**THE UNITED REPUBLIC OF TANZANIA**

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**DAR ES SALAAM SUB-REGISTRY**

**AT DAR ES SALAAM**

**MISC.CIVIL APPLICATION NO. 498 OF 2023**

***(Arising from Judgment and Decree Civil case No.06 of 2022 and Execution No.1/20223 as per Hon.J.W.Mgaya. SRM, dated 29th September 2022)***

***Between***

**MATAMA AYAMBAR.....APPLICANT**

**VERSUS**

**SAMIRA ABDALLAH SALIM.....RESPONDENT**

**RULING**

***Date of last Order: 22/11/2023***

***Date of Ruling: 01/12/ 2023***

## GONZI,J.;

The Applicant has moved this court by way of chamber summons to grant an extension of time for the Applicant to file an appeal against the Consent Settlement Order passed on 29th September 2022 by the District Court of Kigamboni vide Civil Case No.6 of 2022 which was filed by the Respondent herein against the Applicant. In the supporting affidavit, the Applicant deposed that on 21st October 2019 she entered into a lease agreement with the Respondent in respect of Respondent's demised premises situated at Mji Mwema Kigamboni, Dar es salaam. That the Applicant subsequently left the demised premises after having found an alternative place to operate her school business. That in August 2022 she was sued by the Respondent in the District Court of Kigamboni vide Civil Case No.6/2022 for breach of the lease agreement. She continued to state that on 29th September 2022 she entered into a consent Agreement with the Respondent upon being ill-advised by her Lawyer.

The settlement agreement culminated into Judgment by Consent being pronounced by the District Court. I reproduce verbatim the relevant part of the Judgment by Consent:

***"CONSENT SETTLEMENT ORDER***

***The parties having consented to settle the case through mediation, now agrees as follows:-***

***1.That the Defendant shall issue payment of Tshs.25,800,000/=(say Twenty Five Million and Eight Hundred Thousand Shillings to the Plaintiff.***

***2. That the Defendant shall pay Tshs 25,800,000/= in four installments.***

***3.That the Defendant shall pay the Plaintiff Tshs.6,450,000/= on 30/1/2023 being the first installment.***

***4. That the Defendant shall pay the Plaintiff Tshs.6,450,000/= on 30/04/2023 being the second installment.***

***5. That the Defendant shall pay the Plaintiff Tshs.6,450,000/= on 30/07/2023 being the third installment.***

***6. That the Defendant shall pay the Plaintiff Tshs.6,450,000/= on 30/09/2023 being the fourth installment.***

***1. That the Defendant shall pay the sum payable above into the following Plaintiff's Bank Account:***

***Account: 0279616000 BANK OF AFRICA***

***NAME: SAMIRA ABDALLAH SALIM.***

***2.That the Defendant shall vacate the premise on 9/11/2022; premise located at Kigamboni District, Mji Mwema, bearing Plot No.505 Block "A" being a rental premise."***

The Applicant stated that she paid the first and second installments on time but she defaulted in paying the third installment where she paid only Tshs.3,000,000/= due to difficulties in her school business. Therefore, she

asked the District court to reduce the amount payable under the fixed installments. She alleged that the Respondent and the District court refused her prayer. She deposed that equally on 30th July 2023 she went to court with a lesser amount but the Court directed her to pay in cash the whole balance of Tshs.9,900,000/= in one installment or she would be detained as a civil prisoner. She stated that the threat of her being imprisoned on default to pay the agreed amounts was being made real by the Court always summoning a Prisons Officer to attend in court whenever the case would come for mention or hearing. She stated that she was forced to make payments in cash and not via bank deposit anymore. That the court told her bother who attended in Court on 4th August 2023 to tell the Applicant to pay in one installment the outstanding balance or risk going to jail. She stated that she was advised by another lawyer that the District court had no jurisdiction over the land matter and she that is why now she wishes to challenge the Consent Settlement Order that resulted into the consented Judgment but she is out of time. Hence the present application.

In the counter affidavit of the Respondent, the application is resisted. The Respondent stated that the Applicant defaulted her obligation to pay the agreed amounts and hence leading to the dispute and the consent settlement order. The Respondent stated that the Applicant was not keeping her promises and was defaulting not only in the payments but also in attending the case in the District court.

When the case came for hearing on 22nd November 2023, the Applicant appeared in person while the Respondent was represented by Mr.Robert Makwaia, learned Advocate. When given the chance to address the Court about her application, the Applicant did not have anything to submit but she requested the Court to allow her to adopt the contents of the affidavit in support of the application as her submissions in chief. That was allowed. The Respondent on the other hand through Mr.Makwaia, learned Advocate submitted in response as follows:

In the first place, Mr.Makwaia submitted that the Applicant made generalized statements in her affidavit by referring to other people whose names she did not disclose such as the names of her brother who

attended the court on 4th August 2023 and the name of the Magistrate who was harassing and threatening the applicant with imprisonment.

Secondly, it was submitted by the Respondent's counsel that the Applicant complained of the Trial Court not having jurisdiction over the matter, however the same Applicant had raised a Preliminary Objection in her Written Statement of Defence in Civil Case No.6/2022 in the District Court of Kigamboni. He submitted that the then Advocate for the Applicant Mr. Michael Orutu from Noesis Attorneys withdrew without costs the preliminary objection on lack of jurisdiction before Hon.Irene Josiah RM. Counsel argued that the Applicant cannot raise again the preliminary objection on lack of jurisdiction which she had voluntarily withdrawn from the trial court.

Mr.Makwaia submitted further that in a application for extension of time, the Applicant is required to show good cause for delay and to account for every single day of the delay. He submitted that in the case at hand the Applicant was served with the Execution Application on 9th February 2023 but the present application was filed in court on 12th September 2023. No explanation is given as to why there has been such inordinate delay.

Mr.Makwaia submitted further that the Applicant had already started to implement the consent settlement Court order by paying three installments. It was submitted that by the Applicant coming to court now, it is an attempt to deny the Respondent her rights because actually the Respondent is not disputing the claimed amounts and that is why she has been paying. The Respondent's counsel concluded that the present application is just a delaying tactic by the Applicant to honour the judgment by consent.

The applicant made rejoinder submissions by mentioning the names of the Magistrate in the District Court of Kigamboni who allegedly was threatening her. Also she named her brother who was told by the District court to pass over the imprisonment threats to her. She also stated that the delay is caused by the fact that she was sick and she was in hospital. She said that she had with her a medical chit which she had not attached to her affidavit. She submitted that initially she was willing to pay the

agreed amount and that she had already paid Tshs.15,900,000/= in 6 months and that the outstanding balance was Tshs.9,900,000/=. She submitted that this outstanding figure was difficult for her to pay due to financial hardships and that she was sick and that her plea for the Respondent to be lenient fell into deaf ears of the respondent. On withdrawing the Preliminary Objection, she submitted that she did not know anything about it as it was her former advocate who handled everything and therefore she knows nothing about the preliminary objection at all.

After hearing the parties' submissions and going through the affidavit and counter affidavit in this application, I am now in a position to determine the present application.

The application is brought under section 14(1) of the Law of Limitation Act, Cap 89 of the Laws of Tanzania (RE 2019). The section provides that:

***14.-(1) Notwithstanding the provisions of this Act, the court may, for any reasonable or sufficient cause, extend the period of limitation for the institution of an appeal or an application, other than an application for the execution of a decree, and an application for such extension may be made either before or after the expiry of the period of limitation prescribed for such appeal or application.***

It is clear that the Consent Order made by the District Court and which is sought to be appealed against, was made on 29th September 2022. The present application was filed in court on 11th September 2023. That is almost one year later. At any rate, the Applicant is late to file an appeal against the consent settlement Order. Before entertaining an application for extension of time to appeal, I am duty bound to ask myself as to whether the decision in respect of which extension of time is sought is appellable? In this Application, it is not disputed between the parties that an aggrieved person may appeal against a consent judgment. Appeal, revision, review or filing a new suit are all options for challenging a consented judgment depending on the circumstances of the particular case. This position of the law is clear as it was held by the Court of Appeal of Tanzania sitting in Dar es Salaam in

the case of **Arusha Planters and Traders Limited versus Eurafrican Bank (T) Ltd,** Civil Appeal No.78/2001. Hence in the case at hand, whether or not a consent judgment is appellable, is not an issue. The issue is whether or not an extension of time is justified in the circumstances.

Section 14(1) of the Law of Limitation Act allows the Court to extend time for a party to appeal "***for any reasonable or sufficient cause".*** The position of the law in cases of extension of time in Tanzania has been well settled in the case of **Lyamuya Construction Ltd versus Board of Trustees of Young Christians Women of Tanzania**, Civil Application No.2 of 2010 decided by the Court of Appeal. The court can extend time where sufficient reasons are given. The sufficient reasons include the fact that the applicant must account for all period of delay, the delay should not be inordinate, the Applicant should not have shown apathy or negligence or sloppiness.

Clearly, in the present case, the Applicant has not accounted for every single day of the delay in not taking the prescribed steps to prosecute the intended appeal.

On the other hand, the Applicant has relied on the ground of illegality alleging that the trial court lacked substantive jurisdiction to entertain the dispute due to the nature of the subject matter being a land dispute. This was deposed in her affidavit. Mr. Makwaia in his response submitted that the issue of jurisdiction was indeed raised in the trial Court as a preliminary objection but that it was later on withdrawn by the Applicant's counsel hence paving way for the settlement agreement being made. I have seen a copy of the Written Statement of Defence which was filed by the Applicant in the District Court in Civil Case No.6 of 2022. It started with a preliminary point of objection in the following words:

**"Take Notice that on the first day of hearing of this suit, counsel for the Defendant shall raise a Preliminary Objection on points of law that:**

**(a) That this Court has no jurisdiction to entertain this suit."**

So, indeed, there was a preliminary objection lodged challenging jurisdiction of the trial court and that the same was later withdrawn by the Applicant's Advocate. Although the Applicant has submitted that she was ill-advised by her former advocate, I am of the view that what the Applicant's Advocate did was for and on behalf of the Applicant. An Advocate is an agent of the party who hires the Advocate's services and the party is deemed to have authorised the advocate to do whatever he does in respect of the case. If parties were allowed to simply and verbally disown what was done for them by their advocates, Court business would come into paralysis. As it stands, the preliminary objection was withdrawn under instructions of the Applicant and that is why the case proceeded.

Looking at the nature of the preliminary objection withdrawn, it is clear that the same was challenging jurisdiction of the District Court. It is trite that a preliminary objection on jurisdiction of the court can be raised at any time even on an appeal for the first time. The Court can also raise it suo mottu. The present case is not an appeal, rather it is an application for extension of time to appeal. But still the objection on lack of jurisdiction is relevant because one of the grounds for extension of time under the phrase 'sufficient cause' is illegality of the decision sought to be challenged. In the case of **Charles Richard Kombe versus Kinondoni Municipal Council,** Civil Reference No. 13/2019, the Court of Appeal held that where illegality is put forward as a ground for extension of time, the applicant must substantiate the illegality in terms of lack of jurisdiction on the part of the court; that the case was barred under the law of limitation or that there was a denial to the applicant of the right to be heard. In the case before me, the Applicant is raising an illegality of the consent settlement order on the part of the District Court of Kigamboni entertaining a dispute concerning breach of a lease agreement over landed property for which the District Court had no jurisdiction. Therefore, the same issue of lack of jurisdiction on the part of the trial District Court, which was raised and later withdrawn by the Applicant's Counsel in the District Court, becomes relevant now once again, but this time as a constituent ingredient of the ground of illegality for determination of an extension of time. Mr.Makwaia in his submissions argued

that the issue of jurisdiction, having been raised and voluntarily withdrawn by the applicant in the trial court, can not be raised again now. With respect, that argument is not correct. It must be noted that where a court lacks jurisdiction, its decision is a nullity. Also it must be noted that where a court lacks jurisdiction, the parties cannot by their mutual consent confer jurisdiction to it expressly or impliedly. Jurisdiction is a creature of the statute. A court either has or doesn't have jurisdiction in accordance with the provisions of the relevant law. If the District Court of Kigamboni lacked jurisdiction, the Applicant's act of withdrawing the Preliminary Objection in that aspect did not confer jurisdiction to the District Court. Again, jurisdiction is among the constituents making up the ground of illegality which can be used to grant an extension of time. Therefore this issue is properly raised now by the Applicant.

Does the District Court have jurisdiction to entertain a dispute concerning non-payment of rent monies under a lease agreement?

The Land Disputes Courts Act, Cap 216 of the Laws of Tanzania provides:

***4.-(1) Unless otherwise provided by the Land Act, no magistrates' court established by the Magistrates' Courts Act shall have civil jurisdiction in any matter under the Land Act and the Village Land Act.***

***(2) Magistrates' courts established under the Magistrates' Courts Act shall have and exercise jurisdiction in all proceedings of a criminal nature under the Land Act and the Village Land Act.***

The District Court is established under Section 4 of the Magistrates' Courts Act, Cap 1 of the Laws of Tanzania. Also the Land Act under Part IX thereof contains provisions regulating leases. The rights and obligations of the parties to a lease agreement are stipulated in the Land Act. This would have meant that issues of lease agreement such as non-payment of rent are excluded from the civil jurisdiction of the District Court. However, it is not proper for one to conclude that since the Land Act under Part IX regulates leases; and that since Section 4(1) of the Land Disputes Courts Act, Cap 216 ousts civil jurisdiction of the District Court in any matter under the Land Act, then the District Court lacks jurisdiction in the present matter which

essentially concerns payment of outstanding rent under the lease agreement between the parties. One must be cautious that section 4(1) of the Land Disputes Courts Act starts with a saving provision that retains some powers of the District Court in respect of some land matters where the Land Act provides otherwise. The section begins with the phrase: "***Unless otherwise provided by the Land Act.***" This is an indication that a general rule is about to be established by that section but with the necessary exceptions and reservations being made in so far as the Land Act may provide. Then the general rule is established thereby ousting civil jurisdiction of the ordinary subordinate courts established under the MCA to entertain land disputes. The general rule is established in tandem with the reservation being simultaneously made in respect of those land disputes or cases in respect of which the Land Act would provide otherwise as to which courts would have jurisdiction. Digesting further that provision, it means that as a general rule land disputes should not be taken to the ordinary subordinate courts. However, the same law makes an acknowledgement that there are some land disputes which the Land Act may provide that they can be instituted in the ordinary subordinate courts, despite the fact that they are also land disputes like the ones being generally excluded.

The Land Act, in conformity with the reservation made under section 4(1) of the Land Disputes Courts Act, provides under section 107 that:

"107.-(1) An application for relief may be made to a **district Court**-

(a) in a proceeding brought by the lessor for an order of termination of the lease;

(b) in a proceeding brought for the purpose by any of the persons referred to in subsection (2) before the lessor commences a proceeding mentioned in paragraph (a).

(2) An application of relief against an order of termination of a lease may be made by- (a) the lessee; (b) if two or more persons are entitled to the lease as co-occupiers, by one or more of them on their own behalf- (c) a sublessee; (d) a mortgagee for the lessee or a sublessee; (e) the trustee in bankruptcy of the lessee."

It is worth noting that section 107 of the Land Act specifically vests jurisdiction upon the District Court to entertain land disputes relating to "granting an order for termination of the lease." It also gives the locus standi to institute proceedings relating to "granting an order for termination of the lease" to the lessor or the lessee whoever may sue the other first, and the other mentioned persons in whom the lease can be assigned to from time to time under different circumstances like in cases of sublease, mortgage and bankruptcy of the lessee. The section has limited the main relief allowed to be sought by, and granted to, the lessor or lessee (including the assignees of the lease) inter se, to be only "an order for termination of the lease". The provision also allows the lessee and the other mentioned persons in whom the lease can be assigned to from time to time and in different circumstances like sublease, mortgage and bankruptcy of the lessee to apply for incidental reliefs upon an order of termination of the lease being sought by the lessor or lessee.

Section 108 (2) of the Land Act continues to provide in respect of incidental reliefs that: *"A Court may grant any relief against the operation of an order which the circumstances of the case require and without limiting the generality of that power, may-*

***(e) provide that any arrears of rent or other payments due under the lease be paid in such instalments and at such times as the Court shall determine.***

In my reading of the above stipulated provisions of the law, it becomes apparent that not every matter to which the Land Act applies, will fall outside the purview of the ordinary civil jurisdiction of the District Court. There are some disputes which are covered by the Land Act and hence "land disputes" in terms of Section 3 of the Land Disputes Courts Act, and yet the District Court in the exercise of its Civil Jurisdiction has been deliberately conferred with jurisdiction to entertain them. Claim for arrears of rent is one such matter over which the District Court has jurisdiction as it is specifically provided for under Section 108(2),(e) of the Land Act. When we read the contents of the Settlement Order in the case at hand, the District Court of Kigamboni was correctly navigating its course along the narrow channel of jurisdiction conferred upon it by the Land Act under sections 107 and 108.

It had all the requisite jurisdiction. In my view, the import of the language which was used while enacting section 167 of the Land Act also needs to be carefully scrutinized. I reproduce it:

*"1 (2) The Courts of jurisdiction under subsection (1)* ***include-*** *(a) the Village Land Council; (b) the Ward Tribunal; (c) the District Land and Housing Tribunal; (d) the High Court; or (e) the Court of Appeal of Tanzania."*

The use of the term "**include"** in my view, clearly indicates that the said provision is not totally exclusive of other courts; and therefore that it means there are other courts or Tribunals apart from the ones enumerated under section 167 of the Land Act which have limited civil jurisdiction over certain specified aspects of land disputes in some circumstances. The section is, in my view, intended to make a generalized principle with the necessary exceptions being reserved. The general rule is that land disputes shall be dealt with by *(a) the Village Land Council; (b) the Ward Tribunal; (c) the District Land and Housing Tribunal; (d) the High Court; or (e) the Court of Appeal of Tanzania.* However, this general rule recognizes an exception in that where it is "***otherwise provided by the Land Act,"*** another court or tribunal other than the ones enumerated under section 167 of the Land Act shall also have jurisdiction in land disputes.

Interestingly, section 4(1) of the Land Disputes Courts Act, Cap 216 and Section 167 of the Land Act acknowledge the existence of each other and give breathing space to each other. Section 4(1) Cap 216 excludes jurisdiction of ordinary subordinate courts and vests it to the Land Courts enumerated under Section 167 of the Land Act, but it does so while respecting and preserving the superiority and precedence of the Land Act to prevail in this aspect. Section 167 of the Land Act, in turn, duly acknowledges the precedence given to it by section 4(1) of the Land Disputes Courts Act and therefore proceeds to utilize that exception by enacting sections 107 and 108 of the Land Act which confer upon the District Court, a limited civil jurisdiction over a land dispute of termination of the lease and the incidental reliefs upon an order of termination of the lease.

It is worth observing that there are many transactions involving or touching the land and which can result into disputes but the disputes may not be land

disputes. One such example is a contract for constructing a road or building a house. Another example is a contract for renovation or painting of a building or house. Inevitably, land is involved there but any dispute resulting therefrom is not necessarily a land dispute. But I should stress here that, in my view, the order of termination of the lease and the reliefs incidental thereto are also "land disputes" within the meaning of section 3 of the Land Disputes Courts Act, Cap 216 only that the law has deliberately vested jurisdiction over this land dispute to the District Court . If the order of termination of the lease and the reliefs incidental thereto were not also "land disputes" in terms of section 3 of the Land Disputes Courts Act, Cap 216, it would not have been necessary for the drafters of the law to begin by creating an exception or reservation for those disputes while drafting section 4(1) of the Land Disputes Courts Act. If the order of termination of the lease and the reliefs incidental thereto were not "land disputes" like any other land dispute under the Land Act, it would not have been necessary to exclude them; because if they were already not "land disputes", then even without their exclusion there couldn't have been a confusion as to where they belong as to necessitate their explicit exclusion by the law. The disputes over lease are land disputes like any other and without the proviso under section 4(1) of the Land Disputes Courts Act and section 107 of the Land Act, they would also fall under exclusive jurisdiction of the land courts under section 167 of the Land Act. I am of the settled view that all those disputes intended to be covered by the proviso under section 4(1) of the Land Disputes Courts Act which states: "***Unless otherwise provided by the Land Act...,"*** are also land disputes which if only it was not for that proviso, they would have equally fallen into the exclusive domain of the Land Courts stipulated under section 167 of the Land Act. To hold otherwise would make the proviso under section 4(1) Land Disputes Courts Act, Cap 216 and the word "include" under Section 167 of the Land Act, redundant. Moreover, I am of the view that to hold otherwise would make land administration come into paralysis as the office of Registrar of Titles would also be scrapped of its mandate over some land disputes, a mandate which is expressly provided to it by the Land Registration Act, Cap 334. The Land Act under section 163(4) recognizes the powers of the Registrar of Titles to entertain some disputes concerning land. It provides:

***163(4) The provisions of section 102 of the Land Registration Act apply to any decision given by the Registrar under this section.***

Under the Land Registration Act, Cap 334 the Registrar of Titles, is empowered under sections 13 and 14 thereof to receive and determine objections to first registration of land. Also under section 79(1) the Registrar of Titles may, for the prevention of any fraud or improper dealing or for any other sufficient cause, at any time, enter an injunction in the land register as an incumbrance and any such injunction shall operate to prevent any disposition of the estate or interest thereby affected until such conditions as may be specified therein have been satisfied or the injunction has been withdrawn by the Registrar or the High Court otherwise directs. In my view, these provisions give the Registrar of Titles powers to deal with land disputes and make decisions.

The Land Registration Act provides under section 102 that :

***Any person aggrieved by a decision, order or act of the Registrar may appeal to the High Court within three months from the date of such decision, order or act.***

The above is a clear proof that once again the Land Act by virtue of the proviso under section 4(1) of the Land Disputes Courts Act, has made a departure and has vested jurisdiction over certain aspects of land disputes to the office of the Registrar of Titles. If section 102 of the Land Registration Act allows appeals from decision or order of the Registrar of Titles to the High Court, it means the Registrar of Titles is empowered to make binding decisions in some aspects of land disputes which his office is responsible for; and there are many under Cap 334. The pertinent question is where does the Registrar of Titles, who has powers to make decisions and orders in land disputes, feature in the Land Courts stipulated under section 167 of the Land Act? The answer is that the office of the Registrar of Titles is silently also "included" as a Land Court or Tribunal in the enumerated Land courts/tribunals under section 167 of the Land Act. The section is inclusive and not exclusive.

Therefore, I am further fortified in my view that there are other courts and or tribunals vested with limited jurisdiction over certain aspects of land disputes apart from, but in addition to, the land courts stipulated under section 167 of the Land Act. The District Court is one of them in terms of sections 107 and 108 of the Land Act. The word "may" used in section 107 of the Land Act, in my view, is used deliberately to denote that it is not compulsory to file a land dispute seeking an order of termination of the lease and the reliefs incidental thereto, in the District Court. This is a matter over which the District Court shares jurisdiction concurrently with the Land Courts under section 167 of the Land Act. For clarity, it is worth to note that section 107(1) of the Land Act specifically names the **District Court,** not every court established under the Magistrate's Courts Act Cap 11 of the Laws. The Primary Court is clearly excluded.

Therefore, deductively and inductively bringing back home all the above to the case at hand, I entertain no doubt that the District Court of Kigamboni had all the requisite legal mandate to entertain Civil Case No.6 of 2022 based on the claim of rent arrears under lease agreement between the Applicant and the Respondent despite being a land dispute. Therefore, there was no illegality committed by the District Court of Kigamboni in passing the consent settlement order. What was done in the District Court was proper in terms of sections 4(1) of the Land Disputes Courts Act read together with sections 107 and 108 of the Land Act. I therefore find the ground of illegality presented by the applicant in the present case with a bid to secure an extension of time to appeal against the Consent Judgment made by the District Court, is devoid of merits.

I have taken notice of the submissions by the Applicant who sympathetically pleaded for justice that due to her sickness and bad business conditions she finds it difficult to honour her obligations under the decree emanating from the consent judgment. She may approach the Decree Holder and voluntarily negotiate with her for mutual and better arrangements of how to satisfy the remaining portion of the decree rather than attempting to use the court to

thwart the implementation of a lawful court order. A decree is negotiable. The Applicant may seek to negotiate it with the Respondent outside the court. The court cannot compel the Respondent to have mercy upon the Applicant on full satisfaction of the decree of the court. Further, under section 38(1) of the Civil Procedure Code, any complaints regarding execution of the decree are the domain of the executing court. It is the duty of the court to see that a decree is executed. But parties to the decree are free to negotiate on it.

As it stands, the present application for extension of time has no merits. The application is therefore dismissed. I make no order as to costs.

**A.H.Gonzi**

**JUDGE**

**30/11/2023**

Ruling is delivered in Court this 30th day of November 2023 in the presence of the Applicant in person and Mr.Makwaia, learned Advocate for Respondent.

**A.H.Gonzi**

**Judge**

**30/11/2023**