

**IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM**

(CORAM: MBAROUK, J.A., MASSATI, J.A. And MUGASHA, J.A.)

CIVIL APPEAL NO. 63 OF 2016

MBEYA INTERTRADE COMPANY LIMITED APPELLANT

VERSUS

THE COMMISSIONER GENERAL TANZANIA

REVENUE AUTHORITY..... RESPONDENT

(Appeal from the judgment, Decree and Orders of the Tax Revenue Appeals Tribunal at Mbeya in Income Tax Appeal No. 6 of 2004 dated 29th day of January, 2005, and which is filed pursuant to the order for extension of time granted by Hon. Dr. Twaib Fauz, sitting at the Tax Revenue Appeals Tribunal on 8th March, 2016)

(Fauz, J.)

dated the 29th day of January, 2005

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JUDGMENT OF THE COURT

7th and 13th September & 3rd October, 2016

MUGASHA, J.A.:

The appellant, **MBEYA INTER TRADE COMPANY LIMITED**, appeals against the judgment and decree of the Tax Revenue Appeals Tribunal (the Tribunal) in **VAT** Tax Appeal No. 6 of 2004 vide a decision dated 29th January, 2005.

A brief background of the appeal is to the effect that: The respondent made an additional assessment of Value Added Tax amounting to Tshs. 1,576,175/= being undeclared sales for the period of July, 1998 to March, 2000 and issued a demand notice on 16/9/2003 requiring the appellant to settle the tax liability within thirty (30) days or else pay interest on the tax liability. Since the appellant defaulted the respondent closed the appellant's business premises. On 22nd September, 2003 the appellant lodged a notice of intention to appeal and on 29th October, 2003 she appealed to the Tax Revenue Appeals Board (The Board). On 27th October, 2004 the Board partly allowed the appeal and dismissed other grounds. Aggrieved, the appellant appealed to the Tribunal which on 29th January, 2005 dismissed the appeal in its entirety.

Still aggrieved, the appellant has appealed to this Court. Apart from asking the Court to allow the appeal, the appellant prayed for an order that she be compensated Tshs. 51,417,146.00 by the respondent for closing down her business premises from 1st February, 2002 to 16th December, 2004.

The appellant was represented by Mr. John Laswai, learned counsel. At the initial hearing of the appeal on 7th September, 2016, the respondent

who was duly served with the notice of hearing, neither entered appearance nor availed reason of absence. As such, we allowed the appellant to proceed in the absence of the respondent in terms of Rule 112(2) of the (Court of Appeal) Rules, 2009.

Mr. Laswai adopted the written submissions earlier on filed to constitute an integral part in the hearing of the appeal. In addition he made oral submissions in support of the appeal and we reserved the matter for judgment. However, in the course of composing the judgment we noted that some exhibits were missing in the record of appeal and the original case file. We summoned Mr. Laswai on 13/9/2016 to address us on the competence of the appeal on account of the incomplete record of appeal.

Mr. Laswai conceded that there are missing exhibits in the record of appeal such as, exhibit P1 and R4. However, he argued that since the exhibits were admitted and reflected in the proceedings of the Board and the Tribunal and were in the original case file, the Court can make reference thereto. He urged the Court to compose judgment on the basis of the hearing of the appeal conducted on 7/9/2016 in terms of Rule 39(1) of the Rules.

In the present matter, there is no doubt that the record of appeal before us is incomplete. Several documents including the appellant's receipts and returns for the input tax and output tax which were introduced into evidence were not incorporated in the record of appeal. The Exhibits are: **P1, P2, P3, P4, P5, P6, P7, P8, P9, P10, P11, P12, P13, P14, P15 and P16.** These documents were put in the evidence at the hearing of the appeal before the Board on 26/10/2004 as reflected from pages 177 to 182 of the record of appeal. This contravened Rule 96 (1) (f) the Rules which provides:-

"For the purposes of an appeal from the High Court or a tribunal, in its original jurisdiction, the record of appeal shall subject to sub-rule (3) contain all documents put in evidence at the hearing or if such documents are not in English language, their certified translations.

Save that the copies referred to in paragraphs (d) (e) and (f) shall exclude copies of any documents or any of their parts that are not relevant to the matters in controversy on the appeal."

Since this is an appeal originating from the Board, Rule 96 (1) of the Rules must be read together with Rule 96 (2) of the Rules which reads as follows:

"For the purposes of any appeal from the High Court in its appellate jurisdiction, the record of appeal shall contain documents relating to the proceedings in the trial court corresponding as nearly as may be to those set out in sub-rule (1) ..."

Furthermore, section 25 (2) of the Tax Revenue Appeal Act [**CAP 408 RE.2002**] directs compliance with the provisions of the Appellate Jurisdiction Act [**CAP 141 RE.2002**] and the (Court of Appeal) Rules, 2009 as follows:

"Appeal to the Court of Appeal shall lie on matters involving questions of law only and the provisions of the Appellate Jurisdiction Act and the rules made thereunder shall apply mutatis mutandis to appeals from the decision of the Tribunal".

In view of the stated position of the law, we are of settled view that, the Tribunal's judgment appealed against arose from the proceedings conducted by the Board whereby the missing exhibits were admitted in evidence. The missing exhibits are vital for the proper determination of the

appeal. The omission to include the said vital documents in the record of appeal is fatal and it violates the mandatory provisions of Rules 96(1) (f) and 96(2) of the Rules. Therefore, the record of appeal before us is incomplete and the appeal is rendered incompetent. For this reason, we strike it out with no order as to costs.

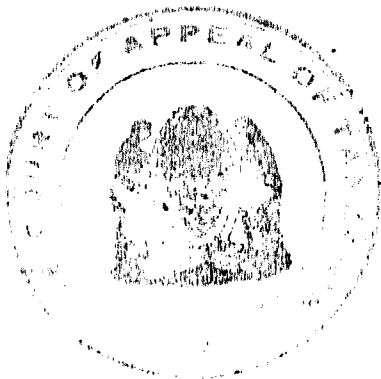
DATED at DAR ES SALAAM this 21st day of September, 2016.


M. S. MBAROUK
JUSTICE OF APPEAL

S. A. MASSATI
JUSTICE OF APPEAL

S. E. A. MUGASHA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.




B. R. NYAKI
DEPUTY REGISTRAR
COURT OF APPEAL