IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MUGASHA, J.A., GALEBA, J.A And MAIGE, J.A.)

CIVIL APPEAL NO. 62 OF 2022

COMMISSIONER GENERAL TANZANIA REVENUE AUTHORITY.....1ST APPELLANT

THE ATTORNEY GENERAL OF THE UNITED REPUBLIC OF TANZANIA .....2ND APPELLANT

VERSUS

MILAMBO LIMITED.....RESPONDENT

(Appeal from the Ruling and Drawn Order of the High Court of Tanzania, (Main Registry) at Dar-es-Salaam)

(Feleshi, J.K)

dated the 30th day of April, 2021

in

Misc. Civil Application No. 57 of 2020

JUDGMENT OF THE COURT

3rd & 14th June, 2022

MUGASHA, J.A.

Before us is an appeal against the decision of the High Court at Dar-es-Salaam dated 30/4/2021 in Misc. Civil Application No. 57 of 2020 in which the appellants were respondents. The appellants herein are challenging the ruling of the High Court in Misc. Civil Application No. 57 of 2020 in which the High Court (Feleshi JK as he then was) granted the respondent extension of time to

apply for leave to file an application to seek prerogative orders of *certiorari* and *mandamus*.

The essential background to this appeal is briefly as follows: Milambo Limited, the respondent herein entered into a share purchase agreement with Vodacom Group Limited over the shares held by the respondent in Vodacom Tanzania Public Limited Company. It is discerned in the record before us that, on 20/11/2017, the respondent sought the indulgence of the 1st appellant to issue a private ruling in order to confirm if the intended share purchase transfer attracted corporate and capital gain taxes under the Income Tax Act, 2004 (the ITA). The respective private ruling was handed down on 11/1/2018 confirming that the corporate income tax was not applicable under the intended share purchase agreement. This prompted the respondent and Vodacom Group Limited to sign a share purchase agreement on 15/2/2018 and proceeded with securing various approvals from the Capital Markets and Securities Authorities and compliance with the regulatory requirements for completion of the share purchase transaction were pursued. After the share purchase agreement was executed, the 1st appellant revoked the private ruling on 14/2/2019, for a reason that its validity had expired. It is on record that, in respect of the

uncompleted share purchase transaction, the respondent sought and was granted a second private ruling which was however revoked on 21/9/2019.

Undaunted, the respondent sought an administrative review against the revocation, but no response was given by the 1st appellant and instead, on 24/9/2019, the 1st appellant notified the respondent on the existing tax liability on sales of shares in Vodacom (T) listed at the Dar-es-salaam Stock Exchange. It was also brought to the attention of the respondent that, since the realization transaction was concluded, a jeopardy assessment was issued and that the collection of due taxes was to be effected through Agency Notice in order to safeguard the interests of the Government. This was effected by the 1st appellant who on 25/9/2019 issued an Agency Notice to the National Bank of Commerce directing the Bank with immediate effect, to collect a sum of TZS. 146,118,017,395.00 from monies held in the Bank Accounts 011105017644 and 01110501763 of Vodacom Group Limited and remit the same to the tax authority that is, the 1st appellant. On 26/9/2019, the Managing Director of the Bank notified the respondent on existence of the Agency Notice. The Bank obliged and on 27/9/2019 notified the respondent to have remitted the sum in question to the 1st appellant in settlement of the capital gains tax and stamp duty owed to the respondent.

Discontented with the revocation of the second ruling and the Agency Notice, the respondent lodged a notice of objection against the assessment of the corporate tax and stamp duty. However, despite several reminders as alleged, the matter was not attended to by the 1st appellant which prompted the respondent to seek intervention of the 2nd appellant vide a letter dated 12/1/2020 which also bore no fruits. It is against the said backdrop, that the respondent opted to seek redress by invoking the remedy of judicial review. As she was already out of time, she applied for an extension of time to apply for leave to file prerogative orders of certiorari and mandamus. The aforesaid background is contained in the paragraphs 12 to 15, 21, 24 and 31 of respondent's affidavit in support of the application before the High Court. In addition, what was verified by the respondent in the said affidavit in paragraph 35 (a), (b), (f) and (g) is to the effect that:

> *(a) This Honourable Court is the only organ in the United Republic that has inherent powers to provide for prerogative orders against decisions of administrative bodies and quasi-judicial bodies.*
>
> *(b) The Honourable Court has inherent powers to provide redresses against the First Respondent's decisions that are made contrary to and/or in abrogation*

of the law, and hence the power to grant the application for extension of time;

(f) That the acts of the First Respondent constitute substantive unfairness and procedural impropriety which this Honourable Court has jurisdiction to provide redresses; and

(g) That the act of the First Respondent to issue the Agency Notice prior to issuance of the tax assessments and collection of tax of TZS 146, 118,017.395 constitutes an act of illegality."

The application was confronted with the preliminary objection raised by the appellants challenging its competence on ground that, the High Court lacked jurisdiction to invoke review jurisdiction to entertain and determine a matter related to a tax dispute. Having heard together both the preliminary objection and the substantive application, the preliminary objection was dismissed and the respondent was granted enlargement of time to file an application for leave to apply the prerogative orders. The High Court reasoned that, before it was not a tax dispute or appeal proceedings but rather a matter for judicial review because: **one,** the provisions of article of 107 A (2) and 108 of the Constitution of the United Republic of Tanzania [CAP 2 R.E.2002], read together with section 17 (2) of the Law Reform (Fatal Accidents Miscellaneous

Provisions) Act [CAP 310 R.E 2019] adequately confer jurisdiction to the High Court to determine the merits of an application seeking judicial review after hearing the parties where the alternative remedy is not accessible or speedy, effective and or adequate or if there are other compelling situations warranting just and commensurate orders; and **two,** the provisions of sections 52 (1) and (11) of the ITA and section 7 of the Tax Revenue Appeals Act should not be construed to bar the High Court from acting on matters which do not amount to trials and appeals or where the High Court is justified to exercise its wide range jurisdiction under the Constitution to curb impunity and malpractice or illegalities committed by administrative bodies and tribunals.

Aggrieved, the appellants have preferred an appeal to the Court predicated on three grounds namely;

1. *That, the trial court erred in law by holding that it has jurisdiction to invoke judicial review powers of matters including matters arising from Revenue Laws administered by the Tanzania Revenue Authority.*
2. *That, the trial court erred in law and fact by failing to declare that Misc. Civil Application No. 57 of 2020 by the respondent for extension of time within which to challenge the first appellant's revocation of private ruling and issuance of agency notice is an*

abuse of court process since the respondent had filed tax appeals No. 48 and 50 of 2021 with the Tax Revenue Appeal Board challenging the decision.

3. *That, the trial court erred in law and fact for failure to properly apply the governing principles in an application for extension of time requiring internal accounting for sufficient cause for the delayed period.*

At the hearing, the appellants were represented by Messrs. Deodatus Nyoni, learned Principal State Attorney, Erigh Rumisha and Ayoub Sanga, both learned State Attorneys, whereas the respondent had the services of Ms. Hadija Kinyaka and Mr. Yohanes Komba, learned counsel. Before the hearing, we were constrained to initially resolve a preliminary objection filed by the respondent's counsel to wit:

> "The *appeal is incompetent for being preferred from interlocutory orders of the High Court namely, an order overruling the preliminary objection on ground of lack of jurisdiction and an order granting extension of time contrary to section 5 (2) (d) of the Appellate Jurisdiction Act, Cap 141 R.E 2019 and contrary to the decision of the Honourable Court in Yara Tanzania Limited versus D.B Shapriya & Co limited Civil Appeal No. 244 of 2018 CAT Dar-es-salaam" (unreported).*

Upon taking the floor, Ms. Kinyaka submitted that the appeal is incompetent because having emanated from an interlocutory order, it is barred by the provisions of section 5 (2) (d) of the Appellate Jurisdiction Act [CAP 141 R.E. 2019]. In this regard, she argued that following the dismissal of the preliminary objection and the grant of enlargement of time to apply to file an application for leave to apply for the prerogative orders, the decision in the respective Ruling is interlocutory and not appealable. To support her proposition, Ms. Kinyaka cited to us a number of cases including, **TUNU MWAPACHU AND THREE OTHERS VS THE NATIONAL DEVELOPMENT CORPORATION AND ANOTHER,** Civil Appeal No. 155 of 2018 and **PARDEEP SINGH HANS VS MEREY ALLY SALEH AND THREE OTHERS,** Civil Application No. 422/01 of 2018 (both unreported). Relying on the cited cases, she urged the Court to apply the principle stated which categorically bars appeals against interlocutory order and implored us to strike out the incompetent appeal with costs.

Upon being probed by the Court, apart from conceding that, nothing was pending before the High Court after the disposal of the application seeking extension of time but she insisted, since the respondent was allowed to file an

application for leave to apply for prerogative orders, that sufficed what can be categorized as a matter pending before the High Court.

The preliminary objection was opposed by the appellants' counsel who urged the Court to dismiss it on ground of being misconceived. On this, it was Mr. Nyoni's submission that, after the determination of the respondent's application for enlargement of time to apply for leave to seek prerogative orders, all was done and nothing remained pending before the High Court and as such, the impugned Ruling is not an interlocutory order on the basis of what has been defined by the Court in a number of its decisions. Thus, he cited to us the cases of **TANZANIA POSTS COPRORATION VS JEREMIAH MWANDI**, Civil Appeal No. 474 of 2020 and **THE DIRECTOR OF PUBLIC PROSECUTIONS VS FARIDI HADI AHMEND AND 36 OTHERS,** Criminal Appeal No. 205 of 2021 (both unreported). He as well added that, the respondent's subsequent application to seek leave to apply for prerogative orders filed pursuant to the granted extension is no longer before the High Court having been struck out which confirms that, there is nothing pending before the High Court.

Having considered the submissions of the learned counsel and the record before us, the issue for our determination is whether the appeal before us is

competent. As earlier stated what is at stake is whether the appeal before us emanates from an interlocutory order.

What constitutes an interlocutory order is the decision of the Court which does not deal with the finality of the case but settles subordinate issues relating to the main subject matter which may be necessary to decide during the pendency of the case due to time sensitivity of those issues. See: *https://lawgic.info. Interlocutory order.*

In our jurisdiction, the Court has embraced the principle of the *"nature of order test"* to detect as to whether the order is interlocutory or not. See: **MURTAZA ALLY MANGUNGU VS RETURNING OFFICER FOR KILWA AND TWO OTHERS**, Civil Appeal No. 80 of 2016, **JUNACO** (T) **LIMITED AND JUSTIN LAMBERT VS HAREL MALLAC TANZANIA LIMITED,** Civil Application No. 473/16 of 2016, **THE DIRECTOR OF PUBLIC PROSECUTIONS,** Criminal Appeal No. 205 of 2021 and **PETER NOEL KINGAMKONO VS TROPICAL PESTICIDES,** Civil Application No. 2 of 2009 (all unreported). In the latter case, the Court stated:

> *"...it is therefore apparent that in order to know whether the order is interlocutory or not, one has to apply* ***"the nature of order test". That is, to ask oneself***

whether the judgment or order complained of finally disposes of the rights of the parties. If the answer is in the affirmative, then it must be treated as a final order. However, if it does not, it is then an interlocutory order."

[Emphasis supplied]

Yet in the case **TANZANIA POSTS CORPORATION** (supra) which was cited to us by Mr. Nyoni, the Court had to determine if an application for revision before it was sought against an interlocutory order having emphasized on the what must be considered in testing 'the nature of order test. Thus, the Court stated:

"That test requires answers to more or less two questions in the context of the matter before us; ***one,*** *what were the remedies that were sought or the rights that the respondent was seeking to enforce or obtain from the High Court? And* ***two,*** *were all such rights or remedies conclusively determined by the High Court or there are certain matters in relation to the same rights that remained pending for determination at the High Court? .... if the answer to question two is that everything at the High Court was finally and conclusively wound up, the decree in revision would be a final decree and the bar at section 5 (2) (d) of the AJA will not apply.*

Conversely, if the decree in revision by the High Court left an issue or issues at the same court (the High Court) undetermined, then the decree in revision is an interlocutory order and this Court will not have jurisdiction to determine the present appeal in view of section 5 (2) (d) of the AJA."

In the premises, the "*nature of order test*" is squarely applicable in this matter and as such, we are satisfied that, following the grant of the application for enlargement of time to apply leave to seek prerogative orders, the remedy sought by the respondent was finally and conclusively determined. In this regard, the cases cited to us by the respondent's counsel are not relevant in the present matter considering that, in all those cases, the appeals were dismissed because the orders did not finally and conclusively determine the matters. Therefore, in the matter under scrutiny, since the respondent was granted reliefs sought on enlargement of time to apply leave to seek prerogative writs, the matter was wound up and as such, the respective ruling is not an interlocutory order at any stretch of imagination. Thus, we agree with Mr. Nyoni that the preliminary objection is misconceived, unmerited and it is accordingly dismissed.

We now turn to the substantive appeal. In the course of hearing, the appellants' counsel abandoned the third ground of appeal and we marked it so. Then, the learned counsel for either side adopted the written submissions containing arguments for and against the appeal in respect of the first and second grounds. A critical issue evolving from the appeal and the respective submissions of either side is whether or not the High Court had jurisdiction to entertain the application which is a subject of this appeal.

In respect of ground one, it was Mr. Nyoni's submission that the High Court lacked jurisdiction to entertain an application in pursuit of judicial review on matters relating to tax disputes that being the exclusive domain of the Tax Revenue Appeals Board (the Board) whereby appeals therefrom lie to the Tax Revenue Appeals Tribunal (the Tribunal) and finally, the Court of Appeal of Tanzania (the Court). He pointed out that, in terms of section 7 of the Tax Revenue Appeals Act [CAP 408 R.E.2002], it is the Board which is vested with sole and exclusive jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the 1st appellant. Thus, it was argued that the High Court wrongly entertained and determined the application relating to a tax dispute which is a subject of the present appeal. To bolster his arguments, the learned Principal State Attorney cited to us the cases

of **THE COMMISSIONER GENERAL (TRA) VS JSC ATOMREDMETZOLO (ARMZ),** Consolidated Civil Appeals No. 78 and 79 of 2018; **TANZANIA REVENUE AUTHORITY VS TANGO TRANSPORT,** Civil Appeal No. 84 of 2009 (both unreported).

It was further submitted that, in the event the respondent was aggrieved with the deeds of the 1st appellant in not being responsive on her complaint on the sum of money collected as due tax liability and to attend the respondent's objection, the respondent's remedy was to appeal to the Board in terms of section 52 (6) of Tax Administration Act [CAP 438 R.E 2019] (the TAA) as amended by the Finance Act in 2020. It was thus, argued that, in the wake of exclusivity of jurisdiction and the special forum to determine tax disputes as created by statute, the High Court wrongly assumed jurisdiction to entertain a tax dispute in a judicial review.

In relation to the second ground of complaint, the appellants fault the learned High Court Judge for not taking cognizance that, since the respondent was seeking the same remedies by way of judicial review and before the Board at the same time, this was forum shopping which amounted to an abuse of court process. Ultimately, Mr. Nyoni invited the Court to nullify the proceedings and the respective ruling of the High Court.

On the other hand, the respondent through Ms. Kinyaka opposed the appeal on ground that, what was before the Court was not a tax dispute but an application seeking enlargement of time to apply leave to be granted prerogative orders. She submitted that, such remedy was invoked by the respondent because of the illegalities committed by the first appellant who arbitrarily collected the respondent's money vide a notice of Agency directed to the Bank without any notice of assessment and abdicated from determining the respondent's objection on the alleged tax liability which made it impossible for the appellant to appeal to the Board.

Furthermore, it was contended that, since neither the Board nor Tax Appeals Tribunal is mandated to grant extension of time within which to apply for leave to seek prerogative orders, the respondent was justified to apply the same before the High Court which enjoys inherent powers to issue prerogative orders. As such, it was thus argued that, in the wake of the oppressive deeds of the 1st appellant, judicial review was the only effective, speedy and adequate means to challenge her illegal conduct. In this regard, it was Ms. Kinyaka's view that the High Court was justified to entertain and grant the respondent's application so that she could pursue the prerogative writs. She distinguished

the cases cited by Mr. Nyoni arguing the same to be relevant to tax disputes while the matter at hand was dealt with by way of judicial review.

In her response to the 2nd ground of appeal, Ms. Kinyaka urged us to find the same not merited. On this, she argued that, the respondent's appeals before the Board were in relation to respondent's grievance in a tax dispute whereas before the High Court the application was in pursuit of the prerogative orders against illegalities committed by the 1st appellant. Besides, she added that the reliefs sought in the two forums were not similar which is obviously reflective of the intended outcomes. Thus, she concluded that since the two remedies before the said forums that is the Board and the High Court, were not pursued simultaneously, the complaint on forum shopping and the respondent being an abuse of court process against the respondent is unwarranted.

Having carefully considered the submissions of learned counsel, grounds of appeal and the record before us, initially, it is not disputed that, the High Court of Tanzania is clothed with jurisdiction of judicial review. This is in accordance with The Law Reform (Fatal Accidents and Miscellaneous Provisions) Act [CAP 310 R.E 2002]. However, the parties locked horns on the issue as to whether, the High Court was clothed with jurisdiction to entertain and determine the respondent's grievances by way of judicial review. While the

appellants' counsel assert that the respondent's grievance was a tax dispute the respondent contends otherwise having asserted that it is a matter for judicial review.

At the outset, we borrow a leaf from the Halsbury's Laws of England, Vol 10 whereby jurisdiction is defined in paragraph 314 as follows:

> "the *authority which a Court has to decide matters that are litigated before it or to take cognizance of matters prescribed in a formal way for its decisions. The limits of this authority are imposed by statute...under which the court is constituted, and may be extended or restrained by similar means. A limitation may be either as to the kind and nature of the claim, or as to the area which jurisdiction extended, or it may partake of both these characteristics."*

The question of jurisdiction was emphasized in the case of **FANUEL MANTIRI NG'UNDA VS HERMAN MANTIRI NG'UNDA AND 20 OTHERS,** Civil Appeal No. 8 of 1995 (unreported) as the Court stated:

> *" The question of jurisdiction for any court is basic, it goes to the very root of the authority of the court to adjudicate upon cases of different nature...The question of jurisdiction is so fundamental that courts must as a*

*matter of practice on the face of it be certain and assured of their jurisdictional position and the commencement of the trial****....it is risky and unsafe for the court to proceed with the trial of a case on the assumption that the court has jurisdiction to adjudicate upon the case."***

[Emphasis supplied]

From the above quoted excerpts, principally, in adjudication, the question of jurisdiction is a threshold question which must be addressed at the earliest opportunity in order to save time and costs and dire consequences of the proceedings being nullified at the later stage in case the objection is raised and sustained. Therefore, jurisdiction is a creature of statute and not the dislikes or likes of the parties or mere compelling situations as intimated by the learned High Court Judge despite a strong presumption that civil courts have jurisdiction to decide all questions of civil nature, the exclusion of jurisdiction of civil courts is not to be readily interfered and such exclusion must either be explicitly expressed or clearly implied. See: Justice Singh G.P. in a treatise titled "Principles of Statutory Interpretation", 8th edition, 2001 at page 581.

In view of the aforesaid, the tax disputes resolving mechanism is provided for under the TAA and the Tax Revenue Appeals Act vesting exclusive

jurisdiction to what can safely be referred to as tax courts namely, the Board, Tribunal and the Court of Appeal. See: **sections 3, 7, 16(1) and (4) and 25 of the Tax Revenue Appeals Act.** Therefore, in terms of the provisions of section 51 of TAA, a tax payer aggrieved by a tax decision may object to the Commissioner General. The respondent obliged having lodged her objection faulting the assessment on tax liability. However, at this juncture, it is crucial to point out that, the assertion by the respondent's counsel that her client was not availed with tax assessment is not true. We say so on account of what is reflected at page 78 of the record of appeal which shows that the 1st appellant availed the respective notice of assessment to the respondent on 24/9/2019 and that is why, she managed to lodge an objection to fault the assessment.

It is the respondent's complaint that the objection was not attended to by the 1st appellant. According to the provisions of section 52 (3) of the TAA, where the first appellant does not determine the objection after the expiry of six months, the sum assessed is deemed to be a final determination on tax payable which as well constitutes an objection decision which is appealable to the Board in terms of section 53 (1) of the TAA which stipulates as follows:

> *"A person who is aggrieved by an objection decision or other decisions or omission of the Commissioner General*

under this Part, may appeal to the Board in accordance with the provisions of the Tax Revenue Appeals Act."

It is crystal clear from the above statutory provisions, an alternative procedure for determination of tax disputes in relation to omission or any act of the Commissioner General in the discharge of his powers and functions is prescribed under the law. It is glaring on the record that, the respondent all along claimed that, the first appellant illegally collected her monies as settlement of outstanding liability of corporate tax, capital gain tax and stamp duty. Apparently, the taxes fall under the provisions of sections 88 (1), (2) and 89 of the Income Tax Act and section 5 (1) (a) and (b) of the Stamp Duty Act [CAP 189 R.E.2019] These are the revenue laws administered by the 1st appellant which is prescribed as a central body for the assessment and collection of specified revenue mandated to administer and enforce the laws relating to such revenue and the related matters. Therefore, in the wake of the prescribed exclusivity of the forums to deal with tax disputes, at his juncture, we deem it pertinent to restate what we said in the case of **ATTORNEY GENERAL VS LOHAY AKONAAY AND ANOTHER** [1995] TLR 80 that:

"...courts would not normally entertain a matter for which a special forum has been established unless the

aggrieved party can satisfy the court that no appropriate remedy is available in the special forum."

In the case at hand, having invoked the remedy of judicial review, prior, the respondent did not furnish proof that no appropriate remedy could be obtained from the Board or Tribunal from whose decisions a final appeal lies to the Court in respect of claims arising from tax disputes. As the respondent complaint hinged on the assessment and collection of taxes arising from the revenue laws administered by the 1st appellant, the grievances are justiciable in the Board together with the alleged inaction by the 1st appellant to determine the respondent's objection against tax assessment. As such, the disputes were outside the competence of the High Court be it in a suit or by judicial review.

In the event the jurisdiction of the High Court is excluded expressly, it seems, what was pleaded before the High Court by the respondent seems to be the respondent's counsel argument that what was before the High Court was a matter for judicial review and not a tax dispute. Apparently, the learned Judge of the High Court fell in this trap having reasoned that, before it was not a tax dispute but rather, a matter for judicial review and that it was compelling to issue just and commensurate orders. With respect, we do not agree with both the respondent's counsel and the learned trial Judge and we shall give our

reasons. The Court was confronted with almost an identical scenario in the case of **TANZANIA REVENUE AUTHORITY VS NEW MUSOMA TEXTILES LIMITED**, Civil Appeal No. 93 of 2009 (unreported) and had the occasion to observe the following:

> *"The second answer provided by Mr. Magongo to the issue, is that there was no reference to any tax dispute in the body of the plaint or prayers. The answer to that is provided by this Court in **KOTRA's** case, where the decision of the Indian case of **RAM SINGH vs. GRAN PANCHAYAT** (1986) 4 SCC 364 AIR, 1986) SC. 2197 was approved. **In the latter case it was held that where the civil Court's jurisdiction is excluded, the plaintiff cannot be allowed to circumvent the bar by the clever drafting of the plaint."***

[Emphasis supplied]

From what can be gathered in the record before us, before the High the respondent's grievances and major cause of action primarily rested against the acts or omissions of the first appellant in the discharge of its functions under the revenue laws namely, the ITA and the Stamp Duty Act. However, the application was cleverly drafted in order to include the claim for unfairness, procedural impropriety and illegality on the collection of tax of TZS.

146,118,017,395.00 as reflected in paragraphs 35 (a), (b), (f) and (g) of the respondent's affidavit at the High Court. This was rather a deliberate and risky attempt to bring the matter within the jurisdiction of the High Court in judicial review which cannot be condoned. Thus, it was incumbent on the learned High Court Judge to have seen the tricky circumvention and reject the application at the threshold. See: **TANZANIA REVENUE AUTHORITY VS KOTRA COMPANY LIMITED,** Civil Appeal No. 12 of 2009 and **TANZANIA REVENUE AUTHORITY VS NEW MUSOMA TEXTILES LIMITED** (supra). Moreover, since the jurisdiction of courts is a creature of legislation, even if the court is confronted with a compelling situation demanding speedy resolution, it must initially satisfy itself if it is vested with the jurisdiction to entertain the matter placed before it.

In view of what we have endeavoured to discuss, the High Court embarked on a nullity having wrongly assumed jurisdiction which was expressly ousted by the prescribed specific forums established under the Tax Administration Act and the Tax Revenue Appeals Act. It erroneously crowned itself with jurisdiction that it did not possess in entertaining and determining the respondent's application for extension of time to apply for leave to pursue prerogative orders. In the circumstances, the High Court proceedings and the

resulting ruling cannot be spared. We nullify the entire proceedings and judgment in Miscellaneous Civil Application No. 57 of 2020 and the incidental orders. Thus, the first ground of appeal is merited since it disposes the entire appeal, we shall not embark on the determination of the remaining second ground of appeal. Thus, the appeal is allowed with costs.

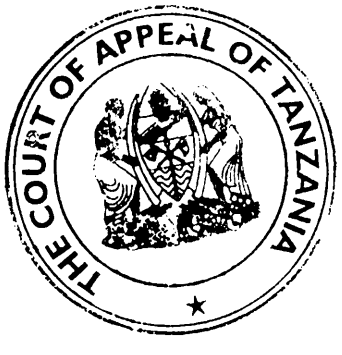
DATED at **DAR ES SALAAM** this 13th day of June, 2022.

S. E. MUGASHA
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

I. J. MAIGE
JUSTICE OF APPEAL

The Judgment delivered this 14th day of June, 2022 in the presence of Mr. Ayoub Sanga, learned State Attorney for the 1st and 2nd Appellants and Mr. Yohanes Konda, learned counsel for the respondent, is hereby certified as a true copy of original.



A. L. KALEGEYA
DEPUTY REGISTRAR
COURT OF APPEAL