IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: MUGASHA, J.A., NDIKA, J.A., And LEVIRA, J.A.)

CONSOLIDATED CIVIL APPEALS NOs 78 & 79 OF 2018

COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY..... APPELLANT

VERSUS

JSC ATOMREDMETZOLOTO (ARMZ) ..... RESPONDENT

(Appeal from the decision Judgment and Decree of the Tax Revenue Appeals Tribunal at Dodoma)

(Mataka, Vice Chairman.)

dated the 6th day of December, 2013

in

Tax Appeal No. 17 of 2013

RULING OF THE COURT

1st & 9th June, 2020

MUGASHA, J.A.:

The appellant, Commissioner General of Tanzania Revenue Authority (CGTRA), is challenging the decision of the Tax Revenue Appeals Tribunal (the Tribunal) which sustained the decision of the Tax Revenue Appeals Board (the Board). Having been unsuccessful in the first and second

appeal, the appellant lodged an appeal to the Court challenging the decisions of the Board and the Tribunal.

In order to understand what precipitated the present matter before us, it is crucial to narrate a brief background as follows: The respondent JSC Atomredmetzolo (ARMZ) is a chartered open Joint Stock Company incorporated in the Russian Federation dealing in uranium mining industry. On 15/12/2010, the respondent purchased from the Australia Stock Exchange all shares in Mantra Resources Limited (Mantra Resources) a company incorporated in Australia and owner of Mkuju River Uranium project located in Namtumbo District, Ruvuma Region.

In December 2010 the respondent purchased shares in Mantra Australia and on 15th December 2010 the respondent entered into a Scheme Implementation Agreement (SIA) with Mantra Australia pursuant to which the respondent purchased 100% of the issued shares in Mantra Australia on the Australia Stock Exchange (ASX). Following the acquisition of all the issued shares in Mantra Australia, the respondent became a sole registered and beneficiary owner of shares in Mantra Australia making Mantra Australia a wholly owned subsidiary of the respondent. Hence Mantra Tanzania and Mkuju River Uranium Project were placed under the

control of the respondent who had a majority 51.4% shareholding in a Canadian Uranium exploration and mining company named Uranium One Inc. (Uranium One). Thus, the respondent opted to invest in the Mkuju River Uranium project through Uranium One based in Canada.

Subsequently, in the wake of execution of the Scheme Implementation Agreement (SIA), the respondent entered into a put/call option agreement with Uranium One, pursuant to which the respondent sold and transferred the shares it had acquired in Mantra Australia to Uranium One for a consideration equal to the respondent's acquisition costs of the scheme shares. This was viewed by the appellant as acquisition of shares by the respondent in Mantra Australia which resulted into acquisition of interest in Mantra's Core asset, that is, Mkuju River Uranium project located in Tanzania, because the subsequent sale and transfer of the said shares to Uranium One was a realization of interest in the Mkuju River Uranium project by the respondent. In that regard, the appellant concluded that, the said transaction was subject to taxation in Tanzania. As such, the appellant vide its letter with reference No. TRA/LZ/INQ/06/5549 dated 30th November 2011 notified the respondent on existence of tax liability of USD 196,000,000/= assessed on investment

income because the income earned has a source in the United Republic since the transaction involved a domestic asset. In addition, on account of conveyance of the domestic asset in question, the respondent also required the appellant to pay Stamp Duty which was assessed at USD 9,800,000. This is what made the respondent to lodged two appeals to the Board vide Tax Appeal Nos.26 and 27 of 2011 against the appellant herein contesting the liability to pay the taxes.

The appeals were predicated under section 14 (2) of the TRAA. Having consolidated the two appeals, in its judgment handed down on 15th May 2013, the TRAB determined the consolidated Tax Appeal No. 26 and 27 of 2011 in favour of the respondent. Aggrieved with the decision the appellant unsuccessfully lodged two appeals to the Tribunal vide Tax Appeal Nos. 16 and 17 of 2013, hence the present appeal. However, for reasons that will become apparent in due course, we shall not reproduce the grounds of appeal.

Both appeals were confronted with preliminary points of objection raised by the respondent through its advocates on the following grounds;

1. That the appeal is without the record of appeal

   on the ground that, the record of appeal was

filed in Court without being endorsed by the registrar and thus contravenes Rules 90(1) (a) and (b), 6, 14 and 18 of the Court of Appeal Rules 2009 as amended.

2. That, the supplementary record was filed out of time.
3. That, supplementary record was served out of time on the respondent.

Both appeals were confronted with preliminary objections touching on their competency before the Court. At the hearing the appellant was represented by Ms. Alicia Mbuya, learned Principal State Attorney, Messrs. Frimin Telesphory, Hospice Maswanyia, Harold Bugami and Amandus Ndayeza, learned counsel from the office of the appellant. The respondent had the services Mr. Audax Kahendaguza and Dr. Abel Mwiburu, learned counsel.

Parties consented to have the two appeals consolidated because apart being confronted with almost same preliminary points of objections touching on the competence of the appeals, they originate from the same appellant's letter which notified the respondent on existence of tax liability.

Thus, Appeals No. 78 and 79 of 2018 were consolidated into one. In this regard, besides, the preliminary points of objection, parties were also required to address the Court on the propriety or otherwise of the respondent's action in seeking the remedy of an appeal before the Board.

In addressing the first point of objection, Mr. Kahendaguza submitted that, the records of the two appeals were neither signed nor endorsed by the Registrar which is against the dictates of Rule 18(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules). Consequently, it was argued that the infraction renders the appeal incompetent. To support his proposition, he cited to us the case of **SGS SOCIETE GENERALE DE SURVELLANCE SA AND ANOTHER VS VIPA ENGINEERING AND MARKETTING AND ANOTHER,** Civil Appeal No. 124 of 2017 (unreported) whereby on account of a similar infraction, the Court declined to invoke the overriding objective principle to salvage the irregular record of appeal and instead proceeded to strike out the incompetent appeal.

On the second point of objection, it was submitted that although the appellant was granted leave to file omitted additional documents, filing those documents in Mwanza sub Registry of the Court without obtaining the permission of the Registrar contravened the provisions of Rule 16 of the Rules. In this regard, it was argued that, since the said additional

record is not properly before the court and considering that leave was already granted under Rule 96 (7) of the Rules, to file the omitted additional documents, such leave cannot be given again in the wake of a bar to such recourse in terms of Rule 97(8) of the Rules. To back up his argument he referred us to the case of **PUMA ENERGY TANZANIA LIMITED VS RUBY ROADWAYS (T) LIMITED,** Civil Appeal No. 86 of 2015 (unreported).

Another point of preliminary objection was on the delayed service of the record of omitted additional documents on the respondent which was effected after the expiry of ten months from the date of filing instead of seven days as required under Rules 99 (2) or 97 (1) of the Rules. He as well, argued that the infraction renders the appeal incompetent. Thus on account of the said lacking endorsement of the record of appeal; irregular filing of the omitted additional documents in Mwanza Registry and delayed service of the such additional documents, Mr. Kahendaguza urged us to strike out the appeal on account of being incompetent.

The 4th point of objection was on the variance of the decree and judgment in respect of Civil Appeal No 79 of 2018. He pointed out that, while the decree bears words "each party shall bear own costs" the same is

not compatible with the judgment from which the decree was extracted. In that regard, he contended that the decree is defective and the appeal is not accompanied by a proper decree which renders Civil Appeal No. 79 of 2018 not competent. To bolster his proposition, he referred us to the case of He relied on the case of **PUMA ENERGY TANZANIA LIMITED VS RUBY ROADWAYS (T) LIMITED,** (supra).

In addressing the Court on the propriety or otherwise of the respondent's action in seeking remedy before the TRAB, both learned counsel for the respondent submitted that, it is not proper for the Court to raise the matter *suo motu* and invoke revisional jurisdiction in terms of section 4 (3) of the Appellate Jurisdiction Act CAP 141 RE. 2002 (the AJA) because **one,** the record is no longer before the Tribunal or the High Court and **two,** a similar matter faulting the jurisdiction of the TRAB constitutes a ground of appeal in the appeal which is not properly before the Court. To back up the proposition he referred us to the case of **P.9219 ABDON EDWARD RWEGASIRA VS THE JUDGE ADVOCATE GENERAL,** Criminal Application No. 5 of 2011 (unreported).

In respect of the propriety or otherwise of the appeal before the Board it was submitted that, respondent's appeals were properly lodged

having been predicated under the provisions of section 14(2) of the TRAA and such, it was argued that, such recourse was justified in terms of section 6 of the Tanzania Revenue Authority Act (the TRA Act), in the wake of the appellant's letter dated 30/11/2011 notifying the respondent on the existence of liability of the taxes payable that is the income tax and stamp duty. Finally, the learned counsel urged the Court to sustain the preliminary points of objection and proceed to strike out the appeal.

On the other hand, Mr. Maswanyia challenged the points of preliminary objection as baseless and misconceived. He submitted that, the records of appeal are properly before the Court as evidenced by the date and stamp of the Court embossed on the record of appeal. He added that, it is not the duty of the Registrar to endorse each and every document contained in the record of appeal. He distinguished the case of **SGS SOCIETE GENERALE DE SURVELLANCE SA AND ANOTHER VS VIPA ENGINEERING AND MARKETTING AND ANOTHER,** (supra) arguing that, in that case neither were the documents stamped nor signed by the Registrar which is not the case here.

In response to the preliminary point of objection on filing the omitted additional documents in Mwanza Sub Registry of the Court, he submitted

that, prior to the filing, requisite permission was obtained from the Registrar and that is why the record was transferred to the main Registry of the Court before being cause listed for hearing. As such, he argued that, in the absence of any Rule requiring such documented permission to be served on the respondent, the appellant is not at fault and besides, the respondent was not prejudiced in any manner.

Mr. Maswanyia conceded on the delayed service of omitted additional documents but he was quick to point out that, the respondent was not prejudiced in any manner. To bolster his propositions, he referred us to the case of **NGERENGERE ESTATE LTD Vs EDNA WILLIAM SITA** Civil Appeal No. 209 of 2016 (unreported)**.** In respect of the objection on the decree being defective, it was argued that, the decree was consistent with the judgment and thus, the appeal is properly before the Court.

On the propriety or otherwise of the appeal before the Board, at the outset, it was submitted that, the Court is mandated to raise a *suo motu* issue on the legality of the proceedings before the Board regardless of a similar matter being among the grounds of appeal. It was also conceded that, the letter which was addressed to the respondent was indeed a notification of existence of liability on income tax and stamp duty which

both have the element of assessable tax. As such, it was argued that the respondent's invocation of the remedy of an appeal before the Board was irregular because while the remedy of an appeal under section 14(2) of the TRAA can be invoked where a tax dispute has no element of assessable tax dispute, section 7A of the TRAA bars the Board from entertaining any appeal arising from a complete assessment of tax without complying with the provisions of section 12 of the TRAA whereby a person who objects to tax liability must initially lodge an objection to the CGTRA. In this regard, it was thus argued that since the TRAB was not mandated to entertain the respondent's appeals the TRAB embarked on a nullity to entertain and determine the respondent's appeals. Finally, the learned counsel for the appellant urged the Court to invoke revisional powers and nullify the proceedings of both the Board and the Tribunal.

In rejoinder, while Mr. Kahendaguza reiterated his earlier submissions on the incompetence of the appeals on account of the stated infractions, Mr. Mwiburi maintained that the respondent was justified to institute an appeal before the Board considering that, the appellant's letter constituted a notice to the respondent on the existence of liability to pay tax and as such, the procedure stipulated under sections 7A and 12 of the TRAA which

obliges one to initially lodge an objection to the CGTRA is inapplicable in the circumstances.

In determining the preliminary points of objection raised the issue for our determination is on the competency of the appeal.

It is glaring that the record of appeal was not endorsed by the Registrar as required by Rule 18 of the Rules. In our considered view, the infraction was as well contributed by the Registrar who ought to have rejected the record in terms of Rule 14(3) of the Rules. Thus, in the absence of endorsed record the appeal is rendered incompetent. Regarding the preliminary objection on filing of omitted additional in Mwanza sub-registry of the Court, this does not raise a pure point of law because whether or not the appellant was given a written permission to file the additional omitted documents in the Sub Registry on Mwanza is a fact which has to be ascertained by the evidence. We are fortified in that account in terms of the case of **MUKISA BISCUIT MANUFACTURING CO. LTD VS WEST END DISTRIBUTORS LTD EARL** [1969] at page 702 where the Court among other things said:

> *"A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is*

argued on assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained ..."

We share the respondent's concern on the unreasonably delayed service of the omitted additional documents which took 10 months from the date of filing. Since the omitted additional documents constituted part of the record of appeal, the appellant ought to have served the record on the respondent not later than seven days in terms of Rule 97 (1) of the Rules. However, without prejudice, we found that the infraction did not occasion any injustice and it deserves to be overlooked because it does not go to root of the matter and besides, the respondent was not prejudiced in any manner.

Regarding the decree, we are satisfied it varies with the judgment from which it was extracted and as such it is defective. On this account, since the decree is one of the crucial documents which must accompany an appeal as envisaged under Rule 96 (1) (h) of the Rules and there is no proper decree accompanying Civil Appeal No, 78 which is thus rendered incompetent.

On account of the said infractions, normally having ruled that the appeal is incompetent we would have proceeded to strike it out. However, in view of what will be unveiled in due course we shall refrain from following that path for a purpose and in order to remain seized with the record of the Board and the Tribunal so as to intervene by way of revision and rectify the revise illegalities prevalent in the proceedings of both the Tribunal and the Board otherwise the decisions of the Board and the Tribunal will remain intact perpetuating the illegalities. This approach was followed by the Court in **TANZANIA HEART INSTITUTE VS THE BOARD OF TRUSTEES OF NSSF,** Civil Application No. 109 of 2008, **CHAMA CHA WALIMU TANZANIA VS THE ATTORNEY GENERAL,** Civil Application No. 151 of 2008 and **THE DIRECTOR OF PUBLIC PROSECUTIONS VS ELIZABETH MICHAEL KIMEMETA @ LULU,** Criminal Application No. 6 of 2012 where the Court said:

In **CHAMA CHA WALIMU TANZANIA VS ATTORNEY GENERAL** (supra), the Court was confronted with an application to revise the decision of the High Court Labour Division which granted injunction to restrain a strike on the basis of the application which was incompetent. That Labour Court acted without jurisdiction was among the grounds in the Notice of Motion

on which revision was sought. The competency of that application was challenged in a preliminary objection raised by the respondents and it was upheld by the Court. However, the Court did not proceed to strike out the incompetent application as it is ordinarily the case because of a fatal illegality patent on the face of the Labour Court record having observed:

> *"..... Since the proceedings were a nullity event the order made therein including the court's ruling and final order was a nullity. ... Because the proceedings before the Labour Court were a nullity, that's why we felt constrained not do strike out this application. We did so in order to remain seized with the Labour Court's record and so be enabled to intervene* ***suo motu*** *to remedy the situation...."*

The Court thus concluded that:

> *"..... In this particular case we are strictly enjoined by law to do what the learned trial judge in the Labour Court failed to do. Failure to do so would be tantamount to perpetuating illegalities, and in particular the injunction order which is admittedly a nullity. Acting under s. 4(3) of the Act we hereby revised the incompetent proceedings in the labour Court."*

The Court quashed and set aside all the orders including the impugned injunction granted therein.

The Court was faced with a similar scenario relating to an incompetent application for revision in **DIRECTOR OF PUBLIC PROSECTIONS vs. ELIZABETH MICHAEL KIMEMETA @ LULU** (supra). Apart from making a finding that the application for revision was not competent, the Court did not strike out the application in order to address the illegality on the face of the record of the High Court having Court emphasized as follows:

> *"So, it is the practice now that it is shown that the Court was not properly moved... so as the Court to exercise its powers of revision under section 4 (2) of the Appellate Jurisdiction Act, Cap 141 R.E 2002 hence the proceedings are incompetent but on the face of the record it shows the same to have been tainted with illegality, the Court will not normally strike out that incompetent application. Instead the Court will be taken to have called the record and proceed to revise the proceedings under section 4 (3) of the Appellate Jurisdiction Act, Cap 141 R.E. 2002..."*

Ultimately the Court held that:

"We did so for a purpose. The purpose is that we remain seized with the High Court's record so as to enable us intervene on our own to revise the illegalities pointed out by invoking section 4(3) of the Appellate Jurisdiction Act CAP 141 RE. 2002, otherwise the High Court record will remain intact."

It is clear, in the above cases that, the Court was confronted with a situation where the applications for revision though incompetent, emanated from illegal proceedings of the High Court and thus, striking them out on ground of incompetency would be tantamount to perpetuating illegalities. See - **NUNDU OMARI RASHID VS THE RETURNING OFFICER TANGA CONSTITUENCY AND TWO OTHERS,** Civil Application No. 3 of 2016.

In the light of the settled position of the law as propounded in case law, the Court has jurisdiction to raise the matter *suo motu* and where possible invoke revisional jurisdiction to correct anomalies in decisions of the courts below or tribunals in order to avert perpetuating illegalities. The jurisdiction of this Court to invoke revisional jurisdiction on the decisions of the Tribunal is embedded in both the Appellate Jurisdiction Act and the Tax Revenue Appeals Act whereby section 25 (1) and (2) stipulate as follows:

"(1) Any person who is aggrieved by the decision

of the Tribunal may preferred an appeal to the Court of Appeal.

(2) *Appeal to the Court of Appeal shall lie on matters involving questions of law only* ***and the provisions of the Appellate Jurisdiction Act * and the rules made thereunder shall apply mutatis mutandis to appeals from the decision of the Tribunal."***

While subsection (1) improvises on the right of appeal to the Court on purely questions of law against the decisions of the Tribunal, the bolded expression under subsection (2) brings into play the application of section 4 (2) and (3) of the AJA, which clothe the Court with revisional jurisdiction in relation to Tribunal's decisions. In this regard, we have read the decision in the case of P.2919 **ABDON EDWARD RWEGASIRA VS THE JUDGE ADVOCATE GENERAL** (supra) which was cited to us by the respondent's counsel. With respect, apart from the case being cited out of context, it is distinguishable with the case at hand. We are fortified in that account because, in the said case the issue determined by the Court was to the effect that, since the Court Martial Appeals court is not part of the structure of the High Court as defined under section 3 of the AJA and article 108 (1)

of the Constitution of the United Republic of Tanzania, 1977, the Court has no jurisdiction to revise the proceedings of the Court Martial Appeals Court unless the respective laws are amended.

Before determining the issue of the propriety or otherwise of the respondent's appeal before the Board, we have deemed it pertinent to revisit the tax disputes resolving mechanism as articulated under the TRAA and the Stamp Duty Act CAP 189 R.E 2002. Under Part III of the TRAA, section 12 regulates the manner in which a person who disputes an assessment made upon him by the Commissioner-General may, to object to the assessment by lodging a notice in writing to the Commissioner-General. After the notice of objection is given, the person objecting shall pay the amount of tax which is not in dispute or deemed by not to be in dispute, or pay one third of the assessed tax, whichever is greater, pending the final determination of the assessment. However, under subsection (3), the Commissioner-General may allow the person objecting the assessment to pay lesser amount as is reasonable in the circumstances, or not to pay tax until the assessment or liability to pay tax is final where the CGTRA is of the opinion that, owing to uncertainty as to any question of law or fact; or considerations of hardship or equity; or impossibility, or undue difficulty

or expense, of recovery of tax, the person objecting the assessment is unable to pay the tax due and payable by him. After the CGTRA's determination of the objection, if a tax payer is aggrieved, he may appeal to the TRAB within the prescribed period in terms of the provisions of section 16 of the TRAA. Moreover, while section 7 of the TRAA vests the TRAB with sole original jurisdiction in all proceedings of civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority, section 7A of the TRAA limits the jurisdiction of the Board in the following manner as it stipulates:

> *"The Board shall not entertain any appeal arising from tax assessment unless section 12 of this Act is complied with."*

This position was subsequent of the amendment of the TRAA vide Finance Act No. 16 of 2007. The assessment is defined under section 3 of the TRAA as follows:

> ***"assessment"*** *means an assessment of tax as determined or ascertained in each of the respective tax law.*

Since the matter before us is on a dispute involving income tax and stamp duty, it is crucial to understand the meaning and the manner in

which the assessment is regulated. Under the ITA, 2004, assessment is defined as follows:

> *"assessment" means and assessment under sections 94, 95, 96 or 103".*

What is of relevance in the particular case at hand is section 96 (1) of the ITA, 2004 which stipulates as follows:

> *"Subject to this section, the Commissioner may adjust an assessment made under section 94, 95 or this section so as to adjust the person's liability to pay tax, including any tax payable on assessment, in such manner as, according to the Commissioner's best judgment and information reasonably available, shall be consistent with the intention of the Act."*

In the light of what we have stated above, in a nutshell, assessment entails the process of determining tax liability whereas the issuing of the respective notice is to enable the taxpayer to know the tax liability. Thus, in the case at hand, the letter authored by the appellant notifying the respondent on the adjusted assessment in terms of section 96 (1) of the

ITA, was a clear notice of existence of liability on capital gain on the part of the respondent.

Furthermore, among the taxes disputed by the respondent is stamp duty which is governed under the Stamp Duty Act CAP 189 RE. 2002. According to the provisions of section 43 (1) and (2) of the Stamp Duty Act, a person who is in doubt as to whether or not an instrument is required to be stamped ***or as to the amount of the stamp duty payable in respect of any instrument,*** may apply for an adjudication by a Stamp Duty Officer. The officer may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence necessary to prove that all facts and circumstances affecting the chargeability of the instrument with duty, or the amount of duty with which it is chargeable, are fully and truly set forth therein. Under section 43(3) of the Act the decision of the stamp duty officer may be appealed against to the Commissioners of stamp duty whose decision on appeal shall be subject to reference to the Board. The decision of the Board is final and binds the stamp duty officer and the parties to the instruments.

In determining the propriety or otherwise of the respondent's appeal before the Board which is a subject of the matter before us, we shall be

guided by the stated position of the law regulating the manner of resolving the tax related disputes **and the jurisdiction of the Board and the Tribunal in entertaining the appeals relating to tax disputes.**

It is not in dispute that after the respondent received the Commissioner's letter dated 30/11/2012 which notified it on the existence of liability to pay income tax on capital gain and stamp duty, lodged an appeal before the Board. Parties locked horns on the propriety or otherwise of the appeal lodged under the provisions of section 14(2) of the TRAA.

In relation to the income tax liability on capital gain, it is clear that if a person is notified of the tax liability, if aggrieved, has to lodge an objection to the CGTRA as prescribed under section 12 of the TRAA. The CGTRA is obliged to make a determination which is appealable to the Board. The circumstances in which one may seek remedy of an appeal to the Board against other decisions of the Commissioner General are stated under the provisions of section 14 (1) and (2) which stipulate as follows:

> "*(1) Any person aggrieved by–*
>
> *(a) the calculation by the Commissioner-*

General of the amount due for refund, drawback or repayment of any tax, duty, levy or charge;

(b) a refusal by the Commissioner-General to make any refund or repayment; or

(c) an apportionment of any amount or sum by the Commissioner-General under the Second Schedule to the Income Tax Act which affects, or may affect, the liability to tax of two or more persons; or

(d) a determination by the Commissioner-General under paragraph 32(4) of the Second Schedule to the Income Tax Act;

(e) the decision by the Commissioner-General to register, or refusal to register, any trader for the purpose of the Value Added Tax Act, may appeal therefrom to the Board.

(2) Notwithstanding subsection (2), a person who objects a notice issued by the Commissioner-General with regards to the existence of liability to pay any tax, duty, fees, levy or charge may refer his objection to the Board for determination.

It is glaring that, subsection (1) limits the circumstances in which one may seek redress by way of an appeal to the TRAB against the decision of the Commissioner. Under subsection (2), a person who objects a notice issued by the Commissioner-General with regards to the existence of liability to pay any tax, duty, fees, levy or charge **may refer his objection** to the Board for determination. Thus, the remedy on the objected notice before the Board is by way of reference and not an appeal as suggested by Dr. Mwiburi.

In the case at hand, since the appellant's letter in question constituted notice on existence of liability to pay income tax to the respondent, it was illegal to seek remedy of an appeal before the Board which is statutorily barred to entertain appeals relating to tax assessment under the provisions of section 7A of the TRAA. Therefore, the Board had no jurisdiction and it embarked on a nullity to entertain the respondent's appeals. Similarly, it was illegal for the Board to entertain the respondent's appeal on stamp duty because the respective tax dispute resolving mechanism initially requires the dispute to be adjudicated by the Stamp Duty Officer and the appeal therefrom lies to the Commissioner and finally a reference may be made to the Board. Thus, as it was the case on the

income tax dispute, the Board illegally entertained the respondent's appeal on stamp duty and what ensued thereafter is indeed a nullity. We are fortified in that account because jurisdiction is a creature of statute and as such, it cannot be assumed or exercised on the basis of the likes and dislikes of the parties. That is why the Court has in a number of occasions insisted that, the question of jurisdiction is fundamental in court proceedings and can be raised at any stage even at the appeal stage. The court, ***suo motu*** can raise it in adjudication the initial question to be determined is whether or not the court or tribunal is vested with requisite jurisdiction. See -**RICHARD JULIUS RUKAMBURA vs ISSACK NTWA MWAKAJILA AND ANOTHER**, Civil Application No 3 of 2004 (unreported). Prior to that, this Court in **FANUEL MANTIRI NG'UNDA VS HERMAN MANTIRI NG'UNDA & 20 OTHERS,** (CAT) Civil Appeal No. 8 of 1995 (unreported) had held thus:-

> *"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 .. (T)he 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 at 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.]

What was said in the above decisions in respect of a trial court on the issue in question applies with equal force to an appellate Board and Tribunal considering that, before an appeal is determined on the merits on issues not touching on the jurisdiction(s) of the court (s) below, it must first be certain that the proceedings giving rise to the appeal were competently before that court or those courts. This is because a judgement in an appeal from proceedings which were a nullity is also a nullity.

On the way forward, we invoke our revisional jurisdiction under the provisions of section 4 (3) of the AJA to nullify the proceedings and judgments of the Board and the Tribunal because the first appeal stemmed from null proceedings. That is why we felt constrained not to strike out this appeal in order to remain seized with the record and so be enabled to intervene *suo motu* to remedy the situation and not to perpetuate illegalities. We further direct the respondent to comply with the law if it wishes to pursue an objection against tax assessment before the appellant

by channeling the same to the CGTRA. Considering the nature of the matter, we make no order as to costs.

DATED at **DODOMA** this 9th day of June, 2020.

S. E. A. MUGASHA
JUSTICE OF APPEAL

G. A. M. NDIKA
JUSTICE OF APPEAL

M. C. LEVIRA
JUSTICE OF APPEAL

The Ruling delivered on 9th day of June 2020 in the presence of Mr. Hospis Maswanyia and Juliana Ezekiel, learned State Attorney for Appellant and Mr. William Mang'ena holding brief of Joseph Sungwa, learned counsel for the Respondent, is hereby certified as a true copy of the original.

G. H. HERBERT
DEPUTY REGISTRAR
COURT OF APPEAL