IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: NDIKA, J.A., MASHAKA, J.A. And NGWEMBE, J.A.)

CIVIL APPEAL NO. 227 OF 2025

AMADEUS GLOBAL TRAVEL DISTRIBUTION LIMITED ..... APPELLANT

VERSUS

THE COMMISSIONER GENERAL

TANZANIA REVENUE AUTHORITY .....RESPONDENT

(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal at Dar es Salaam)

(Herbert, Vice Chairman)

dated the 12th day of May, 2025

in

Tax Appeal No. 86 of 2023

JUDGMENT OF THE COURT

5th December, 2025 & 24th March, 2026

MASHAKA, J.A:

The appellant, Amadeus Global Travel Distribution Limited, is a branch of a Kenya resident entity, solely owned subsidiary of Amadeus ITG, situated in Madrid, Spain. The appellant's business is to commercialize the Amadeus GDS system in Tanzania hence a taxpayer. The respondent, the Commissioner General Tanzania Revenue Authority is responsible for

the impartial administration of the Central Government taxes as regulated by the law.

The respondent conducted an audit of the appellant's tax affairs for the year 2015 and found that the appellant's declared revenue of TZS. 1,752,707,542 which was lower than the total revenue according to the audit that is TZS. 1,806,780,791, resulting in an alleged under-declaration of TZS. 54,073,209. This amount was attributed to finance costs TZS. 51,498,294 plus a 5% mark-up TZS. 2,574,914.

The appellant argued that under the Transactional Net Margin Method (the TNMM) used in its transfer pricing policy, finance costs are excluded when calculating the arm's length price, as the benchmark used was the operating margin not profit before tax. The appellant therefore contended that the revenue was correctly stated and no tax was owed on the excluded finance costs.

The respondent maintained that the TNMM does not allow the exclusion of any class of costs, including finance costs, when determining arm's length pricing. It therefore concluded the assessment and issued a tax assessment including: Corporate Tax TZS. 78,700,422.10, Corporate

Tax on Repatriated Income TZS. 50,619,833 and VAT TZS. 13,153,233.00 plus interest and penalties amounting to the total assessment at TZS. 494,773,040.00.

The appellant objected to the assessment and the respondent rejected the objection. The appellant appealed to the Tax Revenue Appeals Board (TRAB), which consolidated the appeals and ruled in favor of the respondent. The TRAB held that the TNMM does not abandon any class of costs and that the appellant had not justified the exclusion of finance costs. Aggrieved, it appealed to the Tax Revenue Appeals Tribunal (TRAT) on six grounds of complaint, arguing that; the operating margin excludes finance costs, the TRAB erred in law and fact by not applying Tanzanian Transfer Pricing Regulation 9 and OECD Guidelines correctly and the tax assessment was wrongly based on including non-operating expenses.

The TRAT dismissed the appeal, holding that while the TNMM can exclude costs not attributable to the transaction, the appellant failed to prove that the finance costs were non-attributable hence it did not provide sufficient evidence or justification for the exclusion. Still aggrieved, the appellant preferred the present appeal on the following grounds: -

1. *That, the Tax Revenue Appeals Tribunal erred in law by determining the core subject of the appeal based on the issue of whether the finance cost was a service or functional cost.*
2. *That the Tax Revenue Appeals Tribunal erred in law by failing to consider the appellant's Transfer Pricing Policy 2015, and the OECD Transfer Pricing Guideline of 2015, potentially resulting in a flawed decision of including finance costs in the computation of the appellant's revenue of the year 2015.*
3. *That, the Tax Revenue Appeals Tribunal grossly erred in law in holding that the respondent was correct in computing Corporate Tax, VAT and Corporate Tax Repatriated Income Tax against the appellant by including the finance costs incurred by the appellant for the year of income 2015.*

At the hearing of the appeal, Mr. Nasri Hassan and Ms. Lucy Kilangi, learned counsel appeared virtually from Arusha for the appellant while the respondent was ably represented by Messrs. Baraka Mwayalabwe and Achileus Kalumuna, the learned State Attorneys.

Mr. Hassan commenced to address the Court by adopting the written submissions in support of the appeal and amplified ground 1 of appeal, arguing that the Tribunal fundamentally violated its jurisdiction and

principles of natural justice as it anchored on an issue that was not subject to the appeal originating from the TRAB. It was his contention that the core dispute before the TRAB, was strictly on whether the respondent was correct in law and fact to compute Corporate Tax, VAT and Corporate Tax Repatriated Income against the appellant by including all the expenses incurred by the appellant and as to whether the TNMM does not abandon a certain class of costs.

Mr. Hassan argued that in the proceedings, while one of the members, Vicky Jengo at page 1084 of the record of appeal while rendering her opinion and the Tribunal at page 1094 of the record of appeal on its own motion, altered the issue around a new and distinct legal issue on whether the classification of finance costs as "functional" or "service" costs, which was never pleaded, argued, or placed to the parties for submission. He supports his argument with the case of **Joel Mwangambako v. Republic** (Criminal Appeal No. 516 of 2017) [2020] TZCA 1880 (27 November 2020) where the Court refrained to entertain the ground which was neither raised nor determined by the subordinate court. Additionally, he referred the Court to the case of **EX - B.8356 S/SGT**

Sylivester S. Nyanda v. Inspector General of Police and Another (Civil Appeal No. 64 of 2014) [2014] TZCA 2243 (27 October 2014) that the Court is not allowed to decide the case on an issue which was not framed and argued by the parties. Therefore, by deciding the appeal on this new issue, he submitted that the Tribunal deprived the appellant of the right to be heard on that specific point, rendering the process unfair and the resulting decision to be invalid, bolstering his stance with the case of **Abbas Sherally and another v. Abdul Sultan Haji Mohamed Fazalboy** (Civil Application No. 133 of 2002) [2005] TZCA 105 (17 November 2005), which emphasizes the right to be heard before any adverse decision.

On ground 2 of appeal, Mr. Hassan argued that the Tribunal made its decision without proper regard for the two key documents governing the 2015 Tax year. First, it failed to correctly apply the appellant's own 2015 Transfer Pricing Policy (exhibit A4), which utilized the Transactional Net Margin Method (TNMM) based on an Operating Margin. The policy did not provide for finance costs to be included in the cost pool for calculating the

arm's length price. Second, the Tribunal incorrectly applied the 2017 OECD Guidelines retroactively.

He argued that, the correct reference should have been the OECD Guidelines, 2015 in force during the year in question. Even when referencing the Guidelines 2017, the Tribunal misapplied paragraph 2.99, treating it as a mandate for blanket inclusion of all costs. He further argued that this paragraph only requires the inclusion of costs attributable to the activity, and the Tribunal wrongly placed the burden on the appellant to prove non-attributability. This dual failure to consider the relevant policy and the correct version of the guidelines led directly to the erroneous conclusion that finance costs should be included in revenue.

On ground 3, eventually this ground presents the consequential fault arising from the first two grounds. Mr. Hassan argued that because the Tribunal erred in introducing a new issue and in failing to apply the correct legal and factual framework, its ultimate finding that the tax assessment was correct is fundamentally flawed. The inclusion of finance costs in the taxable revenue base was incorrect under the proper application of the TNMM and the OECD Guidelines. This erroneous inclusion artificially

inflated the appellant's revenue figure, leading directly to the excessive and unjust assessments for Corporate Tax (TZS 78,700,422.10), Corporate Tax on Repatriated Income (TZS 50,619,833), and VAT (TZS 13,153,233). Therefore, the Tribunal's final holding is not merely a factual finding but is tainted by the illegalities which out to be overturned. He therefore prayed the appeal to be allowed.

On the other side, Mr. Mwakyalabwe adopted their written submission and in response to ground 1 from the outset he clearly stated that the issue raised by the honorable member of the Tribunal at page 1084 of the record of appeal while giving her opinion cannot be taken as the issue raised by the Tribunal.

In elaborating further, Mr. Mwakyalabwe argued that the core question of whether finance costs should be included in the computation of taxable income was, in fact, the very issue brought before the Tribunal by the appellant. This is evidenced by the appellant's own grounds of appeal before the Tribunal, which challenged the TRAB's decision for including all expenses, and by the appellant's specific submissions arguing that the finance cost of TZS 51,498,298 was not required to be included. Therefore,

the issue was neither new nor unpleaded; it was the central controversy throughout the appeal process.

He argued that, the Tribunal's role was to interpret and apply the legal standard for such inclusion, which it correctly derived from Paragraph 2.99 of the OECD Transfer Pricing Guidelines. The Tribunal found that the appellant failed to discharge its burden of proving that the finance costs were not attributable to its functions, a finding that merely amplified the earlier holding of the TRAB. Consequently, the learned State Attorney further distinguished the case of **Abbas Sherally & Another v. Abdul S.H.M Fazalboy** and **Joel Mwangambako** *(supra)* as misplaced because there was no violation; the parties were fully heard on the issue that was always in dispute.

In respect of ground 2, Mr. Mwakyalabwe submitted that the Tribunal did not fail to consider the appellant's 2015 Transfer Pricing Policy or the OECD Guidelines. On the contrary, the Tribunal's judgment explicitly references and quotes from the appellant's Transfer Pricing Policy, demonstrating that it was duly considered. Furthermore, the Tribunal's entire analysis from pages 1102 to 1112 of the record is a detailed

engagement with the OECD Transfer Pricing Guidelines, particularly Paragraph 2.99.

He argued that the appellant's complaint is, in substance, a challenge to the Tribunal's evaluation of evidence and factual findings, which is prohibited under section 25 (2) of the Tax Revenue Appeals Act (the TRAA). He fortified his stand with the case of **Serengeti Breweries Limited v. Commissioner General, Tanzania Revenue Authority** (Civil Appeal No. 453 of 2023) [2025] TZCA 685 (3 July 2025) and **Williamson Diamonds Limited v. Commissioner General, Tanzania Revenue Authority** (Civil Appeal No. 436 of 2023) [2025] TZCA 720 (14 July 2025) where Court has consistently held that, it lacks jurisdiction to entertain appeals based on factual or mixed law-and-fact questions.

On the substantive transfer pricing argument, the learned State Attorney maintained that the TNMM, as properly understood under the OECD Guidelines, does not permit the arbitrary exclusion of a class of costs like finance costs. Paragraph 2.99 requires the use of fully loaded costs, including all direct and indirect costs attributable to the activity. The

respondent applied the same 5% mark-up as the appellant but correctly included all attributable costs in the pool. Therefore, the Tribunal was right to find that the finance cost was not an excludable expense, he insisted.

In the last ground, Mr. Mwakyalabwe posits that this ground is entirely consequential upon the first two. He argued that having established that the Tribunal correctly found the inclusion of finance costs to be lawful and that the appellant's transfer pricing arguments are unavailing, it follows logically that the Tribunal was correct in upholding the respondent's tax computations. The assessments for Corporate Tax (TZS 78,700,422.10), Corporate Tax on Repatriated Income (TZS 50,619,833), and Value Added Tax (TZS 13,153,233) for the 2015 year of income were therefore correct in law and fact. The Tribunal's holding was a direct and justified application of its findings on the substantive issues. At last, he prayed the Court to find no merit in any of the appellant's grounds, upholds the decision of the Tribunal, and dismisses the appeal with costs.

We had the benefit of going through the detailed written submissions filed by both the appellant and the respondent, as well as the oral

clarifications offered during the hearing, it is our duty now to deliberate and make determination of the issues under controversy.

We shall start with grounds 2 and 3 of appeal on which the main legal issue is the weight and applicability of the OECD Transfer Pricing Guidelines in Tanzanian tax disputes. The primary anchor for the Guidelines in Tanzania is Regulation 9 of the Income Tax (Transfer Pricing) Regulations, 2014 (GN No. 310 of 2014). Regulation 9 (2) states:

> *"For the purposes of interpreting provisions of these Regulations, the Commissioner may have regard to the transfer pricing guidelines issued by the Organization for Economic Co-operation and Development (OECD) as updated from time to time."*

This provision does not incorporate the OECD Guidelines as binding statutory law. Instead, it grants the respondent and by extension, the tax appellate bodies the discretion to have regard to them as persuasive, interpretative tools. They are a helpful guidance, as correctly argued by the Mr. Mwakyalabwe. Consequently, a misapplication or alleged non-consideration of a specific OECD guideline paragraph does not, *per se*,

constitute a point of law equivalent to misconstruing a provision of the Income Tax Act. It may, however, form part of a point of law if the Tribunal, in exercising its discretion to use the guidelines, acts irrationally, misdirects itself on a principle derived from them, or fails to consider relevant guidance it chose to rely upon.

Mr. Mwakyalabwe referred to pages 1102 and 1109 of the record of appeal arguing that indeed the Tribunal did reference and consider the appellant's 2015 policy. The appellant's own submissions at Para 6 and page 10 of the record of appeal concedes. This ground therefore transforms from an allegation of non-consideration to a complaint about the weight given to this evidence and the Tribunal's preference for the OECD Guidelines 2017. Hence it is essentially a matter of fact and evidence evaluation.

Pursuant to section 25 (2) of the TRAA and the binding precedents in **Williamson Diamonds** and **Serengeti Breweries** (supra) this Court lacks jurisdiction to re-evaluate the Tribunal's factual findings regarding which evidence it found most persuasive or which version of the OECD Guidelines it deemed appropriate to have regard to under Regulation 9.

The Tribunal's choice to apply the 2017 Guidelines, which were the most current at the time of its decision and which it considered relevant to the legal test attributability under the TNMM, was within its discretionary and factual domain. The Appellant's attempt to frame this as a point of law is unlikely to succeed, as it is, in substance, a challenge to factual appraisal dressed as a point of law.

The OECD Transfer Pricing Guidelines are not substantive law in Tanzania. They are persuasive, interpretative aids that the Commissioner General and tax tribunals may have regard to under Regulation 9 of the Transfer Pricing Regulations. Whether and how to apply them in a specific case involves the exercise of discretion and factual judgment.

Therefore, a complaint that the Tribunal failed to consider a particular guideline or preferred one guideline version over another is, in most instances, a question of fact or mixed fact and law related to evidence evaluation. As such, it falls squarely within the prohibition of section 25 (2) of the TRAA, which restricts the Court's jurisdiction to pure points of law.

On ground 1 of appeal, Mr. Hassan alleges that the Tribunal determined the case on an unpleaded issue of whether finance cost was a service or functional cost, violating the principle of natural justice (*audi alteram partem*). At first, we agree with the learned State Attorney that the raised issue by the Tribunal member while opining cannot be taken as an issue raised by the Tribunal which form the basis of the decision. Notwithstanding, we entirely agree with the learned state attorney that the appellant's own notice of appeal before the Tribunal at page 898 of the record and written submissions at page 994 of the record of appeal, that the permissibility of including the finance cost was the very heart of the dispute. The Tribunal's analysis of whether the cost was attributable to functions was not a new issue but the necessary legal lens through which to resolve the pleaded issue of inclusion/exclusion. The Tribunal applied the test from OECD Paragraph 2.99, which was already in contention, as referenced in the Board's decision at page 969 of the record.

We also in agreement with the learned State Attorney that the cases cited by Mr. Hassan, **Abbas Sherally** and **Joel Mwangambako** (supra) are distinguishable as they deal with scenarios where courts decided cases

on a completely new legal issue. Here, the Tribunal operated within the universe of arguments presented by the application of OECD principles to a disputed cost. Therefore, the issue of the finance cost inclusion was central, and the Tribunal's attributability test was a logical and lawful method to resolve it. No breach of natural justice occurred. This ground lacks merit.

The appeal is lacking in merit and we dismiss it with costs.

DATED at **DODOMA** this 21st day of March, 2026.

G. A. M. NDIKA
JUSTICE OF APPEAL

L. L. MASHAKA
JUSTICE OF APPEAL

P. J. NGWEMBE
JUSTICE OF APPEAL

Judgment delivered this 24th day of March, 2026 via video link in the presence of Ms. Lucy Kiangi, learned counsel for the Appellant, Mr. Baraka Mwakyalabwe, learned State Attorney for the Respondent/Republic and Ms. Christina Mwanandenje, Court clerk, is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL