

**TAXPAYERS' RIGHTS: HOPE OVER RECENT CASE OF PAN AFRICAN  
ENERGY TANZANIA LTD V. COMMISSIONER GENERAL**

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**ABSTRACT:** The article shows critical appraisals on recent case of Pan African Energy Tanzania Ltd v. Tanzania Revenue Authority under the sphere of tax administration. It examines whether the decision of the case enhanced fair play to both taxpayers and tax authorities. Specifically, the article examines the consideration made by the tax authorities and court upon uncertainty of the tax laws when the taxpayer defends their cases upon refusal of waiver. In this aspect, the article draws attention to two aspects which are; the procedural fairness and presumption of honest on the side of taxpayers. The article concludes that, it is very difficult for the taxpayer to defend oneself successful on lodged objections before the Commissioner General especially on being seen as an honest person upon objecting the assessed taxes. Finally, the article recommends that, the taxpayers' rights should be considered when it appears the wording of the statutes are uncertain.

**Keywords:** Taxpayers' Rights; Tax administration; Tax laws.

## 1 INTRODUCTION

One among the dominant issues in contemporary Tanzania's taxation is bringing tax administration into flexible aspect due to uncertainty of the tax laws. Based on that, this article seeks to make a critical analysis on the decision of the Court of Appeal of Tanzania regarding the case between *Pan African Energy Tanzania Ltd and Tanzania Revenue Authority*<sup>1</sup> in relation to taxpayers' rights. This has been one of the highly debatable decisions under the auspices of tax administration towards taxpayers' rights since its delivery in 2020. The case concerned on a legal challenge of tax administration laws specifically section 50, 51, 52 and 53 of the tax administration Act and 16 and 7 of the Tax Revenue Appeal Act, together with rule 2 and 6 of Tax Revenue Appeal rule which provide for the scope of the Tax Revenue Appeal Board (TRAB)<sup>2</sup> upon tax decisions. The Court of Appeal of Tanzania<sup>3</sup> ruled in favour of Tanzania Revenue Authority and held the company liable for the tax assessed.

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<sup>1</sup> *Pan African Energy Tanzania Ltd v. Commissioner General TRA*, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No172 of 2020 (Unreported).

<sup>2</sup> The Tax Revenue Appeal Act, Cap 408 [R.E 2019] s.4.



The contentious issue was that, the phrases; “other decision” “omissions” of the Commissioner General that may be reviewed by the Tax Revenue Appeal Board create confusion and uncertainty of the tax laws as to whether refusal of granting waiver by Commissioner General denotes “other decisions” or “omission”. The interpretations were done so as to examine the scope of the appellate powers of the Tax Revenue Appeal Board. The phrase ‘other decision’ or “omissions” on objection decisions attract appealable decisions stipulated under section 53 of Tax Administration Act. However, the section appears to be uncertainty despite the fact that, the principle of certainty of the tax law is one among the fundamental principles of the good tax administration in all aspects including the determination of tax liability and determination of objected taxes.

This was revealed in the literature that, certainty of the tax laws reflects the state which respects the rule of law. The certainty of tax laws also benefits both tax authorities and taxpayers in the sense that, it reduces the costs to both taxpayers as well as tax authorities. It also helps the taxpayers arrange their financial affairs and promotion of faithful legal system on the side of tax administration.<sup>4</sup> Moreover, is facilitates easy collection of taxes. However, on the other side, uncertainty of the tax laws not only should be considered as the defects or omission of the lawmakers but also the modern legal technologies which are used by lawmakers as well as law enforcers.<sup>5</sup>

*The Pan African Energy Tanzania Ltd. 's case set* precedence that allows the court of Tanzania to enforce judgement against the taxpayer with respect to consideration of the wider interpretation of uncertainty of the tax laws. The judgment of the case was reached based on the critical interpretation of the decision upon refusal in granting waiver by the Commissioner General being non-appealable decisions, non- objection decisions in respect to objection decision which is defined under section 2 of the Tax Administration Act.<sup>6</sup>

The article focuses on doctrinal research based on available court decisions, literature and relevant provisions of the tax laws that are potential with respect to the article. The article

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<sup>3</sup> The Constitution of United Republic of Tanzania, Cap 2 [R.E 2002], part V, Art 117.

<sup>4</sup> Demin, AV., “Certainty and Uncertainty in Tax Law: Do opposites Attract?”, 9(4) *Laws Journal*, 2020, p.1.

<sup>5</sup> *id.*, p.15.

<sup>6</sup> The Tax Administration Act, Cap 438 [R.E 209] s. 2, which literally read as follows; objection decision means a decision in respect of a tax decision made under section 52.



also predicts that, the Pan African case's judgments will provide certainty of the tax laws and enhance the knowledge of tax laws to many persons such as; tax practitioners, tax experts, tax lawyers and taxpayers in realising their tax rights in respect to the Commissioner General's Decisions in refusing to grant waiver upon the assessed taxes. The article consists of six parts. Part one covers the introduction of the article. Part two explains the facts and holding of the *Pan African Energy Tanzania Ltd v. Commissioner General (TRA)*. Part three addresses the constitutionality of the right to appeal in tax administrative decisions. Part four entails wider viewpoints of the decision of the Pan African Energy Tanzania Ltd v. TRA in connection of taxation principles such as; procedural fairness and presumption of honest of the taxpayers. Part five provides for the benefits produced by the Pan African cases' decision in respect to tax administration towards taxpayers' rights in Tanzania. Finally, part six gives conclusion and recommendations.

## 2 DISPUTE DETAILS

The facts of the case are as follows: the appellant is a company involved in the production and supply of gas registered in Tanzania and resides in Dar es Salaam. Upon assessment made by the Commissioner General, the Appellant in the referred appeal was ordered to pay a total of TZS.84, 228,425,576.50 as taxable amount from his business. Being aggrieved by the decision of the Commissioner General in refusing to grant waiver regarding the amount assessed, the appellant preferred an appeal to the Tax Revenue Appeal Board.<sup>7</sup> Being further dissatisfied with the decision of the Board; he made another attempt to the Tax Revenue Appeal Tribunal (TRAT)<sup>8</sup> which like the Board, struck out the appeal on the ground that the decision was not appealable.

The appellant in the effort to challenge the decision arrived at by the Tribunal preferred the appeal to the Court of Appeal of Tanzania. The appeal meant to challenge the decision of Tax revenue appeals tribunal which struck out his appeal on the ground that the appeal was incompetent since it was derived from the Tax revenue Appeal Board as non-appealable decision. Making reference to the provisions of section 51 of the Tax

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<sup>7</sup> The Tax Revenue Appeal Act, Cap 408 [R.E 2019] s.4.

<sup>8</sup> Id., s.8.



Administration Act and Section 16 (1) of Tax Revenue Appeals Act; The Court of Appeal took a similar position as that of the Board and the Tribunal and struck out the appeal on the ground that the decision of the Board was not appealable. In the light of the said decision, it can be observed that, the Appellant was denied his constitutional right of appeal as the Constitution of United Republic of Tanzania provide under Article 13(6) that the state should arrange the procedures which are appropriate in case of infringement, the person being given the opportunity of fair hearing and right to appeal. in case of infringements

“... the state authority shall make procedure which are appropriate or which take into account the following principles

(a)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 other agency concerned.”<sup>9</sup>

Further to that, the Appellant is obliged to pay the amount which he protested simply because the doors for challenging the decision of the Commissioner General are closed and there are no other avenues available.

It is contended that, there is unfairness decision of the Commissioner General in refusing to grant waiver. His decision is final and conclusive in which the taxpayer cannot appeal against such decision. In the eyes of the public, the decision of the case goes contrary to the Constitutional principles such as equality before the law which is found under Article 13(1) and (2) of the Constitution of the United Republic Tanzania.<sup>10</sup>Nevertheless, the equality before the law in tax matters implies two substantial issues such as material equality in the sense that equal tax burden among taxpayers and procedural issue which focuses on impartial applications and interpretation of the tax law.<sup>11</sup> Moreover, it was argued that, equality before the law in tax matters mainly demand taxpayers’ equality before the law, equality of taxpayers before tax authorities and taxpayers equality before tax burden.<sup>12</sup>

<sup>9</sup> The Constitution of the United Republic of Tanzania of 1977, Cap 2 (R.E 2002) Art.13 (6) (a).

<sup>10</sup>The Constitution of The United Republic of Tanzania of 1977,Cap 2 [R.E 2002] Art.13(1)(2).

<sup>11</sup>Gaina, AM., “Legal Equality and Unity in the Tax Law between Traditional and Modernization”, 2015(1) *Conferinta Internationala de Drept,Studii Europene si Relatii international*,2015,p. 505.

<sup>12</sup> *ibid*.



### 3 CONSTITUTIONALITY OF THE RIGHT TO APPEAL

Historically, appeal has been used on the equity which was regarded as a review of factual issues unlike limited to legal issues.<sup>13</sup> Nevertheless, the appellate review was the part of legal practice and fundamental element of due process or procedure fairness.<sup>14</sup> Lack of recognition of right to appeal upon tax administrative decisions not only violate the Constitution of United Republic of Tanzania which grant the right to one appeal under article 13 (6) (a)<sup>15</sup> but also creates doubtful on tax policy ground. This was also supported by the literature that, lack of guarantee of the right to appeal upon tax administrative decisions on tax assessment issues affect the uniformity of the tax cases being used as the precedent as well as weaken the confidence of judicial system.<sup>16</sup> Equally, the effective protection of the right to appeal in tax cases specifically on tax assessment issues guarantee the due process of the legal system. It also helps to fulfil the major aims of the law which targeting on appearance of disputant parties and creating the reality of fairness which addresses the important thing to the citizens that justice has been done.<sup>17</sup> Moreover, constitutional lawyer argued that, absence of the right to appeal of the tax administrative decisions involving deprivation of the property would make every man to complain on the decisions especially when the decision affects larger part of property of the disputant party.<sup>18</sup>

However, reference to the case of Pan African Energy, most to the people complain because it was the cases concerned with deprivation of the property of the taxpayer without being given the appeal remedy for challenging the refusal of the waiver. Nevertheless, the article noted that, despite the fact that the Constitution of United Republic of Tanzania limit government interference with individual property<sup>19</sup> but due process does not require the taxpayer being given an opportunities to challenge pre-deprivation of property in tax assessment due to the importance of tax collection to the government. This was also noted to

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<sup>13</sup> Robertson, CB., "Right to Appeal" 91(4) *North Carolina Law Review*, 2013,p. 1245.

<sup>14</sup> *ibid.*

<sup>15</sup> The Constitution of United Republic of Tanzania, Cap 2 [R.E 2002].

<sup>16</sup> Han, SS., "One of a Kind: Indiana Tax Court and Its Lack of Right to Appeal", 20 (3) *Western Michigan University Cooley Journal*, 2019, p. 193.

<sup>17</sup> *id.*, 204.

<sup>18</sup> *ibid.*

<sup>19</sup> The Constitution of United Republic of Tanzania, Cap 2, [R.E 2002] art 24 (1) and (2).



be the case by the literature that, the importance of tax collection to the government activities make less restrictions being placed to tax authorities. Moreover, the legislators also understand the importance of tax collection that is why there are minimal interference by the tax authorities through tax laws.<sup>20</sup>

The article suggests that though the right to appeal being restricted in tax collection in Tanzania specifically on tax assessment decisions such as refusal to grant waiver by the Commissioner General. The government should make a clear direction under the tax laws that the approach of judicial review will be substantial to the aggrieved taxpayer. The clear direction to the judicial review upon abuse of discretion on tax collection decisions such as refusal to grant waiver upon tax deposit will ensure taxpayers are treated fairly by tax administration in Tanzania.

#### 4 ACTION TO TAKE/CRITIQUES ON THE DECISION

As noted from the beginning, this article seeks to give comments on the decision about the Pan African Company Limited in relation to taxpayers' rights in the sphere of tax administration. The following are the comments and critiques which are based on above explained decisions.

Firstly, this article observes that, the consideration of procedural fairness in tax matters is utmost important in protecting taxpayers' rights. This is due to the fact that, procedural fairness entails two issues in which the first based on fair decision making encompasses neutrality and rule of law and second fair interpersonal treatment which covers; respect, trust and dignity.<sup>21</sup> Moreover, under the constitutional context, the procedural fairness relate with due process which makes recognition of the mistakes by the authorities and being given the opportunity to citizens of challenging before being deprived protected rights.<sup>22</sup> Conversely, the Pan African's case reflected the Commissioner General's discretionary power

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<sup>20</sup> Cords, D., "Administrative Law and Judicial Review of Tax Collection Decisions", 52(2) *St Louis University Law Journal*, (Vol.52, No.2, 2008) 434.

<sup>21</sup> Olson, NE., "Procedural Justice for All: A Taxpayer Rights Analysis of IRS Earned Income Credit Compliance Strategy", 22(1) *In Advances in Taxation*, 2015, p.4.

<sup>22</sup> *ibid.*



due to his refusal to grant waiver of the tax assessed.<sup>23</sup> Nevertheless, the waiver was made upon the taxpayer application for the waiver stating the reasons why a waiver would be appropriate.<sup>24</sup> However, the Commissioner's discretion upon granting of waiver is available as an option for the taxpayer seeking the said relief. This creates tension in the Pan African's case between decision made refusing to grant waiver and the right to appeal.

It is clear that the *Pan African Energy Tanzania v. Commissioner General (TRA)*<sup>25</sup> is an extension of the decision of the court in the case involving the same parties the case of *Pan African Energy Tanzania Ltd v. Commissioner General (TRA)*<sup>26</sup> which was decided about two years prior. It is observed that, the court is upholding the “*pay now argue later*” principle rooted on the ground that state tax collection should not be hindered by litigation<sup>27</sup> but at the same time the principle is very detrimental to taxpayers' rights.

The Pan African's case experienced the tension on decisions upon refusal to grant waiver by the Commissioner General. The tension relates to the scope of the objection decisions that may be considered as appealable decisions before the Tax Revenue Appeal Board which is provided under section 16 of Tax Revenue Appeal Act and section 52 and 53 of the Tax Administration Act.<sup>28</sup> However, it is noted in this article that, it is true that, the Tax Revenue Appeal Board has the right to accept and entertain all civil appeals lodged against appealable decisions made by Commissioner General on tax matters.<sup>29</sup> Nevertheless, section 52 and 53 of the Tax Administration Act stipulates that, appealable decisions include objection decisions or any other tax decisions made by Commissioner General. As the emphasis the article reproduces the section 53 of the Tax Administration Act that; “A person who is aggrieved by an objection decision or any other decisions or omission of the

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<sup>23</sup> The Tax Administration Act, Cap 438 [R.E 2019] s.51 (6).

<sup>24</sup> *Id.*, s.51 (5).

<sup>25</sup> *Pan African Energy Tanzania Ltd v. Commissioner General TRA*, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No.172 of 2020 (Unreported).

<sup>26</sup> *Pan African Energy Tanzania Ltd v. Commissioner General TRA*, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No.121 of 2018 (Unreported).

<sup>27</sup> Breakthrough Attorney, *Rising Tax Assessment Objection in Tanzania*, 2016,p. 1.

<sup>28</sup> The Tax Administration Act, cap.438 [R.E 2019] s.52 and 53.

<sup>29</sup> Tax Revenue Appeal Act, Cap.408 [R.E 2019] s.7.



Commissioner General under this part appeal to the Board in accordance with the provisions of the Tax Revenue Appeals Act”<sup>30</sup>

The above provision suggests that, the refusal of waiver implicates any other decisions of the Commissioner General. However, the article argued that, for the certainty of the tax law the provision should reads that; “the Tax Revenue Appeal Board has power to determine any other decisions other than refusal of waiver on the tax assessment made by the Commissioner General”. It appears that the provisions are silent in granting taxpayers’ right to appeal against any other decisions on tax assessment made by the Commissioner General that affects them directly or indirectly.

The article further argues that, in examining the section 51, 52, 53 of the Tax Administration Act and section 16 of the Tax Revenue Appeal Act suggests that the power of the Tax Revenue Appeal Board sometimes creates bias on taxpayers against the decisions of the discretionary powers of the Commissioner General. Furthermore, the article argues that, it seems section 51, 52 and 53 of the Tax Administration Act and section 16 of the Tax Revenue Appeal Act<sup>31</sup> do not provide for procedural fairness based on their ambiguity on the scope of Appellate power of the Tax Revenue Appeal Board. This situation is reflected in the case of Pan African when tax practitioners and tax experts are confused in their bid to protect the rights of the taxpayers.

The study found that, procedure unfairness happens without any fault of either of the parties being tax authorities or taxpayers.<sup>32</sup> Moreover, the situation was revealed by the foreign case of *Minister for Immigration and Board Protection v SZTZI*<sup>33</sup> in which the court had the view that, the procedural unfairness is implied when tax authorities exercise their discretionary statutory powers. Nevertheless, the common law principle demands that, the interpretation which is based on uncertainty of tax laws should be interpreted in favour of the weaker party who is the taxpayer. The presumptions should continue until that uncertainty of the tax law is replaced by amendment.

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<sup>30</sup> Cap, 438 [R.E 2019].

<sup>31</sup> Cap, 408[R.E 2019].

<sup>32</sup> Datt, K., “Taxpayer Rights in Australia: Hope Spring Eternal”, 34(3) *Australian Tax Forum*, 2019, p.458.

<sup>33</sup> (2016)HCA 29 at page 75 and 82.





This was also supported by the literature that, the ambiguity being interpreted in favour of the taxpayers is the utmost important in the sense that, a taxpayer is considered as the weaker party based on the relationship of taxes.<sup>34</sup> Furthermore, the presence of some defects in tax laws is the fault of lawmaker. That being the case, the state is the guilty party that should itself take the negative burden of the legislations' defects. This notion comes due to presumption of taxpayers' rights that they exist in the presence of doubt in tax laws.<sup>35</sup>

These findings concur with the body of literature that, it is negative presumptions to assume that tax laws can never be fully perfect and that interpretation by the courts would be accurately in creating fairness to both parties.<sup>36</sup> Furthermore, it was revealed that, there is a doubt in interpretation of tax laws for the benefit of the taxpayers since there is a notion that the existence of state has nothing to do with the taxpayer' rights when it comes to taxation issues.<sup>37</sup> This was reflected on page 10 of the Pan African's judgement in which the court argued that, the definition of tax objection decisions under section 2 of the Tax Administration Act should not be read in isolation; instead, the Act should be read as a whole and being harmonized by the interpretation of the tax laws so as to receive the intention of the parliament.<sup>38</sup> However, the obligation to pay taxes should arise from the scope of tax statutes which normally define the exact parameter of the liability. Therefore, based on this view, the parliament should not shun its responsibility by relying on vagueness of statutory provisions which create double standard and unfairness of rights and obligations between the parties.<sup>39</sup>

Nevertheless, the article revealed that, the judicial review acted as the alternative mechanism for disputing assessment decisions such as refusal to grant waiver by the Commissioner of taxation. This was noted with the statement that:

<sup>34</sup> Demin, A V., "Certainty and Uncertainty in Tax Law: Do opposites Attract?", 9(4) *Law journal*, 2020,p. 24.

<sup>35</sup> *ibid.*

<sup>36</sup> Brederode, R FV., "Introduction; Why Ethics Matter in Taxation" in Brederode, RFV.(ed.), *Ethics and Taxation*, Springer Nature Singapore Pte Ltd, 2020,p. 15.

<sup>37</sup> Lehis,L., "Means Ensuring Protection of Taxpayers' Rights in Estonian Tax Laws" 4(1) *Juridica International*, 1999,p.103.

<sup>38</sup> *Pan African Energy Tanzania Ltd Vs Commissioner General TRA*, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No172 of 2020 (unreported), at p.10.

<sup>39</sup> Brederode, R FV., "Introduction; Why Ethics Matter in Taxation" in Brederode, RFV.(ed.), *Ethics and Taxation*, Springer Nature Singapore Pte Ltd, 2020,p. 15.



“Their hardship considers that, where a statute lays down a comprehensive system of appeal procedure against administrative decisions, it will only be exceptional circumstance, typically an abuse of power, the court will entertain an application for judicial review of a decision which has not been appealed.”<sup>40</sup>

Based on the above statement, the literature noted the reasons why other decisions regarding tax assessment are not appealable especially the refusal to grant waiver for the tax deposit. The courts are always decline to quash the assessment’s discretion decisions since it cannot conclude the arbitrariness of abuse of power by the tax authorities. The court normally consider inappropriate to make a decision against arbitrariness in respect to correctness of the other assessment’s decisions because it would take over the function of the tax authorities.<sup>41</sup> Furthermore, the court assumed that, the abuse of power aligned with the procedure followed in making tax assessment. In case of refusal to grant waiver by the tax authorities; the demand of the taxpayers should be turned into an allegation of bad faith of the tax authorities.<sup>42</sup> Therefore, the above are the valid reasons as to why other decisions regarding the assessment’s decisions cannot be appealable especially on the discretion power of the Commissioner General upon refusal to grant waiver.

The presence of these reasons regarding to non-appealable tax decisions on tax assessment was reflected in the Pan African Case’s judgment at page 26 when the court cited the Ugandan Case of *Fuelex Limited v Uganda*.<sup>43</sup> In that case the Tribunal declined to entertain the issues of refusal to grant waiver to taxpayer and referred the case as the constitutional case. In delivery of the judgment of Pan African Case, the Court of Appeal of Tanzania held similar with the Ugandan position upon the discretion powers of the Commissioner General in refusing to grant waiver to the taxpayer. In this regard, the court itself seems to lack jurisdiction to determine the correctness or incorrectness of refusal in grant waiver by the Commissioner General.

The court also has similar position with the literature that, discretion frequently demonstrates itself when the tax laws gives the rights to the official to depart from tax rules so as to resolve the specific cases in tax matters. Furthermore, such administrative decisions’

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<sup>40</sup> Lau, AM., *Hon Kong Taxation: law and Practice*, Hong Kong: Chinese University press, 2014 at p. 699.

<sup>41</sup> id.,p. 700.

<sup>42</sup> *ibid*.

<sup>43</sup> Tax Application No.25 of 2007.



discretion are normally not being appealable before the court of law.<sup>44</sup> Based on the above view, the article suggests that, there should be consideration in exercising the discretionary power by the Commissioner General specifically on taxpayers' relief upon granting waiver of the assessed tax. Giving relief in granting waiver to some of the taxpayers may be seen fair but refusal in granting waiver to other taxpayers who are honestly applied for the relief may be seen as unfair.

Secondly, with regard to the presumption of honesty of the taxpayers under dispute resolution bodies and court of law; the article found that, there are mentalities of tax authorities in viewing taxpayers with suspicion when making tax assessments. The findings suggest that sometimes taxpayers are treated with suspicion. This was revealed in the case of *Tanga Cement Company Ltd v Commissioner General, TRA*.<sup>45</sup> The facts of the case were that; Tanga Cement Company Limited is the suppliers of cement residing in Tanga. The company sells whole of its cements to its agent company known as Cement Distributors East Africa Limited (CDEAL). These two companies entered into agreement of post-sale rebate of the price it paid per cement. The Commissioner General accepted the said agreement which was implemented in the year 2007 to 2009. Yet surprisingly, in 2011, the Commissioner General issued notice of the additional assessment demanding payment of Tsh 808,571,869.40. He assumed that, the rebates agreements were contrary to section 29 of the Value Added Tax. The Tax Revenue Board ruled in favour of the Commissioner General thus resulting the appealing to the Tribunal.

The Tribunal held that, the Board had the task of resolving the dispute between taxpayers and tax collector, it cannot prejudice to any of them. Therefore, it was required to possess an open mind when entertaining their cases without prejudiced opinion or suspicion. The Board entertained the case brought before it with negative view to the taxpayers. Therefore, the appeal was allowed.

The article argues that, sometimes the administrative bodies and court of law may look at the matter with objectivity which end up with adjudicating tax cases very ease and leaving

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<sup>44</sup> Demin, A V., "Certainty and Uncertainty in Tax Law: Do opposites Attract?" 9(4) *Law journal*, 2020,p. 21.

<sup>45</sup> Case No.T4.16 of 2015 (TRAT).



the taxpayers with sympathetic condition of their fundamental rights. Generally, it has been proved that, challenging discretionary power taken by Commissioner General upon refusal to grant waiver on tax deposit is very difficult or impossible as an analysis of the *Pan African Energy case* has revealed. Nevertheless, in securing the fundamental rights of the taxpayer there should be the balance of interest between the government and the taxpayers.

## 5 THE BENEFITS OF PAN AFRICAN CASE IN TANZANIAN TAX ADMINISTRATION

The Pan African cases makes contributions to tax administrations in Tanzania. Two of the benefits are most significant in tax administration with respect to taxpayers' rights. Firstly, the judgement of the case acted as a source of tax laws in Tanzania. This was vividly shown in the case of *Shana General Stores Limited v Commissioner General (TRA)*.<sup>46</sup>

The fact of the case was that Shana General Limited is a company incorporated in Tanzania engaging in the whole sale and retail trade. The Commissioner General conducted a tax audit on the company for the year 2011 through 2013, which climaxed with the issuance of eleven assessments demanding the company to pay TSh.2, 757,169,591.00 taxes. Based on this assessment the appellant lodged objection challenging the tax assessed. Making analysis of the Tax Administration Act section 51 the appellant was required to deposit Tshs.797, 621,329.10 being one- third of the assessed taxes for the objection to be determined and considered. Being unable to deposit the said amount the appellant requested waiver of the said objection basing on financial difficulties. The Commissioner General denied the waiver. The Appellant approached the Tax Revenue Appeal Board, the same dismissed his appeal. In further fighting for the right, the appellant approached the Tax Revenue Appeal Tribunal but without success up to the Court of Appeal of Tanzania.

The Court of Appeal on the reference made to the Pan African cases discussed above dismissed the appeal with cost. Finally, it was held that, the Tax Revenue Appeal Board has no jurisdiction to hear and determines the appeal against the Commissioner General's decision on applications for the waiver of tax deposit.

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<sup>46</sup> In the Court of Appeal of Tanzania at Dodoma,Civil Appeal No.369 of 2021 (unreported).



Secondly, enhancing flexibility of tax administration; this is due to the fact that, uncertainty of the tax law which is based on concept and phrases are purposely left by legislature so as to receive freedom in interpretation depending on a specific situation. However, in the case of Pan African Energy the phrase “other decision” or “omission” in the case creates flexibility of the tax laws in Tanzania especially on the sphere of tax administration.

The benefit similar with the literature that, although there are many reasons for uncertainty of the tax laws such as language problem and mismatch between lawyers interpretation and statutory interpretation but the major reason of uncertainty is caused by allowing discretionary powers of the tax authorities and prevention of the tax avoidance.<sup>47</sup> Nevertheless, there are many tax provisions which attract purposive interpretation of the tax laws. For instance, in many tax jurisdictions various provisions where the liability of the taxpayer is made depend on the discretionary powers of the tax authorities. The parliament constitutionally enacted tax laws with reference to the opinion of the tax authorities.<sup>48</sup> Tanzania also has no exception with other tax jurisdictions which many of its tax provisions which establish tax liability requires interpretation specifically assessment provisions. Referring to Pan African Energy case most of the provisions were subjected to judicial interpretation such as section 51, 52, 53 and 2 of the Tax Administration Act and section 16 and 7 of the Tax Revenue Appeal Act.

Further, it was argued that, currently there are an increase of aggressive tax planning by taxpayers at international level and domestic level as well. The tendency necessitates tax administration to take precaution at the procedural level with specific administrative powers which assisting tax administration in applying various provisions of the tax laws on the side of the government revenue. This problem also attributed much by the lack of trust between tax authorities and taxpayers.<sup>49</sup>

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<sup>47</sup> Pagone, GT., “Tax Uncertainty”, 33(3) *Melbourne University Law Review*, 2009, p. 886.

<sup>48</sup> *id.*, p. 899.

<sup>49</sup> Roch, MTS., “Forum: Tax Administration versus Taxpayer-A new Deal?” 1212(3) *World Tax Journal*, 2012, p. 288.



## 6 CONCLUSION AND RECOMMENDATIONS

The article concludes by saying that, despite the fact that *Pan African Energy Tanzania Ltd.*'s judgement is problematic and confusing to various persons including tax practitioners, tax lawyers, tax experts and taxpayers with regard to court's interpretation of section 51, 52, 53 of the Tax Administration Act and 16 of the Tax Revenue Appeal Act; it is the opinion of this article that, the decision of the Pan African has potential negative and positive impact on the protection of the taxpayers' rights into tax administration. It is also likely in the eyes of the public that, the decision will weaken the taxpayers' rights against the powerful arm of the government as it diminishes the right to appeal in order to attain tax justice on assessment decisions. However, the decision of the pan African Case set precedence to the future cases in the umbrella of tax administration in Tanzania. Moreover, it provides the knowledge of the tax laws against the importance of flexibility of the administration of tax laws in Tanzania with regard to their uncertainty. This is due to the fact that, the principle regarding the burden of tax liability and justice in taxations demands the competence of tax authorities and court upon using the vague legal concepts of phrases for resolving the specific cases. The decision being the one of the Court of Appeal, the TRAB and TRAT are bound by the same and that may in the long run more rejections of waiver to taxpayers as there is uncertainty in the tax legislation and the court has made a clear observation of that.

Additionally, the article refers to the South African Tax law and its applicability on the application for waiver and grant of waiver subject. Section 164(3)<sup>50</sup> explicitly provides for things to be considered for the tax officials to grant or not to grant waiver. Including compliance history of the taxpayer, amount of tax involved, whether fraud is involved in the origin of the dispute and whether payment of the amount involved will result in irreparable financial hardship to the taxpayer to mention a few. Therefore, this will bring harmony to both taxpayers and the tax authorities if the Tanzania tax laws would have certainty such as this.

The article recommends that, consistency in its decisions by the Commissioner General specifically on discretionary powers of determination of lodged objections of

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<sup>50</sup> The Tax Administration Act No.28 of 2011.



assessed taxes may enhance reputation of TRA. For instance, granting waiver to one taxpayer and leaving the other with the same facts create doubt within the community and create two issues such as the successful taxpayer cannot bring action before tax administration against the victim taxpayer due to *locus standi* and the victim taxpayer cannot claim that the tax authority exercised discretionary power in favour of successful taxpayer. Furthermore, consistency decision will generate goodwill of the community and increase future voluntary tax compliance. Moreover, the article recommends the great burden of the assessed taxes to taxpayers may compromise compliance when looking for some of the taxpayers who receive the relief through decisions by the Commissioner General upon granting waiver. This also may also provide differential treatment among taxpayers which makes taxpayers paying unfair share to the same economic status.

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