IN THE COURT OF APPEAL OF TANZANIA

AT DODOMA

(CORAM: LEVIRA, J.A., GALEBA, J.A. And ISMAIL, J.A.)

CIVIL APPEAL NO. 120 OF 2022

SAPNA ELECTRONICS LIMITED ..... APPELLANT

VERSUS

COMMISSIONER GENERAL
TANZANIA REVENUE AUTHORITY ..... RESPONDENT

(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal at Dar es Salaam)

(Kamuzora, Vice-Chairperson.)

dated the 28th day of January, 2022

in

Tax Appeal No. 97 of 2020

.....

JUDGMENT OF THE COURT

11th & 27th February, 2025

ISMAIL, J.A.:

This is a second appeal that follows two unsuccessful attempts by the appellant, to challenge the decision of the Commissioner General of the Tanzania Revenue Authority (the Commissioner), the respondent, who issued notices of adjusted assessments for Value Added Tax (VAT). The respondent's decision followed receipt of information and financial statements from Vodacom Tanzania Limited, the appellant's business counterpart. The statements, constituting VAT assessments for years between 2009 and 2016, allegedly revealed some discrepancies which led

to an under-declaration of the appellant's tax liabilities, meaning that the computation of tax liabilities was based on discrepant declarations.

The multiple assessments of additional tax liabilities meant that multiple notices were issued for additional assessments which included an interest component aggregating TZS. 160,913,792.00. These notices bred eight appeals, filed in the Tax Revenue Appeals Board (the Board). These appeals were consolidated into one appeal which was designated as Consolidated VAT Appeal No. 100, 101, 102, 103, 104, 105, 106 and 107 of 2018. One of the grounds for the appellant's objection to the claim was that her tax affairs for the period had been comprehensively audited and that the adjustments made prior thereto were enough.

The Board, before which a twelve-ground appeal was preferred was convinced that, notwithstanding the fact that it allowed five grounds of appeal, overall, the appeal was destitute of merit. It dismissed the appeal and found the appellant liable for payment of the assessed taxes for the years of income in question *i.e.* 2009 to 2016.

This decision did not go well with the appellant. Feeling hard done, she took a ladder up to the Tax Revenue Appeals Tribunal (the Tribunal) with a statement of appeal which contained 12 grounds of appeal. This appeal was, yet again, found to be unmeritorious hence the decision to

institute the instant appeal. The memorandum of appeal has raised 11 grounds of appeal, paraphrased as hereunder:

1. *That, the Tribunal grossly erred in law by upholding the findings of the Tax Revenue Appeals Board that the appellant had a duty to produce documentary evidence in proof of incorrectness of the respondent's assessments beyond five years' statutory retention period under section 25 (2) of the Value Added Tax Act, 1997;*

2. *That, the Tribunal grossly misdirected itself and erred in law by misapplying the provisions of section 43 (1) (b) of the Value Added Tax Act, 1997 in total disregard of the statutory limitations to the respondent's exercise of powers despite express provisions of section 25 (2) of the Value Added Tax Act, 1997 exonerating the appellant from obligation to retain documentary proof beyond five years;*

3. *That, the Tribunal erred in law in upholding that the provisions of section 25 (2) of the Value Added Tax, 1997 cannot undermine the burden of proof provided under section 18 (2) of the Tax Revenue Appeals Act, Cap. 408, Revised Edition 2019;*

4. *That, the Tribunal erred in law in upholding the position that where fraud and non-disclosure is alleged by the respondent, it remains the evidential burden of the appellant to prove that the relevant tax was properly declared and paid despite expiry of the statutory retention period under section 25 (2) of the Value Added Tax, 1997;*

5. *That, the Tribunal erred in law by inferring elements of fraud outside the express scope of section 43 (1) (b) of the Value Added Tax, 1997 when justifying the respondent's request for documentary proof beyond the appellant's retention as per section 25 (2) of the Value Adde Tax, 1997;*

6. *That, the Tribunal erred in law by misapplying the provisions of section 80 of the Income Tax Act, 2004 in interpreting the provisions of section 25 of the Value Adde Tax, 1997 to justify the computation of statutory period of retention of accounting and financial records;*

7. *That, the Tribunal erred in law in upholding that the Board was correct to disallow the portions relating to the years of income 2010 to 2016;*

8. *That, the Tribunal erred in law that the appellant by holding that the appellant failed to discharge her burden to produce source documents to reconcile the differences in the disputed items beyond the appellant's statutory period of document retention;*

9. *That, the Tribunal erred in law in rejecting the appellant's profit markup of 5% and upholding the respondent's purported justification of 15% profit markup in [the] absence of evidential proof from the respondent and during lapse of the appellant's statutory period of retention of documents relating to actual profit markup;*

10. *That, the Tribunal erred in law in holding that erroneous revenues in the financial statements cannot be the basis for computation of the actual markups or profit margin; and*

11. That, the Tribunal grossly misdirected itself and erred in law in upholding the Board's abdication of determining its powers on the 11th ground of appeal raised on the claim of TZS 160,913,792 is in contravention of rule 16 of the Tax Revenue Appeals Board Rules, 2018.

Hearing of the appeal pitted Messrs Yohanes Konda and Thompson Luhanga, learned counsel, who represented the appellant, against Mses. Grace Makoa and Juliana Ezekiel, both learned Principal State Attorneys, along with Mr. Yohana Ndila, learned State Attorney.

Mr. Konda's submissions in support of the appeal were structured in a manner that lumped the grounds of appeal into several clusters. This followed his decision to combine some of the grounds of appeal. He chose to argue grounds 1, 3 and 8 together; grounds 2, 4 and 5; while grounds 9 and 10 were also argued in a combined fashion. Ground 11 of the appeal was argued separately.

As we delve into the heart of the parties' submissions for and against the grounds of appeal, we wish to say a word or two on the contention raised by the counsel for the respondent on the eligibility of some of the grounds of appeal preferred in this appeal. The grounds singled out for criticism are 7 through to 11, and the argument by Ms. Makoa is that these grounds contain matters of fact which are not within the purview of the

appellate powers bestowed on the Court under section 25 (2) of the Tax Revenue Appeals Act, Cap. 408 (TRAA). Uncharacteristically though, Mr. Konda did not controvert this contention when he rose to address us in rejoinder. Nevertheless, we are enjoined to pronounce ourselves on it.

It is common ground that jurisdiction of this Court to preside over and determine appeals on tax matters is conferred upon it by section 25 (2) of the TRAA whose substance stipulates as follows:

> *"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."* [Emphasis is added].

The import of the quoted provision was cemented by the Court in Court in **Q Bar Limited v. Commissioner General, Tanzania Revenue Authority**, Civil Appeal No. 163 of 2021 (unreported) in which it was held:

> *"Essentially, this provision entails that an appeal to this Court from a decision of the Tribunal lies on matters involving questions of law only."*

While there may be varying views on what amounts to a question of law, as envisioned in section 25 (2) of the TRAA, the Court's decision in **Atlas Copco Tanzania Limited v. Commissioner General, Tanzania**

Revenue Authority, Civil Appeal No. 167 of 2019 (unreported) provided an invaluable guidance, as follows:

> *"Thus, for the purpose of section 25 (2) of the TRAA, we think, a question of law means any of the following: **first**, an issue on the interpretation of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine on tax revenue administration. **Secondly**, a question on the application by the Tribunal of a provision of the Constitution, a statute, subsidiary legislation or any legal doctrine to the evidence on record. **Finally**, a question on a conclusion arrived at by the Tribunal where there is failure to evaluate the evidence or if there [is] no evidence to support it or that it is so perverse or so illegal that no reasonable tribunal would arrive at."*

Suffice it to say that, technically, this provision ousts jurisdiction of the Court to deal with matters of fact when it sits to determine appeals on tax matters. Only questions of law are eligible for determination at this second appellate stage. It implies, therefore, that, where an appeal contains grounds premised on a factual account, such grounds must be cast away. Glancing through the grounds of appeal, we realize that grounds 7, 8, 9 and 10 carry complaints on the manner in which the Tribunal evaluated and parties' factual contentions. In the appellant's contention, in

the impugned grounds, the Tribunal strayed when it held against the appellant. Undoubtedly, these complaints are a disapproval of the Tribunal's evaluation of evidence and factual analysis carried out by the Board, and we cannot agree more with Ms. Makoa that a contest on those issues ought not to have crossed beyond the borders of the Tribunal, and the appellant erred when she chose to bring such issues to our attention. It is a clear violation of section 25 (2) of the TRAA, and we find the prayer to expunge or disregard them plausible and a legitimate call. We resist the temptation to pronounce ourselves on the merit of these grounds of appeal and, consequently, we refrain from determining them.

Reverting to the surviving grounds, we realize that, save for ground 11 of the appeal, the rest of the grounds bring out complaints revolving around the propriety or otherwise of applying sections 25 (2) and 43 (1) of the VAT Act; invocation of section 80 of the Income Tax Act; and the propriety or otherwise of placing the burden of proof on the appellant. Crucially, these grounds bring out several questions for our determination. These are:

(i) Whether the respondent was right to order production of documents contrary to section 25 (2) of the VAT Act;

(ii) Whether, in the circumstances of this case, the burden of proof rested on the appellant; and

(iii) Whether the Tribunal was right to apply section 80 of the Income Tax Act to set a start off time for computation of five years in matters of VAT

Regarding the first issue, the argument advanced by Mr. Konda is that section 25 (1) and (2) imposes an obligation on a taxable person to maintain his business records for a period not exceeding five years, and that after that the choice to keep or destroy the documents is his. He argued that, the keeping of documents beyond this period must be at the instance of the Commissioner and upon a request in writing. He argued that applicability of section 43 (1) of the Act is subject to section 25 of the Act, and it cannot be said that the appellant failed to keep the documents. He faulted the respondent for issuing a new assessment while knowing that the life of the documents fell outside the time set by law.

Ms. Makoa scoffed at the contentions raised by her counterpart. She held the view that sections 25 (2) and 43 (1) of the Act should not be read in isolation of each other. The learned Principal State Attorney argued that section 43 (1) gives circumstances under which powers of the Commissioner may be exercised.

The rival contentions by the learned counsel appear to revolve around one singular question which is, whether powers of the Commissioner under section 43 (1) of the Act can be implemented without

any due regard and consideration of the time prescription and the condition set out in section 25 (2) of the Act. For ease of reference, it behooves us to reproduce both provisions of the law. Section 25 of the Act provides as follows:

> *"(1) A taxable person shall keep such records relating to his business as the Minister may by regulations published in the Gazette prescribe.*
>
> *(2)* ***A taxable person shall keep the records required under sub-section (1) for a period of five years or such longer period which the Commissioner may require in writing, in a particular case.***"
> [Emphasis is added]

True to what Mr. Konda submitted, section 25 (1) and (2) of the Act casts an obligation on the taxable person to keep records for a period of five years or any such longer period if, in case of the latter, the Commissioner so demands in writing. The argument raised by the appellant in this respect is that, these documents were destroyed upon expiry of the time set out by law and that she could not produce them as required by the respondent. This contention has drawn a serious criticism from Ms. Makoa and her team who did not bat an eye lid on it. In her view, as intimated earlier on, section 43 (1) of the Act has given the respondent an

unfettered right to call for submission of the records as long as there is a suspicion of non-disclosure or incorrectness of the submitted records. To appreciate the import of said provision, we find it apposite to reproduce its substance. It stipulates as follows:

> *"Where, in the opinion of the Commissioner, a taxable person has failed to pay any of the tax payable by him by reason of-*
>
> *(a) His failure to keep proper books of account, records or documents as required under this Act, or the incorrectness or inadequacy of the books, records or documents; or*
>
> *(b) His failure to make or delay in making, any return required under this Act or the incorrectness or inadequacy of any returns;*
>
> *the Commissioner may assess the tax due and any interest payable on that tax and that interest shall be due for payment within one month of the date of the assessment, unless a longer period is allowed by the Commissioner or elsewhere in this Act."*

The significance of this provision was underscored by the Court in **Mbeya Cement Company Limited v. Commissioner General Tanzania Revenue Authority**, Civil Case No. 19 of 2008 (unreported)

wherein the appellant filed improper VAT returns which did not include the imported services. We held as follows:

> *"In its legislative purpose and its plain statutory wording, section 43 (1) (b) is intended to vest in the Commissioner General the discretion to raise an assessment of any tax due and interest payable where in his judgment a taxable person has failed to pay any of the tax payable by him on account of his inter alia, failure to make any return required under the act."*

The clear message conveyed by this provision and the excerpt of the decision is that, the Commissioner General's assessment of tax due and interest thereon can be mounted where the taxable person has failed to keep books of accounts, records or documents as required by the law, and we may hasten to add that, such law would include section 25 (1) and (2) of the Act. The other entry point for the Commissioner General is where there is a failure or delay in making returns or, upon submission, the returns are found to be inadequate or incorrect. The appellant's counsel have contended that, while there may be a reason for exercising such powers, the respondent ought to have complied with, or at least been mindful of the time prescription or condition imposed under section 25 (2) of the Act. This argument did little or nothing to move the respondent's counsel who argued that the powers under section 43 (1) of the Act are

wide and sweeping, dependent on nothing except where conditions set out therein are fulfilled.

We see plausibility in the appellant's assertion in this respect, but only in part, and we shall point it out in due course. It is a fact that, records generated between 2009 and 2013 were more than 5 years of age when the respondent demanded that they be produced in 2017. As rightly contended by Mr. Konda, the appellant was, on expiry of the period, at the liberty to either keep or destroy them. Going by the record of appeal and the submissions, her choice in this case was to destroy them and she did. Before that happened, the respondent did not write (or at least there is no evidence) to instruct the appellant to hold on to the said documents for a period longer than 5 years. What is obvious from this reality is that, the appellant did not have anything to produce to justify the demand by the respondent, or to defend against the allegation of non-disclosure of her tax affairs.

We take a firm position that, while the powers under section 43 (1) of the Act can be invoked by the respondent as was the case here, its applicability must be consistent with other provisions of the law lest the rest of the laws are deemed obsolete or absurd. This beds well with the canon of statutory interpretation in tax statutes which is to the effect that provisions of the law must be interpreted in wholesome, not in peace meal.

This was accentuated in **Bulyanhulu Gold Mine Limited v. Commissioner General (TRA)**, Consolidated Civil Appeal Nos. 89 & 90 of 2015 (unreported) in which the Court held that a statute must be considered as a whole, especially:

> *"Where there is an irreconcilable conflict, in that, two provisions on the surface appear irreconcilable, each has to be interpreted in a manner which will not negate the other."*

In this case, the respondent ought to have been mindful of the dispensation under section 25 (1) and (2) and realize that, for all intents and purposes, this provision is akin to a statute of limitation which cannot be infringed by invoking section 43 of the same Act. We are decidedly of the view that the respondent ought to have exercised restraint and due care observed before he pounced on the appellant and demand that the latter produces the records in question. At the very least, we venture to think, the respondent should have understood that, in the absence of any order for keeping them for any longer period, the appellant had nothing to rely on in discharging the burden placed on her under section 18 (2) of the Tax Revenue Appeals Act, Cap. 408 (TRAA).

Counsel for the respondent has fervently argued that the appellant had several other options of retrieving the documents, citing the banks as

one of such alternatives. With respect, we consider this argument specious, if not hollow. It is a height of inappropriateness and an act of stretching the appellant's duty beyond what section 25 of the Act demands. We also consider this to be an attempt to condone the respondent's procrastination in invoking powers bestowed on him under section 43 (1). Nothing prevented the respondent from raising the suspicion within five years and demand production of the documents, or at least require the appellant to keep the documents as the respondent dwelt on the fact-finding expedition that finally led to the discovery that formed the basis of his action.

We also think that the proposed bank route would, if successful, only help the appellant to retrieve bank statements, yet we know that the nature of the transactions in question also demanded the production of invoices which contain an item of VAT, the subject of the parties' dispute. These would not be sourced from the banks, and we are of the view that the Tribunal strayed in its findings and conclusion that the powers of the respondent under section 43 (1) were properly invoked in respect of documents generated between 2009 and 2013. If left unscathed, the Tribunal's findings will amount nothing but a condonation of the respondent's apathetic conduct when he chose to dawdle along only for him to surface when 'the vessel had left the port'.

The appellant's counsel were critical of the Tribunal's contention found at page 2146 of the record of appeal, when it allegedly imputed existence of the fraud as the basis of the decision to carry out a re-assessment of the appellant's records. This is what constitutes the basis of the appellant's contention in ground 5 of the appeal. In trying to impress us on shifting of the onus where fraud is imputed, Mr. Konda referred us to a couple of our previous decisions on the matter. These are: **Barelia Karangirangi v. Asteria Nyalwambwa**, Civil Appeal No. 237 of 2017; and **City Coffee Limited v. The Registered Trustees of Ilolo Coffee Group**, Civil Appeal No. 94 of 2018 (both unreported).

In reply, Ms. Makoa raised an argument that, while she did not have any qualms about the application of the principles accentuated in the cited decisions, the use of the word "fraud", in this case, does not mean that the same was imputed in this particular case. It only meant that fraud is one of several instances under which the Commissioner may exercise powers.

We have scrupulously reviewed the reasoning made by the Chairperson of the Tribunal who is quoted as saying as follows:

> *"...But where fraud and non-disclosure is alleged by the tax authority, it will still remain the duty of tax payer to prove that the relevant tax was properly declared and paid. The fact that five years retention*

period had passed does not exonerate the tax payer from the responsibility to prove that the assessment was wrong."

In our conviction, the Tribunal never intended to impute fraud in the tax affairs of the appellant. The use of words **fraud or non-disclosure** was intended to enumerate instances which may trigger the decision to carry out a review of the tax person's affairs based on either or both of them, or any other reason. The Tribunal did not single out the appellant as a fraudster or that the respondent's actions were driven by the appellant's fraudulent dealings. It was quite needless, in our considered view, for the counsel to belabour so much and urge the Court to consider this to be a case founded on fraud and require the respondent to prove existence of fraud. This renders the complaint in ground 5 lacking in merit and we dismiss it. We, in consequence, find merit in the appellant's arguments and grounds 1, 2, and 8 succeed.

Next for our determination is the question as to whether the appellant bore the burden of proof and she failed to discharge it when she failed to produce the documents which were requested by the respondent. As we address this issue, it is noteworthy that, in tax cases burden of proof and where it lies is catered for under section 18 (2) (b) of the TRAA which stipulates as hereunder:

"18 (2) In every proceedings before the Board and before the Tribunal-

(b) ***the onus of proving that the assessment or decision in respect of which an appeal is preferred is excessive or erroneous shall be on the appellant.***" [Emphasis is added]

This is a universal position that is widely known and applied across jurisdictions. In our case, this principle was accentuated by the Court in the case of **Insignia Limited v. The Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 14 of 2007 (unreported) in which the Court quoted the excerpt from Richard A. Toby in his book titled **The Theory and Practice of Income Tax (1978)** wherein the learned author had this to say:

"The various authorities have settled the question that the mere making of the assessment by the Revenue is prima facie evidence of liability and is sufficient to demand the payment of the tax. However, the onus is not one which remain on the tax-payer throughout. The taxpayer need only give an explanation which appears reasonable in all the circumstances. This having been done, he will be regarded as having discharged that onus. The burden of proof must at that point in time shift to the Revenue who must then satisfy the Court or tribunal as the justification for maintaining the

assessment. Where the Revenue fails to do so, the assessment must be vacated."

What we deduce from the excerpt and emphasize now is that, the burden would only be lifted off the appellant's shoulders where she produces documents that show that the assessment was excessive or incorrect. It is only then, that the respondent would be called upon to disprove the veracity of the documents submitted. This breeds a question as to whether that was done by the appellant. The unanimous view by the counsel is that this was not done, and we shall delve deeper into this discussion a bit more.

The record bears out that the Tribunal dealt with this matter at pages 2159 and 2060 of the record of appeal when it joined hands with the Board and that the appellant had not done enough to discharge the burden of proving that the assessment made by the respondent was wrong. It held as follows:

"Whether the time for retention of documents [had] expired or not, does not exonerate the Appellant from the burden of proof that the sales were properly declared. Failure by the Appellant to adduce the evidence requested … justified the respondent's action to adjust the assessments on

the basis of industry comparable for similar types of super-dealers as the Appellant..."

We stated earlier on that the appellant's success is only partial. We say so because, whereas the records ranging between 2009 and 2013 were requested rather belatedly and we have adjudged the call unjustified, the five-year rule that absolved the appellant for the period preceding 2014. It does not extend to records generated in the subsequent years *i.e.* 2014 to 2016. These records were within range and the appellant's obligation under section 25 (1) and (2) of the Act was alive and kicking. She had no excuse, we venture to think, for not producing them when she was called upon to do so. Thus, in respect of the allegations touching on this period, the burden of proving that the assessments were excessive or erroneous firmly rested on her shoulders and it spelt doom on her part when she failed to justify the excessiveness or incorrectness of the assessments made for the period in question. We take the position that the respondent was right to invoke the powers and adjust the assessment that left the appellant with an additional tax obligation to the tune of TZS. 154,944,942.89 that was levied through Tax Debit No. 437928437 for the year 2014. In our considered view, the answer to the raised issue is partially in the affirmative in the manner explained above.

The appellant's consternation in ground six is predicated on the Tribunal's decision to seek aid from section 80 (2) of the ITA Act to ascertain the time at which the five-year period stated in section 25 (2) of the VAT Act began to run. As we make sense of this contention, it befits us look at the architecture of section 80 of the ITA and what it provides. It states as follows:

> *"the documents referred to in this section shall be retained for a period of at least five years from the end of the year of income or years of income to which they are relevant unless the Commissioner otherwise specifies in writing."*

The complaint by the appellant is that the Tribunal ought not to have borrowed a leaf from the quoted provision to settle the contest on the method of determining the cut-off date. The respondent's counsel sees nothing untoward in the decision to apply the wisdom found in section 80 of the ITA. We, respectfully, go along with her argument and hold that it was quite in order for Tribunal to do so. Borrowing a leaf is actually taking an inspiration of a certain position where circumstances are similar or akin. This has been part of the judicial practice, and it simply refers, in the normal parlance, a feeling of enthusiasm you get from someone or something, which gives you knew and creative ideas – see: www.collinsdictionary.com. In a legal context, seeking inspiration means: *"using someone else's*

creative work as a starting point to create something new and original, where you take key ideas or concepts but significantly alter them to produce a distinct work, thus avoiding copyright infringement." See: https://www.copyrightuser.org. This is precisely what it means to be inspired or to borrow a leaf, and we find nothing flawed in the Tribunal's decision to seek solace in section 80 of the ITA to establish the date on which five years were set to run. This is not an uncommon practice in the conduct of legal proceedings and we find this ground of appeal destitute of merits and we dismiss it.

As we wind down, it is imperative that we should cast an eye on ground 11, in which the appellant has taken a swipe at the Tribunal's condonation of the Board's failure to determine issues relating to the claim amounting to TZS. 160,913,792.00. This, in the appellant's contention, was in contravention of rule 16 (5) of the Tax Revenue Appeals Board (TRAB) Rules, GN. No. 217 of 2018 that provides as follows:

> *"Except with the consent of the Board, and upon such terms and conditions as the Board may determine, the appellant shall not at the hearing rely on any ground other than the grounds stated in the appeal, and shall not adduce any evidence other than the evidence which was previously made available to the Commissioner General."*

From this postulation, a couple of questions arise as follows: was this a ground before the Board? Could the Tribunal pronounce itself on it? The appellant thinks that the answer should be in the affirmative, while the respondent is avidly of the view that the Tribunal could not lay its hands on this new ground. A glance at page 1380 reveals that the said ground featured as the sixth issue in the Board, and its determination appears at page 1528. Thus, whilst we agree that the letter and spirit of rule 16 (5) of the TRAB Rules are indispensable, we are not convinced by argument that the Tribunal ought not to have considered it as a ground. This was a flawed finding by the Tribunal, as nothing precluded it from determining matters which featured in the Board. Casting a blind eye on it was a little wayward and the appellant's complaint is justified. We find merit in this part of the ground of appeal and allow it.

There is yet another complaint by the appellant to the effect that the additional obligation for 2014, cannot stand because the respondent had comprehensively and exhaustively looked into her tax affairs and given them a 'clean bill of health'. As much as we think that this position is flawed, we think that this issue need not detain us, as Mr. Konda conceded during his oral submissions that the sum of TZS. 154,944,942.89 constitutes a legitimately levied obligation due to the respondent for 2014. This disposes

the second limb of ground 11 in the respondent's favour, and we dismiss the appellant's contention in that respect.

In fine, this appeal succeeds but only to the extent shown herein and, on that basis, we allow that part of the appeal, and quash and set aside the judgment in respect of the successful part, while on the dismissed grounds, especially ground 11 of the appeal, the appellant is ordered to effect payment of the admitted sum due to the respondent. We make no order as to costs.

DATED at **DODOMA** this 27th day of February, 2025.

M. C. LEVIRA
JUSTICE OF APPEAL

Z. N. GALEBA
JUSTICE OF APPEAL

M. K. ISMAIL
JUSTICE OF APPEAL

The Judgment delivered this 27th day of February, 2025 in the presence of Mr. Yohanes Konda and Ms. Butogwa Mbuki, both learned counsels for the Appellant via video facility from Dar es Salaam and Mr. Yohana Ndila, learned State Attorney for the Respondent, is hereby certified as a true copy of the original.

THE COURT OF APPEAL OF TANZANIA

O. H. KINGWELE
DEPUTY REGISTRAR
COURT OF APPEAL