

TAX ALERT



TAX

**TAX DISPUTE APPEAL TO THE COURT
OF APPEAL MUST BE ON A POINT OF LAW**

1. Introduction

The right of appeal is sacred. Even those familiar with the Bible know that the Apostle Paul, after his case was heard before Festus and Festus failed to render a ruling on the charges against him, exercised his right to appeal to Caesar, as recorded in **Acts of the Apostles 25:12**. Throughout history, the right of appeal has existed and continues to play a vital role in the pursuit of justice. However, is this right absolute and unconditional? The answer is no. The right of appeal is governed by established rules and procedures designed to uphold fairness, order, and balance within the legal system.

Beyond the requirement that an appeal must be filed within the prescribed time, appeals in tax disputes before the Court of Appeal demand even more. The additional requirements and procedural considerations governing such appeals will be the focus of this legal alert.

2. The Appeal Process in Tax Disputes

In tax matters, when a taxpayer is aggrieved by a tax assessment, they are required to file a notice of objection. If the objection is heard and the taxpayer remains dissatisfied, they must appeal to the Tax Revenue Appeals Board. If still aggrieved, the next step is to appeal to the Tax Revenue Appeals Tribunal. Finally, the losing party may appeal to the Court of Appeal of Tanzania.

- i). On 3rd July 2025, the Court of Appeal once again, in **Sunshare Investment Limited v. Commissioner General, Tanzania Revenue Authority, Civil Appeal No. 620 of 2023 (unreported)**, dismissed the appeal.

3. Facts of the case

In 2016, the Commissioner General of the Tanzania Revenue Authority (TRA) conducted a post-clearance audit of the appellant's business for the period covering 2012 to 2016. As a result, the Commissioner General discovered that the appellant had undervalued imported goods, leading to a tax liability of TZS 1,737,624,037.55.

Dissatisfied with the assessment, the appellant lodged an appeal with the Tax Revenue Appeals Board on the following grounds:

- i). The goods that were intended to be imported along with their corresponding invoices (which the appellant had already paid for) were later cancelled. Therefore, no customs declaration was made. The appellant attached the cancelled invoices as evidence.

- ii). The appellant also contended that there was a discrepancy between the CIF (Cost, Insurance, and Freight) values recorded in the foreign suppliers' ledger and the values declared in the Tanzania Customs Integrated System (TANCIS).

The Tax Revenue Appeals Board heard the matter and dismissed the appeal on the grounds that the invoices claimed to have been cancelled were not reported in the appellant's balance sheet as of 31st December 2016. Regarding the discrepancy between the CIF values recorded in the foreign suppliers' ledger and the values declared in TANCIS for the year 2016, the Board observed that the ledger showed higher CIF values than those declared in TANCIS. The Board concluded that the appellant had made under-declarations. However, the Board partially allowed the appeal to the extent of TZS 19,498,360.98, which resulted from a miscalculation.

Unhappy with the decision, the appellant unsuccessfully appealed to the Tax Revenue Appeals Tribunal. The appellant subsequently appealed to the Court of Appeal on the following grounds;

- i). The Tribunal erred in law by holding that the Appellant had a duty to call the maker of the Foreign Suppliers Ledger (Exhibit A1 and 3 RI), which was pleaded and relied upon by the Respondent and admitted without objection.
- ii). The Tribunal having erred in law as in Ground 1, further failed to re-evaluate evidence on record and arrived at a wrong and erroneous decision.
- iii). The Tribunal, as the first appellate court, erred in law by failing to hold and re-analyze the documentary evidence properly before the Board, which could not be contradicted by oral testimony.
- iv). The Tribunal erred in law by placing the burden of proof on the Appellant, who had asserted the negative regarding the importation of goods subject to cancelled invoices (Exhibit A4 and A7).
- v). The Tribunal erred in law by failing to determine the legality of the assessed taxes on the Appellant.

Upon being served with the appeal, the respondent raised a preliminary objection (prayer in limine litis) on the ground that the appeal contravened Section 25(2) of the Tax Revenue Appeals Act (TRAA), read together with Section 5(1)(d) of the Appellate Jurisdiction Act.

4. Argument by Counsel for TRA

Counsel argued that the appeal hinged on matters of evidence and or facts, which are not appealable to the Court of Appeal under the cited provisions. Referring to the case of **Atlas Copco Tanzania Ltd v. Commissioner General, Tanzania Revenue Authority (Civil Appeal No. 167 of 2019) [2020] TZCA 317 (17 June 2020, TANZLII)**, counsel for the respondent contended that a point of law arises only when there are specific assertions in the Memorandum of Appeal that clearly identify either the misapplication or misinterpretation of the law or legal principles, or a failure to evaluate or a misapprehension of evidence.

5. Argument by counsel of Tax Payer

He partly conceded to the preliminary objection insofar as the first and fifth grounds of appeal were concerned. However, regarding the remaining grounds, he submitted that they conformed to the principles set out in **Atlas Copco Tanzania Ltd v. Commissioner General, Tanzania Revenue Authority**. He argued that the failure to re-evaluate oral evidence and the financial statements tendered by the appellant raised a point of law deserving the attention of the Court of Appeal—namely, the second and third grounds of appeal. As for the fourth ground, he argued forcefully that, since it relates to the shifting of the burden of proof, it constitutes a question of law.

6. Court of Appeal Decision

In its decision the Court of Appeal held that;

- i). It is trite law under section 25(2) of TRAA that the right to appeal against a decision of the tribunal is only available if the intended appeal raises a question of law.
- ii). The alleged points of law must not only be specific but more importantly, apparent on the face of the Memorandum of Appeal and should not be ones that invite the Court to reopen factual issues in support of the appeal.

7. Conclusion

The Court of Appeal reaffirmed the long-standing principle that it only entertains tax appeals raising questions of law, not disputes over facts or evidence. Parties dissatisfied with decisions of the Tax Revenue Appeals Tribunal must therefore ensure that their grounds of appeal clearly identify legal errors—such as misinterpretation or misapplication of the law—rather than attempting to re-argue factual findings. In essence, the Court remains a guardian of the law, not a re-examiner of facts.

DISCLAIMER

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