

# TAX RECOVERY IN TANZANIA

*Written by Gaston Luvakule*

*LLM Student at School of Law, St. Augustine University*

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## ABSTRACT

Tax justice encompasses far more than a failure to administer justice in any tax appeals court. An efficient tax system achieves the 4 Rs of taxation: revenues to finance public services; redistribution to reduce inequality; repricing to address public harms like the extraction of fossil fuels and tobacco use; and political representation - acknowledging the critical role of tax in ensuring governments are held accountable. The 4 Rs are an effective weapon for tax justice because they guarantee that governments have the resources and the will to provide for their citizens. Tax injustice immediately reduces government revenue, makes it more difficult for them to support social, economic, and political activities, and makes it less likely that they will be able to increase people' wealth and income. This article examines the effectiveness of the tax appeals machinery to determine whether it can prevent or, in some cases, rescue revenue loss while maintaining efficient administration of justice. It does this by acknowledging that tax dispute resolution is a crucial component of the efficient operation of any modern tax system.

## THE SETUP OF TAX APPEALS EQUIPMENT

The objective of the appeals is to improve voluntary tax compliance, mould the behaviour of the taxpayer, and foster public confidence in the honesty and competence of the Revenue

authority. The objective of the appeals is to resolve tax controversies excellently and effectively, without litigation, on a basis that is fair and impartial to both the government and the taxpayer. This would probably widen the revenue base and strengthen the overall tax system. The difficulty in generating income increases as tax disputes grow. This would compel the revenue authority to increase the base as a corrective step to close the budget's fiscal gap.

Many nations have changed how tax disputes are handled in the world, including Tanzania, which in 2000 made the deliberate decision to establish the Unified Tax Appeal Machinery. Under this system, tax disputes resulting from any Revenue laws that are administered by the Revenue authority must be filed with a single appellate authority. The National Tax Appeals Board, established under Section 89 (1) of the Income Tax Law, had jurisdiction to hear and decide only Income Tax Appeals arising solely from disputes between decisions of the Commissioner for Income Tax and the taxpayers prior to the creation of the New Unified Tax Appeals Machinery.

The Income Tax (Appeals Board) Rules comprised regulations guiding the appeals process. The Appeals Tribunal handled appeals from the Appeals Board. To challenge the Appeals Board's ruling, the Commissioner or a taxpayer had to do so in front of the Appeals Tribunal. By virtue of the Tax Revenue Appeals Act, the TRAB and the TRAT were constituted as quasi-judicial bodies with sole authority to hear and decide appeals. As a quick and affordable substitute for the court system, they offer an independent, objective, and neutral platform for hearing and resolving tax dispute disputes.

## **PRINCIPLE GROUNDING THE RIGHTS OF CIVIL APPEALS**

In civil cases, the government asserts that the taxpayer prepared and filed his or her tax returns carelessly or made an error in calculation. While fines may be included in civil proceedings, the criminal court system and possibly jail time are not. In keeping with this, the Court of Appeal ruled on April 16, 2019, through Hon. Justices K.M. Mussa, S.E.A. Mugasha, and S.A. Lila, that the TRAB has the authority to hear appeals resulting from the compounding of offences.

In general, a convicted taxpayer has the ability to challenge the Commissioner's decisions in court or vehemently request that his conviction and penalty be reviewed. Until all appeal rights have been used up or have been waived, convictions cannot be regarded as conclusive and final. Therefore, appeals are focused with correcting error at the broadest level of generality. Corrective mechanisms are a crucial component of advanced legal systems:

Legal systems that have been developed allow for error correction. Error is anticipated on a frequent basis, in the sense of honest disagreements about the facts or the creation or application of legal standards.

Since there are numerous potential causes for such errors, the major purpose of the modern right of appeal is to credibly protect against miscarriages of justice where an innocent defendant may be mistakenly condemned.

The fact-finder might not properly evaluate the evidence, might be misled by irrelevant, biased, or falsified evidence, might not present exculpatory evidence at trial, or might have gotten an unfair trial for a number of other reasons. Therefore, appeals offer a venue where defendants may have these issues addressed.

The purpose of appeals is to preserve uniformity, equality, and consistency in trial courts by correcting anomalous interpretations of the law in specific cases and providing explanation and direction that will increase future legal applications' equity and consistency.

A forum for ensuring the proper interpretation, development, and application of the law, appeals give the criminal justice system as a whole as well as the civil justice system legitimacy. The public's trust in the administration of justice rises when mistakes are avoided and courts administer criminal justice consistently and fairly, and they enable the resolution of legal disputes.

The framework provided by appeals has allowed for the just and equitable development of the content of the taxpayer's rights as a defendant, the proper application of the standards of evidence, and the range of substantive offences and defences.

In accordance with Sections 13(1) and (6) of the URT Constitution of 1977, the right to appeal is legitimated as follows:

"All persons are regarded as equal before the law and are entitled to protection and equality before the law, without any discrimination, and in order to ensure such equality, the state authority shall make procedures which are appropriate; in that, when the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or other agency."

Access to justice is also a right that is denied.

Justice is hampered by two fundamental factors. The first is the financial and time costs. The second is the burdensome bureaucratic and procedural complexity that needs to be reduced. Chaos, conflict, and impunity come through the left window if justice exits through the right window.

### **REGIME INSTITUTIONAL**

Both the tax revenue board and the tax revenue appeals tribunal were specifically created to handle appeals pertaining to tax issues between revenue authorities and taxpayers. In Tanzania, a taxpayer who disagrees with the Commissioner General's decision has the option to register an appeal with the Board, according to the claim;

"A person who wishes to appeal to the Board shall issue to the Board a written notice of appeal within 30 days of the date of service of the Notice of final determination of the assessment of tax, specifying whether intends to appeal against the whole or part of the tax assessed or the existence of the obligation to pay any tax, duty, fee, levy, or charge, and shall serve copies of the notice of appeal to the parties to the appeal. In accordance with Sections 16(1) through (3) of the Tax Revenue Appeals Act, Cap. 408 and Rule 6(1) of the TRAB Rules 2001, the Statement of Appeal must be filed with the Board's Secretary within 45 days (inclusive) of the date the Notice of Final Determination of the Assessment of Tax is served on the Appellant. In accordance with Rule 6(3) of the TRAB Rules 2001, the Secretary of the Board must attest to the date of receipt and serve a copy of the document to the Commissioner General of the TRA.

In disputes arising from revenue legislation enforced by the Tanzania Revenue Authority, the Board has exclusive jurisdiction. The Court of Appeal's ruling in the case of Attorney General vs. Lohay Akonaay and Joseph Lohay, which made the following crucial findings, supports this.

"Normally, courts would not take up an issue for which a special forum has been formed unless the aggrieved party can persuade the court that no adequate remedy is available in the special forum," the statement reads.

When tax issues are referred to the Tax Revenue Appeals Board, a particular forum for such matters, the processes specified by the Tax Revenue Appeals Act do offer an adequate remedy to the plaintiff.

The Tax Revenue Appeals Board ("TRAB") will, pursuant to section 12 of the Tax Revenue Appeals Act, have "sole original jurisdiction" in all civil proceedings involving disputes relating to revenue legislation managed by the Tanzania Revenue Authority.

"Tax Revenue Appeal Board" is the name of the body. It is obvious that;

"The Board is a particular forum that has been established by the Act for the resolution of civil disputes related to tax regulations that are overseen by the Tanzania Revenue Authority. The Board is a unique forum created with that goal in mind.

Any person who wishes to appeal the Board's decision must submit a written notice of their intention to do so to the Registrar within 14 days of the date of the Board's decision. The

Registrar will then serve copies of the notice on each party to the appeal and send one copy to the appropriate Zone Center, where the appeal will be decided.

The Registrar shall issue a 14-day Notice of Hearing to all parties to an appeal and serve them by way of Summons. "An appeal to the Tribunal shall be instituted by lodging a Statement of Appeal at the Registry of the TRAT within 30 days from the date of service of the decision and proceedings of the Board. Likewise, the appeal must be submitted with the supporting documentation indicated in Rule 6(2).

The case of Commissioner General v. Rupesh Enterprises Ltd., "where one of the concerns was whether Jurisdiction of the Tribunal is restricted to appeals deriving from the judgements of the Board," is persuasive evidence in favour of this. Among the rulings was that

According to section 16(4) of the Tax Revenue Appeals Act, 2000, "the Tribunal's authority is confined to appeals arising from decisions made by the Board; it cannot be expanded to problems not addressed by the Board." Appeals were granted.

Because the real income will be appropriately paid to the government once the appeal has been quickly decided and effectively performed, the TRAB and TRAT have a significant judicial role in guaranteeing fair, efficient, and successful tax collection by the government.

"If the appellant is not satisfied with the TRAT's ruling, he or she must appeal to the Court of Appeal, which only hears cases containing legal issues. According to Rule 24(2), the Notice of Appeal must be submitted in triplicate to the Tribunal within 14 days, and the Registrar is responsible for sending it to the Court of Appeal.

It should be kept in mind that the Court of Appeal's duties include hearing and ruling on each appeal that is submitted to it in relation to a ruling or other decision made by the High Court or a magistrate with extended jurisdiction. In the matter of *Fidahussein & Co. Ltd vs. Commissioner General*, it was determined, among other things, that

According to section 25 (2) of the Tax Revenue Appeals Act 2000, only cases involving legal issues qualify for an appeal to the Court of Appeal against a tribunal decision. The request was approved.

In a similar spirit, Harold J. Nsekela made the following rulings in the matter of *Mr. Mohsin Somji v. Commissioner for Customs and Excise Commissioner for Tax Investigations*. The major argument was that the court lacked jurisdiction to hear the issue.

If it is determined that the court lacks the authority to hear the case, that will be the end of the matter there.

He cited the case of *West End Distributor Ltd. v. Mukisa Biscuit Manufacturing Co. Limited*, in which the following statement of the concept was made:

According to what I know, a preliminary objection is a legal issue that has been pleaded or that is implied clearly from the pleadings and that, if raised as a preliminary issue, has the potential to end the lawsuit. Examples include a challenge to the court's jurisdiction, a claim of time limitation, or an argument that the parties are required under the agreement that gave rise to the lawsuit to submit the dispute to arbitration.



It was necessary for the court to interpret section 9 of the Indian Civil Procedure Code (1908), which is analogous to section 7 (1) above, in the case of Firm of Illuri Subbaya Chetty and Sons v. State of Andhra Pradesh. According to the Court's ruling on page 324:

There is a general presumption that a citizen who alleges that money has been taken from him illegally must have a remedy in the ordinary civil courts, and that such a remedy can be held to be barred only on very clear and unmistakable indications to the contrary. This is important to keep in mind when determining whether the jurisdiction of civil courts to entertain a suit is barred or not. Unless the relevant statute contains an express provision to that effect or results in a necessary and unavoidable implication to that effect, it will not be inferred that civil courts lack the authority to hear civil cases. The civil courts may nevertheless have jurisdiction to hear a case brought before them on some of the topics covered by a special statute even though it may have provided for specific remedies.

It should be emphasised that parties are permitted to settle their disagreements amicably and are then allowed to submit a "Deed of Settlement" to the Board, Tribunal, or Court of Appeal, depending on the circumstances, which will issue an Order. The Chairman of the Board made an order in the case of Ms Jandu Plumbers Limited v. Commissioner General stating;

"This matter is hereby marked as settled out of Board in accordance with terms and conditions contained in the Deed of Settlement upon parties herein reaching settlement, the conditions of which are contained in the Deed of Settlement executed by the parties and filed in this Board this fourteenth day of November, 2011."

## **RECOMMENDATION AND CONCLUSION**

Taxes strengthen the incentives for citizen involvement in politics and put pressure on lawmakers to be more accountable, practise better governance, and allocate funds more effectively. Fiscal institutions can be strengthened with the support of domestic revenue mobilisation. However, where there is a lack of tax justice within the tax community, this may be taken away. In general, the effectiveness of the tax appeals apparatus has been mediocre at best. In order to support efforts by the nation to enhance a domestic tax base without diminishing, which is essential to generating budgetary room for her development, performance should thus be expedited.

As a result, the tax appeals system should be able to improve its efforts to give taxpayers access to an unbiased and independent tax dispute settlement procedure. To guarantee that everyone is treated equally under the law and to avoid a significant amount of taxes being held up in litigation, they should gradually aim to increase voluntary tax compliance while upholding tax fairness.