



MONTHLY

Newsletter

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Welcome to the inaugural edition of our monthly newsletter!

Dear esteemed colleagues, clients, and friends

In a time of rapid change and uncertainty, where new challenges emerge daily and the pace of innovation constantly redefines the playing field, it's more important than ever to stay informed. Yet, while many focus on what they already know, we at MWEBESA LAW GROUP believe in venturing beyond the surface, into the unpredictable, the dynamic, and the future.

That's why we've created this newsletter, to serve as a beacon of insight and foresight for you. We aim to keep you updated on the legal developments that shape not just our profession, but the entire fabric of our world. Our goal is to offer you more than just news; we aspire to provide context, meaning, and actionable insights to help you navigate the complexities of the modern legal and business environment.

Every month, on the last Friday, you'll find within these pages a curated collection of the latest updates on legal trends, regulatory changes, & landmark cases compiled by our Editor, Monalisa Mushobozi. But more than that, we'll share practical advice on addressing today's business challenges, and thought-provoking stories that reflect our core values of integrity, innovation, and service.

Our dedicated team of lawyers; Valentina Clifford, Allan Rutashobya and Said Nyawambura, will share their unique perspectives, shining light on key issues and emerging opportunities, making sure you are always equipped to act and adapt in this fast-paced world. Whether you're a client seeking guidance, a colleague looking for fresh insights, or a partner keen to deepen your understanding of the law's evolving role, this newsletter is for you.

We invite you to join us on this journey, one where we look beyond the familiar, embrace the unexpected, and lead with knowledge. We highly anticipate and encourage your feedback; it is an essential part in fostering our growth.

Together, we will remain connected to the pulse of the legal landscape, and chart a course through the complexities of tomorrow.

"In a world dominated by the extreme, the unknown, & the improbable, we often find ourselves clinging to the familiar."

– Nassim Nicholas Taleb, *The Black Swan*

Stay curious. Stay informed. Welcome aboard.

Crispin B. Mwebesa
Managing Partner
MWEBESA LAW



THE AUDIT SHOWDOWN: WHY TIMELY EVIDENCE IS YOUR BEST DEFENCE AGAINST TAX LIABILITIES.

Imagine standing before the Tanzania Revenue Authority (TRA), where every missing document or delayed submission can inflate your tax liability and weaken your defense. The rules are clear: the onus of proof rests squarely on your shoulders. Fail to provide the right evidence at the audit stage, and you risk facing assessments based on estimates that could cost you more than you bargained for. In this unforgiving arena, submitting timely, comprehensive evidence isn't just a legal requirement; it's your strongest shield in the battle against excessive tax obligations. As the saying goes, "A stitch in time saves nine", and in the case of audits, that stitch could save your business.



WHAT THE LAW SAYS ABOUT TAX AUDITS

In Tanzania, the power to conduct tax audits or investigations is vested in the Commissioner General of the Tanzania Revenue Authority (TRA) under Section 1 of the Tax Administration Act [CAP 438 R.E. 2019] (TAA). However, pursuant to the conditions set in Section 47 of the TAA, the TRA can only audit returns filed or tax due within the last five years, except in cases of fraud or serious omission.

During the audit, taxpayers are legally obligated to comply and provide reasonable assistance, failure to do so is a punishable offense under Section 85 of the TAA. Such assistance is provided through according them with all necessary documentation as they may request or as you see fit. Auditors are not looking for an overload of paperwork, they want precision. Focus on providing documentation that directly supports your position.

Documentation may include inter alia: Bank statements reflecting income and expenditure; Accounting books and ledgers; Invoices & receipts for sales and purchases; Electronic Fiscal Device (EFD) receipts; Payroll and commission records; Import and export documentation; email and all sorts of correspondences with suppliers, TRA etc., that can substantiate your tax position; and Contracts establishing business transactions

LEGAL OBLIGATIONS AND THE CONSEQUENCES OF NON-COMPLIANCE

Notably, failure to provide all relevant & adequate evidence during tax audit, TRA may issue adverse assessment based on estimated figures. This is allowed under Section 50 of the Tax Administration Act [CAP 438 R. E. 2019], which confers discretionary powers to the Commissioner General to make such assessments. This estimation often results in a higher tax liability than what might have been assessed had sufficient documentation been provided.

WHY TIMELY SUBMISSION OF EVIDENCE MATTERS

The most critical stage for submitting evidence is during the audit itself. Section 52(9) of the TAA, as amended by the Finance Act 2020, significantly limits the reliance of new evidence at the appeals stage. Any failure to submit complete evidence at the audit phase can severely hinder a taxpayer's ability to challenge an assessment later, weakening their appeal and potentially leading to unfavorable rulings.

EXCEPTIONS FOR ADDUCING ADDITIONAL EVIDENCE AT APPEAL

While the general rule limits additional evidence at the appellate stage, there are exceptions. Through making an application for leave to adduce the same, Section 17(2) of the Tax Revenue Appeals Act gives the Board and Tribunal discretion to accept new evidence, and Rule 36(1)(b) of the Court of Appeal Rules allows the Court of Appeal to do the same. However, this is only permitted when it can be demonstrated that the taxpayer could not reasonably have obtained the evidence during the audit or trial, and that the new evidence could significantly alter the case outcome.

Notable cases such as *Kariakoo Auction Mart vs. Mashaka Dyanga & Others (Civil Appeal 234 of 2019)* and *African Barrick Gold Plc vs. Commissioner General TRA (Civil Application 350 of 2019)* illustrate this principle in action, where additional evidence played a critical role in appellate proceedings.

PRACTICAL RECOMMENDATIONS FOR TAXPAYERS

Remember, in the eyes of the auditor, well-submitted evidence is not just data, it is the difference between a smooth audit and a problematic one. Once the TRA issues its assessment, your window for introducing new evidence slams shut, leaving you vulnerable to inflated liabilities based on incomplete information. The stakes are high, and the risks are real. However, with proactive preparation and a solid audit strategy, you can significantly mitigate these risks. In the end, the effort you put in today could be the difference between a favorable outcome and a costly financial setback.

KEY TIPS

- Act defensively in your daily transactions. Ensure that you meticulously maintain your documentation for each transaction in anticipation of an audit.
- Treat every request for documentation as a priority. Submit as much as possible within the initial deadlines to demonstrate your diligence and willingness to comply.
- Use a checklist to ensure that all required evidence is included and logically arranged, making it easier for the auditors to cross-reference and validate the information.
- Before submitting any evidence, ask yourself: *Does this document directly support my position? If the answer is no, reconsider its inclusion.*
- If any inconsistencies arise, address them openly in your submission. Transparency can often mitigate potential penalties.
- Engage a tax professional early in the audit process to guide you through documentation and ensure compliance with applicable laws

UNLOCKING THE DOORS: NAVIGATING THE LABYRINTH OF COMPLIANCE IN REAL ESTATE INVESTMENT

This surge in demand has pushed up top rentals in Dar es Salaam, with developers capitalizing on the demand and bringing forward a slew of new residential and commercial complexes, primarily in & surrounding the Peninsular, Mikocheni, Kariakoo, Kigamboni, & Goba, to mention a few. This has turned Tanzania's real estate market into a lucrative investment opportunity for both domestic and foreign investors. This article provides guidance to new entrants looking to venture into the real estate sector in Tanzania, particularly those intending to buy residential property for the purpose of developing apartment buildings.

KEY PROCEDURES PRIOR TO PURCHASING A PROPERTY

MARKET RESEARCH

Imagine purchasing a property in a low-demand area without realizing it lacks future development prospects. After construction, you struggle to find tenants due to the poor location, leading to significant financial losses. Proper market research ensures you choose the right location with long-term development potential; By consulting professionals such as real estate agents, valuers, and legal experts, you gain valuable insights into market conditions, property availability, and pricing trends.



CONDUCTING DUE DILIGENCE

Consider the disastrous scenario where you buy a property without verifying its ownership. Months later, a legal dispute emerges when another party such as a Bank claims ownership, revealing that the Seller didn't have the right to sell and that the property was mortgaged. You're forced into a costly legal battle, and in the worst-case scenario, you could lose both the property and your investment.

Due diligence is a non-negotiable step in any real estate transaction. Ensure the land is registered & free from encumbrances by conducting official searches at the Ministry of Lands, visiting the site, making an inquiry to the neighbors living near by the property, and consulting local authorities. It's crucial to verify property boundaries and the legitimacy of ownership, skipping a site visit could mean discovering too late that the property is encumbered by unpaid land taxes or environmental restrictions.

ENGAGING LEGAL COUNSEL

Real estate transactions, especially for foreign investors, are complex. A legal expert will guide you through compliance, drafting contracts, and ensuring the purchase process is legally binding. Furthermore, the legal counsel can assist in negotiations to secure favorable terms. If you're a foreign investor, the absence of legal guidance could lead to a misunderstanding of local laws, resulting in a breach of regulations that jeopardizes your ownership or subjects you to hefty fines.

OBTAINING NECESSARY APPROVALS

After signing the sale agreement, submit the necessary land forms to the Municipal Council to calculate registration and stamp duty fees (2% of the purchase price). Afterwards, the Tanzania Revenue Authority (TRA) shall also assess the Capital Gains Tax (10% of the purchase price), which must be paid before the transfer is completed by the Ministry of Lands.

Upon payment of the Capital Gain Tax, an application shall be submitted to the Ministry of Lands to initiate the transfer process and obtain approval for the new ownership.

Imagine closing the deal and skipping the approval process to save time. Months later, you discover that the property is still legally owned by the Seller because the transfer process was never initiated. The Seller, who remains the legal owner, could sell the property to someone else, leaving you without any legal recourse. Failure to complete this process means your ownership is not legally recognized, leaving you vulnerable to disputes.

APPROVALS TO BE OBTAINED PRIOR TO CONSTRUCTION

BUILDING PERMIT

This is obtained from the local government authority. This involves submitting architectural & engineering plans, along with proof of compliance with local zoning laws if applicable.

ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

Depending on the scale & location of the project, an EIA from the National Environment Management Council (NEMC) may be required to assess the potential environmental impacts & propose mitigation measures. For example, constructing a residential building in an industrial area is highly discouraged. Doing so may prompt authorities, such as NEMC and the Local Government's Town Planning Department, to order the developer to cease construction, as it violates the land laws & policies.

COMPLIANCE PRIOR TO APARTMENT BUILDING DEVELOPMENT



- Pursuant to the Unit Titles Act, Cap, 2008 and its Regulations
- Preparation and registration of a Unit Plan before construction, specifying whether the development is phased or completed as a whole.
- Securing certificates from a registered land surveyor; an architect, and the local government, each approving the unit plan.
- Paying the relevant fees depending on the project's scope (turnkey or phased).
- Upon project completion, the developer or purchaser must register the units individually (apartments) with the Ministry of Land.

CONCLUSION

In this thriving market, being prepared means having the right guidance, legal expertise, and commitment to adhering to the regulations that govern this promising frontier. Through careful planning and compliance, the rewards of real estate investment in Tanzania are within reach, secure, sustainable, and immensely profitable.

CASE DIGEST:

NOORMOHAMED ABDULLA OSMAN & ANOTHER VERSUS ABDUL AZIZ HAGEB

Case Title: **Noormohamed Abdulla Osman & Another Versus Abdul Aziz Hageb.**
 Citation: **Civil Appeal No. 264 Of 2019 [2024] TZCA 766**
 Court: **Court of Appeal at Mwanza**
 Date of Decision: **19th August, 2024.**
 Judges: **Mugasha, J.A., Ngwembe, J.A., Mlacha, J.A.**

OVERVIEW

In this riveting legal saga, Abdul Aziz Hageb (the Respondent), sued NoorMohamed Abdullah Osman and Mohamed Said Seif, the Appellants, before the High Court of Tanzania, at Mwanza. The cause of action was premised as hereunder:

1. The legality of the 1st Appellant's rescission of the sale agreement of a house located on Plot No. 81 Block Q, Uhuru Street in Mwanza City (the suit premises) between him and the 1st Appellant after he had paid a substantial sum to purchase the suit property
2. The legality of the consequent re-sale agreement of the suit premises between 1st Appellant to the 2nd Appellant.

The reliefs sought by the Respondent included a declaration that the subsequent sale agreement between the Appellants was a nullity; permanent injunction against the Appellants from disturbing the Respondent from occupying the suit premises, general damages and costs of the suit.

FACTS

This case revolves around a dispute over the sale and rescission of a property located at Plot No. 81, Block Q, Uhuru Street in Mwanza. The respondent, Abdul Aziz Hageb, initially entered into a sale agreement with the 1st appellant, Noormohamed Abdulla Osman,

to purchase the property, but the 1st appellant rescinded the agreement after alleging default on the payment schedule. The property was then resold to the 2nd appellant, Mohamed Said Seif, leading to the respondent's legal challenge.

The Trial court decided that the rescission was unilateral and unlawful; even though the Respondent had delayed in paying the purchase price, that did not amount to a default of the same. The Appellants were restrained from disturbing the Respondent and the Respondent was ordered to finalize the remaining instalments to perfect the transfer of the property. Being aggrieved by the decision of the trial court, the Appellants brought their grievances before the Court of Appeal in the form of this Appeal.

ARGUMENTS BY THE PARTIES

APPELLANT'S ARGUMENTS

The Appellants maintained that the rescission was justified because the Respondent had defaulted to pay the scheduled instalments on agreed dates which was contrary to Clause 3 of the sale agreement and as such, he was entitled to rescind the agreement. Their argument was premised under section 55(1) of the Law of Contract that states

"When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract."

RESPONDENT'S ARGUMENTS

The Respondent countered by pointing to Clause 3 of the sale agreement, which clearly stated that the dates of payment were not "of the essence," provided each instalment was made before the next one was due. He emphasized that he had made all payments on time, and thus, the rescission and subsequent resale were unlawful. Clause 3 of the sale agreement stated

"The dates of payment of the instalments shall not be the essence of this contract as long as the purchaser pays due instalments before the next following instalment."

DECISION OF THE COURT

The Court of Appeal upheld the High Court's ruling that the rescission of the sale agreement by the 1st appellant was unlawful. The Court found that the Respondent had indeed complied with the payment schedule as per the agreement, & the 1st Appellant's claim of default was unjustified. Since the Respondent was still the rightful owner under the original sale agreement, the 1st Appellant had no legal title to pass in the subsequent sale to the 2nd Appellant, making the resale void.

LEGAL PRINCIPLES ESTABLISHED

1. **Contractual Flexibility:** Payment schedules in contracts must be adhered to, but if the contract allows flexibility, strict compliance with specific dates is not always required. The Court cited with approval the comment in **Halsbury's Laws of England**, 5th Edition Reissue Vol. 9 (1) at page 685 where it is stated that:

The modern law, in the case of contracts of all types, may be summarized as follows: Time will not be considered to be of essence, except in one of the following cases:

- a) *Where the parties expressly stipulate conditions as to time must be strictly complied with.*
- b) *The nature of the subject matter of the contract or the surrounding circumstances show that time should be considered of essence.*
- c) *A party who has subjected to unreasonable delay gives notice to the party in default making time of essence." [Emphasis supplied]*

2. **Rescission of Sale Agreements:** A seller cannot unilaterally rescind a sale agreement without just cause, especially if the buyer is compliant with the terms.
3. **Nemo dat quod non habet:** A seller cannot transfer what they do not legally own. Once a property is sold, the seller cannot validly resell it to another party

SIGNIFICANCE OF THE CASE

This case serves as a crucial reminder that when time is intended to be of the essence, it must be explicitly stated & not assumed, especially in high-stakes real estate transactions. For investors & property developers, it underscores the importance of meticulously following all procedures & payment terms in a timely manner to avoid costly disputes & significant financial losses.



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