

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

(CORAM: KIMARO, J.A., ORIYO, J.A., And MWARIJA, J.A.,)

CIVIL APPEAL NO. 80 OF 2015

**G. S. CONTRACTORS LIMITED..... APPELLANT
VERSUS
COMMISSIONER GENERAL (TRA).....RESPONDENT**

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

(Honourable Hussein Mataka. Vice Chairperson)

Dated 31st day of July, 2014

in

Tax Appeal No. 22 of 2014

RULING OF THE COURT

19th February & 24th March, 2016

ORIYO, J.A.:

The appellant is challenging the decision of the Tax Revenue Appeals Tribunal dated 3rd February, 2015 in Tax Appeal No. 22 of 2014.

However, before the appeal came up for hearing, the respondent lodged a Notice of Preliminary Objection, in terms of Rule 107(1) of the Tanzania Court of Appeal Rules, 2009, (the Rules), as follows:-

*"That the appeal has been brought to this Court
in contravention of Section 25(2) of the Tax
Revenue Appeals Act, R.E. 2006 read together*

with Rule 96(2) of the Tanzania Court of Appeal Rules, 2009;

Reasons therefore the counsel for the Respondent shall pray for the Appeal to be struck out with costs."

For ease of reference, **Section 25(2) of the Tax Revenue**

Appeals Act, Cap 408, R.E. 2002, provides:-

*"Appeals to the Court of Appeal shall lie on matters involving questions of law only and the provisions of the Appellate Jurisdiction Act Cap. 141 and the rules made thereunder **mutatis mutandis** to appeals from the decision of the Tribunal."*

At the hearing of the appeal, the appellant was represented by one Nyayisa Godwin, learned counsel assisted by Diana Matondane, learned counsel. The respondent TRA, had the services of Mr. Primi Telesfori, learned counsel. The crux of the objection by the respondent was the absence from the record of appeal, a copy of the decree issued by the Tax Appeals Board. The rationale given by the respondent being that in the event the decision of the Tax Appeals Tribunal on record is, for some reason vacated, it would follow that the decree of the Tax Appeals Board on record would then be available for enforcement.

Apparently, Mr. Godwin, learned counsel for the appellant was not persuaded that the Board was the first appellate court, but rather to him, it was the Court of first instance after a decision of the Commissioner General. He submitted that the omission cited is not fatal because Rule 96(2) relates to the first appellate court; and not the court of first instance.

However, the learned counsel made a prayer that in the event the Court finds it necessary to have a decree of the Board on record; for the interest of justice; the appellant be allowed to amend the Record of Appeal to include the missing record; in terms of Rules 4(1) (2) (b) and 111; of the Rules.

Rule 96(2) of the Rules provides the following:-

" 96 – (2) For the purposes of any appeal from the High Court in its appellate Jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as may be to those set out in sub-rule(1) and shall contain also the following documents relating to the appeal to the first appellate court –

- (a) the order if any giving leave to appeal;*
- (b) the memorandum of appeal;*
- (c) the record of proceedings;*
- (d) the judgment or ruling;*
- (e) the decree or order;*
- (f) the notice of appeal,*

and in the case of a **third appeal**, shall contain also the corresponding documents in relation to the second appeal **and the certificate of the High Court that a point of law is involved** (Emphasis supplied).

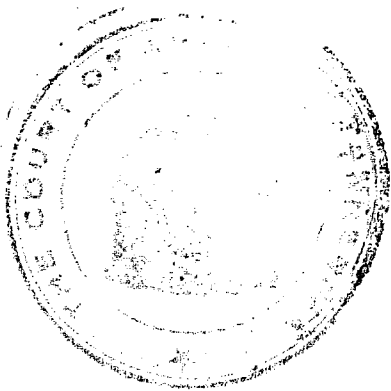
Our starting point is to make a general observation that the Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal are both appellate bodies in tax disputes; but at different levels. In our view, the Tax Revenue Appeals Board is the first appellate Court from a decision of the Commissioner General and the Tax Revenue Appeals Tribunal being the second appellate court from the decision of the Tax Revenue Appeals Board.

In view of the legal status of the two Tax Appellate institutions; the provisions of section 25(2) of the Tax Revenue Appeals Act R.E.2006, read together with Rule 96(2) of the Rules,

make it mandatory that the Record of Appeal contains among others, the documents listed in Rule 96(2) (a) to (f). (supra). Further, this being a third appeal, the record has in addition, to contain a certificate that a point of law is involved; absence of which renders the appeal incompetent.

In the event, we think that this point of objection sufficiently disposes of the matter. Accordingly, the appeal is struck out. Each party to bear own costs.

DATED at **DAR ES SALAAM** this 22nd day of March, 2016.



N. P. KIMARO
JUSTICE OF APPEAL

K. K. ORIYO
JUSTICE OF APPEAL

A. G. MWARIJA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.

A handwritten signature in black ink, appearing to read "J. R. Kahyoza", is written over a horizontal line.

J. R. KAHYOZA
REGISTRAR
COURT OF APPEAL