

**IN THE TAX REVENUE APPEALS TRIBUNAL  
AT TANGA  
VAT APPEAL NO 10 OF 2011  
PEMBE FLOUR MILLS LTD.....APPELLANT**

*VERSUS*

**COMMISSONER GENERAL .....RESPONDENT**

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**PROCEEDINGS**

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12/9/2011

QOURUM:

|                    |               |
|--------------------|---------------|
| Hon.H. M. Mataka   | Vice Chairman |
| Prof. J. Doriye    | Member        |
| Mr. N. Shimwela    | Member        |
| For the Appellant  | Absent        |
| For the Respondent | Absent        |
| Ms. Sabiha Nassib  | SA            |

**Order:**

This Appeal is fixed for hearing from 26<sup>th</sup> September, to 30<sup>th</sup> September, 2011. Members and parties to be notified. The proceeding will start at 9.00 am.

It is so ordered.

**Hon.H. M. Mataka Vice Chairman, Sgd**  
**12/9/2011**

**18/10/2011**

**QOURUM:**

**Hon.H. M. Mataka**

**Vice Chairman**

**Prof. J. Doriye**

**Member**

**Mr. N. Shimwela**

**Member**

**For the Appellant**

**Mr. Michael Ngalo, Advocate for the Appellant, accompanied by Mr. Riyaz, head of finance of the company**

**For the Respondent**

**Mr. Felix Haule, Advocate for the Respondent and Alfred Makoi, Tax Auditor for TRA**

**Ms. Sabiha Nassib**

**SA**

**Ms. J. Gogadi**

**PS**

Today the Tribunal is set for hearing appeal no. 10 of 2011 between PEMBE FLOUR MILLS LTD hereinafter referred to as the Appellant and Commissioner General (TRA) hereinafter referred to as the Respondent. The hearing is opened, Mr. Ngalo may proceed.

**Mr. Ngalo:**

Hon. Vice Chairman and Members of the Tribunal the Appellant's appeal was lodged on 15<sup>th</sup> June, 2011 and essentially seeks to fault the decision of the Tax Revenue Appeals Board that was handed down on 31<sup>st</sup> March, 2011.

Hon. Vice Chairman the facts which initial are straight forward, I do not wish to repeat them. So I pray the Tribunal to adopt them as they are in the Statement of fact which is contained in para 3.1 of the Appellant's Statement of Appeal

I am going to the grounds of appeal which are itemized as a, b, c, d, e, and f.

I also pray to consolidate and argue item a and b together as one ground. I will argue item C separately and I request to be allowed to combine items d and e together as one ground, and I will abandon ground f as it superfluous.

Hon. Vice Chairman and Members there is a small point to be corrected on the second page at para 3.2 (b), the VAT Act Cap 142 should read 148.

Hon. Vice Chairman, I wish to summarize the holding and findings of the Board in its judgment as follows.

At page 8 of the judgment the Board held that bran and pollard are wheat by products and that bran and pollard are not cereal in terms of the second schedule item 1(5) of the VAT Act Cap 148. This appears at page 10 at second paragraph of the Board's judgment.

On page 8 second paragraph the Board held that all goods itemized on para 1 of the second schedule are meant for consumption and specifically as for food that under item I

The spirit behind the exemption granted on goods at second schedule must have been assist people of low income in getting their supplies in terms of food and not otherwise. Therefore, anything which is not food and for human consumption was definitely not envisaged.

At page 10 second para the Board held that (Appellant read). The two by products were used for animal feeds and the animals are exempted from VAT charges. Hon. Vice Chairman on ground 1 and 2, it is the Appellant submission that interpretation and findings of the Board on whether bran and pollard are exempt under VAT is erroneous.

It is because, item 1(5) of the second schedule of the Act. Item (5) is specific for our case it deals with unprocess agricultural products, it lists those wheat and other cereals. It is my submission that the two by products which are subject to this case are products which are categorized as wheat and other cereals. It is not correct as the Board held that bran and pollard are excluded in this provision simply because it is not listed in this provision. The Board also erred by restricted for those products by human consumption in term of food. I submit that the Board erred for the simple reason that under item 1 of the second schedule it has five lists of food crops and livestock supplies. The phrase used for "human consumption" appears only once and does not appear under item 2,3,4 and 5.

So it is my submission that if the Legislature did not use that phrase at para 2,3,4 and 5 then it left to those supplies to unrestricted and not for human consumption only. It is my humble submission that the Board's interpretation is overrestricted, it can only mean that its interpretation is erroneous and that the legislature did not intend. The Board said at page 9 the products were used for animals feed, it goes to support my submission that it does not mean that all the products must only be for human consumption as the Board held. And the Board correctly held that animals are exempted then the charging VAT on bran and pollard could not arise in the circumstances. That could not be applicable on assumption that they used for animals feed only. I humbly request the Tribunal to

revised the interpretation on item 11(5) of the second schedule to be erroneous and untenable.

The process of agricultural product that I mentioned on item 1(5) of the second schedule the Board ought to have determined the process through which the two products are generated.

In item (5) there are two notes. It is my submission that for bran and pollard to qualify for VAT the Board ought to have determined the process by which those products come about. Hon. Vice Chairman the Board considered this fact at page 10 of its judgment. (Appellant read). It is my submission that on one hand the Board seemed to be in correct position, but later falls short by not admitting that bran and pollard as exempt supplies, that in my view is contradicting in the Board's decision.

The Board justified at page 11 on second paragraph that it is not the process but what the product is worth. It is erroneous for the Board to hold that the processes of obtaining bran and pollard is simple and goes to state that the two by-products were not covered under exempt supplies.

The third ground (c) :the Board erred in determining the appeal on submissions rather than on evidence. Being judiciary in nature the proceedings before the Board ought to be conducted in accordance with rules and procedures governing such proceedings in ordinary Court and Tribunals which including the framing of issues, taking of evidence orally or

documentary and determination of legal and factual matters that arise in dispute before the Board.

There were matters that needed calling of evidence before concluding the matter. These matters include whether bran and pollard are by-products of wheat, process of obtaining bran and pollard i.e whether it is a simple process or not; The Board was invited to see how the by products are generated but it declined the invitation. The Board should have checked on whether other millers are charged VAT on bran and pollard so as to avoid discriminatory treatment of millers. The Board claims that bran is for animal feeds only, but we know it is also used in preparation of local bran. These matters needed evidence.

Hon. Vice Chairman and Members of the Tribunal, I wish to cite the decision of Civil Appeal no. 50 of 1998, G. ALIBAHU and six others vs. HILAL AHMED KHALIFAN BUSAIDY. The Court of Appeal held that "we are satisfied that the proceedings before the Dar es Salaam Regional Housing Tribunal were improperly conducted and the decision it reached was flawed to an extent that it ought to have been quashed by housing Appeals Tribunal. It follows that decision of the High Court which affirmed the decision of the lower Tribunal must be quashed, as we hereby do".

I request you to take into account at page 10 of this case referred to Marijani Vs. Ngowi case.

It is my submission that the finding of facts which alleged before the Board were not based on any evidence led before it.

Now coming to ground d and c, I think these grounds also covered during my earlier submission ground a and b so I pray to be adopted. With all that I have said Hon. Vice Chairman, it is the Appellant's prayer that, this Tribunal quash and set aside decision of the Board dated 31<sup>st</sup> March, 2011. We further pray to the Tribunal to allow the Appellant Appeal against the Respondent decision dated 16<sup>th</sup> July, 2010. We finally pray for costs of this Appeal be awarded to the Appellant. Hon Vice Chairman and Members I beg to submit. That's all.

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| <b>Hon.H. M. Mataka</b> | <b>Vice Chairman, Sgd</b> |
| <b>Prof. J. Doriye</b>  | <b>Member, Sgd</b>        |
| <b>Mr. N. Shimwela</b>  | <b>Member, Sgd</b>        |

**18/10/2011**

**Order:**

The hearing will continue at 2.00 pm when the Respondent will make his reply submission.

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| <b>Hon. H. M. Mataka</b> | <b>Vice Chairman, Sgd</b> |
| <b>Prof. J. Doriye</b>   | <b>Member, Sgd</b>        |
| <b>Mr. N. Shimwela</b>   | <b>Member, Sgd</b>        |

**18/10/2011**

**18/10/2011**

**QOURUM:**

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| <b>Hon.H. M. Mataka</b>   | <b>Vice Chairman</b>   |
| <b>Prof. J. Doriye</b>    | <b>Member</b>  |
| <b>Mr. N. Shimwela</b>    | <b>Member</b>  |
| <b>For the Appellant</b>  | <b>Mr. Michael Ngalo, Advocate for the Appellant, accompanied by Mr. Riyaz, head of finance of the company</b> |
| <b>For the Respondent</b> | <b>Mr. Felix Haule, Advocate for the Respondent and Alfred Makoi, Tax Auditor for TRA</b>                      |
| <b>Ms. Sabiha Nassib</b>  | <b>SA</b>  |
| <b>Ms. J. Gogadi</b>      | <b>PS</b>  |

We are continuing with the hearing of reply submission for the Respondent, the hearing is opened.

**Mr. Haule:**

Hon. Vice Chairman and Members of Tribunal, the Respondent after having heard Appellant submission wishes to reply as follows.

To start with Counsel for the Appellant opted to combine four grounds and argued them together. These are ground a,b,d and e; ground f of the appeal was left out or abandoned. I am starting with the four grounds

which were argued together. The born of contention in this appeal both at the Tax Revenue Appeals Board and before this Tribunal is the VAT chargeability of wheat bran and pollard. That being the case therefore, the Appeal remains with only one issue. The issue is whether wheat bran and pollard are exempt supplies for VAT purposes.

Hon Members of the Tribunal, Counsel for the Appellant in making submission on ground a,b,d, and e together contended that the Board's interpretation and finding that bran and pollard are not VAT exempted is erroneous because, the two items being by products of wheat are covered in the group of "other cereals" thus according to the Counsel bran and pollard are cereals.

In countering this argument I wish to refer the Tribunal to the dictionary meaning adopted by the Board regarding the 3 items i.e the word cereal, bran and pollard. see page 8 at para 2 by Webster Dictionary, copyright 2006 by Princeton University

According to that dictionary cereals mean any grass cultivated for its edible grain or the grain itself. Bran is the broken coat of the seed of wheat, rye or other cereal grain and pollard is a floury particle resulting from stripping, grinding, blending, polishing etc.

From the above definition it was right for the Board to hold that bran and pollard are not cereals to be included in the group of other cereals which are appearing under item 9(5) of the second schedule to the VAT Act as alleged by Counsel for the Appellant.

The allegation by Counsel for the Appellant that it was wrong for the Board to hold that bran and pollard, though not listed in a group of exempt supplies are covered in the phrase "other cereals" this allegation is very wrong. Bran being an alter coat of grain and pollard as particle arising from, blending, stripping, gridding, polishing cannot be cereals. We pray to this Tribunal to disregard that contention and uphold the contention of the Board that bran and pollard are not cereals.

The Appellant also stated that the Board erred by restricting itself to products which are meant for human consumption only. Looking at item 1 there are five item the phrase for human consumption is only appearing under sub items one. Meaning that sub item 2 to 5 are not necessary for human consumption. According to the intention of the legislature these are those which were meant for human consumption to enable income earners to afford them.

In countering this contention I wish to draw your attention to the heading of item 1, The heading itself states : "food crops and livestock's supplies. From this heading, it goes without saying that nothing can be called food if it is not for human consumption. That is why bran and pollard was not

listed but Mills flour was listed whether from wheat or maize it can be used for human consumption. That being the case therefore even if the phrase for human consumption has not been specifically stated in all sub items the fact remain that all items under item one of the second schedule to the VAT were meant to be those for human consumption.

As stated by the Board at page 9 last paragraph starting with the third line "The price consideration is in relation to its edibility and not just plain cheapness as argued by the Appellant' counsel".

The Board commented its position when it referred to sub item 4 of the same item 1 by stating that shellfish and ornamental fish have not been included, because they are not food and not for human consumption, thus why they were not included. That being the case I wish to counter the argument by the Counsel for the Appellant that the Board's interpretation was overstretched and the legislature never intended item listed under item 1 is not for human consumption, I wish to submit that was really intention of the legislature. The issue is edibility of the food.

Hon. Vice Chairman regarding the Board's observation that the two products were used for animals feeds and these animals are exempted from VAT, the Board further held that this by itself does not automatically gives rise to other thing related to livestock to be VAT exempt (see 2nd paragraph at page 10 of the Board' judgment). To that end I dispute the contention by counsel for the Appellant that since bran and pollard are

used to prepare animals which animals are exempted from VAT, the charging of VAT on the two product sold by the Appellant does not arise. So, the prayer by the Appellant to reversed the Board's position on this aspect is also disputed.

Hon. Members of the Tribunal, regarding the process involved in obtaining bran and pollard I agree with the holding of the Board at page 11 at first para that "the simple process of stripping wheat and getting bran and pollard as by products do not constitute bran and pollard to be cereal for the purposes of the second schedule, Sec.10 paragraph 1 item 5 read together with section 10 of VAT Act Cap .

### **Now I am going to ground "c"**

This ground states that the Board erred in determining the Appeal based on submission of the parties only without calling evidence on disputed factual matters. To answer this ground let me say that the appeal before the Board was not based on factual issue but on legal issue i.e. point of law. Here the issues is whether bran and pollard are taxable supplies according to VAT law. The question for calling for evidence was unnecessary. Further even if there were some factual issue to be considered (something which is denied) it was the duty of the parties to raise them, and not of the Board. There was no factual issue raised by any party and denied by the Board. So, this allegation by the Appellant that the Board did not comply with the judicial procedure is mere after thought on the part of the Appellant.

Furthermore, the Board, as the this Tribunal, is not bound by strict procedure relating to conduct of proceeding and taking the evidence. Moreoever, the counsel never told this Tribunal how non compliance with procedures by the Board prejudiced his client case. Regarding the case cited by learned friend in the Court of Appeal **Civil Appeal No. 50 of 1998 G. Alibahi and six other Vs. Hial Ahmed Khalifan Busaidy.**

I think this is not a relevant authority in our appeal simply because, there are no computations involved in our appeal, and that the appeal was based only on point of law of determining whether bran and pollard were exempt supplies. To sum up I say that the Board's hearing and determination of the case before it was fairly done, and its decision was correct. I pray this Tribunal to disallow this appeal or dismiss in its entirety on the ground that that Appeal has no merit, it is just an attempt to force an issue which is not within the law. I also pray that costs of this Appeal be provided for. That is all Hon. Vice Chairman and Members of the Tribunal.

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|--------------------------|---------------------------|
| <b>Hon. H. M. Mataka</b> | <b>Vice Chairman, Sgd</b> |
| <b>Prof. J. Doriye</b>   | <b>Member, Sgd</b>        |
| <b>Mr. N. Shimwela</b>   | <b>Member, Sgd</b>        |

**18/10/2011**

**19/10/2011**

**QOURUM:**

**Hon.H. M. Mataka**

**Vice Chairman**

**Prof. J. Doriye**

**Member**

**Mr. N. Shimwela**

**Member**

**For the Appellant**

**Mr. Michael Ngalo, Advocate for the Appellant, accompanied by Mr. Riyaz, head of finance of the company**

**For the Respondent**

**Mr. Felix Haule, Advocate for the Respondent and Alfred Makoi, Tax Auditor for TRA**

**Ms. Sabiha Nassib**

**SA**

**Ms. J. Gogadi**

**PS**

Today the Tribunal is fixed for hearing rejoinder submission. The hearing is opened, Mr. Ngalo may proceed.

**Mr. Ngalo:**

Hon. Vice Chairman and Members of the Tribunal, my learned friend has summarized my ground of appeal that only one issue arises is whether Bran and Pollard were exempted from VAT. There is another issue namely whether or not the Board ought to have called and received the evidence. I pray to the Tribunal to make a ruling on this issue.

The issue of use of Webster dictionary, that definitions are not proper one for use by the Board and this Tribunal that those items covers under VAT Act. I pray to this Tribunal to get definition from Hansard. My submission is that the Webster Dictionary was not proper to interpret those words.

On issue of submission of the Respondent the words on marginal Notice are "food and livestock supplies" I am sorry that I was not aware that VAT Act has been revised so I abandoned this point.

I am saying that phrased for "human consumption" does not appear on sub item (2) and (5) in the Second Schedule.

My submission is that the omission of that phrase must have been for purposes. If I intended to leave other items to be covered.

I am inviting the Tribunal to fault the Board decision that held that the goods listed under item 1 of the second schedule are those for human consumption only. The interpretation that it could cover bran and pollard that I mentioned it.

My learned friend says that even if the phrase has not specifically stated all items they are meant to include human consumption. My response is that the interpretation is against the principle of interpretation which give no room for assumption.

The issue of the uses of bran and pollard in my earlier submission I stated that bran and pollard are used for animal feeds, and animals are exempted on paying VAT on their supplies.

The Respondent stated that since the bran and pollard are used for animal feeds that VAT charged is not exempted.

I am saying that bran and pollard are not for animal feed but even if they are for animal feed, and the animal are VAT exempted so bran and pollard are also exempted.

The process of getting bran and pollard must be simple but it must lead to production of cereal so as to be exempted.

My submission is that item 1(5) of the second schedule does not mention that the process must be cereal, by making that observation the Board erred.

Finally, I submit that the Respondent submission was wrong. Furthermore, the record before the Board and the Tribunal the parties had agreed that they should go only on legal issue. I submit that even if there was such agreement on records that was not have absorbed the Board on its duty to conduct the proceedings in accordance to the law.

And finally, the Respondent argued that the Appellant had not shown that they suffered prejudice I submit that the Appellant did suffered prejudice, because the decision of the Board contained findings of facts which were made by the Board itself without hearing the parties thereon. The prejudice is the one that had not being head by the Board. Had the Appellant been head on those matters, I believe the Board's decision could have been different. And this is gist of Court of Appeal decision on the case cited at page 10 of its judgment.

So, it is my prayer and reiterate that the Appeal is well grounded, and it should be allowed as prayed. That is all honourable Vice Chairman and members

**Hon. H. M. Mataka**                      **Vice Chairman, Sgd**

**Prof. J. Doriye**                         **Member, Sgd**

**Mr. N. Shimwela**                      **Member, Sgd**

**19/10/2011**

**Order:**

The Tribunal will start its deliberation today and tomorrow members will submit their opinions.

Judgment will be delivered on 20<sup>th</sup> October,2011 at 2.00 pm.

**Hon. H. M. Mataka**                      **Vice Chairman, Sgd**

**Prof. J. Doriye**                         **Member, Sgd**

**Mr. N. Shimwela**                      **Member, Sgd**

**19/10/2011**

**IN THE TAX REVENUE APPEALS TRIBUNAL**  
**AT TANGA**  
**VAT APPEAL NO. 10 OF 2011**  
**PEMBE FLOUR MILLS LTD.....APPELLANT**  
*Versus*  
**COMMISSONER GENERAL .....RESPONDENT**

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**J U D G M E N T**

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*Date of final submissions: 19<sup>th</sup> October, 2011*

*Date of Judgment: 20<sup>th</sup> October, 2011*

***Hon. H. M. Mataka – Vice Chairman***

This is an appeal by PEMBE FLOUR MILLS LTD herein after referred to as the Appellant and Commissioner General TRA herein after referred to as the Respondent.

The Appellant is appealing against the whole decision of the Tax Revenue Appeals Board delivered on 31<sup>st</sup> March, 2011. In its decision the Board held that the appeal had no merits and hence proceeded to dismiss it. The Appellant aggrieved by that decision and now appeal before this Hon. Tribunal. In his Statement of facts and reasons /grounds of appeal the Appellant raised six grounds of appeal, which itemized a,b,c,d, e and f.

However, during submission in chief the Appellant Counsel Mr. Ngalo prayed to consolidate and argue items a and b together as one ground, item c he argued separately. He went further to request the Tribunal to allow him to combine items d and e together as one ground, and finally he requested to abandoned ground f as it would be covered during his submission in the first grounds.

The Appellant Counsel invited the Tribunal to read at page 8 of the Board's Judgment where the Board held and found that bran and pollard are wheat by products and not cereal in terms of Second Schedule item 1 (5) of VAT Act Cap 148.

Mr. Ngalo went further to refer the Board's holding that almost itemized goods in paragraph 1 of the Second Schedule are meant for human consumption and specially as food. The spirit behind the exemption granted on goods at Second Schedule must have been to assist people of low income in getting their supplies in terms of food and not otherwise. Therefore, anything which is not food and or for human consumption was definitely not envisaged.

The Appellant contested that, interpretation and findings of the Board on whether bran and pollard are not exempt under VAT is erroneous. This is because, item 1(5) of the Second Schedule of the Act, item 1 sub (5) is dealing with un processed agricultural products, it lists those wheat and other cereals. The Appellant submission is that the two by products which are subject to this case are products which are categorized as wheat and other cereals. And that it is not correct as the Board held that bran and pollard are excluded in this provision simply, because it is not listed in this provision.

On the other hand, the Respondent counsel Mr. Haule in replying to the Appellant submission started by submitting that the born of contention in this appeal both at Tax Revenue Appeals Board and before this Tribunal is the VAT chargeability of wheat bran and pollard. That being the case therefore, the appeal remains with only one issue i.e whether wheat bran and pollard are exempt supplies for VAT purposes.

In replying to the Appellant's argument that the two items being by-products of wheat are covered in the group of other cereal thus according to the Appellant Counsel bran and pollard are cereals.

In arguing this argument, Mr. Haule referred the Tribunal to the dictionary meaning adopted by the Board regarding the three (3) item i.e. the word cereal, bran and pollard by Webster Dictionary, Copyright, 2006 by Princeton University, according to that dictionary cereal mean "any grass cultivated for its edible grain, or the grain itself, bran is the broken coat of the seed of wheat, rye or other cereal grain and pollard mean a flour particles resulting from stripping, grinding, blending, polishing etc. from the above definition, Mr. Haule argued that it was right for the Board to hold that bran and pollard are not cereals to be included in the group of other cereals which are appearing under item 1(5) of the Second Schedule to the VAT Act, Cap 148. R.E 2006 as alleged by Counsel for the Appellant.

The Respondent Counsel further countered the allegation by the Counsel for the Appellant that it was wrong for the Board to hold that bran and pollard though not listed on a group of exempt supplies, they are covered in the phrase "other cereals" this allegation is very wrong. Bran being an outer coat of grain and

pollard as particles rising from blinding, stripping cannot be cereals. The Respondent Counsel contested the Appellant submission that the Board erred by restricting itself to products which are meant for human consumption only. He submitted that, the Appellant's assertion that item one sub (5) the phrase for "human consumption" only appearing on sub item (1)

On answering to this argument, Mr. Haule drew attention of the Tribunal to the hearing of item 1. He stated that the heading itself states "food, crops and livestock's supplies," from this heading, it goes without saying that nothing can be called food if it is not for human consumption. That is why bran and pollard was not listed but mills flour was listed, as it can be used for human consumption.

The Appellant during his rejoinder submission has emphasised what he has been submitted earlier. With regard to definition of terms "bran, pollard and wheat" the Appellant counsel argued that the Webster Dictionary that defined those words are not proper one for use by the Board and this Tribunal. He prayed to the Tribunal to get definition of those terms from Hansard.

On the other hand, the Appellant counsel reiterates his earlier submission that bran and pollard are used for animals feeds, and animals are exempted on paying VAT on their supplies, so bran and pollard are also exempted from paying VAT. After discussing arguments between both parties in this case we are of the collective opinion that there is only one major issue to be discussed and resolved i.e. whether bran and pollard are VAT exempted according to VAT Act Cap 148 R.E. 2006. The other issue relate to the Board failure to call and receive evidence this issue carry little weight which could not change our final decision.

As far as the first ground of the appeal is concerned, with due respect to the Appellant Counsel that a key point of consideration as the trial Board rightly found, bran and pollard are by-products of the wheat milling process. They are wheat products but not wheat itself which is the cereal referred to in that sub – paragraph.

When bran and pollard are sold by the wheat millers they are not sold as cereals and therefore cannot be exempted from VAT as argued by the Appellant. There is no doubt that bran and pollard can be used in other production process. For example, we know that bran is used in the production of breakfast cereals such as a whole range of flakes, they are also used in making biscuits and other flouris such as attafLOUR used in the making certain types of chapattis. That is in addition to being also used in the making of animal feeds.

Therefore, it is immaterial if the resultant product to which bran and pollard are input in tax exempt or not. The point that needs clear determination is whether bran and pollard as by products of wheat just as wheat flour is are VAT exempt.

Generally, the Legislature exempted flour from VAT, because of its edibility, but not bran and pollard which is not directly usable for human consumption. While as pointed above that bran can be used as an input in the production of products that can be for human consumption but bran and pollard must undergo a manufacturing process before they can be edible by human being.

It is equally obvious that bran and pollard being by products of the cereal wheat cannot be included in the category “wheat and other cereals” as the Board

correctly ruled. And that, the arguments by the Appellant's counsel as stated above are a mere attempt to get bran and pollard included under the Second Schedule where they clearly do not covered.

After what we have stated here and above we are of the firm view that the first ground of the appeal has no merit and dismiss it.

Let us briefly examine the second ground which carry little weight that relate to the failure of the Tax Revenue Appeals Board to call and receive evidence to prove the simplicity of the process, edibility of bran and pollard, or that the two by products for animal and not human consumption etc.

This point is immaterial to the determination as to whether the two products are VAT exempt or not. In any case it was not the duty for the Board to call for evidence but rather the parties to the proceedings to request it if it is necessary to do so. With due respect to the Appellant counsel, the authority cited i.e. *G.Alibahi And Six Others Vs. Hilal Ahmed Khalifan Basaidy* Civil Appeal No. 50 of 1998, does not apply to the instant case. It is because, the said case related to an error of computation of rent charges. While this case relates to whether wheat bran and pollard are exempt supplies for VAT purposes.

Rule 16(2) of Tax Revenue Appeals Tribunal rule states that "*a proceedings before a Tribunal shall be conducted with a little formality and technicality as possible, and the Tribunal shall not be bound by the rule of evidence but may inform itself on any matter in such manner as it think appropriate*".

According to Rule 16(2) we are agreeing with the Respondent that, the Board as the Tribunal is not bound by strict procedure relating to conduct of proceeding and taking the evidence. We are of collective idea that in the absence of any request from the Appellant and Respondent seeking to call witness or tendering evidence before the Board, the Board cannot be faulted for not calling witness or receiving evidence because it was not the duty of the trial Board to do so. Therefore, we find that this ground of appeal is untenable and dismiss it accordingly.

In view of what we have stated here, it is our considered opinion that bran and pollard do not belong to the Second Schedule of the VAT Act and are not VAT exempt. It is therefore, the Appellant's appeal should fail and be dismissed in its entirety. That the Appellant is ordered to pay the assessed taxes and we make no order as to the costs.

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**H. M. Mataka**  
**Vice Chairman**

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**Prof. J. Doriye**  
**Member**

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**Mr. N. Shimwela**  
**Member**

**20<sup>th</sup> October, 2011**

Delivered this 20<sup>th</sup> day of October, 2011 in the presence of Mr. Riyaz, Head of Finance for the Appellant and Mr. Felix Haule, Advocate for the Respondent.

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**H. M. Mataka**

**Vice Chairman**

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**Prof. J. Doriye**

**Member**

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**Mr. N. Shimwela**

**Member**

**20<sup>th</sup> October, 2011**

We certify that this is a true copy of the original.

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**H. M. Mataka**

**Vice Chairman**

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**Prof. J. Doriye**

**Member**

.....

**Mr. N. Shimwela**

**Member**

**20<sup>th</sup> October, 2011**

