IN THE COURT OF APPEAL OF TANZANIA
AT DAR ES SALAAM

(CORAM: LILA, J.A., MWANDAMBO, J.A., And KAIRO, J.A.)

CIVIL APPEAL NO. 443 OF 2020

KILOMBERO SUGAR COMPANY LIMITED.....APPELLANT

VERSUS

COMMISIONER GENERAL
TANZANIA REVENUE AUTHORITY.....RESPONDENT
(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal at Dar es Salaam)

(Haji, Vice Chairperson, Dr. Mzenzi and Mandari, Tribunal Members.)

dated the 16th day of September, 2020
in
Tax Appeal No. 34 of 2019

JUDGMENT OF THE COURT

25th April, 2022 & 19th October, 2022

LILA, JA:

In this appeal, the appellant KILOMBERO SUGAR COMPANY LIMITED is faulting the decision by the Tax Revenue Appeals Tribunal (TRAT) which sustained the Tax Revenue Appeals Board's (TRAB) decision that she is liable to pay the respondent TZS. 32,006,125.00 being withholding tax which she ought to have withheld when she effected payment of TZS. 188,000,00.00 to Zambia Sugar Company Limited (ZSCL) for directorate service office for Central Region which is in Zambia. The payment was in

the form of management fees. The instant appeal to the Court is a clear manifestation of dissatisfaction with the finding.

It was common ground that upon the appellant filing final returns for the year of income 2011 and 2012, the respondent conducted an audit, the report of which revealed that the appellant paid TZS. 188,000,00.00 to ZSCL for the directorate service office for Central Region which is in Zambia but did not remit the relevant withholding tax. Exercising its mandate under section 84 of the Income Tax Act, 2004 (the ITA), the respondent issued a Withholding Tax Certificate notifying the appellant her liability No. WHT/IRMD/9/2/2013 in the sum of TZS. 32,006,125.00. It was not smoothly received by the appellant who challenged it by preferring an objection which, however, after deliberation, the respondent was not inclined to amend it. Consistent with section 13 of the Tax Revenue Appeals Act, the respondent latter issued a notice of confirmation of assessment requiring the appellant to pay the aforementioned amount latest by 10/2/2017 without fail otherwise an interest shall start to accrue on the said amount. That move triggered institution of an appeal by the appellant to the TRAB in which he advanced four points of grievances as hereunder:-

"1. That the management services for the year of income 2012 were performed outside Tanzania (not sourced in the United Republic) are by the provisions of Section 69(i) of the Income Tax Act, 2004 are not subject of withholding tax.

2. That by the provisions of the Double Taxation agreement (DTA) between Tanzania and Zambia, the withholding tax obligation does not arise.

3. That since one of the grounds of appeal in Appeal No. 19 of 2016 which was lodged in the Tax Revenue Appeals Tribunal on 4th august 2016 is touching the very tax which is subject of this appeal; the Respondent's decision dated January 10, 2017 is res subjudice.

4. That the Respondent's decision dated January 10. 2017 is not supported by the reasons of the decision as required by law and is therefore in breach of the principles of natural justice."

Addressing itself to the issue *"whether management fees paid to ZSCL is part of industrial and commercial profits"* in terms of the Double Taxation Agreement between Zambia and Tanzania (the DTA), hence not subject to withholding tax, the TRAB, after quoting in extenso Article IV(1) of the DTA, observed at page 295 that:-

"Also looking at the clear words of the provisions of Article IV(1) of the DTA, the words "industrial and commercial profits" signifies that, the DTA is applicable only to the extent where the taxable income relates to industrial and commercial profits. In the present case, there is no dispute that, Zambia Sugar Company Limited is incorporated in Zambia, hence is an enterprise and resident of Zambia with no permanent establishment in Tanzania. For that matter, the transactions related to industrial and commercial profits of ZSCL are not taxable in Tanzania in terms of the provisions of Article IV(1) of the DTA."

The TRAB went further to state at page 296 that:-

"We think that management fee paid to ZSCL is not part of the industrial and commercial profits. In broader perspective, one may agree that services do form part of taxable income of any enterprise in any part of the world where such services are not classified as "unearned incomes" and/or subjected to differential taxes (e.g. specific rates of final withholding taxes). However, in the present case, reading the clear words used in the provisions of Article IV(1) of the DTA, ***we find the term "service" not specifically referred to in Article***

IV(1) of the DTA. Therefore, in our view, the inclusion of management fees under industrial and commercial profits is not justified. *Also the term profit as defined by the Oxford Dictionary means "a financial gain, especially the deference between the amount earned and the amount spent in buying, operating or producing something". This means that, all expenses are deducted for total revenues collected and management fee is simply payment which would be income to a company receiving it (See* ***Tullow Tanzania BV vs. Commissioner General, TRA,*** *Appeal No. 64 of 2013 (unreported). Therefore, the appellant's arguments that management services form part of industrial and commercial profit of ZSCL, a non-resident enterprise cannot stand.* ***The appellant was thus obliged to withhold tax on management fee paid to Zambia Sugar Company Limited.*** *We find the appellant's appeal on the second ground to have no merits and we resolve the first issue affirmatively."*

Having lost, the foregoing finding was not free from criticism by the appellant who preferred an appeal to the TRAT in Appeal No. 19 of 2016 before which four points of grievances were a subject for determination. These are:-

"(i) By holding that Management fee is not part of industrial and commercial profit; the Honourable Board misinterpreted the meaning of the term industrial and commercial profits as applied in the Double Taxation Agreement between Tanzania and Zambia;

(ii) Having stated that services do form part of taxable income of any enterprise in any part of the world and therefore subject to taxes such as withholding tax, the Honourable Board erred in law in differentiating between "services" and Management fee" by holding that it is not justified to include Management fee under industrial and commercial profits simply because Article IV(1) of the DTA does not mention the term "service".

(iii) The Honourable Board erred in law by relying on the narrow interpretation of the term profit which is provided under the Oxford Dictionary and in the decision of ***Tullow Tanzania BV vs. commissioner General, TRA in Appeal No. 64 of 2013*** *which was decided per in curium by the Board."*

(4) The Honourable Board erred in law for not considering the Appellant's fundamental and or

substantial arguments against the decision of the respondent."

Like the TRAB, the TRAT was convinced that, given the clear wording of Article IV(1) of the DTA, management fees is not part of the industrial and commercial profits envisaged hence, the DTA is inapplicable. It further, based on a persuasive decision in the case of **Cape Brady Syndicate vs. Inland Revenue Commissioner** (1921) 1 KB 64 that there is no presumption as to tax, "you read nothing in, you imply nothing" and the case of **Tullow Tanzania BV Vs. Commissioner General, TRA** (supra) where it was held that Article 7 of the DTA between Tanzania and South Africa which had identical provisions with those in Article IV(1) of the DTA is inapplicable in withholding tax on service fees, the TRAT held that the provisions of Article IV(1) of the DTA between Tanzania and Zambia are equally inapplicable in the situation obtaining in the present case essentially because the Article does not provide for the term "service".

Once again, the appellant was dissatisfied and sought to fault the TRAT decision on a three point memorandum of appeal. However, at the hearing Mr. Ayoub Mtafya, learned counsel who represented the appellant, with leave of the Court, abandoned ground one (1) of appeal. Two points of grievance remained which are:-

"1. That the Honourable Tax Tribunal erred in law by holding that "management fee cannot be included under commercial and industrial profits because the Article (Article IV of the DTA) does not provide for the term service and that the terms and conditions so provided in the said Article are centered on industrial and commercial profits and not payments derived by the entity situated in a foreign country.

2. That the Honourable Tax Tribunal erred in law and or misinterpreted the provisions of Article IV of the Double Taxation Agreement between Tanzania and Zambia by holding that the Board was correct in holding that inclusion of management fee under Industrial and Commercial Profit is not justified as the Article is centered on profits while the instant appeal has nothing to do with profits."

Mr. Ayoub Mtafya, appeared for the appellant, as hinted above whereas Mr. Juma Kisongo and Ms. Consolata Andrew, both learned Principal State Attorneys and Ms. Salome Chambani, learned State Attorney, joined forces to represent the respondent in resisting the appeal.

Amplifying on the grounds of appeal after adopting the written submissions he had lodged earlier as part of his submission, Mr. Mtafya

argued in respect of both grounds of appeal which he took the view, and rightly so, in our view, that they are closely related. They are actually intertwined or interwoven. Upon our perusal of the record of appeal against both written and oral arguments before us, we noted that, to a large extent, his arguments bore semblance with the arguments and submissions he lodged before the TRAB and TRAT. A common argument is that both the TRAB and TRAT took a narrow view of the word profit contrary to its definition in paragraph 4 particularly Articles 1, 72, 73 and 74 of the **OECD Commentary 2014** in the **Materials on International TP and EU Tax Law** by Kees Van Raad which, he stressed, is very important in the interpretation of the convention. It is his further argument that article IV of the DTA covers all types of income as opposed to the view taken by both the TRAB and TRAT that it does not cover or provide the term service. In his attempt to distinguish income referred in Article IV(1) and IV(7) of the DTA, he contended that the latter was not considered by TRAB and TRAT for had they done so, they would have realized that the former covers all types of income while the latter restricts the application of Article IV(1) to a situation where a certain income is taken care of by other articles of the DTA.

Mr. Mtafya also referred us to section 8(2) of the ITA which defines what is income from business in which service fees is amongst them and section 128(4) of the ITA which imposes a duty to the United Republic, in cases where it is a party to the international agreement with a provision so requiring, to either exempt a certain income or payment from being subjected to payment of tax or reduce the amount of tax payable. Principally, he was insistent that the management fees paid by the appellant to the ZSCL was a profit from business hence, in terms of Article IV(1) of the DTA it was not subject to withholding tax as it was a payment for management services by a company with a permanent establishment in Zambia.

The foregoing view was strongly opposed by Ms. Andrew and Mr. Kisongo who pressed for the Court to find that Article IV(1) of the DTA does not provide for the term "service" hence the management fee paid is chargeable to withholding tax. They referred us to our earlier decision in **Kilombero Sugar Company Limited and the Commissioner General, TRA**, Civil Appeal No. 218 of 2019 (unreported) where, at page 23 of the typed judgment, this Court interpreted Article 7 of the DTA between Tanzania and South Africa which is similar to article IV of the DTA

between Tanzania and Zambia. In that case, the Court observed that it does not talk about service fees but business profits and concluded that service fees by a South African entity for provision of professional services to a Tanzanian entity do not form part of the business profits thus subject to withholding tax under section 83(1)(b) of the ITA. They were not agreeable with Mr. Mtafya that section 8(2)(a) of the ITA defines management fee as part of or inclusive in industrial and Commercial profits. Neither does it provide that service fee is profit but is included in the person's gains or profit from conducting business, they argued. The position was, according to them, properly propounded by TRAB in its decision in **Tullow Tanzania BV vs Commissioner General, TRA** (supra) which was later sustained by the TRAT. They impressed upon the Court to follow the same route and dismiss the appeal with costs.

We have examined the proceedings in the record of appeal and also given due weight to the rival arguments by learned brains of both sides before the TRAB, TRAT and the judgments thereof and realized that, in both grounds of appeal, the bottom line of their contention is whether Article IV(1) of the DTA includes management (service) fees. With that in mind and in order to have a smooth landing, we find it compelling that we

should, at first, resolve whether Article IV(1) of the DTA bears any semblance with Article 7 of the DTA between Tanzania and South Africa which was a subject of discussion by the Court in the case of **Kilombero Sugar Company Limited vs Commissioner General, TRA** (supra). We shall refer the former agreement as the DTA and the later as DTA-TSA so as to avoid any confusion that may arise. And, for ease of reference, we quote them as hereunder:-

Beginning with the DTA, Article IV(1) states:-

> *"**Article IV***
>
> 1. *The **industrial and commercial profits of an enterprise** of a Contracting State shall be taxable only in that state unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If **the enterprise** carries on business as aforesaid, tax may be imposed in that other Contracting State but only on so much of them as is attributable to the permanent establishment."*

And, Article 7 of the DTA-TSA provides:-

> *"**Article 7***

Business Profits

[Compare; OECD Model / UN model]

1. *The profits of an enterprise of a Contracting State shall be taxable only in that state unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid,* ***the profits of the enterprise*** *may be taxed in the other State but only so much of them as is attributable to that permanent establishment." [Emphasis added]*

Common in both provisions is the fact that it is the profit from business which is subject to tax. The distinction appears to be that, while Article IV(1) of the DTA refers to and is restrictive to profit from **industrial and commercial enterprises**, Article 7(1) of the DTA-TSA refers to profit from **enterprises** irrespective of the kind or nature. So, the latter catches a wider spectrum of sources of income. Stated in other words, profits from other sources apart from industrial and commercial enterprises are sub-sets of it and are chargeable to tax. However, substantially in both Articles, it is the profit from the enterprise which is chargeable to tax. In that context, we have noted no substantial and material differences between

the two Articles save for the scope and the fact that the Contracting States to which they are applicable are different. Whether or not we shall accept the invitation by the learned Principal State Attorneys to follow the Court's interpretation of article 7(1) of the DTA-TSA in **Kilombero Sugar Company Limited and the Commissioner General, TRA** in interpreting Article IV(1) of the DTA is an issue the discussion of which we reserve to a later stage in this judgment.

Reverting back to the substantive issue raised earlier on, it is crystal clear that the parties are in agreement that the money paid (TZS. 188,000,000.00) by the appellant to ZSCL is income from business of an enterprise, Kilombero Sugar Company Limited which has a permanent establishment in Tanzania. It was paid as management or service fees. They, too, seem to have a common understanding of the import of Article IV(1) of the DTA. We are justified to hold so bearing in mind the parties' concurring views in their respective submissions. In respect of the appellant, in the concluding submission in respect of article IV of the DTA at page 4 item 2.2.1, it is stated that:-

> *"It was the appellant's argument that, since the said amount was paid to Zambia Sugar Company Limited, which is incorporated in Zambia,*

withholding tax or withholding obligations on the appellant does not arise for management services because by the provisions of Double Taxation Agreement (DTA) between Tanzania and Zambia the withholding obligation does not arise as industrial and commercial profits of an enterprise of a contracting state shall only be taxable only in that state."

And, on the part of the respondent, in unambiguous words, at page 4 of the reply submission, it is stated that:-

"When the respondent conducted a tax audit for the year 2011 and 2012, came up with some audit findings among others that the appellant (who is a resident in Tanzania) had paid to Zambia Sugar Company Limited (a resident in Zambia), a Management Fee amounting to Tshs. 188,000,000. From the transaction, the respondent subjected the Appellant to the withholding tax liability at the sum of Tshs. 32,006,125.00 which was supposed to be withheld and remitted to the Respondent when the appellant was making payments to Zambia Sugar Company Limited for the said Management Fee of Tshs. 188,000,000..."

While it is accepted by the parties that the payment made was management fees, the bone of contention between them, as alluded to above, is narrowed down to be whether or not Article IV(1) of the DTA embraces management or service fees hence not subject to withholding tax in Tanzania. In actual fact, the Court is being called upon to expound the import of Article IV of the DTA. We shall do so while mindful of the principles governing interpretation of tax statutes. Luckily, the Court had an occasion to examine such principles of various jurisdictions and was not hesitant to subscribe to a few of them in the case of **Pan African Energy Tanzania Ltd vs Commissioner General, Tanzania Revenue Authority**, Civil appeal no. 81 of 2019 (unreported). These are:-

1. *While construing a provision that creates a right, the court must always lean in favour of a construction that saves the right rather than on which defeats the right...**However, the interpretation should lead only to the logical end; it cannot go to the extent of reading something that is not stated in the provision. Full effect should be given to the language used in the provision** and a rigid or restricted interpretation must be*

avoided.(see a book on "Law and Practice of Income Tax" by Kanga, Palkhivala and Vyas Volume 1 ninth Edition pages 26 to 27).

2. *In taxing clear words are necessary in order to tax the subject. Too wide and fanciful construction is often given to that maxim, which does not mean that words are to be unduly restricted against the Crown, or that there is to be any discrimination against the Crown in those Acts.* ***It simply means that in taxing one has to look merely at what is clearly said. There is no room for intendment. There is no equity about tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied...[see*** the case of **Capebrandy Syndicate vs Inland Revenue Commissioners** [1921] 1 KB 64].
3. *The statutes enacted for imposition and collection of income tax must be strictly construed.* "[see the case of **Charles Herbert Withers Brothers- Payne vs The Commissioner of Income Tax,** Civil Appeal No. 55 of 1968 EACA (unreported). (Emphasis added)

Guided by these principles and attaching the words their literal meaning since they are unambiguous, we find ourselves constrained to

agree with the observation made by the TRAB and upheld by the TRAT on the context of Article IV(1) of the DTA. The TRAB, at page 10 of its judgment found at page 295 of the record of appeal stated that:-

> *"In the light of the provisions of article IV(1) of the DTA, the industrial and commercial profits of an enterprise of a Contacting State is taxable only in that State, that is in the country which the enterprise is resident. Where the enterprise carries on business in that other Contracting State through a permanent establishment, it will be taxable in that other Contracting State in which it is resident."*

That is, indeed, in our considered view, the proper import of Article IV(1) of the DTA. That notwithstanding, absence of the word "**service**", was an issue to which the parties parted ways whether or not that Article is applicable in the present situation. Without mincing words, we entirely agree with the learned Principal State Attorneys and even Mr. Mtafya did not suggest otherwise, that the word "service" is not reflected in that article. However, the article makes reference to industrial and commercial profits. What then this entails? In the statement of appeal to the TRAB, the appellant presented herself as a company involved in the business of production and sale of sugar. As to how it generates profits, the TRAB

deduced the meaning of profit from Oxford Dictionary and observed, and in our view rightly so, that profit is a *"financial gain, especially the difference between the amount earned and the amount spent in buying, operating or producing something. This means that, all expenses are deducted from the total revenues"*. In our further view, that ought not to have been the end of it. In order to resolve whether the Article ought to have expressly indicated the word "service" the TRAB and TRAT ought to have gone further to consider what is meant by income from business. On this, we are persuaded by the explanation of the word business provided at page 128 of the book **INCOME TAX IN TANZANIA** by Paul Joseph published in 1990 that:-

> *"**Business** comes under different forms and guises. The term business can be comfortably applied to describe **commercial speculative ventures**, a concern, a co-operative, a joint venture, a barter or an exchange of goods or commodities, a single or isolated transaction, a merchandising or marketing enterprise and a host of **other transactions in the nature of a business, where buying and selling of goods or providing of services play an important role.**"* (Emphasis added).

It may be discerned, therefore, that business is a commercial venture and it is not restricted to sale or exchange of goods only but it extends to provision of services for gain or profit. For this reason, the author goes further to state that:-

> *"In a market economy, business may be described as the purchase and sale of goods motivated with achieving a gain or profit.*
> ***In the word of commerce it may mean*** *a person, a partnership, a co-operative, a parastatal, a corporation or* ***a limited company engaged in commerce,*** *in trade or* ***manufacturing or providing of a service, the motive always being profit....in one way or other will be subject to the income tax laws identified under business income.****"*(Emphasis added)

Without implying or involving ourselves in intendment and giving the words their literal meaning, it is plain therefore that business includes **provision of service for gain or profit** and the latter is a commercial transaction motivated by obtaining a profit. Stated simply, provision of service for gain or profit is a commercial transaction. Hence, the word "**service**" is embraced in the phrase "commercial profit". We would add that it would be demanding too much if we are to expect articles of this

nature to state each and every kind of business, business undertakings which generate profit subject to tax and also include every word. Others are matters that are deducible from the article when read in its context. The articles are couched in a general form so as to accommodate other matters having a bearing with it. Ultimately, since the word commercial is reflected in Article IV(1) of the DTA, the argument by the learned Principal Attorneys that it does not embrace the word "service" falls apart. For this reason, ground one of appeal succeeds.

Now, applying Article IV(1) of the DTA to the instant case, it seems obvious to us that the appellant paid service fees (management fees) to the ZSCL, which, applying the source and residence tests, would be subject to withholding tax in Tanzania under sections 6(1)(b), 69(i)(i) and 83(1)(b) of the ITA not only because the appellant is a company resident in Tanzania but also because the income paid to ZSCL has a source in Tanzania. Luckily, it has never been an issue that the source of income paid to ZSCL is Tanzania, the services were rendered in Tanzania and the payer is a company resident in Tanzania. Such is the stance we took in the unreported case of **Tullow Tanzania BV vs The Commissioner**

General Tanzania Revenue Authority, Civil Appeal No. 24 of 2018. For clarity, we take pains to recite the relevant part of that decision thus:-

> *"Reading sections 6(1)(b), 69(i)(i) and 83(1)(b), all together gives two conditions for payment to a non-resident to be subject to withholding tax. These are: (1) the services of which the payment is made must be rendered in the united republic of Tanzania, and (2) the payment should have a source in the United Republic of Tanzania.*
>
> *The withholding obligation under section 83(1)(b) of the Act applies to a payment for service fee with a source in the United Republic of Tanzania and section 69 stipulates what payment have a source in the united Republic of Tanzania.*
>
> *It is our strong view that the word rendered used under section 69(i)(i) is synonymous to words "supplied" or "delivered". In this regard, a non-resident who provides services to a resident has delivered/supplied services to a resident of the united Republic of Tanzania. The recipient of the service is actually the payer for such services, in which case, "source of payment" cannot be any other place except where the payer resides. In other words as the services of which payments were made were consumed or utilized by the*

appellant in the United Republic of Tanzania for purposes of earning income in the United republic, then payments made for such services had a source in the United republic of Tanzania and the respondent had to withhold tax under section 83(1)(c) of the Act."

Given the above legal position, the service fees paid by the appellant to the ZSCL would be subject to withholding tax in Tanzania and the appellant would have the obligation to withhold tax. Such would also be the situation in Zambia as ZSCL would receive such an amount as an income thereby subjecting the same income to double Taxation hence the introduction of Double Taxation Relief Agreements (DTA). Principally, the agreements are intended to give tax relief to tax payers in such occurrences. The issue in the instant case would then be is the DTA of any assistance?

In the present case, Article IV(1) of the DTA, in very clear terms provides that the *industrial and commercial profits of an enterprise of a Contracting State shall be taxable only in that state unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.* The appellant, as we have said it repeatedly, is resident in Tanzania, carries on business in Tanzania and has

no permanent establishment in Zambia. Hence it had an obligation to withhold tax. The assertion that the service fees paid to ZSCL is not subject to withholding tax is therefore misplaced. The situation would be different if the appellant carried business in Zambia through a permanent establishment situated in Zambia whereby it would be exempted from the obligation to withhold tax on the payment for services rendered in Tanzania thereby subjecting itself to tax in Zambia in terms of Article IV(1) of the DTA. The rationale behind is that such payment would amount to income in Zambia hence be, again, subjected to tax. For, once such payment is taxed in Tanzania on account of the residence and source test, the same payment would be taxed again thereby rendering the DTA redundant. It is then when Article XVI (1) of the DTA would come into play and exclude the tax withheld by the appellant in the determination of tax payable by ZSCL in Zambia to which the management (service) fees paid will amount to an income subject to tax. Ground two (2) of appeal thereby fails and is dismissed.

Just in passing, Mr. Mtafya had tried to impress the Court that it is important to have resort to the provisions of the **OECD Commentary 2014** every time we are faced with the problem of interpreting the articles

of the DTA. We think he would be true only to the extent of offering assistance in situations where the provisions of a given DTA are unclear. This was not the case in the present matter.

We lastly consider the invitation by the learned Principal State Attorneys that we should not depart from the position taken by the Court in the case of **Kilombero Sugar Company Limited vs Commissioner General, Tanzania Revenue Authority** (supra). We have read the decision and realized that it was decided in its own context quite unrelated to issues before us in the instant appeal. In that case, presence or absence of the word "service" in the DTA between Tanzania and South Africa was not an issue as opposed to the instant case where it formed the crux of the case. Added to that, the meaning of the term "profit" in relation to costs incurred in the provision of services, constituted a significant discussion by the Court in that case which is not the case herein. Save for the fact that in both cases the appellant has a legal obligation to withhold tax and remit the same to the respondent, we find no material bearing between the two cases. Accordingly, the invitation is hereby rejected.

All said, the appeal partly succeeds in that article IV(1) of the DTA embraces service fees paid by industrial and commercial enterprises.

Otherwise the appeal fails and the finding by both tribunals (the TRAB and TRAT) that the appellant had a liability to withhold tax and remit it to the respondent is sustained. The appellant wrongly paid service or management fee (TZS. 188,000,000.00) to ZSCL without honouring her legal obligation to withhold tax and remit the same to the respondent. The latter, therefore, properly issued to the appellant a notice for payment of the same. In view of the appeal is partly successful, we order each party to bear its own costs.

DATED at **DAR ES SALAAM** this 19th day of October, 2022.

S. A. LILA
JUSTICE OF APPEAL

L. J. S. MWANDAMBO
JUSTICE OF APPEAL

L. G. KAIRO
JUSTICE OF APPEAL

The Judgment delivered this 19th day of October, 2022 in the presence of Mr. Erick Denga, learned counsel for the Appellant and Mr. Auni Chilamula, learned State Attorney for the Respondent is hereby certified as a true copy of the original.

D. R. LYIMO
DEPUTY REGISTRAR
COURT OF APPEAL