions or omissions of the respondent appellable to the Board sounds attractive but, with respect untenable. Contrary to the learned advocate, we do not think he is correct in submitting as he did that the Court took a narrow approach in excluding other decisions and omissions from the realm of appellable decisions. We say so mindful of section 53 (1) of TAA relied upon by the learned advocate vesting right of appeal to an aggrieved tax payer subjects such right to the provisions of the TRAA. Section 16 (1) of TRAA as amended by section 110 of TAA provides:

> *"Any person who is aggrieved by an objection decision of the Commissioner*

General made under the Tax Administration Act may appeal to the Board".

As we stated in **R v. Mwesige Geofrey & Another**, Criminal Appeal No. 355 of 2014 (unreported):

> *"... when the words of a statute are unambiguous, "judicial inquiry is complete". There is no need for interpolations, lest we stray into the exclusive preserve of the legislature under cloak of overzealous interpretation. This is because "courts must presume that a legislature says in a statute what it means and means in a statute what it says there!"*

We have no doubt that the section is too clear and unambiguous to engage the Court into a construction which Mr. Mtafya alluded to. Mindful of the foregoing, in ***Pan African Energy I*** the Court stated:

> *"From the above provision [referring to section 16(1) of TRAA as amended by section 110 of TAA], it is significantly discernible that an appeal to the Board is presently narrowed down to an objection decision of the CG under the TAA. It is beyond question that, in the situation at hand, there is, so far, no objection decision of the CG and to say the least, going by the specific language used in section 16 (1), the purported appeal before the TRAB which did not result from an objection decision of the CG was incompetent."*
>
> *[at page 13]*

The Court did alike in other subsequent decisions amongst others, ***Pan African Energy II*** and **Shana General Stores Ltd** (supra). It is plain from the foregoing that the restriction of appealable decisions is not a result of the Court's narrow approach as urged by Mr. Mtafya but by the law itself. This explains why in **Shana General Stores Ltd,** for instance, the Court declined to treat the refusal of waiver to deposit 1/3 of the disputed tax as an objection decision amenable to appeal because the language used in section 16(1) of TRAA did not permit an interpretation by including appeals from the respondent's decisions beyond his objection decisions.

It is thus no longer in dispute that since the appellant did not appeal against the respondent's objection decision, the purported appeal was incompetent. The net effect is that the Board assumed jurisdiction which it did not have in entertaining the appellant's appeal from a non-objection decision contrary to the dictates of section 16(1) of TRAA. Such an incompetent appeal had the effect of vitiating the proceedings before the Board, so its decision. Consequently, the appeal to the Tribunal together with the proceedings and the resultant decision were a nullity from which no competent appeal could have been instituted before this Court.

Accordingly, we are constrained to invoke the Court's revisional jurisdiction under section 4 (2) of the Appellate Jurisdiction [Cap. 141 R.E 2019] and nullify the proceedings before the Board and the Tribunal for being a nullity and quash their respective decisions as we hereby do rendering the appeal incompetent. Having so held, we cannot determine the other issues in the appeal from an incompetent appeal.

In fine, the incompetent appeal is hereby struck out with costs.

DATED at **DAR ES SALAAM** this 25th day of May, 2022.

S. A. LILA
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

L. G. KAIRO
JUSTICE OF APPEAL

The Judgment delivered this 30th day of May, 2022 in the presence of Mr. Ally Hamza, learned counsel for the appellant and Mr. Cherubin Chuwa, learned Senior State Attorney for the respondent, is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL