IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MWARIJA, J.A., KENTE, J.A. And ISMAIL, J.A.)

CIVIL APPEAL NO. 425 OF 2023

TOTAL TANZANIA LIMITED.. APPELLANT

VERSUS

COMMISSIONER GENERAL (TRA).................................. RESPONDENT

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

(Ngimilanga, Vice Chairman)

Dated the 15th day of February, 2023

in

Tax Appeal No. 09 of 2023

....

JUDGMENT OF THE COURT

16th June, 2025 & 9th April, 2026

MWARIJA, J.A.:

The appellant, Total Tanzania Limited, a limited liability Company incorporated in the United Republic of Tanzania and carrying on the business of marketing and distribution of fuel and lubricants in the country, has appealed against the decision of the Tax Revenue Appeals Tribunal at Dar es Salaam (the Tribunal). In the impugned decision, the Tribunal upheld the decision of the Tax Revenue Appeals Board (the Board) in Consolidated Income Tax Appeals Nos. 394, 395 and 396 dated 28/5/2021. In the said appeals,

the appellant appealed against the assessment of the respondent, the Commissioner General of Tanzania Revenue Authority disallowing from the appellant's accounts, the deduction of the amount claimed to be expenses incurred in the production of its income in terms of section 11 of the Income Tax Act, 2004 (the ITA) for the years 2021, 2013 and 2014.

The Tribunal agreed with the decision of the Board that the appellant had failed to establish, through evidence, that the amount sought to be deducted was incurred for payment of technical services rendered by Total Outre Mer, in terms of section 11 (2) of the ITA hence a deductable amount by the appellant under section 33 of the ITA. The respondent found that the amount did not qualify for deduction. It was found that, existence of transfer pricing documents showing that the transaction was at arm's length was not in itself, a sufficient proof that services were rendered.

The appellant was further aggrieved by the decision of the Tribunal hence this appeal which is predicated on three grounds as follows:

"1. The Tax Revenue Appeals Tribunal erred in law in failing to interpret the provisions of section 11 (2) of the Income Tax Act, 2004 and holding that the services/group technical assistance by Total Outre Mer were incurred wholly and exclusively in the production of the appellant's income.

2. The Tax Revenue Appeals Tribunal erred in law in failing to consider section 33 (1) of the Income Tax Act, 2004 and the OECD Transfer Pricing Guidelines, 2010 in determining the correctness of the respondent's decision to disallow group technical assistance fee charged to the appellant by Total Outre Mer (TOM).

3. The Tax Revenue Appeals Tribunal erred in law by failing to hold that, the Board was wrong for contradicting the requirements of section 20 of the Tax Revenue Appeals Act read together with rule 15 (3) of the Tax Revenue Appeals Board Rules, 2018."

On the hearing date, the appellant was represented by Mr. Allan Nlawi Kileo, learned counsel while the respondents were represented by Ms. Consolatha Andrew, learned Principal State Attorney assisted

by Mr. Hospis Maswanyia, learned Principal State Attorney, Ms. Hadija Senzia and Mr. Thomas Buki, both learned Senior State Attorneys.

In deliberating on the grounds of appeal, we wish to begin with the 3rd ground. It is a correct position as submitted by the learned Principal State Attorney in his reply written submission that, the point was not raised in the Tribunal. However, as argued by the appellant's learned counsel, since the ground raises a point of law on the legality or otherwise of the judgment of the Board, the appellant was justified to raise it in this appeal. See the cases of **William Sulus v. Joseph Samson Wajanga** (Civil Appeal No. 193 of 2019) [2023] TZCA 92 cited by the appellant's counsel, **Halid Maulid and Another v. Republic** (Criminal Appeal No. 342 of 2020) [2021] TZCA 225 and **Mwananchi Communications Limited and 2 Others v. Joshua K. Kajula and 2 Others** (Civil Appeal No. 126/01 of 2016) [2020] TZCA 1061. In the case of **Halid Maulid and Another** (supra) the Court had this to say:

> *"...even though it is a new ground, since it is on a point of law, the Court is not precluded from entertaining it. This is because, as a principle, a point of law can be raised at any*

stage of proceedings. The position has been stated in a number of decisions of the Court including; ***DPP v. Bernad Mpangala and 2 Others****, Criminal Appeal No. 29 of 2001,* ***Venant Kagaruki v. Permanent Secretary, Ministry of Finance and Another****, Civil Appeal No. 103 of 2007 and* ***Mathias Eusebi Soka v. The Registered Trustees of Mama Clementina Foundation****, Civii Appeal No. 40 of 2001 (all unreported).*"

On the basis of that trite position of the law, we find that the appellant was justified to raise the point at issue.

In his submission in support of the said ground of appeal, the appellant's learned counsel referred the Court to pages 2528 - 2529 of the record of appeal where, in its judgment, the Board stated as follow:

"*Since there is no evidence adduced to prove that services in issue were rendered... proof of transaction to be at arm's length is immaterial as it cannot stand without the first criterion being proved. This position has been agreed by the Vice Chair and one Board member, while the other Board member is of the view*

that the tendering of the transfer pricing document suffices to prove provision of services. That being the case and basing on the fact that a decision of the Board is on the majority number of the members, the decision on this issue to prevail is the one that stand on the fact that transfer pricing documents [do] not prove the provision of services."

According to the learned counsel, the Vice Chairman simply disagreed with the opinion of one of the members, Ms. Misso without giving reasons for so doing as required by rule 15 (3) of the Tax Revenue Appeals Board Rules, 2018 (the Board's Rules). Mr. Kileo cited also section 20 of the Tax Revenue Appeals Act, Chapter 408 of the Revised Laws (Cap. 408) to show that, such is also a requirement where the Chairman or the Vice Chairman of the Tribunal disagrees with a member or the members of the Tribunal. It was Mr. Kileo's submission that, non-compliance by the Vice Chairman rendered the judgment defective.

In reply Ms. Andrew opposed the argument that the Vice Chairman's failure to comply with rule 15 (3) of the Board's Rules was inconsequential. She agreed that, under the cited rule, the Chairman

or the Vice Chairman is not bound by the opinion of the members, but argued that, in this case, the difference of opinion of one member could not change the decision because the other member did not have a different opinion. She concluded that, in the circumstances, the Tribunal cannot be faulted for having failed to find that, the Board's judgment was defective for the Vice Chairman's failure to comply with rule 15 (3) of the Board's Rules.

It is common ground that, in making decision, the Chairman or the Vice Chairman of the Board is not bound by the opinion of his assessors. When he disagrees with them however, he must record their opinion and give reasons for his disagreement. This is in accordance to rule 15 (3) of the Board's Rules which states as follows:

> *"15 (1) -*
>
> *(2) -*
>
> *(3) For the purpose of determining any matter, the chairman shall not be bound by the opinion of any member but, if he disagrees with the opinion of any member,* ***he shall record the opinion of such member or members***

differing with him and reasons for his disagreement."

[Emphasis added]

This position applies also to the Tribunal by virtue of the provisions of section 20 of Cap. 408 which provides that:

> "*20. For the purposes of determining any matter, the Chairman or Vice Chairman as the case may be, shall not be bound by the opinion of any member but, if he disagrees with the opinion of any member, he shall record the opinion of such member or members differing with him and reasons for his disagreement.*"

We have considered the submissions of the learned counsel for the parties. The argument by Ms. Andrew that the omission by the Vice Chairman to give reasons for disagreeing with the opinion of a member was inconsequential is, with respect, incorrect. In the first place, it is a mandatory requirement to give reasons for disagreeing with the opinion of a member or members. That is irrespective of the fact that, it was one of the two members who gave a different opinion. From the bolded part of rule 15 (3) of the Board's Rules which has been reproduced above, it is a mandatory requirement to

give reasons for disagreeing with the opinion of a member or members of the Board.

Secondly, giving of reasons is important for determination on whether the Chairman or the Vice Chairman of the Board or the Tribunal, as the case may be, was justified to disagree. That duty finds its origin in what was termed by this Court in the case of **Abdallah Bazamiye and Another v. Republic** [1990] T.L.R. 42, as *Segesele* principle. In that case, in which the Court was considering the relevance of the opinion of assessors in a criminal trial, it adopted the principle enunciated by the East Africa Court of Appeal in the case of **Charles Segesele v. Republic**, EACA Criminal Appeal No. 13 of 1973. The Court observed as follows:

> "*We think that the assessors' full involment is an essential part of the process that its omission is fatal, and renders the trial a nullity. We wish to add another thought to this exposition. For our purpose in the Court of Appeal, the informed and full views of assessor become further necessary when we have to rely on what we might call the Segesele Principle, that in the event of the trial judge disagreeing with the unanimous view of his*

assessors ***we shall want to determine whether he was entitled to do so. In order to enable us to make that determination meaningfully we must know the judge's reasons for so disagreeing and to appreciate those reasons we would have to gauge them against the full and informed view of the assessors.***"

[Emphasis added]

See also the case of **Kandi Marwa Maswa v. Republic** (Criminal Appeal No. 467 of 2015) [2016] TZCA 60.

In our considered view, the principle applies in any trial conducted with the aid of assessors and where the law provides, as in this case, that reasons must be given in case of disagreement with the opinion of a member or members who participated in the hearing of the case. Failure to comply with that legal requirement renders the judgment fatally defective. Since that was the position in this case, we find the judgment of the Board fatally defective and because this finding suffices to dispose of the appeal, the need for considering the other grounds of appeal does not arise.

In the event, we quash the judgment of the Board and set aside the resultant orders. As a consequence, the proceedings and the judgment of the Tribunal arising from that judgment are also hereby quashed and the orders therefrom are similarly set aside. The record should be remitted to the Board for it to compose a new judgment in accordance to the law.

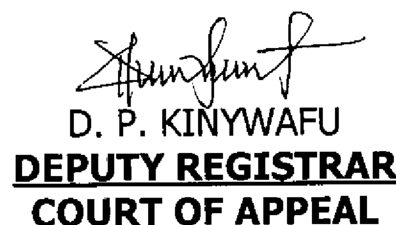
DATED at **DODOMA** this 8th day of April, 2026.

A. G. MWARIJA
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

M. K. ISMAIL
JUSTICE OF APPEAL

The Judgment delivered this 9th day of April, 2026 in the presence of Mr. Mahmoud Mwangia, learned counsel for the appellant and Ms. Consolatha Andrew, learned Principal State Attorney for the respondent and Mr. Soud Omar, Court Clerk, connected vide video facility, is hereby certified as a true copy of the original.



D. P. KINYWAFU
DEPUTY REGISTRAR
COURT OF APPEAL