



Legal Alert

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From our Tax Desk

Waiver Appeals: Board's Jurisdiction in Dilemma!

- ✚ *The Tribunal nullifies the Board's decision that it has jurisdiction over waiver appeals;*
- ✚ *The Tribunal holds that Pan African Case is a good law and binding; and*
- ✚ *The Musoma Textiles Case is distinguishable.*

Yet, in another twist of events, the Tax Revenue Appeals Tribunal, "TRAT" re-affirms that the Tax Revenue Appeals Board "TRAB", has no jurisdiction to determine waiver appeals. This was in a ***Tax Appeal No. 69 & 70 of 2019 between the Commissioner General, TRA and Mek One***, where the Commissioner General was challenging the TRAB's decision that it had jurisdiction to determine waiver appeals based on section 7 of the Tax Revenue Appeals Act.

This ruling comes in less than three months where the TRAB gave a decision in Appeal No. 23 of 2020, to the effect that it has sole and original jurisdiction to determine all matters of a civil nature arising from the administration of revenue laws, waiver appeals being one of them. The TRAB again, in ***Tax Appeal No. 100 of 2020 between Pragon Offshore International Limited and Commissioner General, TRA***, categorically stated that, now, it is more than clearer that, under section 7 of the Tax Revenue Appeals Act; section 53 (1) of the Tax Administration Act, that the TRAB has jurisdiction to determine waiver appeals. In both these decisions, the TRAB distinguished the case of ***Pan African Energy Tanzania Limited vs Commissioner General, Tanzania Revenue Authority, Civil Appeal No 121 of 2018***, on the basis that, in the Pan African Case, the Appellant preferred its appeal under section 16 (1) of the Tax Revenue Appeals Act and that the Court of Appeal did not address section 7 of the same Act. To cement its position, the TRAB relied on the case of ***Commissioner General, TRA vs. New Musoma Textiles Limited, Civil Appeal No. 119 of 2019***, where the Court of Appeal stated as follows:-

"To be sure, the Tribunal was conscious that the Board had the sole original jurisdiction over the intended proceeding, it being one of civil nature in respect of a revenue law administered by the TRA in terms of section 7 of the Tax Revenue Appeals Act and that an appeal from the Board lay to it in terms of section 11(1) of the same law. In this sense, the complaint in the first ground is but an attempt to make a mountain out of a molehill. We dismiss it."

The TRAT has lately however, overruled the TRAB's position that it has jurisdiction over waiver appeals. In its ruling read this week, the TRAT states that Musoma Textiles Case is distinguishable and that Pan African's Case remains a good law and is binding. The TRAT's position with regards to the TRAB's jurisdiction on waiver appeals, follows a series of decisions issued by the TRAT maintaining a similar position. These decisions include the TRAT's decisions in ***TPCC vs Commissioner General, Tanzania Revenue Authority, Tax Appeal No. 8 of 2019***; and ***Consolidated Tax Appeals No. 22 & 23 of 2019 Denafro Investment Limited v Commissioner General (TRA)***. In distinguishing Musoma Textiles Case, the TRAT reasoned that, in that case, the Court of Appeal did not make reference to section 53 of the Tax Administration Act and section 16 of the Tax Revenue Appeals Act. Further, that the Musoma Textiles Case had not overruled the Pan African Case.

With this decision, the TRAB's jurisdiction is ousted by the TRAT and consequently, a number of waiver appeals pending before the TRAB are at risk of being thrown away in the foreseeable future unless a contrary decision comes from the Court of Appeal. This is not palatable news for taxpayers as we approach end of the year vacations. The ruling galvanizes the uncertainties surrounding waiver appeals where the TRAB had already provided taxpayers with a thigh of relief.

Given the importance of the subject, our tax team is actively undertaking thorough reviews of all waiver jurisdictional appeals decisions and once we get hold of the TRAT's ruling issued this week, we will compile our feature article for the consumption of our esteemed readers.

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