IN THE COURT OF APPEAL OF TANZANIA
AT DAR-ES-SALAAM

(CORAM: MUGASHA, J.A., KWARIKO, J.A. And KENTE, J.A.)

CIVIL APPEAL NO. 180 OF 2019

JACKSON SIFAEL MTARES.....1ST APPELLANT

DOMINIC KIGENDI.....2ND APPELLANT

TIMOTHEO SAIGURAN OLE LOITG'NYE.....3RD APPELLANT

SAMWEL SIFAEL MTARES.....4TH APPELLANT

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS..... RESPONDENT

(Appeal from decision of the High Court of Tanzania at Dar-es-salaam)

(Magoiga, J.)

dated the 7th day of May, 2019
in
CRIMINAL APPLICATION NO. 42 OF 2019

.....

JUDGMENT OF THE COURT

22nd & 28th October, 2021

MUGASHA, J.A.:

This is an appeal against the forfeiture of properties alleged to have been acquired from the proceeds of crime handed down by the High Court in an application which was lodged thereto by the respondent. The application was preceded by the order of the Court of Appeal which among other things, directed the respondent to file the respective application in the High Court in accordance with the provisions of sections 9(1), 10 and 16(1) and (6) of the Proceeds of Crime Act [Cap 256 R.E.2002] (the POCA) within a period of six months

from the date of judgment. The decision of the Court of Appeal had originated from a criminal case in which the appellants namely, Jackson Sifael Mtares, Dominic Kigendi, Thimotheo Saiguran Ole Loitg'nye and Samwel Sifael Mtares were jointly charged and convicted by the Resident Magistrates' Court for Dar es Salaam at Kisutu of two counts of *conducting and managing a pyramid scheme* c/s 171A (1) and (3) of the Penal Code [CAP 16 R.E 2002] and *accepting deposits from the general public without a license* c/s 6(1) and (2) of the Banking and Financial Institutions Act, No 5 of 2006.

In respect of the first count, each appellant was sentenced to pay a fine of TZS. 3,000,000.00 or in default to serve a custodial sentence of 3 years. For the second count, they were each sentenced to pay a fine of TZS. 18,000,000.00, in default a custodial sentence of 3 years. Furthermore, the trial Court also made an order for the Bank of Tanzania (BOT) to make an arrangement so that a refund would be made to the members of DECI (TANZANIA) LIMITED who deposited their funds and not collected at any single instance.

Aggrieved by the latter order, the respondent unsuccessfully preferred an appeal to the High Court of Tanzania and finally appealed to the Court of Appeal vide Criminal Appeal No. 2 of 2018.

It is against the said backdrop, the respondent filed Criminal Application No. 42 of 2019 in the High Court of Tanzania which is the subject of the present appeal. In the said application, the respondent sought forfeiture to the Government of the United Republic of Tanzania the landed assets, motor vehicles and monies in four bank accounts on ground of being tainted properties as they were acquired and collected through a pyramid scheme which was conducted by the appellant. The application was supported by the affidavit sworn by Shedrack Martin Kimaro, the learned Principal State Attorney of the respondent herein.

On the other hand, the appellants opposed the application claiming that the properties in question were not tainted, not acquired from the proceeds of pyramid scheme but rather, from the members of DECI (TANZANIA) LIMITED and that, the landed assets and the motor vehicles in question belonged to the said Company and as such, the forfeiture was not justified.

Before the High Court, it was not disputed that, the appellants were convicted and sentenced for conducting and managing pyramid scheme and accepting monetary deposits from the public without a valid licence vide Criminal Case No. 109 of 2009 and that, they were shareholders and Directors of DECI (TANZANIA) LIMITED incorporated on 25/7/2007 by 2009 having monies in different Banks' branches in

Dar-es-salaam City and properties listed in the chamber summons. However, the following issues were contentious: **One,** whether the properties listed and sought to be forfeited were proceeds of crime and hence tainted; **two,** whether there is evidence to negate the same or if there are certain interests to be excluded.

Having considered the provisions of sections 9, 10 and 13 of the POCA and the affidavital evidence of the rivalling parties together with their oral submissions, the learned High Court Judge at pages 188 to 189 of the record of appeal found that, all landed properties and motor vehicles registered in the name of DECI (TANZANIA) LIMITED listed in the application for forfeiture order were tainted properties acquired through pyramid scheme conducted by the appellants. Thus, in terms of the provisions of section 23 of the Proceeds of Crimes Act, lifted the veil of incorporation of DECI (TANZANIA) LIMITED and concluded that, the appellants herein are direct beneficiaries of tainted properties belonging to DECI (TANZANIA) LIMITED which were acquired through a pyramid scheme conducted by the appellants herein. The appellants being aggrieved, have preferred the present appeal to this Court on the following grounds:

1. *That, the learned Judge erred in law and fact in holding that no other person appeared in court to adduce evidence that the properties and cash money are his or has interest whatsoever.*

2. *That the learned Judge erred in law and fact in holding that there was no cogent evidence from the appellants to convince the court that the alleged landed properties were not acquired through the pyramid scheme.*

3. *That the learned judge erred in law and fact in failure to accept that some of the landed properties and motor vehicles were owned by DECI Ltd which was not a party to the criminal proceedings.*

4. *That the learned judge erred in law and fact in failure to observe and accept that account No. 0102010000194 held in Dar es Salaam Community Bank, Uhuru Branch with Tshs. 1,457,730,462.49 did not belong to the appellants but was owned by Jesus Christ Deliverance Church which was not part of the criminal proceedings.*

5. *That the learned judge erred in law and fact in departing from the directions made by the Court on 7/9/2018 which ordered the money should not be forfeited unless every person who made deposits is heard by the high court as per sections 9, 10 and 16(1) and 6 of the PCA.*

6. *That, the learned trial Judge misdirected himself in ordering that all the properties listed in the chamber summons and in the notice of application for forfeiture order as 1 (a-v) with their respective value be forfeited to the United Republic of Tanzania.*

At the hearing before us, the appellants who were present in Court had the services of Mr. Majura Magafu, learned counsel whereas the respondent was represented by Messrs. Paul Kadushi and Shedrack Kimaro, learned Principal State Attorneys and Mr. Elisante Masaki, learned State Attorney.

In prosecuting the appeal, Mr. Majura on behalf of the appellants, faulted the High Court on the following: **One**: having wrongly ordered forfeiture acting on the irregular application which did not comply with the Court's order directing all those interested in the matter to be involved which was not the case. On this, he submitted that those interested included DECI (TANZANIA) LIMITED, DECI Kenya and Jesus Christ Deliverance Church who were neither notified nor joined in the application in question. In this regard, it was Mr. Magafu's argument that although the appellants were Directors and shareholders of DECI (TANZANIA) LIMITED, it was irregular to lift the veil and proceed against them without joining them as respondents. **Two,** the High Court wrongly relied solely on the respondent's deposition in paragraph 19 of the affidavit which is based on information garnered from the investigators asserting that the properties were tainted which was not substantiated by any other evidence. Thus, it was Mr. Magafu's argument that the forfeiture order was wrong in the wake of the

respondent's failure to prove on the balance of probabilities that, the properties in question were tainted and illegally acquired through a pyramid scheme conducted by the appellants. He thus, urged the Court to allow the appeal, reverse the decision of the learned High Court Judge with a direction to the respondent to file an application and implead all interested parties.

In opposition of the appeal, it was Mr. Kadushi's submission that, the application for the forfeiture under the POCA was prompted by the conviction of the appellants on the serious crimes generating tainted property which is in line with the settled law that, forfeiture of tainted property must follow as no one should enjoy the proceeds of crime. To cement his propositions, he referred us to the case of **ATTORNEY GENERAL VS MUGESI ANTHONY AND TWO OTHERS**, Criminal Appeal No. 220 of 2011 (unreported). It was also contended that, the appellants and the interested parties were aware of the intended forfeiture vide the Chamber Application and the accompanying affidavit and the notice of the application for forfeiture which were copied to them. Besides, the notice of the respective application to the public at large was published in Daily Newspaper and Uhuru and Habari Leo newspapers in the publications dated 6/3/2019 and as such, the entire process was in compliance with the provisions of sections 9 and 10 of

the POCA. However, Mr. Kadushi was quick to point out that, the law does not require that interested parties should be impleaded in the application as suggested by Mr. Magafu but rather, upon notification on the intended forfeiture, the law accommodates those interested to lodge whatever claims in respect of the tainted property to be forfeited.

The aforesaid notwithstanding, the Court cautioned to the effect that the present appeal was not brought by DECI (TANZANIA) LIMITED, DECI AFRICA or the Church as Mr. Magafu demonstrated. As such, it was argued that the alleged interested parties, if they so wished ought to have initially invoked the provisions of section 16 of POCA to initially pursue any grievance before the High Court either before or after the forfeiture order was given. It was thus contended, since section 16 was not invoked to seek the available remedy, the complaints by DECI (TANZANIA) LIMITED and DECI Kenya have been newly raised at this appellate stage and he urged us not to entertain them on account of lack of jurisdiction. To bolster his propositions, he relied on the cases of **ELIA BARIKI VS REPUBLIC**, Criminal Appeal No. 321 of 2016 and **FRANK KANANI VS REPUBLIC,** Criminal Appeal No. 425 of 2018 (both unreported).

It was further submitted that, the respondent's case was proved on the balance of probabilities in the wake of her depositions

establishing that that the properties including movable and immovable properties and sums of money in the four Banks' branches were acquired from the pyramid scheme which was conducted by the appellants necessitating the lifting of the incorporation veil in order to facilitate the forfeiture of the proceeds of crime which is in accordance with the dictates of section 23 of the Proceeds of Crime Act.

Then, on his part, Mr. Kimaro reiterated that the respondent had furnished cogent proof in the affidavital evidence to warrant the forfeiture order *vis a vis* the appellants' failure to furnish any contrary evidence besides giving general and evasive denial as reflected in the joint counter affidavit. Finally, on the basis of the what was submitted on behalf of the respondent, the Court was urged to dismiss the appeal in its entirety.

In rejoinder, apart from reiterating his earlier submission that no evidence was paraded by the respondent to warrant forfeiture order Mr. Magafu shifted goal posts contending that since DECI (TANZANIA) LIMITED, DECI KENYA and the Jesus Christ Deliverance Church are not among the appellants, they were not in any way affected by the forfeiture order.

Having carefully considered the grounds of appeal, the record before us and the submissions of the rivalling parties we shall initially determine the grounds 1, 4 and 5, followed by grounds 3, 2 and 6.

The gist of the appellants' complaint in grounds 1, 4 and 5 is that, other interested persons did not appear to state if they had interest in the properties which were to be forfeited and as such, the order of the Court in that regard was not complied with. At this juncture, it is crucial to reproduce the respective Court order which is at pages 83 and 84 of the record of appeal as follows:

> *"In conclusion, we allow the appeal and quash the order of the first appellate court. We direct the DPP to file an application in the High Court in compliance with the provisions of sections 9 (1), 10 and 16 (1) and (6) of the PCA within a period of six months from the date of delivery of this judgment."*

The respective application was promptly filed within six months as directed by the Court and notice of the intended forfeiture was given to the appellants and interested parties vide the chamber application, the supporting affidavit and the notice of application on the intended forfeiture which was apart from being copied to the appellants and all interested parties, it was published in Daily News issue dated 6/3/2019.

This is evident at page 132 of the record of appeal and which was not objected to by the appellants and in essence it was acknowledgement or acceptance of the averments of the opposite party. Thus, being aware of the application for forfeiture, parties were enabled to appear and adduce the evidence on the interest they had in the property as per the dictates of the provisions of section 16 (1) and (6) of the POCA which stipulate as follows:

> *"16.-(1) Where an application for a forfeiture order is made against property, any person who has an interest in the property may, before the forfeiture order is made, apply to the court for an order under subsection (6).*
>
> *(2) Subject to subsections (3) and (7), where a forfeiture order against property has been made, any person who has an interest in the property may apply to the court for an order under subsection (6).*
>
> *(3) N/A*
>
> *(4) N/A*
>
> *(5) N/A*
>
> *(6) Where a person applies to a court for an order under this subsection in respect of his interest in property against which an*

application for a forfeiture order or a forfeiture order has been made and the court is satisfied that-

(a) the applicant was not in any way involved in the commission of the offence concerned; or

(b) if the applicant acquired his interest at the time of after the commission of the offence, the applicant did so-

(i) for sufficient value; and

(ii)without knowing and in circumstances such as not to arouse reasonable suspicion that the property was, at the time of the acquisition, tainted property

the court shall make an order for the transfer of the interest by the Permanent Secretary in the Ministry responsible for Treasury to the applicant or for the payment by the Permanent Secretary in the Ministry responsible for Treasury to the applicant of an amount equal to the value of the interest, as the court thinks fit".

However, it is rather unfortunate, as remarked by the trial court at page 187 of the record of appeal, apart from the appellants, none other appeared before the High Court to be heard that the properties subject to the forfeiture order belonged to them or were tainted and sourced

from the pyramid scheme conducted by the appellants. Therefore, the complaint that, the learned judge erred in law and fact in holding that no other person appeared in court to adduce evidence that the properties and cash money are his or has interest whatsoever is misconceived. At this juncture, we agree with Mr. Kadushi that none of the said institutions qualifies to be the appellant herein and the application which is a subject of the present appeal.

Thus, being strangers they cannot be heard in the present appeal. Besides, the complaints raised by the appellants airing grievances of strangers are new and this Court has no jurisdiction to determine them. Without prejudice to the aforesaid, regarding the complaint that sums of money found in the Dar-es-salaam Community Bank belonged to the Jesus Christ Deliverance Church and not the appellant, as earlier pointed out since the Church is stranger in this appeal, the complaint was brought through the backdoor and we are not obliged to entertain it. Notwithstanding the aforesaid, according to paragraphs 17 and 18 of the respondent's affidavit, it is the 1st appellant who opened and was operating the respective Bank Account in which monies collected through the pyramid scheme was deposited. This was not seriously contested by the appellants who made bare denials without stating as to where the money was sourced.

In this regard, we decline Mr. Magafu's proposition that the interested parties ought to have been joined in the application for forfeiture order. We say so in the light of the plain language couched in section 16 which clearly shows as to why and how an interested party can pursue his/her rights by moving the court in the wake of an application seeking forfeiture order.

We thus, decline to allude to Mr. Magafu's line of argument. We are fortified in that account because **One,** it is elementary that the meaning of a statute must in the first instance, be sought in the language in which the Act is framed, and if it is plain, the sole function of the courts is to enforce it according to its terms because, **two,** when the words of a statute are unambiguous, judicial inquiry is complete because courts must presume that the legislature says in a statute what it means and means what it says. See – **REPUBLIC VS MWESIGE GEOFREY AND ANOTHER,** Criminal Appeal No. 355 of 2014 and **BP TANZANIA VS THE COMMISSIONER GENERAL OF THE TANZANIA REVENUE AUTHORITY,** Civil Appeal No 125 of 2015, (both unreported). Thus, in the wake of clear and plain wording of the provisions of section 16 stating the manner in which interested parties may pursue remedies in applications for forfeiture, the Court need not go out of its way to interpolate that they must be joined as suggested

by Mr. Magafu. We thus find grounds 1, 4 and 5 misconceived and proceed to dismiss them.

We now turn to grounds 2, 3, and 6 which basically attack the propriety of the forfeiture order to the effect that, the forfeiture order was wrong in the absence of cogent evidence that the alleged tainted properties were acquired through the pyramid scheme; some of the properties including landed assets and motor vehicles belonged to DECI (TANZANIA) LIMITED. Before addressing those grounds, it is crucial to point out that this being a first appeal, the Court is mandated to re-consider and re-evaluate the trial court's evidence and if warranted, draw its own conclusions. However, such jurisdiction can be exercised if there is no evidence to support a particular conclusion; or if it is established that the trial Judge failed to appreciate the weight or bearing circumstances admitted or proved, or plainly wrong. See – **PETERS VS SUNDAY POST LIMITED** [1958] E.A 424. We shall accordingly be guided by the stated principle.

As it can be discerned from the record, parties gave their account vide affidavital evidence. In that regard, the respondent's application was accompanied by an affidavit and documentary account showing how the tainted property was acquired from the proceeds of a pyramid scheme. On the other hand, in opposition, the appellants filed a counter

affidavit aimed at countering what was deposed by the respondent. The deposition contained in the respective affidavits were indeed pleadings and it is settled law that, parties are bound by their own pleadings and no party should be allowed to depart from his pleadings with the effect of changing his case from what he/she originally pleaded. See – **JAMES FUNKE GWAGILO VS ATTORNEY GENERAL** [2004] T.L.R 161.

Mr. Magafu attacked the deposition contained in paragraph 19 of the respondent's affidavit not sufficient to establish that the properties were tainted warranting forfeiture because the contents therein are information sourced from the investigators, the respondent contended that he respondent's case was established on the balance of probabilities. Mr. Kimaro on the other hand argued since the affidavit is a substitute of an oral account, the respondent had established cogent evidence to prove its case on the balance of probabilities.

As a general rule of practice and procedure, an affidavit for use in court is a substitute for oral evidence. Such affidavit must be confined to such statements as the deponent is able of his own knowledge to prove but in certain cases may contain statements of information and belief with grounds thereon. See: **DIRECTOR OF PUBLIC PROSECUTIONS VS DODOLI KAPUFI AND ANOTHER,** Criminal Application No. 11 of

2008 (unreported) and **SALIMA VUAI FOUM VS REGISTRAR OF CO-OPERATIVE SOCIETIES AND THREE OTHERS** [1995] T.L.R 75.

In the light of the settled position of the law, the respondent's deposition sourced from information from the investigators as specifically verified in the verification clause did not invalidate such affidavit considering that, where an averment in the affidavit is not based on personal knowledge, the source of information should be clearly disclosed. That said, according to the provisions of section 110 of the Evidence Act [CAP 6 R.E.2019], the burden of proving a fact rests substantially on who asserts the claim and as such, it is incumbent on the Court to examine as to whether the person upon whom the burden lies has discharged such burden and cannot proceed on the basis of the weakness of the other party. The required standard of proof in an application seeking forfeiture order is prescribed under the provisions of section 75 of the POCA which stipulates as follows:

> *"Subject to section 12, any question of fact to be decided by a court on an application under this Act shall be decided on the balance of probabilities."*

The standard of proof on a balance of probabilities simply means that, the court will sustain such evidence which is more credible than the other on a particular fact proved. See – **PAULINA SAMSON**

NDAWAVYA VS THERESIA THOMAS MADAHA, Civil Appeal No. 45 of 2017 **and BAKARI MBUGUNI AND 63 OTHERS VS TANGA CITY COUNCIL AND ANOTHER,** Civil Appeal No. 263 of 2020 (both unreported). We shall be guided by the said yardstick to determine as to whether the respondent's case was proved on the balance of probabilities.

In its affidavit the respondent deposed to the following effect: **One,** that the appellants were shareholders/Directors of DECI (TANZANIA) LIMITED incorporated in Tanzania and was carrying on business of granting loans to petty traders and introduced schemes named: **TUSHIKAMANE REVOLVING FUND** operated on a principle of **VUNA KUTOKANA NA MBEGU ULIYOPANDA.**

Two, the schemes were based on collection and acceptance of deposits from general public on promise in return to get attractive profit in a very short time and with such terms, solicited the general public to join DECI (TANZANIA) LIMITED.

Three, the collected subscription fees and deposits were solicited from members of general public and deposited in four bank accounts including a sum of TZS. 1,457,790,462.49 in Jesus Christ Deliverance Church Account No. 012010000194 at the Dar-es-alaam Community Bank which was later changed to Account No. 00012010000194/1 held

at Uhuru Branch and which was operated by the 1st appellant herein; the sum of TZS. 57,933,304.10 in Account number 021140019558 at Kenya Commercial Bank opened and operated by the 1st appellant herein and TZS. 12,503,068,647.89, Account number 2260160 at the National Micro Finance Bank opened and operated by the 3rd and 4th appellants herein.

Four, it was further deposed that the proceeds collected from the general public through the pyramid scheme were utilised to purchase landed assets on behalf of DECI (TANZANIA) LIMITED as follows:

> (a) House No. UKMMD/1237 located at Mwembe Madafu, Ukonga Dar es Salaam;
>
> (b) Plot No. 651, Block "M" located at Forest area in Mbeya;
>
> (c) House on Plot No. 7 Block "P" with Title Number 033004/23 situated at Rufiji street, Mwanza Municipality;
>
> (d) Plot No. 2/283/2 Block "E" Mabibo Kinondoni Dar es Salaam;
>
> (e) Unsurveyed piece of Land located at Manyinga village, Turiani Mvomero District Morogoro;
>
> (f) Plot No. 467 Block 'H' with certificate of title No. 48170 located at Tegeta area Dar es Salaam;

(g) House on plot MM/19/P located at Manzese along Morogoro Road, Dar es Salam; and

(h) House on Plot Number KND/MXS/MNM/Z with Residence License Number KND 008337, Kinondoni Dar es Salaam.

Five, it was also deposed by the respondent that, the appellants further used the proceeds collected from the general public to purchase on behalf of DECI (TANZANIA) LIMITED the following motor vehicles:

(a) Motor vehicle make Toyota Premio with Registration Number T 132 AWJ;

(b) Motor vehicle make Toyota Land Cruiser with Registration Number T.480 AUP;

(c) Motor vehicle make Toyota Rava 4 with Registration Number T. 274 ATQ;

(d) Motor vehicle make Toyota Mark II with Registration Number T. 676 AYP;

(e) Motor vehicle make Subaru Legacy with Registration Number T 682 AUT;

(f) Motor vehicle make Toyota Ipsum with Registration Number T 850 AXY;

(g) Motor vehicle make Toyota Ipsum with Registration Number T 455 ADM;

(h) Motor Vehicle make Toyota Mark II with Registration Number T. 186 AXY;

(i) Motor vehicle make Mitsubishi Pajero with Registration Number T 852 AAV;

(j) Motor vehicle make Toyota Land cruiser with Registration Number T 789 AUX; and

(s) Motor vehicle make Nissan Terrano with Registration Number T 899 AYU.

In addition, the respondent as well, furnished a documentary account on the purchase of the landed properties and motor vehicles and respective motor vehicle registration cards, bank statements from the four bank accounts and the Memorandum and Articles of Association of DECI (TANZANIA) LIMITED showing that the appellants were Directors and each held shares in the said company. It was further deposed which was acknowledged by the respondent that the appellants were prior charged and convicted for conducting and managing a pyramid scheme and accepting deposits from the general public without a licence and were accordingly sentenced.

On the other hand, in their joint counter affidavit, noted which was in essence admission that the appellants being Directors and shareholders of DECI (TANZANIA) LIMITED were involved in the scheme and that, the house at Ukonga was, among others, purchased from the proceeds of collection from members of the public in a pyramid scheme conducted by them. For the remaining properties, the appellants made

general and evasive denial which as correctly found by the learned High Court Judge was not sufficient to counter the strong respondent's case before the High Court. We are fortified in that account because in their joint affidavit they did not assert anything to the effect that the landed properties belonged to DECI (TANZANIA) LIMITED and were not obtained by the money collected through a pyramid scheme conducted by the appellants.

That apart, the appellants failed to prove that the money used to purchase the properties alleged to be tainted was not collected from the general public and availed no further and better particulars of fact as to the source of the funds used to purchase the tainted properties as opposed to the respondent's averments in the affidavit and documentary account. Therefore, as rightly found by the High Court we find that the respondent's case was proved on the balance of probabilities having as well correctly considered the time frame in which the properties were acquired between 2008 and 2009 whilst the pyramid scheme was commenced way back in 2007.

Next is the issue of lifting the veil of incorporation or piercing the veil. The learned High Court Judge invoked the provisions of section 23 of the POCA which stipulate as follows:

"23.-(1) In assessing the value of benefits derived by a person from the commission of any serious offence, the court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person whether or not the person has-

(a) any legal or other interest in the property; or

(b) any right, power or privilege in connection with the property.

(2)Without limiting the generality of subsection (1), the court may have regard to-

(a) shareholdings in, debentures over or directorships of any company that has an interest, whether direct or indirect in the property;

(b) any trust or any other registered entity that has relationship to or interest in the property; and

(c) any family, domestic or business relationships between persons having an interest in the property, or in any company or trust referred to in paragraph (a) or (b), and any other persons."

Parties locked horns on the issue of piercing the incorporation veil. It is not in dispute that the appellants were Directors of DECI

(TANZANIA) LIMITED on whose behalf tainted properties were acquired in its name having been sourced from proceeds of crime. Without prejudice, we agree with Mr. Magafu that from a juristic point of view, a company is a legal person distinct from its members. However, lifting the incorporation veil entails looking behind the person in control of the company not to take shelter behind legal personality where fraudulent and dishonest use is made of the legal entity. The underlying reasons are to ensure that the legal entity should not be used to defeat public convenience, justify wrong or defend crime. Thus, the law will consider the company as an association of persons whereby the courts can draw aside the veil to see what lies behind. This is the spirit embraced under section 23 (2) of the POCA. In this regard, since the appellants being directors who were convicted and sentenced for serious crimes had direct interest in the tainted properties purchased on behalf of DECI (TANZANIA) LIMITED utilizing the proceeds of crime, the incorporation veil was correctly lifted or pierced in order to proceed against the appellants personally and forfeit to the Government the tainted properties and assets. We say so because, professional criminal engaged in serious organized crime should not benefit from their crimes. See – **ATTORNEY GENERAL VS MUGESI ANTHONY AND TWO OTHERS** (supra). In view of what we have endeavoured to discuss the grounds 2, 3 and 6 are not merited and must fail.

In view of our scrutiny and re-evaluation of the affidavital evidence of either side, we are satisfied that the respondent had proved its case on the balance of probabilities that the tainted properties were acquired from proceeds of a pyramid scheme conducted by the appellants and the forfeiture, was in the circumstances, justified. Thus, all said and done, we do not find any cogent reason to fault the decision of the High Court and the unmerited appeal is hereby dismissed in its entirety with costs.

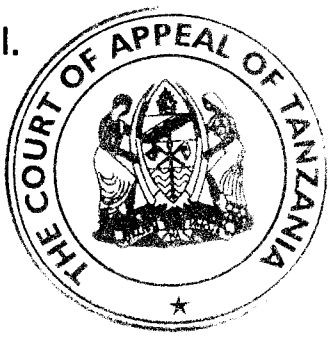
DATED at **DAR ES SALAAM** this 27th day of October, 2021.

S. E. A. MUGASHA
JUSTICE OF APPEAL

M. A. KWARIKO
JUSTICE OF APPEAL

P. M. KENTE
JUSTICE OF APPEAL

This Judgment delivered on 28th day of October, 2021 in the presence of the 1 and 3rd appellants, and in the absence of the 2nd and 4th appellants, and Ms. Subira Mwalumuli learned Senior State Attorney for the respondents/Republic, is hereby certified as a true copy of the original.



G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL