IN THE COURT OF APPEAL OF TANZANIA

AT DAR ES SALAAM

(CORAM: MZIRAY, J.A., MKUYE, J.A., and KOROSSO, J.A.)

CIVIL APPEAL NO. 148 OF 2018

COMMISSIONER GENERAL,

TANZANIA REVENUE AUTHORITY ..... APPELLANT

VERSUS

AGGREKO INTERNATIONAL PROJECTS LTD ..... RESPONDENT

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

(Mjemmas, Chairperson, Mwaibula and Kissenge, members)

Dated the 25th day of July, 2018
in
Tax Appeal No. 27 of 2016

JUDGMENT OF THE COURT

7th June & 4th July, 2019

KOROSSO, J.A.:

The appeal before the Court arises from a decision of the Tax Revenue Appeals Tribunal (the Tribunal) dated 25th July 2018 in Tax Appeal No. 27 of 2016. The appellant is the Commissioner General of the Tanzania Revenue Authority (TRA). TRA is a Revenue Authority established under Section 4 of the Tanzania Revenue Authority Act Cap 399 R.E. 2006, with a duty to assess, collect and account for Government revenue in the

country. The present appeal arises from the fact that TRA is involved in a tax dispute with the respondent, Aggreko International Projects Ltd. who operate in Tanzania as a branch of Aggreko International Projects Limited, a company registered in the United Kingdom, engaged in generation of emergency/temporary power (electricity), and working mainly with Tanzania National Electricity Supply Company Limited (TANESCO) as the main customer.

The nature of the respondents' operations in Tanzania is centered on demand for emergency power, and administrative functions are executed by the head office situated in Dubai, United Arab Emirates. Records of proceedings at the Board and the Tribunal as contained in the records of appeal, reveal that between the years 2011 to 2012, the respondent head office, provided a number of services on behalf of the respondent and the cost of these services was allocated to the respondent. The respondent paid management fees to the head office for services rendered on its behalf by the head office. In the financial year 2013-2014, the appellant (that is TRA) conducted an audit on the respondent's tax affairs for the years of income 2011 and 2012. Audit findings led the appellant to form a view that the respondents' head office costs are part of the management

fees attributed to the respondents' operations in the country and consequently subject to withholding tax.

With these audit findings, the appellant proceeded to issue a withholding tax certificate to the respondent demanding for a total of Tshs. 2,220,852,775/- where Tshs.1,614,442,557/- being the principal tax and Tshs. 606,410,218/- as interest thereto arising from management fees paid by the respondent for service rendered from non-resident service providers. Upon being served with the said certificate, the respondent, dissatisfied with the assessments of withholding tax on management fees, objected to the assessment but the appellant confirmed the assessments, arguing that it was a correct reflection of the situation and the law. The respondent was aggrieved by this decision and lodged an appeal before the Tax Revenue Appeals Board (the Board) and the Board upheld the assessment by the appellant. Being aggrieved by the decision of the Board the respondent did not stop there and proceeded to file an appeal before the Tax Revenue Appeals Tribunal (the Tribunal) where his appeal was allowed.

When considering the respondent's appeal against the appellant withholding tax assessment, the Board held that payments made to non-

residents for services performed outside Tanzania have a source in Tanzania hence subject to withholding tax and that for income tax purposes the income will have a source in Tanzania if its base is in Tanzania. When the second appeal went before the Tribunal, issues considered included the import of our decision in **Commissioner General (TRA) vs Pan African Energy,** Civil Appeal No. 146 of 2015 (unreported) where this Court considered section 69(i)(i) of the ITA, 2004 implications and stated that;

> *"Section* 69(i)(i) *does not impose a liability on an individual company to withhold tax where service fee is paid in relation to services rendered out of the United Republic regardless of the fact that payment is made by a company registered in and is doing business in Tanzania."*

The Tribunal held that it was bound by this decision and that in essence the appellant (then) had no obligation to withhold tax on payments made as management fees for services rendered by its head office offshore. This meant that the Tribunal reversed the decision of the Board finding in favour of the respondent (in the current appeal). It is against the Tribunal's decision that this appeal is now before this Court having been filed by the appellant dissatisfied with the said decision.

The memorandum of appeal sets out three grounds of appeal challenging the decision of the Tribunal, namely:

1. *That the Tax Revenue Appeals Tribunal erred in law by holding that the payments made by the respondent to non-residents for services performed outside Tanzania have no source in Tanzania hence no withholding tax payable.*
2. *That the Tax Revenue Appeals Tribunal erred in law by holding that the Appellant was wrong in law to impose interests on the Respondent.*
3. *That the Tax Revenue Appeals Tribunal erred in law by disregarding the correct position of the law as contained in decision of this Court in the case of* ***Tullow Tanzania BV versus Commissioner General,*** *Civil Appeal No. 24 of 2018.*

The appellant and the respondent counsel filed written submissions for and against the appeal respectively in compliance with Rule 106(1) and subrule (8) of the Tanzania Court of Appeal Rules 2009 (the Rules) and which were during the hearing of the appeal adopted by each counsel subsequently. On the date of hearing, the appellant was represented by Mr. Salvatory Switi, Learned Advocate and the respondent enjoyed the services of Mr. Wilson Kamugisha Mukebezi, Learned Advocate.

In arguing this appeal, the appellant's counsel with the leave of the Court proceeded to argue in unison the 1st and 3rd grounds and proceeded to submit that we find that the Tribunal erred in holding that payments made by the respondent to non-resident service providers for services performed outside Tanzania have no source in Tanzania hence no withholding tax was payable. The counsel grounded his arguments on the fact that section 83(1)(b) of the ITA, 2004, applicable during the year of income 2011-2012 (the period of the disputed assessment), impose an obligation to a resident person who pays service fee which has a source in Tanzania to a non-resident to withhold income tax and remit it to Tanzania Revenue Authority (TRA). Arguing that for proper construction of the principle of this provision it should be read together with section 6(1)(b) of the ITA, 2004. The counsel for the appellant contended further that the combined effect of the two provisions is that, payment of service fee by a non-resident is subject to withholding tax where it can be proved that the source is in Tanzania.

It was further submitted by the appellant's counsel, that for tax purposes, payments which have a source in Tanzania are dealt with under section 69 of the ITA, and more relevant for the current matter is section

69(i)(i) of ITA. The appellant's counsel submitted that whereas the applicability of section 69(i)(i) of the ITA, 2004 to determine which income has a source in Tanzania is not doubted, the Court should find erroneous the interpretation made by the respondents' counsel in construction of section 69(i)(i) of ITA, 2004, saying that, for the income to have a source in Tanzania the rendered services must be performed in Tanzania solely, and that in the present case since the services were by non-resident service providers the respondent had no duty to withhold tax on payment for non-residents. The counsel for the appellant argued that the above construction by the respondent on the said provision was adopted by the Tribunal in its deliberation and hence the findings by the Tribunal, and thus the Court should also find that the Tribunal erred.

The appellant counsel contended that when a non-resident service provider provides service to a non-resident service provider, should be considered to have supplied or delivered service in Tanzania irrespective of where the service came from. Contending further that applying this to the present case where it is a common ground that non-resident service provider rendered, supplied, delivered management services to the respondent in respect of activities conducted by the respondent in

Tanzania and therefore, under section 69(i)(i) of the ITA, 2004, the said service was rendered in Tanzania irrespective of the fact that it was done from outside Tanzania.

The appellant counsel submitted further that while understanding established rules of interpretation of legal provisions and the practice that tax laws should be interpreted strictly, it is imperative that consideration must be made on the purpose of the Act as a whole so as not to create absurdity. Arguing that taking a purposive approach, the proper construction of section 69(i)(i) of ITA, 2004 is that, payment of service fee has a source in Tanzania if services in respect of which the payment is made are rendered in Tanzania, a position he prayed the Court to adopt. That if this position is adopted then the issue for determination will be whether the services rendered by the respondent to non-resident service provider were rendered in Tanzania. That the Court should be guided by its own decisions, such as the **Tullow Tanzania BV case**, (supra), where at pg. 11 of the Judgment, the word "*rendered*" was defined and that applying the said interpretation, the phrase "*service rendered*" in Tanzania means "*service supplied*" or "*delivered*" in Tanzania.

It was further argued by the appellant's counsel, that since the services were consumed in Tanzania in line with the holding in **Tullow Tanzania BV** (supra), the assumption should be that the services were rendered in Tanzania, and thus payment of service fees made by the respondent company to non-resident service providers had a source in Tanzania, meaning that, the respondent company have an obligation to withhold tax for such payment and remit the same to TRA and pay the requisite interest arising from delay in payment of accrued tax.

With regard to the decision relied upon by the Tribunal in allowing the appeal, that is, the case of **Pan African Energy Tanzania Ltd** (supra), the counsel for the appellant urged the Court to find the said decision distinguishable because the findings therein were substantially influenced by consideration of various provisions of the Indian Income Tax provisions which differ materially from provisions of our tax laws. The counsel further submitted that the holding on this issue found in **Tullow Tanzania BV case** (supra) whose respective findings have been reaffirmed by this Court in **Shell Deep Water TZ BP vs Commissioner General for TRA**, Civil Appeal No. 123 of 2018 (unreported) and found to

be good law, should guide the deliberation and determination of the appeal before the Court.

Addressing the second ground of appeal, the counsel for the appellant argued that this ground addresses the interest payable which is consequential from the principal tax, thus if the first and third grounds of appeal are allowed, it should follow that this ground be allowed since the principal tax is subject to interest and in the present case, the respondent failed to pay requisite withholding tax for the period of 2011-2012, and thus the unpaid amount interest is also due. The counsel concluded with prayers that all grounds of appeal be allowed with costs.

On the part of the respondent, Mr. Wilson Mukebezi, learned Advocate in reply to the arguments advanced by the counsel for the appellant when substantiating the appeal, submitted that all the presented grounds of appeal are devoid of merit and then proceeded to submit on the grounds of appeal sequentially. The respondent's counsel started by addressing the 3rd ground of appeal by challenging the contention advanced that had the Tribunal members been referred to the decision of this Court in **Tullow Tanzania BV case** (supra), the Tribunal would have arrived at a different decision from which they had and affirmed the

decision by the Board. The counsel stated that this statement is erroneous because **Tullow Tanzania BV case** (supra) was decided in July 2018, and by that time, the decision of the Tribunal had already been given. Therefore there was no possibility that the Tribunal would have had the opportunity to consider the decision of this Court in **Tullow Tanzania BV case** (supra) prior to concluding the matter before them.

We will cogitate this assertion without delay. Having perused through the records of appeal we find that the decision of the Tribunal is dated 25th July 2018 and that of this Court in **Tullow Tanzania BV case** (supra) is dated 4th July 2018. Therefore the argument by the respondent counsel disputing the assertion by the learned counsel for the appellant is devoid of merit. Although at the same time, perusing through the records of the Tribunal we find that the Tribunal were aware of our decision in **Tullow Tanzania BV case** (supra) because it is referred to in the Judgment of the Tribunal as seen at pgs. 211, 216, 218, 219 of the record of appeal rendering the argument by the appellant's counsel that had the Tribunal been made aware of the decision in **Tullow Tanzania BV case** (supra) they would have confirmed the decision of the Board, also without substance.

The counsel reminded the Court of the principle that tax statutes are to be construed according to clear words of the statute. Arguing that in doing so, a true perspective of the law can be achieved and thus avoiding a situation which is not contemplated by the legislature when enacting the law. Expounding further on this, the learned counsel, invited the Court to consider and determine the issue drawn, by first discussing the import of section 69(i)(i) of the ITA, 2004 stating that the said provision impose the condition that services must be rendered in this country. The learned counsel for the respondent, submitted further that taxation is a creature of the Constitution, vide Article 138(1) of the United Republic of Tanzania Constitution 1977 (as amended from time to time), and requires that tax should be imposed through law. The counsel argued that the cited provisions by the appellant's counsel, that is section 83(1)(b), 69(i)(i) and Section 6(1), are relevant in addressing the main issue for the Court's determination in this case and that is, whether the payment made to non-resident service providers are subject to withholding tax. On their part the respondent prayers were that the Court find that they were not subject to withholding tax as found by the Tribunal.

The respondent's counsel also invited the Court to consider our decision in **Commissioner General of TRA vs. Pan African Energy,** arguing that on their part, they are of the view that the decision in the **Commissioner of TRA vs Pan African Energy** (supra) is good law especially how it dealt and addressed the relevant provisions therein which are the same provisions being discussed in the present case. It was the counsel's contention that the decision in **Tullow Tanzania BV's case** (supra) should not be followed since it is not good law for the following reasons:

> "**i.** *Because it imported definitions which do not tally the law. The argument being that when you consider the said decision, at page 11 paragraph 3, the Court attempted to define the word "render" while the law says the person delivering has to be inside Tanzania, and in this case the problem is with the services rendered in Tanzania and from outside Tanzania.*
>
> ***ii.*** *That the act of distinguishing the* ***Pan African Energy case*** *(supra) without determining the import of the section, important to be determined and only stating that the decision was influenced by the Indian Tax Law is not proper.*

iii. *That in deciding the* ***case of Tullow Tanzania BV*** *(supra), the Court imported tax principles on avoidance and relied on decisions not relevant to the dispute and that this can be seen from a case discussed in section/paragraph 66 including a case discussing section 66 whilst section 69(i)(i) is very clear in itself.*

iv. *When the* ***Pan African Energy case*** *was decided, this Court went ahead and advised the Government to change the law as the case in India. That section 3 of the Finance Act, 2016, amending the Income Tax Act, defines "services rendered". That* ***Tullow's case*** *(supra) did not address this problem. That the Court Should uphold the law as it was then, and rely on the position propounded in the* ***Pan African case*** *(supra) decision since it was correctly decided".*

Arguing further that, for section 69(i)(ii) to apply, it is only when the Government is the payer and it is then that the interpretation made by the Board and the appellants counsel applies. That this subsection addresses circumstances where the Government is the payer for the services rendered, irrespective of place of exercise rendering or forbearance. He further submitted that in earlier versions of the law prior to the 2016

amendments, the word "rendered" was not defined and it is the insertion in the amendment law that gives rise to the meaning subscribed by the appellant and not the way it was, and which should be construed in the present appeal.

On the issue of interest accrued advanced in 2nd ground of appeal, the respondent counsel submitted that the position by the Tribunal was correct and thus prayed that the Court should dismiss the appeal and uphold the decision of the Tribunal and thus the claim for interest has to also fail.

In his brief reply, the appellant's counsel reiterated his earlier submissions and disputed the assertion by the respondent's counsel that the service provider must be situated in Tanzania and stated that the decision in **Tullow Tanzania BV case** (supra), there was no consideration of the amended provisions of the law, that had inserted the definition of the word "rendered", and the purpose of the said amendment was to cure the confusion which obtained at the time. That when considered and constructed jointly, Section 83(1)(b), Section 69(i)(i) and Section 6(1) of ITA 2004 expound that withholding tax is imposed on

payment to non-residents where the source of payment is United Republic, also referred to as the "source principle".

We have meticulously considered the submissions and arguments presented by the learned counsel both in support of and against the appeal. We find that the main issue before us for determination is whether or not the Tribunal erred in holding that the respondent company had no obligation to withhold tax on payments made as management fees for services rendered by its head office offshore and this being the case the respondents were not supposed to pay the interest imposed. In effect it falls on the interpretation of Section 69(i)(i) of ITA, 2004 and its import. Consequential to this is whether the respondent is liable to pay interest as per the claims.

At the same time, we are of the view that all the grounds of appeal will be considered and determined in unison having regard to the fact that all the grounds of appeal are centered on the appellant's claim against the respondent company on withholding tax on management fees for services rendered by the respondent's head office offshore and in essence, address interpretation of section 69(i)(i) of the ITA, 2004, as read together with section 6(1)(b) and 83(1)(b) of the Income Tax Act, 2004.

Before proceeding any further, we endeavor into discussion of an important matter we feel should be addressed. That is understanding the concept of withholding tax and what it entails. We recognize that this matter has been previously addressed by this Court and we thus proceed to adopt what was stated by this Court in **Tullow Tanzania BV case** (supra), that "Withholding tax" is a tax that is required to be withheld by the person making "payment" of certain amounts to another person in respect of goods supplied or services rendered to satisfy the recipients' tax liability.

Again, with the understanding that interpretation of provisions in tax matters is very important and having been invited by the counsel for both parties to do this, where on the part of the appellants' counsel the plea was for this Court to use a purposive approach, whilst on the part of the respondents we were invited to construct the relevant provisions by use of the plain meaning approach accordingly, we find it is important to venture into a discussion of the rules of construction of taxing statutes, especially since interpretation of various provision of the ITA, 2004 relevant to the present case is imperative in the determination of this appeal.

We take leaf from a decision of this Court in **Bulyanhulu Gold Mine Limited vs. Commissioner General (TRA)**, Consolidated Civil Appeal No. 89 and 90 of 2015 (unreported) where they adopted excepts from a book, "**Income Tax Law in Tanzania Source Book**, "DUP" (1996) Ltd 2000, cited at pgs. 8 and 9 of the Judgment of this Court, disclosing several rules of construction which we find appropriate to also consider in the present case. These include:

1. *The strict construction Rule (**Kilman vs. Winkworth** (1933)17 TC 569*
2. *Considering the Statute as a whole Rule- 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*
3. *Words of the Statute must be read in context- The main rule is that, words and phrases are to be construed in the sense in which they are ordinarily used, but where they have a technical meaning in law they must be construed in accordance with that meaning.*
4. *Departure from the literal construction of the statutory language- The main rule of construing taxing statutes is that one should look simply at what is clearly said. However, courts may sometimes depart from literal construction, where such construction leads to an absurd*

*result which cannot have been contemplated. For instance where such literal construction can lead to unfair and highly inequitable results. (**AG vs Hallet** 2 H & N. 368).*

We are also guided by our decision **in Republic vs Mwesige Godfrey and Another** in Criminal Appeal No. 355 of 2014 (unreported), where we stated;

> *"Indeed it is axiomatic that when the words of a statute are unambiguous, "judicial inquiry is complete". There is no need for interpolations, lest we stray into the exclusive preserve of the legislature under the cloak of overzealous interpretation"*

That Court must always presume that what a legislature says in a statute means what it says there. But went on to also state that:

> *"But this only holds true in the clearest of cases. Where there is an obvious lacuna or omission and/or ambiguity the courts have a duty to fill in the gaps or clear the ambiguity"*

The respondent counsel submitted that the decision by the Tribunal on interpretation of section 69(i)(i) of ITA, 2004 was correct because it was centered in construction of the provision in a manner governing interpretation of tax statute that is, by reading the context and construing the meaning in the sense in which they are ordinarily used, as the wording

in this provision is clear, and it does not impose obligation to pay withholding tax to non- resident service providers, a position upheld by this Court in **Pan African Energy case** (supra). On the other side, the appellant is of the view that, construction of such a provision must be in a manner that preserves its purpose. The appellant's counsel implored the Court to use a purposive approach so as to bring in a reality perspective of the provision and avoid generating a situation of absurdity or one not contemplated by the legislature.

At this juncture to have an overview of the gist of the provisions under consideration it is pertinent to import all the relevant provisions we find relevant to the issue for determination:

Section 6(1)(b) of the Act, which addresses what is chargeable income to a non- resident person, provides thus:

> "6(1) *Subject to the provision of sub-section (2), the chargeable income of a person for a year of income from any employment business or investment shall be*
>
> *(a) .....N/A*
>
> *(b) In the case of a non- resident person, the person's income from the employment, business or*

investment for the year of income, but only to the extent that the income has a source in the United Republic."

The import of this provision is that a non-resident person's income is taxable where the income has a source in the United Republic of Tanzania, and thus imposing the "source principle".

Section 83(1)(b) states:

'S. 83-(1) Subject to sub-section (2), a resident person who

(a) ..... N/A

(b) *Pays a service fee or an insurance premium with a source in United Republic to a non-resident person shall withhold income tax from the payment at the rate provided for in paragraph 4(c) of the First schedule."*

The import of this provision is to foist obligation for withholding tax on payments to non-residents to the extent and only where the source of payment is in the United Republic of Tanzania.

The other relevant provision is section 69(i)(i) of ITA that provides:

"The following payments have a source in the United Republic

(a)(h) ..... N/A

(i) Payments, including service fees, of a type not mentioned in paragraphs (g) or (h) or attributable to employment exercised, service rendered or a forbearance from exercising employment or rendering service.

(i) in the United Republic, regardless of the place of payment, or..."

Section 69 of ITA 2004 expounds on payment with a source in the United Republic. For reasons which shortly shall become apparent we find that we shall apply the purposive approach in construction of the relevant provision in this case finding it more appropriate under the circumstances.

Perusing through the above provisions, we entirely subscribe to the holding in **Tullow Tanzania BV case** (supra), a position restated in the **Shell Deep Water TZ BP case** (supra), there is no doubt in our minds that when reading through sections 6(1)(b), 69(i)(i) and 83(1)(b) of ITA 2004, all together gives two conditions for payment to a non-resident to be subjected to withholding tax. These are: (1) the service 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. This stance has not been challenged by either counsel in this appeal.

The counsel for the respondent invited the Court to depart from the decision of this Court in **Tullow Tanzania BV** (supra) and reaffirm the decision of this Court in **Pan African Energy** (supra) and also to find the decision in **BP Tanzania vs. The Commissioner for TRA**, Civil Appeal No. 125 of 2015 (unreported), which discussed matters related to withholding tax on payment of non-resident service providers to be distinguishable because it addressed section 69(e) of ITA 2004. The weight of the respondent's counsel arguments is that the Court's interpretation of the provision should augur well with the practice in interpretation of Tax Statutes, that is, strict interpretation, having regard to the content and parameters put in the relevant provision. That the Court be guided by the decision of this Court in **Pan African Energy Tanzania Ltd** (supra) and that in the present appeal, the Court should not depart from the decision of the Tribunal, since the services being taxed were performed in Dubai and not Tanzania, thus withholding obligation did not arise in respect of the payments. The appellant's stance differed on this as already expounded hereinabove, finding the holding in **Pan African Energy** (supra) to be distinguishable.

We had time to consider our decision in the case of **Pan African Energy** (supra), where having considered the provisions of section 6(1)(b), 83(1)(c) and 69(i)(i) of ITA 2004, held that section 69(i)(i) is clear that income tax is chargeable for services rendered in Tanzania and stressing on the words "**services rendered"** in Tanzania and construed the said provision not to impose liability on an individual company to withhold tax where service fee is paid in relation to services rendered out of the United Republic of Tanzania, except where the payer is the Government and then Section 6(i)(ii) will apply. We share the view that the obtaining circumstances in the appeal under consideration render the said decision to be distinguishable because as also held in the case of **Tullow Tanzania BV** (supra) and **Shell Deep Water TZ BP case** (supra), the Court in arriving at the decision in **Pan African Energy** case (supra) seem to have been greatly influenced by cases and laws put before the Court emanating from India, including the provisions of the India Income Tax law. Provisions which at the time were not similar in context or construction to the relevant provisions in our Tax laws.

The Court in the **Tullow Tanzania BV case** (supra) was also of the view that the word "rendered" as used under section 69(i)(i) of ITA 2004,

is synonymous to the words "supplied" or "delivered", and thus, in effect, meaning that a non-resident person who provides services to a resident, has delivered/supplied services to a resident of the United Republic of Tanzania. This position was reaffirmed in **Shell Deep Water Tanzania BV** (supra).

We firmly subscribe to the position held by this Court as expounded in **Tullow Tanzania BV case** (supra) a position also adopted in **Shell Deep Water Tanzania BV** (supra**)** on the issue of "the source" and "service rendered" and also where it was stated that, as the recipient of the service is the actual payer for such services, the "source of payment" has to be where the payer resides. Applying the findings from the cases cited above to the present appeal, where the management services were conducted from Dubai, by a branch company situated in Tanzania, the situation is similar in that the said services were utilized or consumed in the United Tanzania and thus without doubt can be said to be "sourced" in the United Republic of Tanzania.

There being no dispute that for the years 2011-2012, the respondent paid management fees for service rendered on its behalf by its head office situated outside Tanzania, that is, Dubai and that during the period the

respondent was engaged in operations in Tanzania, we are thus satisfied that the respondent made payment for management services rendered by non-resident service providers, for services sourced in Tanzania, and that this imposed a duty to the respondent to withhold tax on the payment made.

In the event, we find that the 1st and 3rd ground of appeal are meritorious and that the Tribunal erred in law by not having a proper construction of sections 6(1)(b), 69(i)(i) and 83(1)(b), especially the fact that read together, withholding tax is imposed on payment of service to non- resident service providers.

We think it is important to also discuss albeit briefly the four issues raised by the respondent when submitting and imploring this Court to find the decision in **Tullow Tanzania BV case** (supra) bad in law. We wish to state that the duty of this Court in this appeal was not one of reviewing our decision in **Tullow Tanzania BV case** (supra), there are remedies available under the Appellate Jurisdiction Act, Cap 141 RE 2002 where a person aggrieved by a decision of this Court may undertake to move the Court to review its decision and that was not our task in this appeal before us.

In the final analysis, having allowed the 1st and 3rd ground of the appeal consequential to this is the duty for the respondent to pay interest for the principal sum and for the delay in payment of commensurate tax. Thus the 2nd ground of appeal has merit and is therefore allowed.

The above said, the appeal is allowed with costs.

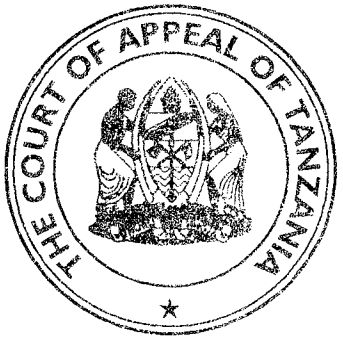
DATED at **DAR ES SALAAM** this 28th day of June, 2019

R. E. S. MZIRAY
JUSTICE OF APPEAL

R. K. MKUYE
JUSTICE OF APPEAL

W. B. KOROSSO
JUSTICE OF APPEAL

I certify that this is a true copy of the original.



S. J. KAINDA
DEPUTY REGISTRAR
COURT OF APPEAL