

# Legal Brief

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## FK Law Chambers' Tax Team set to argue two Important Tax Cases before the Court of Appeal of Tanzania, one involving a Financial Institution and the other Manufacturers of Petroleum Jelly

FK Law Tax Team is poised to argue two important tax appeals before the Court of Appeal of Tanzania. The two cases that have been cause listed involve a Financial Institution that disputes tax treatment of the impairment provisions, borrowing costs and reserve movements; and the other involves a manufacturer of Petroleum Jelly whose dispute is centred on the correct classification of Petroleum Jelly under the Harmonized Commodity Description and Coding System (the HS Code) and whether such products are exercisable items.

Appearing for the two cases from the FK Law Chamber's office will be Ms. Hadija Kinyaka, Associate Partner of the Firm and Dr. Erasmo Nyika who has been granted a special leave to appear before the Court of Appeal by the Chief Justice of the United Republic of Tanzania. Leave was required for Dr. Erasmo to appear due to the legal requirements that an Advocate is only allowed to appear before the Court of Appeal of Tanzania if he/she has practiced for at least for five years. Dr. Erasmo is in his second year of active practice and has been granted leave to appear based on his expertise in taxation derived from advising clients, research and teaching tax law over the past five years.

In respect of the tax appeal involving a financial institution, FK Team will categorically argue for the applicability of the International Accounting Standards (IAS) and the International Financial Reporting Standards (IFRS) in provisioning for impairment assets. It will be Team arguments that impairment provisions on loans are legally recognized under the Income Tax Act 2004, and that such provisions should only taxable when they are released. FK Tax Team understands the wrong footing taxpayers have taken in making a case for impairment provisions where they mistakenly confused tax treatment of bad debts under the Income Tax Act 2004.

The tax appeal that involves manufacturers of petroleum jelly revolves around the proper classification of petroleum jelly. TRA had argued all along that petroleum jelly is classifiable under HS Code 3304.99.00 with the ultimate goal of not only subjecting such products to a higher import duty rate, but also making them exercisable items pursuant to the Amendments introduced by the Finance Act 2013 to the Excise Management Act Cap. 147 R.E. 2008. Taxpayers have argued that petroleum jelly is classifiable under HS Code 2712.10.00. Taxpayers' arguments were accepted by both the Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal. Dissatisfied with the decisions of the Tribunal, TRA preferred an appeal to the Court of Appeal of Tanzania. The Court of Appeal of Tanzania will hear the arguments of both parties before giving its decision on the correct class to which petroleum jelly should be classified.

*For inquiries relating to taxation, mining, financing and oil and gas, feel free to contact:*

Dr. Erasmo Nyika  
Associate Partner  
FK Law Chambers  
Lecturer – University of Dar es Salaam School of  
Law  
PhD (Aberdeen); LL.M. (Dar); PGDLP (LST);  
LL.B. (Hons)(Dar)  
FK House|23 Barack Obama Drive|Sea View|  
Upanga PO Box 20787|  
Dar es Salaam|Tanzania  
Tel: +255 22 2 122 029|031|032  
Fax: +255 22 2 122 027  
Mobile: +255 759 247 118  
+255 689 551 298

Hadija Kinyaka  
Associate Partner  
FK Law Chambers  
Registered Arbitrator - TIA  
LL.M. (Taxation) (Dar); PGDLP (LST);  
LL.B. (Hons) (Dar)  
FK House|23 Barack Obama Drive|  
Sea View|Upanga PO Box 20787|  
Dar es Salaam|Tanzania  
Tel: +255 22 2 122 029|031|032  
Fax: +255 22 2 122 027  
Mobile: +255 682 497 475

