MONTHLY

Newsletter

ISSUE 05
FEBRUARY **2025**

Editor's Note February Edition

Welcome to our February edition, a month brimming with fresh insights and legal clarity! As February comes to a close, we bring you yet another engaging edition of our newsletter, featuring critical legal developments that shape both Tanzania's regulatory landscape and broader global discourse.

This month, we revisit the ongoing mine rehabilitation debate, an issue that has sparked significant discussion within Tanzania's mining sector. Our article, which was also featured in The Citizen magazine on February 26th, examines the regulatory overlap between the Mining Commission & the National Environmental Management Council in administering mine rehabilitation bonds. With both entities imposing similar financial obligations, this regulatory tangle raises crucial questions about environmental accountability, regulatory efficiency, and legal clarity. Should mining companies be subjected to dual compliance costs, or is it time for a harmonized approach? We explore the legal hierarchy and propose solutions to streamline this critical process.

In our second feature, we analyse a recent Court of Appeal of Tanzania decision that reaffirmed its long-standing stance: the Commissioner General's refusal to grant a tax waiver is not an appealable decision. This ruling clarifies the limits of judicial intervention in administrative discretion, reinforcing the principle that unless explicitly provided for in law, such decisions remain outside the appellate jurisdiction. For taxpayers, businesses, and legal practitioners, this decision underscores the importance of engaging in proactive tax planning and compliance strategies rather than relying on discretionary relief.

As we close this edition, we invite you to reflect on these developments and engage with us in shaping the conversations that matter. Whether in mining, taxation, or regulatory compliance, informed decision-making is the foundation of success. We hope these articles not only inform but also inspire you as we navigate these complex legal landscapes together.

Thank you for your continued support, and here's to an enlightening March ahead!

Managing Partner
Crispin B. Mwebesa

A LEGAL QUAGMIRE OF COMPETING BONDS:

Prioritize Environmental Security Or Regulatory Efficiency?

Mine rehabilitation, the process of restoring post – mining landscapes to ecological viability, is a cornerstone of sustainable resource extraction. In Tanzania, this responsibility is enshrined in law, with both **the Mining Act [CAP. 123 R.E. 2019]** and **the Environmental Management Act, 2004 (EMA),** responsible to ensure Mineral Right Holders bear financial responsibility for environmental restoration. Yet, a regulatory paradox has emerged wherein two ostensibly overlapping bonds i.e., a **Rehabilitation Bond** (under the Mining Act) and a **Decommissioning Bond** (under the Environmental Management (Environmental Performance Bond) Regulations, 2024), are simultaneously imposed to serve the same purpose. This conflict exposes regulatory flaws in Tanzania's governance of mine rehabilitations, raising concerns about legal hierarchy, potential compliance conflicts, and the true cost of "sustainable" mining. This article examines the key concepts of mine rehabilitation, the regulatory framework that governs it, the challenges arising from conflicting mandates, and ultimately, the best practices needed to navigate these complexities.

Understanding Mining Rehabilitation

At its core, mine rehabilitation is the restoration of land affected by mining activities, ensuring that post-mining landscapes become safe for wildlife, flora, and local communities. Every advanced mining operation is required to have a rehabilitation plan, designed to revert mined areas to their natural state or to an alternative use that benefits the environment & society. In Tanzania, this process is critical for mitigating long-term environmental damage and safeguarding public health, as well as preserving the country's natural heritage.

The Regulatory Framework: A Dual Approach

Tanzania's regulatory landscape for mining rehabilitation is complex due to the existence of two conflicting laws. The Mining Act, with its accompanying regulations, most notably the Mining (Safety, Occupational, Health, and Environment Protection Regulations, 2010) assigns the Mining Commission a central role in the regulation of mining activities. Under Section 22(h) of the Mining Act, the Commission is empowered to monitor and audit environmental management, including overseeing the financial provisions for progressive rehabilitation and mine closure.

Further to that, regulation 207 of Mining (Safety, Occupational, Health, & Environment Protection Regulations, 2010) read together with the Mine Closure Guidelines, 2019 require a Mineral Licence holders deposit a Rehabilitation Bond with the Minister for Minerals. This bond is intended to cover the costs associated with mine closure, ensuring that the government is not left to shoulder the environmental liabilities of failed or abandoned mines. The various forms that the bond can be deposited include; escrow account, insurance guarantee bond, bank guarantee, and capital bond.

Parallel to this, the **EMA** confers broad oversight on environmental matters to the Minister of Environment assisted by the National Environmental Management Council (NEMC), who is responsible for articulating policy guidelines to promote sustainable environmental management. In line with these responsibilities, in 2024 **(GN No 369 of 2024)** the NEMC introduced what it terms a **Decommissioning Bond** under the Environmental Management (Environmental Performance Bond) Regulations, 2024. Although similar in intent to the Rehabilitation Bond, the Decommissioning Bond is administered separately and is designed to secure funds for environmental remediation. Under these regulations, a Mineral Right Holder is required to prepare a detailed decommissioning plan within one year of commencing operations. This plan, crafted by a registered environmental expert, must include comprehensive cost estimates for the environmental performance bond. The NEMC, through its Project Decommissioning Committee, is then tasked with reviewing the plan within ninety days of receipt. Upon approval, the plan is forwarded to the Director of Environment, who determines the appropriate form and amount of the bond. Acceptable forms of the bond include escrow accounts, insurance guarantee bonds, bank guarantees, or capital bonds. Failure to comply within thirty working days after the prescribed period will result in fines ranging from a minimum of five million shillings to a maximum of one billion shillings.

The Conflict: Two Bonds, One Function

Herein lies the crux of the problem: both bonds target the same risk (abandoned environmental liabilities) but are administered by separate government bodies namely the Mining Commission and the National Environmental Management Council under distinct laws. For a mineral holder, this dual imposition means paying two similar bonds to two separate government entities, effectively duplicating financial obligations for the same purpose. The practical implications of this quagmire are profound. For mining companies, the financial and administrative burden of maintaining two separate bonds can lead to reduced capital for actual rehabilitation efforts, potentially resulting in inter alia underfunded mine closures and environmental degradation.

An Analytical Perspective

Consider a hypothetical mining company operating in Tanzania. Under the current framework, it must secure a Rehabilitation Bond to cover mine closure costs as per the Mining Act. Now, if the same company is also subject to a Decommissioning Bond from the NEMC, it faces the prospect of setting aside additional funds, funds that may be redundant if both bonds ultimately serve the identical purpose of ensuring environmental remediation.

This dual requirement raises several questions:

a. Which bond takes precedence when the obligation is due?
b. Can the funds from one bond be applied towards the responsibilities of the other?
c. How can the government harmonize these provisions to avoid imposing unnecessary financial strain on investors?

These are not merely academic queries; they have real-world implications for the cost of doing business in Tanzania's mining sector. This regulatory quagmire has given rise to the following two competing schools of thought on supremacy.

1. Sector-Supremacy Argument

One could argue that the Mining Act, as specialized legislation governing all facets of mining operations, should take precedence in matters directly related to mine rehabilitation. Proponents of this position assert that, given the highly technical and complex nature of mine rehabilitation, the authority best suited to oversee this process is the Mining Commission, along with its subsidiary bodies such as the Chief Mine Inspector and the National Mine Closure Committee. These entities possess industry-specific expertise and technical acumen, having been involved in mining operations from inception through to closure. Their focused regulatory framework and deep understanding of mining practices enable them to establish and enforce rigorous rehabilitation standards that are both effective and efficient. In contrast, general environmental agencies like the NEMC, operating under a broader mandate, may lack the necessary specificity and detailed operational insight required to address the unique challenges inherent in mine rehabilitation.

2. Environmental Primacy Argument

Conversely, the Environmental Primacy Argument asserts that given the broad mandate for sustainable environmental management under the Environmental Management Act (EMA), NEMC's authority should prevail in matters affecting the environment, including mine rehabilitation. Section 13 of the Environmental Management Act (EMA) unequivocally empowers the Minister of Union Affairs and Environment with the overall responsibility to oversee all environmental matters. This provision establishes NEMC as the apex authority on environmental protection, including mine rehabilitation. Mine rehabilitation is not just a mining issue; it is an environmental issue with far-reaching consequences. Unlike the Mining Act, which focuses narrowly on sectoral operations, EMA adopts a holistic approach to environmental management.

It recognizes that mining impacts extend beyond extraction sites, affecting water systems, biodiversity, and local communities. Furthermore, section 232 of the Environmental Management Act clearly states that ***"if any provision of the Act is in conflict or is inconsistent with another written law relating to environmental management, the provisions of the Environmental Management Act shall prevail."*** This provision is not a mere technicality; it is a deliberate legislative choice to prioritize environmental protection over conflicting interests positioning NEMC as the ultimate regulatory authority on all environmental matters. Therefore, in the context of mine rehabilitation which directly impacts the environment, NEMC should assume full responsibility for administering and enforcing the decommissioning bonds, ensuring that environmental safeguards are rigorously upheld over any competing interests under the Mining Act.

Yet, the current dual-bond system appears to disregard this hierarchy, position a critical question; Is this regulatory conflict a genuine effort to bolster environmental safeguards, or is it a mere legislative oversight? A case in point is the 2019 dispute involving Acacia Mining where ambiguous regulatory mandates on environmental liabilities led to prolonged litigation and a fine of Tsh 5.6 billion ($2.4 million), severely eroding the country's outlook (in the global/and trust investment world). This dispute vividly illustrates how vague regulatory frameworks can hamper business operations and diminish community confidence in regulatory authorities.

Experience from other countries

Looking beyond Tanzania, global precedents offer instructive lessons. In Australia, a single "Mining Rehabilitation Fund" is administered by a joint agency that integrates both environmental and mining oversight, ensuring a cohesive approach. In Botswana, a clear statutory hierarchy exists, with environmental laws unequivocally overriding sectoral regulations in cases of conflict. These examples illustrate that harmonized, transparent regulatory frameworks are achievable and beneficial.

Achieving Regulatory efficiency

Regulatory efficiency is achieved when legal frameworks are harmonized, clear, and designed to minimize redundancies while ensuring robust oversight. Ideally, the mechanisms designed to secure mine rehabilitation should be singular and unambiguous, thereby providing a predictable and cost-effective process for both regulators and industry stakeholders. Moreover, effective regulation requires an independent regulator. While the Mining Commission is deeply involved in many mining-related matters and may lack the necessary independence, the NEMC is autonomous and thus better positioned to serve as the proper regulatory authority. Importantly, NEMC operates separately from sector-specific bodies which helps it avoid undue influence from the industry stakeholders or pressure from interest groups. This ensures that it can enforce environmental regulations impartially and effectively, without external interference.

To resolve the current regulatory conflict and achieve true efficiency, the government must take decisive steps to harmonize the Mining Act and the Environmental Management Act (EMA). This can be accomplished by repealing Regulation 207 of the Mining (Safety, Occupational, Health, and Environment Protection) Regulations, along with the Mine Closure Guidelines, and all provisions that currently grant the mining sector oversight over rehabilitation. Instead, regulatory supremacy should be explicitly granted to NEMC, in line with Section 232 of the EMA, which establishes its authority over environmental matters.

However, regulatory efficiency does not mean operating in silos. A streamlined framework should recognize the technical expertise of the mining sector while ensuring that final authority remains with NEMC. A balanced approach would involve collaborative oversight, where the Chief Mine Inspector and the National Mine Closure Committee play an advisory role in the mine closure process. Under this model, when a closure plan is submitted to NEMC, the mining sector would be responsible for issuing a no-objection statement, ensuring that sector-specific technical considerations are addressed before final approval.

By structuring the framework in this manner, Tanzania would establish a single, authoritative body for mine rehabilitation while preserving the critical industry-specific expertise needed in decision-making. This approach is not unprecedented in Tanzania; for example, in the telecom sector, the Fair Competition Commission (FCC) is required to seek for the written advice of the Tanzania Communications Regulatory Authority (TCRA) whenever it encounters matters related to electronic or postal communications as defined in the Electronic and Postal Communications Act. Such a streamlined process eliminates regulatory inefficiencies and duplication, providing companies with a clear, predictable compliance pathway. Ultimately, this harmonized framework would strengthen governance, ensure effective environmental remediation, and promote sustainable development in the mining sector.

Conclusion

As Tanzania continues to develop its regulatory framework for mining rehabilitation, addressing these overlapping bond requirements is essential. A well-coordinated regulatory approach will benefit all stakeholders protecting the environment, supporting economic development, and creating a predictable legal landscape that attracts both local and international investment. As the meeting of minds among regulators and industry players continues, one thing is clear: thoughtful, unified policies are the key to unlocking Tanzania's full potential in responsible mining.

CASE NOTE:

Audax Kijana Kameja Vs Commissioner General Tanzania Revenue Authority (2025 TZCA 49)

Court: Court of Appeal of Tanzania
Coram: Kerefu, J.A., Fikirini, J.A., Masoud, J.A.
Date of Judgment: 21st February 2025
Appellant: Audax Kijana Kameja
Respondent: Commissioner General, Tanzania Revenue Authority
Appeal Number: Civil Appeal No. 144 of 2022

Introduction

The Court of Appeal of Tanzania (CAT) has consistently held that the refusal to grant a waiver of the one-third tax deposit is not appealable before the Tax Revenue Appeals Board. This decision in *Audax Kijana Kameja vs Commissioner General TRA* aligns with previous rulings, including *Pan African Energy Tanzania Ltd v. Commissioner General TRA* (2019) and Pan African Energy Tanzania Ltd v. Commissioner General TRA (2021), reinforcing the established jurisprudence on the jurisdictional limits of the Board. By affirming that waiver refusals are administrative decisions outside the Board's jurisdiction, the CAT maintains a clear stance on the statutory framework governing tax appeals.

Background

This appeal arose from a tax dispute between the appellant, Audax Kijana Kameja, and the Commissioner General of the Tanzania Revenue Authority (TRA). The appellant was served with an adjusted tax assessment notice for the 2010 year of income, requiring payment of TZS 402,192,237.10. In response, he sought an extension of time to file a notice of objection. While this application was pending, a second demand notice for TZS 379,912,382.10 was issued. The appellant, dissatisfied with the assessment, filed a notice of objection and simultaneously sought a waiver of the one-third tax deposit required under the Tax Administration Act, 2015 (TAA). The TRA rejected the waiver application on the ground that it was time-barred.

The appellant challenged the rejection before the Tax Revenue Appeals Board (the Board), which held that it lacked jurisdiction, as the appeal did not arise from an objection decision but rather from the TRA's refusal to grant a waiver. The appellant then appealed to the Tax Revenue Appeals Tribunal (the Tribunal), which upheld the Board's decision, relying on the Court of Appeal's precedents in *Pan African Energy Tanzania Ltd v. Commissioner General TRA (2019)* and *Pan African Energy Tanzania Ltd v. Commissioner General TRA (2021).* The appellant subsequently appealed to the Court of Appeal.

Key Legal Issues

1. Whether the Tax Revenue Appeals Board had jurisdiction to hear an appeal against the TRA's refusal to grant a waiver of the one-third tax deposit.
2. Whether the Tribunal correctly applied the precedents set in the Pan African Energy cases in determining the jurisdictional issue.
3. Whether the appellant's claim was based on an 'omission' by the TRA under Section 53(1) of the TAA, thus falling within the Board's jurisdiction.

Mwebesa Law: Article 2

Appellant's Arguments

The appellant contended that the Tribunal erred in dismissing his appeal by incorrectly applying the *Pan African Energy* precedents. He distinguished his case by arguing that the TRA's failure to determine his application for waiver within the prescribed time constituted an 'omission' under Section 53(1) of the TAA, which should have been within the jurisdiction of the Board. He further asserted that the legislative intent of Section 53(1) was to allow appeals against tax authorities' failures to act, separate from the requirement of an 'objection decision' under Section 16(1) of the Tax Revenue Appeals Act (TRAA).

Respondent's Arguments

The respondent argued that the only appeals allowed before the Board are those stemming from 'objection decisions' under Section 16(1) of the TRAA. The respondent maintained that its refusal to grant a waiver was not an 'objection decision' but rather an administrative determination, which could not be challenged before the Board. The respondent further emphasized that the *Pan African Energy cases* had already established that the Board lacked jurisdiction over waiver denials.

Court's Analysis & Decision

The Court of Appeal reaffirmed that the Board's jurisdiction is strictly confined to appeals against 'objection decisions,' as prescribed under Section 16(1) of the TRAA. The Court ruled that a taxpayer can only appeal against an objection decision arising from an assessment dispute and not against administrative refusals, such as a waiver denial. The Court reiterated its previous stance in *Pan African Energy I and II* that the phrase 'other decisions or omissions' in Section 53(1) of the TAA does not extend the Board's jurisdiction to matters outside 'objection decisions.'

Regarding the appellant's claim that the respondent's delay in determining the waiver request constituted an 'omission,' the Court found that the respondent had ultimately issued a refusal decision, albeit belatedly. Since the appellant's appeal was based on that decision rather than a complete failure to act, it did not fall within the definition of an 'omission' under Section 53(1) of the TAA. Instead, it was deemed a refusal decision outside the Board's jurisdiction. The Court further held that adherence to the doctrine of *stare decisis* required it to follow its prior rulings in *Pan African Energy cases*, which were on all fours with the present matter.

Conclusion and Holding

The Court dismissed the appeal in its entirety with costs, upholding the Tribunal's decision that the Board lacked jurisdiction to hear the appellant's claim. The ruling reinforced the position that taxpayers cannot challenge TRA's waiver refusals before the Board and must seek alternative legal avenues if aggrieved by such decisions.

CASE NOTE:

Audax Kijana Kameja Vs Commissioner General Tanzania Revenue Authority (2025 TZCA 49)

Our Analysis & Recommendations

While this decision ensures legal consistency, it also highlights a significant gap in the tax dispute resolution framework for the following reasons:

1. Section 53(8) of the TAA grants the Commissioner General broad discretionary powers to determine waiver applications. These broad discretionary powers are not subjected to any defined statutory boundaries. Without such limitations, the power risks being used arbitrarily, potentially undermining fairness and allowing for abuse. In law, discretionary powers must be exercised with due diligence and fairness, thus any misuse or arbitrary decision should be subject to judicial review.

2. Secondly, all tax disputes are initiated through an objection process that requires taxpayers to deposit one-third of the assessed tax. This prerequisite effectively integrates the waiver application into the appeal process. Thus, classifying it as an administrative matter rather than an objection decision is misplaced. The rigid one-third deposit requirement creates an unfair barrier, particularly for taxpayers who cannot afford it despite having valid objections. As a result, taxpayers who have legitimate grounds for objection but cannot meet the financial requirement are left without an effective remedy, as their right to challenge the assessment is effectively extinguished.

3. Furthermore, the same Commissioner General who assesses and collects taxes also decides on waiver applications. This dual role creates an inherent conflict of interest. An independent review mechanism is necessary by empowering an independent body, such as the Tax Revenue Appeals Board (TRAB), with revisionary authority to ensure that waiver decisions are made impartially.

4. Last but not least, the Court's decision highlights a legislative gap that leaves aggrieved taxpayers without a clear avenue for recourse when a waiver is denied. In this decision, while Court held that one must seek alternative legal avenues if aggrieved by such decisions, they failed to provide what exactly are the alternative legal avenues to be explored. This raises a critical question: Should a taxpayer's right to adjudication be forfeited due solely to financial incapacity? The current framework provides no clear answer, underscoring an urgent need for reform, and unfortunately the Court has consistently overlooked opportunities to reform the law.

Mwebesa Law: Article 2

In light of the above, we recommend the following recourse:

1. The Parliament should reform the law to introduce an administrative process for reviewing waiver decisions. This could involve vesting the Commissioner General with express review powers or granting the TRAB revisionary jurisdiction over waiver determinations. Such measures would provide a formal avenue for redress and help ensure that waiver decisions are fair and transparent.

2. The Presidential Commission for Tax Assessment and Advisory should prioritize this issue by exploring structured solutions to address the conflict of interest and procedural barriers inherent in the current system. By doing so, they can help create a more balanced tax dispute resolution framework that protects taxpayer rights and prevents unjust tax enforcement.

Moving forward, there is a need for legislative reform to provide a structured solution, ensuring that legitimate tax disputes are not dismissed solely due to an inability to meet the one-third deposit requirement. Without such measures, the existing system risks perpetuating an imbalance that favours administrative discretion over equitable taxpayer recourse.

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