TAX JUSTICE IS NOT A BRAIN SURGERY: ANALYSIS OF TAX RECOVERY ON THE PERFORMANCE OF TAX APPEAL MACHINERY IN TANZANIA

Written by ***Prof (Dr.Juris) Handley Mafwenga***

Ph.D (juris), Ph.D (finance), MSc(finance), MBA(managerial economics &policy), LL.M (taxation), LL.M(procedural law &international legal practice),LL.B(hons), PGDip(tax management), ADDip (tax management): Ministry of Finance & Planning, United Republic of Tanzania

ABSTRACT

Tax justice goes far beyond lack of administration of justice at any tax appeal mach. An effective tax system delivers the 4 Rs of tax: revenues to fund public services; redistribution to curb inequalities; repricing to address public harms such as fossil fuel extraction and tobacco consumption; and political representation – recognising the key role of tax in ensuring governments are held accountable. The 4 Rs are a powerful tool for tax justice, ensuring that governments have both the means and the motivation to deliver for their people[i].Lack of tax justice results directly in lost revenues and undermines governments' ability to meet social, economic and political activities and possibility of the governments to enhance wealth and income to the citizens. Acknowledging that tax dispute resolution is a vital module of the effective operation of any modern tax system, this article analyses the performance of the tax appeals Machinery's as to whether rescue loss of revenue as the case may be preserve effective administration of justice.

Keywords: Tax justice, Administration of justice, recovery of tax revenue, Tax appeals machinery performance

ESTABLISHMENT OF TAX APPEALS MACHINERY

The unprejudiced nature of the Appeals is to resolve excellently and effectively tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer aiming at enhancing voluntary tax compliance, shaping behaviour of the taxpayer and constructing public confidence in the integrity and efficiency of the Revenue authority[ii]. This would likely enhance the tax net and put in place the credible broadened tax base. The more the disputable taxes the more it is the scantiness revenue generation. This would enforce the revenue authority to broaden the base as a remedial measure to fill fiscal gap in the budget[iii].

Many countries in the world transformed the administration of justice on tax disputes including Tanzania which in the year 2000, as a matter of policy deliberately decided to establish Unified Tax Appeal Machinery under which tax disputes arising from all Revenue laws administered by the Revenue authority have to be lodged in the same and single-based appellate authority[iv]. However, prior to the establishment of the New Unified Tax Appeals Machinery there was the National Tax Appeals Board established under Section 89 (1) of the Income Tax Law[v], having jurisdiction to hear and determine only Income Tax Appeals arising solely from the disputes between decisions of the Commissioner for Income Tax and the taxpayers[vi].

Rules governing the procedure before the Appeals Board were contained in the Income Tax (Appeals Board) Rules[vii]. Appeals from the Appeals Board lied with the Appeals Tribunal[viii]. The Commissioner or a taxpayer[ix] had to appeal to the Appeals Tribunal against the decision of the Appeals Board. The Tax Revenue Appeals Act[x], established the TRAB and the TRAT as *quasi-judicial* institutions with *exclusive jurisdiction* to hear and determine appeals. They provide an independent, impartial and neutral forum for hearing and resolving disputes on tax issues on a timely, cost-effective alternative to the court system[xi].

UNDERLYING PRINCIPLE FOR THE CIVIL APPEALS RIGHTS

In civil cases, the government claims that the taxpayer made a mistake, calculation error, or acted negligently in the preparation and filing of his or her returns of taxes. Civil cases may involve a fine, but they do not involve the criminal justice process or potential prison time[xii].

In that vein, on 16 April 2019, the Court of Appeal rules through Hon. Justice K.M. Mussa, Hon. Justice S.E.A. Mugasha and Hon. Justice S.A. Lila, that the TRAB lacks jurisdiction to entertain appeals emanating from compounding of offences[xiii].

Generally, a convicted taxpayer has the right to appeal against the decisions of the Commissioner, or copiously seek review of, conviction and sentence against him. Convictions cannot be treated as conclusive and final until appeal rights have been either entirely exhausted or waived[xiv]. Therefore, at the broadest level of generality, appeals are concerned with correcting error. Mechanisms for error correction are an important feature of developed legal systems[xv]:

> "Developed legal systems make provision for correcting error. Error—in the sense of good faith differences of opinion about finding the facts or about formulating or applying rules of law—is expected as a regular occurrence."

The primary function of the modern right of appeal is to creditably protect against miscarriages of justice where an innocent defendant may be wrongly convicted, in that there are many possible reasons for such errors.

> "The fact-finder may fail to assess the evidence properly; 2) may be misled by irrelevant, 3) prejudicial or fabricated evidence; or exculpatory evidence may not be produced at trial, and 4) a defendant taxpayer may not have received a fair trial for a myriad of potential reasons. Appeals therefore, provide a forum in which defendants may have these concerns addressed".

Appeals maintain, uniformity, equality, and consistency in trial courts whereby appellate courts correct anomalous applications of the law in particular cases and clarification and guidance are given leading to greater equity and consistency in the future application of the law[xvi].

Appeals provide legitimacy not only to the criminal justice system as a whole but also to the civil justice system where public confidence in the administration of justice increases when miscarriages do not occur and when courts dispense criminal justice consistently and fairly, and allow questions of law to be settled because they provide a forum for ensuring the proper interpretation, development and application of law[xvii].

Appeals have been the framework in which the content of taxpayer's rights as defendant, the proper application of rules of evidence, and the scope of substantive offenses and defences have all been justly and fairly developed.

The Right to Appeals attains its legitimacy under Section 13 (1) and (6) of the Constitution of the URT, 1977 where;

> "All persons are regarded to be equal before the law and are entitled, without any discrimination, to protection and equality before the law 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 of the other agency concerned".

Inaccessible justice is also justice denied…and there are two main obstacles to justice. The first is its costs, in terms of time and money. The second is the onerous procedural and bureaucratic complexity that have to be lessened. If justice goes out through the right window, chaos, conflict and impunity enter through the left window[xviii]

INSTITUTIONAL FRAMEWORK

The tax revenue board and tax revenue appeals tribunal are exclusively established for the foremost purpose of dealing with appeals relating to the tax disputes between revenue authority and the taxpayers. In Tanzania, taxpayer that has been aggrieved by the decision of the Commissioner General has the right to file the objection to the Board[xix]; in that, it is asserted that;

> "A person who wishes to appeal to the Board shall issue to the Board a written notice of intention to appeal within 30 days from the date of the service of the Notice of final determination of the assessment of tax, states whether intends to appeal against the whole or part of the tax assessed or the existence of the liability to pay any tax, duty, fee, levy or charge and shall serve the copies of the Notice of intention to appeal to parties to an appeal. Rule 4(1) is in line with Section 16(1) through (3) of the Tax Revenue Appeals Act, Cap 408 and Rule 6(1) of the TRAB Rules 2001 where the

> Statement of appeal shall be lodged at the Secretary of the Board within 45 days (30 days inclusive) following the date on which the Notice of final determination of the assessment of tax is served on the appellant. The Secretary of the Board shall endorse the date of receipt and the copy be served to the Commissioner General of the TRA by virtue of Rule 6(3) of the TRAB Rules 2001".

The Board has exclusive jurisdiction in disputes emanating from revenue laws administered by the Tanzania Revenue Authority[xx]. This is supported by the decision of the Court of Appeal in the case of Attorney General vs. Lohay Akonaay and Joseph Lohay[xxi] which made the following pertinent observations;

> "…… courts would not normally entertain a matter for which a special forum has been established unless the aggrieved party can satisfy the court that no appropriate remedy is available in the special forum".

The procedures prescribed under the Tax Revenue Appeals Act,[xxii] do provide an adequate remedy to the plaintiff[xxiii] when tax disputes are referred to the Tax Revenue Appeals Board which is a special forum for such matters.

> "The TRAB shall, subject to section 12 of the Tax Revenue Appeals Act have "sole original jurisdiction" in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority".

The Board is the "Tax Revenue Appeal Board".[xxiv] It is clear that;

> "The Board is a specific forum that has been designated by the Act for the vindication of civil disputes arising from revenue laws administered by the Tanzania Revenue authority. The Board is a special forum established for that purpose". [xxv]

Any person, who wishes to appeal upon dissatisfaction of the Board's decision, shall issue a written notice of intention to appeal within 14 days from the date of the decision of the Board to the Registrar who shall serve copies of the notice of intention to appeal upon all parties to the appeal and send one copy of the notice to the appropriate Zone Center where the appeal shall be determined[xxvi].

> "An appeal to the Tribunal shall be instituted by lodging a Statement of Appeal at the Registry of the TRAT within 30days from the date of the service of the decision and proceedings of the Board and the Registrar shall issue a 14 days' Notice of hearing to

> all parties to an appeal and serve them by way of Summons. Likewise, the appeal should be accompanied by the documents listed under Rule 6(2)"[xxvii] .

This is supported by the case of Commissioner General vs. Rupesh Enterprises Ltd [xxviii] "Where one of the issues was whether Jurisdiction of the Tribunal is limited to appeals emanating from the decisions of the Board" It was held *inter alia* that;

> "The jurisdiction of the Tribunal is limited to appeals emanating from decisions made by the Board as per section 16(4) of the Tax Revenue Appeals Act, 2000; therefore, it cannot be extended to issues not determined by the Board". The Appeal was allowed.

The TRAB and TRAT have an extensive judicial role in ensuring fair, efficient and effective collection of taxes by the Government, because when the appeal has timely been finally determined and properly executed the real revenue will be fairly paid to the government.[xxix];

> "Once the appellant has not been satisfied by the decision of the TRAT will have to appeal to the Court of Appeal which deals with the matter involving the question of law only. The Notice of appeal shall be filed in Triplicate at the Tribunal within 14 days and the Registrar shall forward the same to the Court of Appeal (Rule 24(2))".

It should bear in mind that, the functions of the Court of Appeal is to hear and determine every appeal brought before it arising from the judgment or other decision of the High Court or of a magistrate with extended jurisdiction[xxx]. This is in line with the case of Fidahussein & Co. Ltd vs. Commissioner General [[xxxi] It was held inter alia that;

> "In terms of section 25 (2) of the Tax Revenue Appeals Act 2000, an appeal against the decision of Tribunal lies to the Court of Appeal only on matters involving questions of law". The Application was granted

In the same vein in the case of Mr. Mohsin Somji vs. Commissioner for Customs and Excise Commissioner for Tax Investigations[xxxii] the main objection was based on lack of jurisdiction by the Court to entertain the suit- Nsekela, Harold J has the following in the decisions;

> "….If it is found that this court has in fact no jurisdiction to entertain the suit that will be the end of the matter in this court".

He referred in Mukisa Biscuit Manufacturing Co. Limited vs. West End Distributor Ltd[xxxiii] in which stated the principle in the following words-

> "So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration".

In the case of Firm of Illuri Subbaya Chetty and Sons vs. State of Adra Predesh[xxxiv] the Court had occasion to construe section 9 of the Indian Civil Procedure Code (1908) which is in *parimateria* with section 7 (1) above. The Court stated as follows at page 324 -

> "In dealing with the question whether Civil Courts' jurisdiction to entertain a suit is barred or not, it is necessary to bear in mind the fact that there is a general presumption that there must be a remedy in the ordinary civil courts to a citizen claiming that an amount has been recovered from his illegally and that such a remedy can be held to be barred only on very clear and unmistakable indications to the contrary. The exclusion of the jurisdiction of civil courts to entertain civil causes will not be assumed unless the relevant statute contains an express provision to that effect or leads to a necessary and inevitable implication of that nature. The mere fact that a special statute provided for certain remedies may not by itself necessarily exclude the jurisdiction of the civil courts to deal with a case brought before it in respect of some of the matters covered by the statute".

It should be noted that, parties can be intelligently able to settle their disputes out of the court of law and upon doing so they are entitled to lodge a "Deed of Settlement" to the Board, Tribunal as the case may be Court of Appeal which will issue an Order. In the case of Ms Jandu Plumbers Limited vs. Commissioner General[xxxv] the Chairman of the Board issued an Order asserting that;

> "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 14th day of November, 2011, this matter is hereby marked as settle out of Board in accordance with terms and conditions contained in the Deed of Settlement".

THE JURISPRUDENCE AND EMPIRICAL ANALYSIS OF THE SUBSTANCE OF THE RIGHT TO APPEAL

Appeals must be adequate and effective

Paul Caron (2013)[xxxvi] argues that;

> "Both taxpayers and governments struggle to stay on top of the various complex sources of tax law and to apply them in a myriad of different contexts. Given the potential for confusion and disagreement, it would make sense to have a process for taxpayers to appeal government decisions to an expert body that can provide authoritative, reasoned and rational solutions to tax disputes".

In that regard, the appeals to be adequate and effective must be dealt by authoritative, reasoned and rational solutions.

An appeal is only adequate where it allows for review of both the factual and legal basis of conviction. The substance of convictions must be reviewable, including an assessment of the sufficiency of the evidence presented[xxxvii]. Appeals should be reappraised in the sense that is suited to correcting errors and thus minimizing the risk of wrongful convictions. Appeal must also be effective; the concern is to ensure that appellants have the practical means to challenge their convictions. In order to pursue an appeal, particularly one concerned with demonstrating error at first instance, it is imperative to have access to a record of those proceedings.[xxxviii]

In affirming to the adequate appeals, the case of Rungwe Freight Ltd vs. Commissioner General,[xxxix] the appellant, aggrieved by the decision of the Tax Revenue Appeals Board filed appeal no. 3 of 2006 in the Tax Revenue Appeals Tribunal challenging the said decision of the Board[xl]. On behalf of the Respondent a notice of Preliminary Objection was filed raising three points of law, namely;

> (1) that the appeal was incompetent because no notice of intention to appeal was filed and served on the respondent; (2) the appeal was filed out of time and (3) The appeal was bad in law for failure to comply with rule 6(3) of the Tax Revenue Appeals Tribunal Rules, 2001, in that the decision of the Commissioner General had not been attached to the statement of appeal filed with the Tribunal.

The first issue was whether the appeal was filed out of time and the second one was whether it was necessary or not for the appellant to attach the decision of the Commissioner General to the statement of appeal.

On filing the appeal out of time, the appellant argued that it received a copy of the proceedings and judgment late and appealed to the Tribunal that it was now common practice that day of appeal start to run after receipt of a copy of judgment and proceedings and not from the date of judgment. The failure to attach the Commissioner's decision was answered by the advocate for the appellant by saying that there is a need for judicial officers to avoid having undue regard to procedural technicalities and appealed to the Tribunal to disregard that requirement.[xli].

The Tribunal held *inter alia* that;

> "In order for an aggrieved party to conduct an appeal before the Board, the documents listed under rule 7(2) are mandatory and if any one of them or more is/are missing, then the purported appeal before the Board is incompetent. Since the respondent by his own admission did not include the decision of the Commissioner for Customs and Excise refusing a refund in the appeal before the Board, and since the decision of the Commissioner for Customs and Excise is one of the enumerated documents, such omission rendered the appeal before the Board incompetent; In other words, there was no appeal before the Board". Preliminary objection was sustained.

In the same vein the notice of appeal will be deemed to be effective only if has been filed; in that regard, in the case of Commissioner General vs. Archipelago Investment Ltd Stamp Duty Tax.[xlii] The appellant Commissioner General of Tanzania Revenue Authority being aggrieved by the decision of the Board appealed to the Tribunal. Before the hearing began the counsel for the respondent raised a Preliminary Objection stating two grounds:

> (1) That no notice of appeal was filed with the Board in terms of rule 4 (2) of the Tax Revenue Appeals Tribunal Rules 2001, and secondly that a notice of appeal filed with the Tribunal was not served upon the respondent as per section 16 (4) of the Tax Revenue Appeals Act, Cap 408 (R.E. 2002). The counsel for the appellant on the first ground of objection provided evidence showing that the notice of appeal was filed with the Board (2) that failure to serve a notice of appeal on the respondent is not fatal to the appeal and that such failure does not cause any breach of justice to the respondent.

The issue regarding the Service of notice of appeal was;

(1) "Whether or not a failure by the appellant to serve a notice of appeal to the respondent who is the opposite party renders the appeal incompetent: and

(2) regarding the Precedent – *Stare decisis* – Decision of the Court of Appeal was whether the Tribunal is bound by the that decision"

Hence, the Tribunal was faced with decisions of the Court of Appeal of Tanzania that conflicted with its own and had to decide whether or not to follow that decision; it was held *inter alia* that;

> " (1) since the appellant failed to serve the notice of appeal to the respondent as per section 16 (4) of the Tax Revenue Appeals Act, Cap 408 (R.E. 2002), the appeal is incompetent before the Board (2) Given that there are two conflicting decisions one from the Tribunal and another one from the Court of Appeal of Tanzania, legal practice and procedure dictate that the Tribunal is bound by the decisions of the Court of Appeal of Tanzania and in no way the Tribunal can depart from such decisions and (3) Notwithstanding decision in Clock Tower Service Station v. Commissioner General [Customs & Excise Appeal No. 10 of 2002], the Tribunal held that the appellant's appeal in this case is defective as he did not serve a notice of appeal on the respondent". The preliminary objection was upheld and appeal struck out.

Finally, it should be noted that the assistance of counsel will often be necessary in order to ensure that a defendant has effective access to appeal proceedings. The particular scope of this requirement more closely aligns with the right to legal assistance in civil proceedings generally, on which there is considerable jurisdictional variation. It is in that regard, Section 22(3) of the Tax Revenue Appeals Act[xliii] provides that;

> "Parties may appear in person at a hearing or be represented by any other person being an advocate or any other person registered as tax consultant, accountant or auditor and the Commissioner- General may be represented by person duly authorized on that behalf".

Cases involving unrepresented litigants took longer. In civil cases, cases involving represented claimants against unrepresented defendants took less time than both parties were represented. The exception was cases where there were active unrepresented defendants, which appeared to be longer[xliv].

The legal technicalities have been evil in the administration of justice; therefore, care must be taken into consideration to ensure real tax revenues are timely collected. At the Annual General Meeting of the Tanganyika Law Society in February 2012, where the main theme centred around legal technicalities, the Chief Justice joined the chorus against legal technicalities, when, in his keynote address, he said;

> "Procedural justice constitutes another imperative challenge to the system of administration of justice. It has a direct influence on justice delivery. Article 107A (2) (e) enjoins the Courts to dispense justice without being tied up with undue procedural technicalities. We must do away with antiquated, onerous and redundant procedures. They serve no purpose. Substantive justice must be rendered without unwarranted or excessive procedures. Not every procedural requirement is essential or goes to the root of the cause or matter[xlv].

The Right to Appeal is an Opportunity Right

A ubiquitous feature of the right to appeal is that it is unquestionably conceived of as an opportunity right. Conceptually, opportunity rights fall between negative human rights, which impose limitations on state action, and positive rights, which, when asserted require positive state action, often the provision of goods or resources[xlvi]. Opportunity rights, in contrast, are concerned with the establishment of institutions and procedures—for example, jury trials, confrontation procedures and elections—those individuals are entitled to access and in which they may participate[xlvii]. From the citizen's perspective, an opportunity right is not primarily a right to be free from state action or to receive a benefit; it is a right that lies dormant until the citizen chooses to exercise it at the designated time[xlviii].

A right to appeal protects both private litigants and judicial system as a whole, and it is constitutional rights but has not shown how appellant system is governed by fair procedures[xlix]. It is the individual's responsibility to exercise the right in accordance with the rules governing the institution. Indeed, the European Court has the following observation;

> "A crucial component of the right is that, it must be exercisable on the defendant's, rather than a third party's initiative. Conceiving of the right to appeal as an opportunity right is of most significance when one considers the way in which appeal proceedings are conducted It is essential that courts permit the appellant to participate actively in

> the proceedings. A procedure in which the appellant has no opportunity to identify the issues or present submissions will be defective".

In the case of Commissioner General TRA vs. Rahisi Store Tax Revenue Appeals Tribunal Dar es Salaam[l] it was stated that;

> "One of the issues was whether the appellant can institute the Application to lodge an appeal out of time and what would be the grounds for granting application"

The counsel for the applicant argued that, the applicant could not file the appeal within the statutory prescribed time because they were served with the certified copies of proceedings and judgment two days after the last day of filing the appeal. There was no objection from the respondent". It was held *inter alia* that;

> "Since the applicant's failure to lodge an appeal within the prescribed time has been occasioned by the Board's delay to supply him with copies of the proceedings and judgment, the applicant is entitled to an extension of time to lodge the appeal". The application was granted[li].

The legal technicalities likely be in use at the expense of substantive justice. The administration of justice is the core and exclusive function of the judiciary TRAT and TRAB inclusive. There are hitches in variety of rules of procedure in which courts cannot absolve because they are in it to the hilt[lii]

The Appellate Process Must Be Fair

Fairness may be considered further at three different levels, which include fair tax appeals process including tax laws interpretation and administration as critical element in optimal tax system[liii].

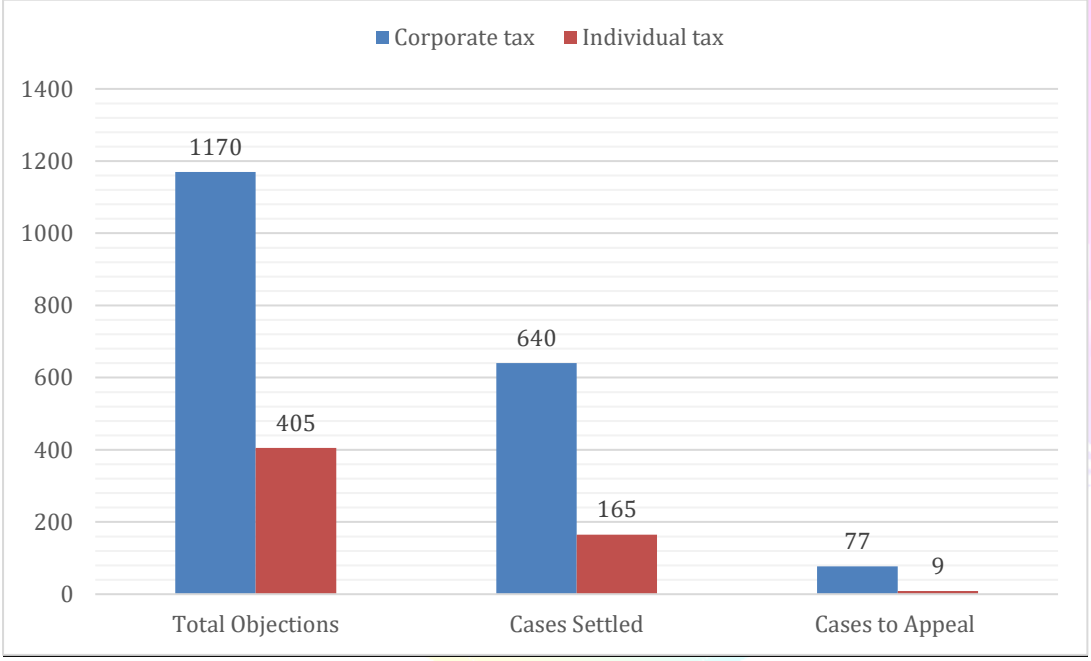
FAIR TO THE INDIVIDUAL APPELLANT

The appeal process must be fair to the individual appellant in that, procedural requirements must pursue legitimate aims, and they cannot be so onerous that, by restricting access, they impair the "very essence of the right"[liv]. It is very unfortunate that, under Section 12(3) of the Tax Revenue Appeals Act[lv], it has been stipulated that;

> "In pursuing the appeal process where a notice of objection to an assessment is given, the person objecting shall, pending the final determination of the objection to an assessment by the Commissioner General in accordance with section 13 pay the amount of tax which is not in dispute or one third of the assessed tax, whichever amount is greater".

Suffice it to say that, however, the taxpayers have rights to raise objections and appeals as stipulated by the Tax Administration Act, and Tax Revenue Appeals Act[lvi], as revised from time to time. Section 51 (1) of Tax Administration Act, allows a taxpayer who is aggrieved by a tax decision made to object the decision by filing an objection to the Commissioner General, within thirty days from the date of service of the tax decision[lvii].

Handling of Objections for corporate entities and individual taxpayers from 2015/16 to 2017/18



Source: Author's Survey

Upon receipt of a notice of objection, Commissioner General admits an objection that complies with legal requirement after payment of amount of tax not in dispute or one third of the tax assessed. Further, the Commissioner General may direct the objecting taxpayer to pay a lesser amount or waive the tax deposit required when he is satisfied that there exist good reasons warranting such reduction or waiver. In most cases, an increased in objection is attributed by the taxpayers who use as strategy to delay payments and skills in handling objections[lviii].

Furthermore, where an objector prefers an appeal to the Board or to the Tribunal, it has been further stipulated that;

> "Any tax deposited pursuant to section 12(3) of the Tax Revenue Actlix, shall continue to remain deposited with Commissioner General pending the final determination of the appeal by the Board or, as the case may be, the Tribunal. In that, the Appeal shall not be determined where the Commissioner has amended the assessment in accordance with the objection made by the taxpayer, determine the objection in the light of the proposed amended assessment or proposed refusal and any submission made by the Objector, and determine the objection partially in accordance with the submission by the objector by virtue of Section 13(a); 15(a)(b) respectively"

In the case of M/S M & M Communications Ltd vs. Commissioner General Tax Revenue Appeals Board Dar Es Salaam [VAT Tax Appeal Case[lx]

> "One of the issues was whether it is necessary to make any deposit with the Commissioner General prior to the determination of an appeal by the Board".

When the appeal was called for hearing the respondent raised a Preliminary Objection on the ground that the appellant had not deposited one third of the assessed amount. The Board disposed of the Preliminary Objection after examining the effect of the amendment of section 16 of Act 15/2000 by the Finance Act 2004 and went on to hear the appeal. It was held *inter alia* that;

> "As per the amendment of section 16 of Act 15/2000 by the Finance Act 2004, it is no longer a condition for admission of an appeal by the Board, for the appellant to make any deposit with the Commissioner General prior to the determination of an appeal by the Board". Appeal was dismissed[lxi].

On the other hand, time limits for bringing an appeal "undoubtedly serve the purpose of assuring a proper administration of justice." Provided the limit itself does not prevent a diligent appellant from lodging an appeal, it may be strictly enforced. In respect of the tax matters, by virtue of Section 16 (1) of the Tax Revenue Appeals Act[lxii];

> "Any person who is aggrieved by the final determination of the assessment of tax by Commissioner General may appeal to the Board. The appeal shall be heard by the Board upon serving the notice of appeal to the Commissioner General within thirty days following the date on which a notice of final determination of assessment of tax is

> served on the appellant; and the appeal is lodged with the Board within forty-five days following the date on which the notice of final determination of assessment of tax is served on the appellant by virtue of Section 16(3) (a) (b) of the Tax Revenue Appeals Act, Cap 408".

In the case of Rupesh Enterprises Ltd V. Commissioner General Tax Revenue Appeals Board Dar es Salaam [VAT Tax Application[lxiii]

"One of the issues was whether Failure to serve notice of intention to appeal renders the appeal incompetent before the Board".

This was an appeal by M/s Rupesh Enterprises Ltd for payment of interest on delayed refunds. Before the hearing began the respondent raised a Preliminary Objection on points of law that the appeal was incompetent for non-compliance with Rule 4 of the Tax Revenue Appeals Board Rules 2001 and in total defiance with the Board's ruling and Order dated 21st April, 2006. It was held *inter alia* that;

> "(1) since the appellant failed to serve the notice of intention to appeal to the respondent contrary to the mandatory requirement under Rule 4 (5) of the Tax Revenue Appeals Board Rules 2001, the appeal is incompetent before the Board". The Preliminary Objection was upheld and appeal dismissed[lxiv]

However, in this vein, on a number of times the courts have been too technical about the rules to the extent of denying justice though rules of procedure are handmaidens of justice. The Court has become too much of a slave to its rules (of procedure) that it cannot rectify injustices including tax justice[lxv].

FAIR BETWEEN GROUPS OF APPELLANTS WITHOUT DISCRIMINATION

The Appeal process must be fair as between groups of appellants. The process cannot discriminate between different classes of people. The appellants should be treated equally and they have to feel respected and given equal chance of their defence[lxvi].

Fair at the Systemic Level

The Appeal process should be considered at the systemic level. Because appellate resources are always limited, it is legitimate for a process to seek to channel its resources into hearing arguable or meritorious appeals; frivolous or hopeless appeals may be disposed of expeditiously, provided they still receive adequate consideration of their merits[lxvii].

Indeed, it is not in the interests of justice and fairness to allow unmeritorious appeals to prejudice the speedy resolution of those that have sufficient substance to justify a hearing. This is justifiable as law and justice are not only capable of being achieved simultaneously, they are indeed, inseparable….. There is no reason why courts should not administer justice in every situation and according to the law. True law can never be in conflict with natural justice, the constitution and equity[lxviii]

The Modalities of Appeal and Performance Analysis of Tax Cases

The first step in the Appeal process is filing the "Statement of Appeal". All sections of the "Statement of Appeal Form" must be completed and all documentation relevant to the complaint must be attached to the Statement. In the case of East Usambara Tea Co. Ltd vs. Commissioner General[lxix] it was held inter alia that;

> "Since the appellant did not include in his pleadings a mention of section 13(3) of the Tax Revenue Appeals Act, 2000, this cannot be entertained by the Board because it was not pleaded". Appeal was allowed

As substantively provided by the Tax Revenue Act,

> "A party who is aggrieved by the decision of the Board may appeal against the decision to the Tribunal within thirty days from the date of the decision, and shall serve notice to the opposite party within fifteen days following the date on which the notice of appeal was filed to the Tribunal. The Board or Tribunal, may extend the limit of time set under subsection or subsection of section 16 if it is satisfied that the failure by a party to give notice of appeal, lodge an appeal or to effect service to the opposite party was occasioned by absence from the United Republic, sickness or other reasonable cause, subject to such terms and conditions as to costs as it may consider just and appropriate"[lxx].

In the case of Broron Technologies (Pty) Ltd vs. Commissioner General[lxxi] One of the issues was whether the delay by the Board to issue written decision to the parties within the period prescribed under section 18(2) (e) and 24(1) of the Tax Revenue Appeals Act 2000 constitutes a good reason to grant extension of time to file notice of appeal.

In this case the applicant Broron Technologies (PTY) Ltd applied to the Tribunal for an extension of time to give notice of appeal and file the intended appeal against the decision of the Board. In support of his application the applicant raised three grounds:

> (1) Failure by the Board to serve the written decision to the parties within fourteen or fifteen days made the applicant fail to file the notice of appeal within the time prescribed by law. (2) such failure denied the applicant who resides in South Africa and had no office in Tanzania an opportunity to examine the Board's decision and determine whether they should initiate an appeal process or not. (3) That the decision of the Board was based on some serious misinterpretation and misapplication of both law and facts and therefore the intended appeal had overwhelming chances of success.

The counsel for the respondent opposed the application by arguing that it did not disclose a good cause for extension of time. It was held *inter alia* that;

> "(1) In terms of section 16(5) of the Tax Revenue Appeals Act 2000, the Tribunal may exercise its discretion to extend the time limit within which to give the notice of appeal only upon being satisfied that the applicant's failure to give the notice of appeal was occasioned by his absence from the United Republic, sickness or any other reasonable cause. (2) The procedure governing the process of giving notice of appeal under section 16(3) of the Tax Revenue Appeals Act 2000 and rule 4(1) of the Tax Revenue Appeals Tribunal Rules 2001 does not require a party aggrieved by the decision of the Board to obtain the written decision of the Board in order to issue notice of intention to appeal; therefore the delay to get a copy of the decision of the Board is not a reasonable cause for applicant's failure to file a notice of intension to appeal within the prescribed time limit". The Application was dismissed with costs.

Likewise, in the case of National Health Insurance Fund vs. Commissioner General.[lxxii] One of the issues was whether Appeals filed out of the statutory period are incompetent before the Board. In this case, the appellant NHIF was appealing against the decision of the Commissioner General's refusal to recognize it as a charitable organization. At the start of the hearing of the

appeal the respondent's counsel raised a Preliminary Objection against the appeal on ground that it was time barred therefore incompetent before the Board. It was held *inter alia* that;

> "(1) the court was satisfied that the appellant's application for recognition as a charitable organization was decided on 25th March, 2004 against which decision the appellant never bothered to appeal; the decision on 17th November, 2005 was just a reminder that the issue would not come up again as the respondent was *functus officio*. (2) Since the appellant lodged the notice of appeal on 16th December 2005 and the appeal on 30th December 2005 contrary to section 16(2) (a) and (b) of the Tax Revenue Appeals Act 2000 which requires a notice of intention to appeal to be lodged within 30 days and an appeal within 45 days from the date the appellant received the decision of the Commissioner General, the Board said that appeal is time barred and therefore incompetent before the it"; the Court accordingly upheld the Preliminary Objection"

It should bear in mind that, a person who wishes to appeal to the Board is entitled to file to the Board a "Written Notice of Intention" to appeal within thirty days from the date of services of the notice of final assessment of tax or notice as to the existence of liability to pay any tax, duty, fees, levy or charge. A copy of a notice of intension to appeal shall be served to the Commissioner General within 30days. A notice of intention to appeal must be made in the Form TRB 1, and shall be signed by or on behalf of the Appellant. An appeal to the Board shall be instituted by lodging a statement of appeal at registry of the Board within forty-five days from the date of service of notice of the final assessment, or any decision appealed against.

In the case of Tokyo Auto Centre Ltd vs. Commissioner General[lxxiii] One of the issues was whether regarding the procedure in the proceedings before the Board, the Board has the mandate to elect procedure to be adopted in the hearing and Execution of Board's decrees whether is automatic and whether Application for stay of execution of decree constitutes grounds for granting application.

This was an application for an order to stay execution of the Board's decree brought under a certificate of urgency. Before the proceedings began it was discovered that the respondent had threatened the applicant with enforcement by tax collection measures without first having the decree for execution of the Board's decision. Secondly, the Board was faced with the question as to what was the applicable procedure in entertaining the application. The Board subsequently clarified the proper legal position. The counsel for the respondent challenged the application

by arguing that the applicant did not advance strong or sufficient grounds to warrant the stay execution of the Board's decree. It was held inter alia that;

> "(1) in terms of rule 15(10) of the Tax Revenue Appeals Board Rules 2001, the Board is mandated to elect procedure to be adopted in the hearing. (2) Execution of the decrees issued by the Board is not automatic, the respondent the Commissioner General must have applied to the Board for an order authorizing execution or tax recovery measures to be initiated as per rule 21(1) of the Tax Revenue Appeals Board Rules 2001.(3) Since the applicant was ordered by the Board to pay the respondent a substantial sum and that it acted without any delay in filing notice of intention to appeal to the Tribunal, the Board was satisfied that the applicant would suffer substantial loss if the stay is not granted and that the application has been made without unreasonable delay as per Order XXXIX rule 5(3)(a) and (b) of the Civil Procedure Code 1966"; The Application was granted"

In assessing as to whether tax justice had taken place in tandem with the performance of TRAT/TRAB, we use the t-test using two paired samples in order to compare between disputable tax revenue and the total revenue comprising of import duty, excise duty, VAT and Income tax which are two dependent sets of test data so as to test as to whether the means (i.e., averages) are different from each other and the level of significance is 0.05. This is basically confirmatory work using data from 2001 to 2013. The Paired t-test formula is given by the following expression;

$$t_{Obtained} = \frac{\overline{D-\mu_D}}{S_{\overline{D}}} = \frac{\overline{D-\mu_D}}{\frac{S_D}{\sqrt{n}}} = \frac{\overline{D-\mu_D}}{\sqrt{\frac{SS_D}{n(n-1)}}} \quad \ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots(1)$$

Because under the Null Hypothesis $\mu_D = 0$ in that regard our formula becomes;

$$t_{obtained} = \frac{\overline{D}}{S_{\overline{D}}} = \frac{\overline{D}}{\frac{S_D}{\sqrt{n}}} = \frac{\overline{D}}{\sqrt{\frac{SS_D}{n(n-1)}}} \quad \ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots\ldots(2)$$

In our statistical quantitative analysis, we have developed two hypotheses;

Hypothesis 1= Disputable taxes reduces tax revenue levels in all categories of taxes (Null Hypothesis; and

Hypothesis 2= Disputable taxes do not reduce tax revenue levels in all categories of taxes (Alternative Hypothesis). Using the regression model, we have the following expression for the disputable taxes;

Disputable Taxes = $\hat{\beta}_0 + \hat{\beta}_1 + Total\ tax\ revenue$.....(3)

From the year 2002 through 2012, the Board and the Tribunal received a number of appeals and in that, decisions were remarkably executed[lxxiv]. In the same vein, the Board and the Tribunal have still been hearing the proceedings and have further made decisions on a number of appeals which were filed in different stages.

Results of the t-Test: Paired Two Sample for Means $\alpha = 0.05$

	Variable 1(Disputable Taxes)	*Variable 2(Total Tax Revenue)*
Mean	7.80539E+12	4.8054E+11
Variance	4.34147E+23	3.10006E+23
Observations	3	3
Pearson Correlation	0.241961003	
Hypothesized Mean Difference	0	
df	2	
t Stat	16.85439432	
P(T<=t) one-tail	0.001750886	
t Critical one-tail	2.91998558	
P(T<=t) two-tail	0.003501772	
t Critical two-tail	4.30265273	

CHALLENGES IN THE APPEALS PROCESS

Adjournment for the Scheduled Appeals

An adjournment is a suspension or postponement of proceedings to the judiciously predetermined future time or place by the courts for a number of reasons and at many different points in the trial process. A motion, trial, pre-trial conference, or any other court date can be adjourned for any number of reasons, including unavailability of counsel or their client, a lack of time in the court's schedule, or for procedural irregularities. If the case has been adjourned, the court will give instructions on how to proceed. Sometimes, a case is adjourned *sine die*[lxxv], which means it has been adjourned without another date being set. In this case, the parties will have to schedule another date themselves if they wish the case to continue for the other future times. When a case is adjourned, it will be re-scheduled for a date at some point in the future.

However, it is the law that procedural irregularities should not vitiate proceedings if no injustice has been occasioned therefore, rules should not be used to thwart justice[lxxvi]. Some jurisdictions recognize the concept of *"Adjournment in Contemplation of Dismissal"* (ACD), which means;

> "A trial, is postponed while the defendant performs some ordered prerequisite such as community service to dismissal. If the activity is performed to the court's satisfaction, and no further bad acts are committed, the case may be dismissed without a plea. If the activity is not performed to the court's satisfaction, or if the person reoffends, the trial will proceed at an appointed time. In essence, an ACD ruling imposes a period of probation on the defendant before the defendant goes to trial, without a plea of guilty or not guilty".

The Board and the Tribunal have respectively the power to adjourn the hearing of any proceedings before them[lxxvii]. Likewise, such law provides that:

> " In every proceedings before the Board and before the Tribunal the appellant shall appear either in person or by his duly authorised agent on the day and at the time fixed for hearing of the appeal but if it is proved to the satisfaction of the Board or Tribunal, as the case may be, that owing to absence of the appellant from the United Republic, or due to sickness or any other reasonable cause, he is prevented from attending or cause to be represented at the hearing of the appeal on the date and the time fixed for hearing,

the Board or the Tribunal, as the case may be, may adjourn the hearing of the appeal for such reasonable time as it may think appropriate"[lxxviii].

In some occasions, Advocates of the parties (both TRA and taxpayers) have been praying for the adjournment of the appeals on the reasons that advocates were on official excursions, thereby causing them unable to attend in the courts of high jurisdictions. Advocates were not arriving timely at the courts or they have not been able to be availed statement from their clients including among others family problems such as death ceremonies, illness, and family caretaking relating to ailment.

Non-reply to the Statement of Appeals

The Statement of Appeal (which is a statutory requirement) and rejoinder should be a complete and comprehensive document and include all materials the Party wishes to be considered and the rejoinder should be timely made. Unfortunately, TRA's advocates have been failing to timely respond to the Statement of Appeals, hence causing for the adjournment of the appeals which had to be determined. It should be noted that, Taxpayer has the burden of proving, by a preponderance of the evidence that TRA has erred in applying or interpreting the relevant statute or facts.

Preliminary Objections (PO)lxxix lacking legal basis

Preliminary objections are generally a form of pleadings by lawyers; they are points of law or fact raised at the outset of a case or lawsuit by the defence without going into the merits of the case. In other words, preliminary objections take no account of the validity of the claims of the claimant or plaintiff. The preliminary objections may be taken on the basis of the following:

1) The jurisdiction of the particular court or tribunal to hear the case is lacking,
2) The suit discloses no cause of action. In other words, there is no underlying basis or dispute for which the suit could have been initiated,
3) The suit is time-barred by limitation. For example, many types of civil suits may be barred after a period of three years from the time the dispute or cause of action arose. This limitation is imposed in many legal systems to avoid excessive abuse of the system and to prevent litigants who sleep over their rights from exercising it after considerable lapse of time. However, in some situations, courts may have the power to condone delay for legitimate reasons,

4) The relief claimed by the claimant in the suit cannot be granted by the Court, either because it is barred in law or the Court has no jurisdiction to grant the relief claimed or otherwise infructuous, and 5) the doctrine of Res Sub Judice. In other words, another suit by the same claimant against the same defendant, disclosing the same cause of action, is pending before another court.

TRA's Advocates have always been filing the Preliminary Objections (POs) which were unfortunately alleged to be lacking legal basis, hence causing for the lag-determination and improper execution of the appeals. The PO as held and cited by Justice Rutakangwa, Msofe and Kaji was rationally defined in the case of Mukisa Biscuits Manufacturing Company LTD vs. West End Distributors LTD[lxxx]. Law, J.A observed that;

> "A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of the pleadings, and which, if argued as a Preliminary Objection may dispose of the suit. …. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is the exercise of judicial discretion".

In the case of TAICO Ltd v Tanzania Revenue Authority[lxxxi] on the 19th December 2003, the applicant TAICO LTD filed an application for leave to apply for the prerogative orders of Certiorari, Mandamus and Prohibition against the respondent's decision to seize his motor vehicles namely a tanker with Registration No. TZF 9351 and a trailer with Registration No TZF 7776 together with fuel for having been found in possession of unaccustomed fuel products contrary to the Petroleum Marking Regulations (GN 45 of 2001) read together with section 146 of the East African Customs and Transfer Tax Management Act, 1970 and S.47 of the Value Added Tax Act, 1997. On 12th July, 2004, learned counsel for the respondent Mr Primi filed a notice of preliminary objection that the application is bad in law for being time barred. Judge Shangwa held *inter alia* that;

> "In the light of section 18(2) of the Law Reform (Fatal Accidents and Miscellaneous Provisions) Ordinance Cap.360, time within which the applicant had to file his application cannot start to run from 15/9/2003 when the Tax Revenue Appeals Board made its decision because the decision which the applicant wants to challenge by applying for the prerogative orders of Certiorari, Mandamus and Prohibition is not the

> decision of the said Board's Chairman but the decisions of the commissioner for customs and Excise which were made on 27/1/2003 and 28/1/2003 respectively. He agreed with Mr Primi for the respondent that application is time barred". Preliminary Objection was upheld and he dismissed the application with costs.

However, the law provides that, a notice of objection by the taxpayer shall contain a statement in precise form, of grounds in respect of which the objection to an assessment is made, and shall be filed with the Commissioner General within thirty days from the date of service of the notice of the Assessment[lxxxii].

In the case of Erick David Massawe T/A Erick David Petrol Station V. Commissioner General[lxxxiii] One of the issues was whether Board is partly to blame for non-service and the appeal is competent Applications; and on the Application for extension of time to lodge notice of objection regarding grounds for granting application as to whether pursuing remedy in other fora may constitute a "reasonable cause"

In this case, in two occasions in 2004 the appellant was found in possession of unaccustomed petroleum products. The respondent seized the products and closed the petrol station. The respondent's officer went ahead to assess the payable import taxes and duties and immediately served the appellant with a notice of assessment. However, the appellant did not lodge his objections against the two assessments to the Commissioner General, instead unsuccessfully filed civil suits in the ordinary courts of law. Later on the Appellant lodged two late notices of objection to the respondent requesting him to exercise his discretion to extend the time within which to lodge late notice of objection together with an application for waiver not to deposit taxes not in dispute before determination of the notices of objection.

The respondent rejected the appellant's application for extension of time because it did not disclose a reasonable cause, hence the appeal to the Board. Before the hearing began the counsel for the respondent raised a preliminary objection on the ground that the appeal was incompetent before the Board for non-service of the notice of intention to appeal on the respondent which is a statutory requirement. During the hearing of the appeal, the counsel for the appellant submitted that the appellant's failure to file the objection within the time prescribed by law was caused by the appellant's decision to take his grievances to the wrong forum. The counsel for the respondent resisted the appeal that it did not disclose a 'reasonable cause' as contemplated by the law. It was held *inter alia* that;

> "(1) where there is a possibility that the Board staff is the cause of non-service of the notices of intention to appeal, the appellant will not be wholly responsible for such non-service, and therefore the appeal will remain competent, non-service notwithstanding. (2) The appellant's actions of deliberately choosing the wrong forum does not constitute reasonable ground upon which the respondent Commissioner General could have granted him leave to file late notices of objection against the two notices of assessments as per section 12 (5) of the Tax Revenue Appeals Act 2000". Appeal was dismissed

It should bear in mind that, an application must state under what rule it is brought, so that the Court is properly moved. Non-citation, citing a repealed or non-existing rule, are matters of a fundamental nature, since they are matters which touch on the jurisdiction of the Court. But errors mixing sub-sections and paragraphs are, and should not be so held[lxxxiv].

It should be concluded that, understanding the nature and scope of preliminary objections is very important for practicing lawyers; knowing how to raise a properly formulated and legally valid preliminary objection, and when to raise it; this can save a lot of time and costs for clients. Preliminary objections are the basic legal weapons that a defendant can utilize without expending too much effort.[lxxxv] Where an application omits to cite any law at all, or cites a wrong law, but the jurisdiction to grant the order exists, the irregularity or omission can be ignored and the corrected law inserted so as to deliver administration of justice and protect the tax revenue in disputes[lxxxvi].

APPOINTMENT OF THE DEPUTY CHAIRPERSONS AND RESOURCE ALLOCATION

The appointing authority delayed in appointing the Deputy Chairpersons of the Board and that of the Tribunal. This has been reducing the speed in the determination of appeals. Moreover, the Board and the Tribunal have faced an immense problem concerning the budget constraints which to a large extent has negatively been affecting execution of the functions of the Board and the Tribunal.

It is a belief that;

> "The Government budget is formulated and implemented based on the priority of interventions. But it is a widely held view that these two institutions could have been given more priority in order to ensure that their functions are performed effectively and timely so as fair taxes demanded by the Government through appeals could be collected after appeal decisions have been made in line with the law"

When the appeal has been timely determined and properly executed, the legal disputes are waived and this could empower the Government to simply collect taxes for development and improve good governance. These achievements are comprehended and realized without due consideration on who has won the case or not.

The Budget constraints affected determination of the appeals in the following areas;

> "(1) Appeals especially at the regional levels have not been timely determined; (2) Members are not full or whole time employees of the Board and Tribunal, thus, if they had not been timely paid their allowances, it tended to be challenging to determine the appeal; (3) the budgeted amount for the hearing has been insufficient and inadequate thereby causing for the few appeals to be determined; (4) lack of offices and working facilities especially lack of Chambers ought to be used for hearing caused non-determination of appeals as planned; and (5) Failure for the employees and members to participate in training under the capacity building programs relating to the resolving tax disputes hindered and obstructed the determination process".

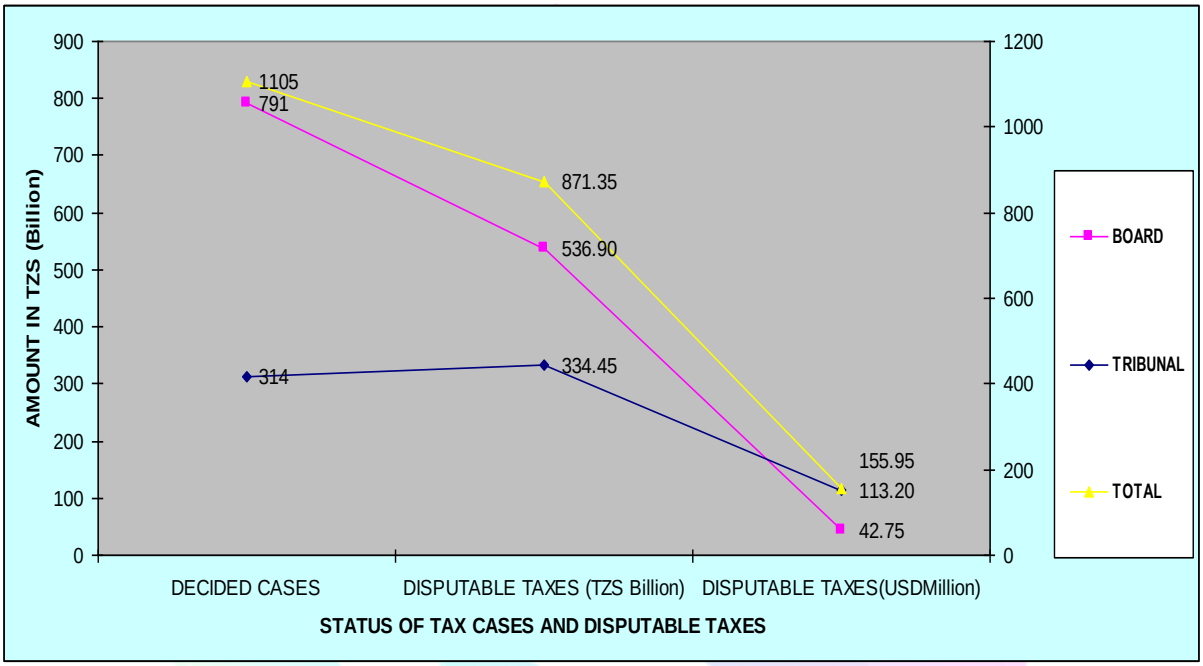
Nevertheless, the Budget constraints issue was addressed and submitted by the TRAB and TRAT with variety of applications for resource allocation in the Fiscal Years 2011/2012 and 2012/2013.

Right of Appeal at the High Court Causing Deregistration

The findings in this analysis shows that, when the Revenue Authority has to collect more than TZS 10billion in either of the type of taxes into which disputable cases could arise, the Null Hypothesis is less or equal to TZS 10billion and the alternative Hypothesis is greater than TZS10 billion hence, it is a one sided test. Therefore, we reject Null because P-Value of 0.001750886 is less than 0.05 (level of significance) and under two-tail we reject Null because P-Value of 0.003501772 is less than 0.05. Therefore, at 0.05 significance level there is sufficient sample evidence to support the claim that disputable taxes reduce tax revenue levels

in all categories of taxes. Moreover, the disputable tax to the total revenue ratios are increasing at an increasing rate since 2001, thereby reflecting the wide scope of tax cases to be determined; indeed this is a reflection of revenue risks.

Performance of the TRAB and TRAT (2002-2012)



Source: Tanzania Law Reports for the year 2002 through 2012

Given the Linear Model in equation (3) above, as long as R^2 is 0.6473, by having the value of disputable revenue we can perfectly predict the value of the revenue. However, the intercept has not been included. Eighty-four *per cent* of the variation in the response variable is explained by the total revenue which is an explanatory variables and the remaining twenty-six *per cent* is attributed to unknown as the disputable taxes have no certainty that can be collected to add value to the total revenue, because this would likely depend on the position of the winner in the case. The 2008 Doha Declaration on Financing for Development states that:

> "We will step up efforts to enhance tax revenues through modernized tax systems, more efficient tax collection, broadening the tax base and effectively combating tax evasion. We will undertake these efforts with an overarching view to make tax systems more pro-poor. While each country is responsible for its tax system, it is important to support national efforts in these areas by strengthening technical assistance and enhancing international cooperation and participation in addressing international tax matters,

including in the area of double taxation". UN Financing for Development, Doha Declaration – article 16.

CONCLUSION AND RECOMMENDATION

Tax increases incentives for public participation in the political process and creates pressure for more accountability, better governance, and improved efficiency of government spending. Domestic revenue mobilization can help strengthen fiscal institutions. However, this can be deprived where there is no tax justice in the tax fraternity. Generally, performance of tax appeals machinery have not been robust but rather moderately realized. Performance therefore, should be accelerated to facilitate efforts by the Country in strengthening a domestic revenue base without deprival which is a key to creating fiscal space for her development.

Therefore, tax appeals machinery should be able to enhance their efforts in providing taxpayers with access to an independent and impartial tax dispute resolution process. They should progressively intend to improve voluntary tax compliance by maintaining tax justice, so as to ensure that everyone is treated equally under the law, and prevent a high amount of taxes from being held up in disputes.

ENDNOTES

[i] Dayana, B, *et al* , 'Principles for Human Rights in Fiscal Policy', CESR, 2021 *https://www.cesr.org/ principles-human-rights-fiscal-policy*

[ii] Loren D. Prescott Jr., *"Challenging the Adversarial Approach to Taxpayer Representation"*, 30 Loy. L.A. Rev. 693 (1997).": Mafwenga, H.M (2019) "*Tax Justice and Advocacy Clinic: A Focus on the Revenue Index for Effective Fiscal Management in Tanzania "*IMCA Finance & Tax Care Consult (Unpublished Manuscript) accessible at *https://www.scribd.com/document/351583943/Tax-Justice-and-Advocacy-Clinic-2*: OECD(2004) *"Compliance Risk Management: Managing and Improving Tax Compliance"* Forum on Tax Administration Compliance Sub-group Centre For Tax Policy And Administration:

[iii] Malcolm, G, (1989) *"Tax Reform in Developing Countries Fiscal Reform in the Developing World"* Duke University Press Durham and London ISBN 0-8223-0874-6: Shaheen, M, Income Tax Compliance and Policy Issues in Developing and Emerging Economies (2014) : The Case of Bangladesh Available at https://www.researchgate.net/publication/262529723_Income_Tax_Compliance_and_Policy_Issues_in_Developing_and_Emerging_Economies_The_Case_of_Bangladesh : Katharine G. Y, & Amartya, S, (2019) *"19 - Public Budget Analysis for the Realization of Economic, Social and Cultural Rights Conceptual Framework and Practical Implementation from Part VI - Rights and Accountability"* Cambridge University Press DOI: https://doi.org/10.1017/9781108284653.020

[iv] The Tax Administration Act, Cap 438 (R.E 2019): See also FB Attorneys "*Jurisdiction of the Board in Tax Decisions still a Nightmare"* Legal Update – 13 June 2022 https://fbattorneys.co.tz/wp-content/uploads/2022/06/LU_130622.pdf : See also Section 17(1) of the Tax Revenue Appeals Act [CAP 408 R.E 2019]

[v] No 33 of 1973: Act, Cap 438: Cap.408

[vi] East African Law Chambers (EACLC) "Did the Court of Appeal Oust the Tax Board's and Tax Tribunal's Jurisdiction in Relation to Tax Deposits" Tax Services (2019) http://tz.ealawchambers.com/2018/wp-content/uploads/2019/08/EALC-Tax-Legal-Tax-Services-Tax-Boards-and-Tribunals-Jurisduction-and-Waiver-of-Tax-Deposits.pdf : Section 50(1). 51(1), 51(5), 51(6), and 52(2) of the Tax Administration Act, Cap 438

[vii] Income Tax (Appeals Board) Rules, 1975 published by GN No. 218 of 1975

[viii] Appeals Tribunal was established under section 90 (1)

[ix] Section 93 (2) of the Income Tax Law No 33 of 1973

[x] Cap 408 of 2002 R.E

[xi] Griswold, E, N. "The Need for a Court of Tax Appeals" *Harvard Law Review* Vol. 57, No. 8 (Oct., 1944), pp. 1153-1192 The Harvard Law Review Association: Msando, A, *"Resolving Tax Disputes Through Alternative Dispute Resolution (ADR) Processes In Tanzania: Law And Practice"* Master of Laws Degree (LL.M) Graduate Essay: University of Dar es Salaam September, 2019: Melinda, J, "A dispute systems design evaluation of the tax dispute resolution system in the United States and possible recommendations from Australia" *eJournal of Tax Research* (2018) vol. 16, no. 1, pp. 56-86

[xii] Soled J, A. & Goodman, L, "Tax Return Preparation Mistakes: How to avoid or mitigate professional liability" *Journal of Accountancy* (2010) https://www.journalofaccountancy.com/issues/2010/jun/20102524.html

[xiii] 219(3)(e) of the EACCMA: Danshera, C, "Administrative Law and Judicial Review of Tax Collection Decisions" *52 St. Louis U. L.J.* (2008). Available at: https://scholarship.law.slu.edu/lj/vol52/iss2/5

[xiv] Wasby, S, L. *"Publication (or Not) of Appellate Rulings: An Evaluation of Guidelines"* papers presented to the Southern Political Science Association (Savannah Ga., November 2002) and American Political Science Association (Philadelphia Pa., August 2003)

[xv] Pfander,[J, E. "Cases Without Controversies: Uncontested Adjudication in Article III Courts Cases Without Controversies: Uncontested *https://doi.org/10.1093/oso/9780197571408.001.0001 O*nline ISBN: 9780197571439 Print ISBN: 9780197571408 Publisher: Oxford University Press: McMahon Jr M, J. *et al* Recent Developments in Federal Income Taxation: The Year 2014 17 Fla. Tax Rev. 97 (2015), available at *http://scholarship.law.ufl.edu/facultypub/693*

[xvi] Esomeju, N, C, (2021) *"Improving the Tax Dispute Resolution Process in Nigeria with Special Attention to the Tax Appeal Tribunal: Insights from South Africa with an Emphasis on Tax Courts"* Thesis submitted to the Faculty of Law, University of Cape Town in fulfilment of the requirements for a PhD degree: Mukesh, B, *"Tax Dispute Resolution Challenges and Opportunities for India"* (2016) LexisNexis- A Gurgaon, Haryana, India.

[xvii] Marshall, P, D. "A Comparative Analysis of the Right to Appeal" *Duke Journal Of Comparative & International Law* [Vol 22:1] (2011): Ainsworth, J, *"Procedural Justice and the Discursive al Justice and the Discursive Construction of Narratives at Trial: Global Perspectives"* The Seattle University School of Law 4 Languages Cultures Mediation 79 (2017).

[xviii] Mkapa B.W. *"Address at the Silver Jubilee Anniversary of the Court of Appeal of Tanzania",* 2004: See also D. T. Dobie (Tanzania) Ltd vs. Phantom Modern Transport (1985) Ltd Civil Application No.141 of 2001, Unreported

[xix] Rule 4(1) through (5) of the TRAB Rules 2001published by the GN NO 57 of 20/4/2001)

[xx] The TRA Act, Cap 339 of 1995 (G.N. No. 319 of 1995):GTZ (2019) *"The Tax System in Tanzania: A Tax Policy"* Specific support by the Good Financial Governance (GFG) Programme: Sikika: Royal Denis Embassy

[xxi] *Attorney General vs. Lohay Akonaay and Joseph Lohay* (1995) TLR 80 at page 96

[xxii] Cap 408 (G.N. No. 126 of 2001) (Act, No 15 of 2001)

[xxiii] (see: sections 12, 13, 14 and 15)

[xxiv] Section 3 of the Tax Revenue Appeals Act,

[xxv] Sections 3 and 7 of the Tax Revenue Appeals Act

[xxvi] Rule 6(1)

[xxvii] Rule 6(2) Documents which must be accompanied by the Appeal are (a) A certified copy of the Procedures of the Board (b) A certified copy of the decision of the Board and (c) A copy of the notice of intention to appeal to the Tribunal

[xxviii] *Commissioner General vs. Rupesh Enterprises Ltd -Tax Revenue Appeals Tribunal Dar Es Salaam [Income Tax Appeal: DSM 2 of 2007]*

[xxix] Rule 24 (1) of the TRAT Rules 2001 published by the GN NO 56 of 20/4/2001

[xxx] Article 117(3) of the Constitution of the URT, 1977

[xxxi] *Fidahussein & Co. Ltd vs. Commissioner General [Tax Revenue Appeals Tribunal Dar Es Salaam [Application: DSM 1 of 2007]* where one of the issues was whether Application for leave to appeal to the Court of Appeal such Application must disclose points of law. This was an application for leave to appeal to the Court of Appeal against the decision of the Tax Revenue Appeals Tribunal.

[xxxii] Mohsin Somji v. Commissioner for Customs and Excise and Commissioner for Tax Investigations H.C [2004] T.L.R 66,

[xxxiii] *Mukisa Biscuit Manufacturing Co. Limited vs. West End Distributor Ltd* (1969) EA 696 Law J.A. at page 700

[xxxiv] *Firm of Illuri Subbaya Chetty and Sons vs. State of Adra Predesh* AIR 1964 SC 322

[xxxv] *Jandu Plumbers Limited vs. Commissioner General* [VAT Tax Appeal DSM No. 15 of 2011]

[xxxvi] Caron, P (2013) *"Policy Preferences and Expertise in Canadian Tax Adjudication Today at Toronto"*; Pepperdine University School of Law

[xxxvii] Orfield, L, B, "The Scope of Appeal in Criminal Cases" *University of Pennsylvania Law Review and American Law Register* Vol. 84, No. 7 (May, 1936), pp. 825-845: Martha S. Davis, A Basic *Guide to Standards of Judicial Review*, 33 S.D. L. REV. 469 (1988): Anderson, H. A. (2011). Revising harmless error: Making innocence relevant to direct appeals. *Texas Wesleyan Law Review*, 17, 391–402.: Higg in bottom, J. (2013, May 8). Shadow of guilt: Until the Utah Supreme Court weighs in on her factual innocence, Debra Brown lives one day at a time. Salt Lake City News. Retrieved from http://www.cityweekly.net/utah/article-17508-shadow-of-guilt.html

[xxxviii] See Section 19(a) through (b) of the Tax Revenue Appeals Act Cap 408

[xxxix] *Rungwe Freight Ltd V. Commissioner General Tax Revenue Appeals Tribunal Dar Es Salaam [Appeal No 3 of 2006],*

[xl] Customs and Excise Tax Appeal No 13 of 2004,

[xli] See Rule 7(2) (a) through (g)

[xlii] Commissioner General vs. Archipelago Investment Ltd Stamp Duty Tax Appeal No 16 of 2006 [Originating From VAT Appeal No. 8 of 2005]: See Marwa Kachang'a vs. Republic (Criminal Appeal 471 of 2017) [2020]:

[xliii] Cap 408

[xliv] Moorhead, R. & Sefton, M. (2005) *"Litigants in person; Unrepresented litigants in first instance proceedings"* Department for Constitutional Affairs Research series 2/05: UNDP, "Programming for Justice: Access for All, A practitioner's guide to a human rights-based approach to access to justice", 2005

[xlv] Othman, M.C. Keynote Address to the Annual General Meeting of the Tanganyika Law Society, Arusha, 17th February,2012.p.21: Othman, M.C. "*Access to Justice and Justice Delivery in Tanzania"*. Vol.1(1) Zanzibar Year Book of Law, 2011, p.13

[xlvi] Carothers, T, & Brechenmacher S, "Accountability, Transparency, Participation, and Inclusion: A New Development Consensus?" *Carnegie Endowment for International Peace* (2014): Viljoen, F, *"6 Substantive Human Rights Norms in the African Regional System"* international Human Rights Law in Africa (1st edn)(2007) https://doi.org/10.1093/acprof:oso/9780199218585.003.0006

[xlvii] Wojkowska, E, *"Doing Justice: How informal justice systems can contribute"* UNDP Oslo Governance Center

[xlviii] Viljoen, F, *"International Human Rights Law: A Short History"* Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa. United Nations

[xlix] Cassandra, B, R, (2013); *"The right to appeal"* North Carolina Law Review Vol 91 No 4 Western Reserve University School of Law: Youn, M, "The Chilling Effect and the Problem of Private Action" *The Vanderbilt Law Review*10-2013 1471 (2019)

[l] *Commissioner General TRA V. Rahisi Store Tax Revenue Appeals Tribunal Dar Es Salaam [Application: DSM 32 of 2006]*

[li] Ibid (fn 33)

[lii] Ramadan, A.S.L. Twenty Five Years of the Court of Appeal of Tanzania and the Establishment of the East African Court of Justice in Peter, C.M & Bisimba, H.K (Eds). *"Law and Justice in Tanzania: Quarter of a Century of the Court of Appeal of Tanzania".* Mkuki & Nyota Publishers/ Legal and Human Rights' Centre, 2007, p.228

[liii] Shu-Chien J, C, (2018) "Neutrality as Tax Justice: The Case of Common Consolidated Corporate Tax Base under the EU law" *European Studies* – Volume 5/2018: Sugin, L. "Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems". *Fordham Law Review*, 2004, vol. 72, no. 5, p. 1991–2014" Findley, K. A. (2009). Innocence protection in the appellate process. Marquette Law Review, 93, 591–638.

[liv] Waldron, J, "The Core of the Case against Judicial Review" The Yale Law Journal Vol. 115, No. 6 (Apr., 2006), pp. 1346-1406: *The Yale Law Journal Company, Inc.*

[lv] Ibid (fn 544)

[lvi] Cap 438(R.E 2019)

[lvii] Asian Development Bank (2016) "A Comparative Analysis of Tax Administration In Asia And The Pacific" ISBN 978-92-9257-569-4 ": Asian Development Bank. 2014. *"Tool Kit for Tax Administration Management Information Systems. Manila".* Barreto, R. and R. Sinha. 2014. *"Implementing a Tax Administration System in the Kyrgyz Republic".* ADB Briefs, No. 29. December 2014. ISBN 978-92-9254-845-2 (Print). Manila:

[lviii] Whitehead, S (2019) "Tax Disputes and Litigation Review" *The Law Review* ISBN 978-1-83862-007-3eNCOMPASSPrint Solutions , Derbyshire

[lix] Ibid (fn 544)

[lx] *M/S M & M Communications Ltd V. Commissioner General Tax Revenue Appeals Board Dar Es Salaam [VAT Tax Appeal Case: DSM 15 of 2005]*

[lxi] Markert, L, "Preliminary Objections Pursuant to ICSID Arbitration Rule 41(5) - Soon to Become the Preliminary Objection of Choice?" *TDM Journal* 3 (2012), in Investor-State Disputes - International Investment Law https://www.transnational-dispute-management.com/article.asp?key=1821 :. Cremades, R, & Bernardo, M *"The Use of Preliminary Objections in ICSID Annulment Proceedings"* Kluwer Arbitration Blog Institute for Transnational Arbitration (ITA), Academic Council

[lxii] Ibid (fn 544)

[lxiii] *Rupesh Enterprises Ltd V. Commissioner General Tax Revenue Appeals Board Dar Es Salaam [VAT Tax Application: DSM 2 of 2006]*

[lxiv] González-Salzberg, D, "Do Preliminary Objections Truly Object to the Jurisdiction of the Inter-American Court of Human Rights? An Empirical Study of the Use and Abuse of Preliminary Objections in the Court's Case Law" *Human Rights Law Review*, vol. 12, n. 2, 255-286 University of Sheffield - Law School

[lxv] Nyalali, F.L. *"The Challenging Role of the Tanzania Bar".* Tanzania Lawyer, 1994, p.4

[lxvi] *Barbara B. Crabb, In Defense of Direct Appeals: A Further Reply to Professor Chemerinsky, 71 AM. BANKR. L.J. 137, 138 (1997)* ("Americans continue to believe in the right of appeal, both as a means of giving a second chance to be heard, albeit in limited fashion, thus providing a greater sense of fair treatment, and for its normative function, in essence reining in the outliers among the lower courts, with the result that litigants can expect reasonably uniform and consistent treatment within the courts of any particular jurisdiction.").

[lxvii] Daltont, H,L, "Taking the Right to Appeal (More or Less) Seriously" *The Yale Law Journal* Vol. 95: 62, 1985: Todd E. Thompson "Increasing Uniformity and Capacity in the Federal Appellate System" 11 *the Law Journals at UC Hastings Scholarship Hastings Constitutional Law Quarterly* 457 (1984). Ugirashebuja, E, *"The East African Court of Justice"* East African Court Of Justice Law Report ISBN: 978-9987-712-64-9 : h Duane, J, J, "The Four Greatest Myths About Summary Judgment" 52 *Washington & Lee Law Review*. 1523 (1995): Rubinson, R, "A Theory of Access to Justice", 29 *Journal of Legal Profession*. 89 (2005)

[lxviii] See also Nyalali, F.L. *"The Challenging Role of the Tanzania Bar".* Tanzania Lawyer, 1994, p.4

[lxix] *East Usambara Tea Co. Ltd V. Commissioner General Tax Revenue Appeals Board Tanga* [VAT Tax Appeal: TNG 3 of 2007]

[lxx] Section 16(4) through (6) of the Tax Revenue Act, Cap 408

[lxxi] *Broron Technologies (Pty) Ltd V. Commissioner General Tax Revenue Appeals Tribunal Dar Es Salaam [Application: DSM 7 of 2006]*

[lxxii] *National Health Insurance Fund V. Commissioner General [Income Tax Appeal: DSM 25 of 2005]*

[lxxiii] *In* the case of *Tokyo Auto Centre Ltd V. Commissioner General Tax Revenue Appeals Board Dar Es Salaam [VAT Tax Appeal Case: DSM 9 of 2005*

[lxxiv] The Board has decided 791 appeals whereas the disputable taxes amounted to TZS 536,898,874,521 and USD 42,750,492. On part of the Tribunal a total of 314 appeals were decided whereas the disputable taxes amounted to TZS 334,457,600,241 and USD 113,199,760.

[lxxv] Adjournment sine die (from the Latin "without day") means "without assigning a day for a further meeting or hearing". To adjourn a tax court *sine die* is to adjourn it for an indefinite period. A tax courts adjourns sine die when it adjourns without appointing a day on which to appear or assemble again. It can be used in reference to members of the tribunal whose terms or mandates are coming to an end, and it is anticipated that this particular body will not meet again in its present session, form, or membership

[lxxvi] The Judge-in-Charge, High Court, Arusha vs. N.I.N Munuo Ng'uni Civil Application No.141 of 2001, Unreported

[lxxvii] Section 17(1) (f) of the Tax Revenue Appeals Act, Cap 408

[lxxviii] Section 18(1) (a) of

[lxxix] The nature of a preliminary objection necessarily affects the burden of proof. There are basically two categories of preliminary objections: "those raising questions of fact outside the record and those which may be determined from the facts of record. *"Chester Upland Dist Vs. Yesavage, [653 A.2d 1319,*1325(Pa.Commw. 1994].* If preliminary objections raise issues of fact beyond the record, the failure of the parties to provide requisite evidence does not excuse the court from making further inquiry. *Holt Hauling& Warehouse Systems Vs Aronow Roofing, [309 Pa. Super. 158, 454 A.2d 1131, *1133 (1998)]*

[lxxx] *Mukisa Biscuits Manufacturing Company LTD v West End Distributors LTD* (1969) EA 696 At page 700

[lxxxi] *TAICO Ltd v Tanzania Revenue Authority [Misc. Civil Cause No. 108 of 2003) [2006] TZHC 21*

[lxxxii] Section 12 (2) of the Tax Revenue Appeals Act, Cap 408

[lxxxiii] *Erick David Massawe T/A Erick David Petrol Station V. Commissioner General [Consolidated Customs & Excise Tax Appeal: Msh 12/2004 and 1/2005]*

[lxxxiv] Nakkakonge Battaka Coffee Industry Ltd vs. Nkonge Tukyasubira Farmers, (1971) ULR 55, Tebajjukira vs. Ssabatanzi, Civil Application No.8 of 1988 (Uganda) and Deepak Chamanlal Kamani vs. Kenya Anti-Corruption Commission(2010)eKLR.

[lxxxv] Wasserstrom, R, "Lawyers As Professionals: Some Moral Issues" *Human Rights* Vol. 5, No. 1 (Fall 1975), pp. 1-24: Devaney, J, G, "The Law and Practice of Fact-Finding before the International Court of Justice" Thesis submitted for assessment with a view to obtaining the degree of Doctor of Laws of the European University Institute (2014): Schwarzer, W, W. Dealing with Incompetent Counsel- The Trial Judge's Role", 93 *Harvard. Law Review*. 633 (1980): Colin Flora, It's a Trap! The Ethical Dark Side of Requests for Admission, 8 St. Mary's Journal on Legal Malpractice & Ethics (2018): See also Beisner, J, H, "Discovering a Better Way: The Need for Effective Civil Litigation Reform, 60 *Duke Law Journal* 547, 549 (2010)

[lxxxvi] See also Saggu vs. Roadmaster Cycles (U) Ltd (2002) 1EA 258, CA(U)