



## Legal Brief

### Execution of Decree and Stay of Execution against Tax Recovery Measures.

#### 1. Introduction

- 1.1. On 25<sup>th</sup> July, 2025 the Court of Appeal of Tanzania (CAT) has delivered a remarkable ruling in an application for stay of execution between **Tanzania Health Promotion Support versus Commissioner General (TRA)**<sup>1</sup>. The ruling clarifies what triggers an application for stay of execution against a tax decree as well as any other tax recovery measures or enforcement notices. The ruling sets a broader avenue to litigant who wants to seek orders for stay of execution where the decree holder has not filed a formal application for execution of a decree in court, but has invoked other means of tax recoveries like tax demands or agency notices.
- 1.2. In Tanzania Health Promotion Support's Appeal, the CAT has ruled to the effect that CG has power to execute the orders of the Tribunal without going back to the Tribunal, the said letter sufficed to be a notice of execution. Execution of court decrees can either be through court systems or outside court systems, in all circumstance courts are still having jurisdiction to grant stay of execution especially where there is a pending appeal, revision or any other matter in court.
- 1.3. According to Tax Revenue Appeals Act<sup>2</sup>, the Tax Revenue Appeals Board Rules<sup>3</sup> and the Tax Revenue Tribunal Rules<sup>4</sup> Board's and Tribunal's decree can be executed by filing an application for execution through specific prescribed forms which are provided by the respective laws in line with the Civil Procedure Code.<sup>5</sup> However, Commissioner General (CG) normally does not go with that root of filing a formal application for execution instead CG invokes recovery measures provided under part IX of the Tax Administration Act<sup>6</sup> which include issuance of Agency Notices, Tax Demands or creations of charges. The CG's recovery means require immediately

<sup>1</sup> Civil Application No. 11 of 2025. Court of Appeal of Tanzania at Dodoma

<sup>2</sup> Section 25 (3), Cap 408, R.E 2023

<sup>3</sup> Rule 25 (1), TRAB Rules of 2018 GN. No 217

<sup>4</sup> Rule 24 (1), TRAT Rules of 2018 GN. No 222

<sup>5</sup> Cap 33 R. E 2023

<sup>6</sup> Cap 438, R.E 2023



mandatory compliances which in other circumstance even applications for injunctive orders fails by being overtaken by events.

## 2. Factual and Procedural Background.

- 2.1. In Civil Application No. 11 of 2025, Tanzania Health Promotion Support (THPS) sought for stay of execution against Commissioner General's (CGTRA) letter dated 22<sup>nd</sup> May, 2025 titled "*Outstanding Tax Liability*" intended to remind THPS to pay her tax liabilities in sum TZS 1,660,021,987.88 being SDL Tax assessment for the year 2015 to 2019. In the said letter CG gave an ultimatum to THPS that the said tax liabilities should be paid within five (5) days failure of which CG will invoke recovery measures without further notice. The CG's ultimatum prompted THPS to file an application for stay of execution before the CAT.
- 2.2. The circumstances leading to this application originated from a tax dispute between THPS and TRA. In year 2019, TRA conduct tax audit on THPS resulting into SDL Assessment to the tune of TZS 1,639,977,319.22, being the principal tax and interests. THPS contested the said assessment before the CG on the ground that THPS is a charitable organization which is exempted from paying the said tax liability. CG did not agree with THPS defense, hence the assessed amount remained intact.
- 2.3. THPS appealed to the Tax Revenue Appeal Board (the TRAB). The TRAB agreed with THPS position that THPS is a charitable organization hence she is not liable to pay SDL as per the law. Aggrieved by TRAB's decision, CG appealed to the Tax Revenue Appeal Tribunal (TRAT). The TRAT reversed the Board's decision and held THPS did not qualify for SDL exemption.
- 2.4. On 24<sup>th</sup> March, 2025 THPS filed a Notice of Appeal before the Court of Appeal intending to challenge the TRAT's decision. On 22<sup>nd</sup> May, 2025 THPS received a letter from CG titled "Outstanding Tax Liability of TZS 1,660,021, 987.88" as a reminder to pay the outstanding tax liability within five (5) days, failure of which CG will invoke recovery measures without further notice. This letter triggered THPS to file an application for stay of execution before the CAT and attached thereto, TRAT's Judgment and Decree, a Notice of Appeal, and CG's Letter.

### 3. Argument of Parties.

4.1. In arguing the Application, THPS submitted that the application was competent before the CAT as it complied with the requirements provided under rule 11 of the CAT Rules for being filed within fourteen (14) days from the date of receiving CG's Letter. In its Affidavit in support of the Application THPS demonstrated it will suffer substantial loss in case execution will be proceed, that will lead to closure of the organization and it provided an undertaking for security. In moving the court, it was argued that CG's letter fits in the category of *Execution*, THPS cited the case of **Arrif Yussuf Shariff versus Sabri Mwadini Haji**<sup>7</sup> where the CAT held an eviction notice is a sufficient notice of execution.

4.2. It was CG's argument that the application was filed prematurely as no execution was commenced. The said Letter had an invitation for reconciliation. No document was attached by THPS as a proof of Substantial loss. Rule 11 (5) requires security and not an undertaking which THPS deposed in the Affidavit in support of the Application, therefore the Application was incompetent. Alternatively, CG requested the CAT to order for security equivalent to the outstanding tax liability if it will find the Application meritorious.

### 5. Ruling and Court's Reasoning.

5.1. In determining the Application, the CAT made an analysis of party's submissions by being guided by the requirements provided under rule 11 of the CAT Rules, that is whether CG's letter suffices to be a Notice of Execution, whether THPS will suffer substantial loss if CG will proceed with execution as per the letter and finally whether THPS has provided security.

5.2. It was the Court's reasoning that Rule 11 does not restrict execution to court execution alone. According to the CAT "Execution could take different forms and the Notice of execution also could be in different forms". CG has power to execute the orders of the Tribunal without going back to the Tribunal, therefore CG's letter sufficed to be a notice of execution.

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<sup>7</sup> [2025] TZCA 90, TANZLII

5.3. The court also reasoned that THPS, being a charitable organization, does not engage in activities of generating profit. Therefore, it is likely to suffer substantial loss if CG will immediately recover the said tax liability totaling TZS 1, 660,021,987.88.

5.4. It was the Court's reasoning that Security is not necessarily to be deposited before stay is granted. The court can give a reasonable time to the Applicant to submit security. THPS was only required to demonstrate their readiness to deposit a security. The CAT granted stay by ordering THPS to submit to the court a bank guarantee in decretal sum of TZS 1, 660,021,987.88 within sixty (60) days.

## 6. Conclusion.

6.1. The basis of stay of execution is the Applicant having a pending dispute in court which need further court's intervention. The rationale for it is to prevent the Applicant from any loss or disadvantage which might result from execution of a decree which is being challenged by the Applicant before the court of law and at the end, the matter will be determined in the favour of the Applicant.<sup>8</sup>

6.2. In THPS' Application, the CAT has confirmed execution covers tax demand notices, or letters, agency notices and eviction notices. In another recent decision of the CAT,<sup>9</sup> the CAT held an application letter for rectification of the Title in the Land Registry by the Registrar of Tittle was a notice of execution. In paragraph 1 of page 13 of the ruling the CAT held, there are instances where a decree holder may proceed with execution without involving courts.

6.3. The scope of the precedent in the matter between THPS and CG is not only for tax cases but it cut across the whole field of civil litigation.

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<sup>8</sup> Para 3 of page 11 of the Ruling in Tax Application No. 27 of 2020, Tax Revenue Appeal Tribunal at Dar es salaam

<sup>9</sup> **Milton Lusajo versus Elizabeth Thomas Olotu**, Civil Application No. 109 of 2025, Court of Appeal of Tanzania at Dodoma