Lodwar Wholesalers Ltd v Commissioner of Investigation & Enforcement (Commercial Case 1 of 2020) [2023] KEHC 24768 (KLR) (Commercial and Tax) (29 September 2023) (Judgment)

Neutral citation: [2023] KEHC 24768 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

COMMERCIAL CASE 1 OF 2020

MN MWANGI, J

SEPTEMBER 29, 2023

BETWEEN

LODWAR WHOLESALERS LTD ..... APPELLANT

AND

COMMISSIONER OF INVESTIGATION & ENFORCEMENT ..... RESPONDENT

JUDGMENT

1. The appellant's case is that it is a family company where the directors render their services by trading in general goods such as sugar, hardware and medical equipment. The respondent contended that sometime in October 2016, it begun investigating the appellant on tax matters for the years 2010 to 2015 so as to establish whether the appellant had declared all income for purposes of tax. The said investigations were commenced as the appellant had begun trading in 2010 but allegedly failed to file returns for the years 2010, 2011, 2014 and 2015 and only filed nil corporation tax returns for the years 2012 and 2013. During the said investigations, the respondent relied on records/information availed by the appellant as well as third party information from the appellant's clients and bank records as provided for under Section 24(2) of the *Tax Procedures Act*, 2015. After analysis of the information availed to them, the respondent issued an additional assessment through a letter dated 1st September, 2017.

2. It was stated by the respondent that in issuing the additional assessment, it relied on review and analysis of bank statements for income Tax (corporation Tax) vis a vis what had been declared as income from sales. The respondent stated that additional income established as per the banking-sales analysis was then compared to the turnover as declared in the VAT3 returns filed for the years 2011 to 2015 and the variance led to the appellant being charged VAT in the sum of Kshs.203,520,805.00. The appellant objected to the said assessment vide a letter dated 29th September, 2017 stating that the

variance between the two comprised non-vatable items being supply of medical equipment to the County Government of Nairobi.

3. The respondent asserted that since the appellant's financial statement indicates that they deal in general supplies, the appellant's argument could not hold water as the supply could be for any other vatable items. The respondent stated that the appellant provided Local Purchase Orders from Nairobi City County in support of the non-vatable items instead of invoices. The respondent was of the view that Local Purchase Orders only prove an intention to supply but are not evidence of actual purchase/ transactions. It was stated by the respondent that when the appellant was asked to provide further evidence of the said supplies, it admitted not to have kept the necessary records for the supplies in issue, vide a letter dated 28th June, 2017. The respondent contended that the appellant was not even able to prove purchase of the medical supplies through purchase invoices from their suppliers.

4. The respondent further stated that in as much as the appellant alleged to have been supplying medical equipment to the County Government of Nairobi, the said allegation was not supported by any evidence of tendering or award to tender from the County Government of Nairobi. Due to the above factors, the respondent confirmed its earlier statement through an objection decision vide a letter dated 23rd November, 2017. Subsequently, the appellant lodged an appeal with the Tax Appeals Tribunal (hereinafter referred to as "the Tribunal") against the respondent's objection decision vide a Memorandum of Appeal and statement of facts both dated 20th December, 2017.

5. After consideration of the parties' pleadings, documents attached to the appeal and submissions, the Tribunal was of the view that the issues for determination were; whether the respondent erred by charging corporation tax of Kshs.174,047,117 for purchases of Kshs.554,811,712.00 for the years 2011 to 2015, whether the respondent erred by charging output VAT of Kshs.203,520,806.00 on sales of non-vatable items for the years 2011 to 2015, whether the respondent was justified to charge income tax of Kshs.27,345,343.00 which according to the appellant, was made up of transfers from related parties, and whether the penalty levied by the respondent was in breach of the provisions of Sections 80 and 89 of the *Tax Procedures Act*, 2015.

6. On the first issue, the Tribunal relied on the provisions of Section 59(1) of the *Tax Procedures Act* and Sections 15(1) and 54A(1) of the *Income Tax Act* and found that the respondent did not err by charging corporation tax of Kshs.174,047,117.00 for purchases of Kshs.554,811,712.00 for the years 2011 to 2015. On the second issue, the Tribunal in agreeing with the respondent found that the appellant's Local Purchase Orders from the County Government of Nairobi can only be considered as an intention to supply and not evidence of actual purchase hence the respondent was right in charging the taxes thereon.

7. On the third issue, the Tribunal held that despite the fact that parties are bound by their pleadings, matters related to law can be raised at any stage of the pleadings and must not necessarily be pleaded. In agreeing with the appellant on this issue, the Tribunal referred to the provisions of Section 80 of the *Tax Procedures Act*, 2015 and held that the respondent was in breach of the said Section in respect to the penalty imposed against the appellant relating to the period 2013 to 2015 since it was the same period to be considered in Criminal Case No. 32 of 2018 in Count 34 of the charge sheet. For that reason, the penalty for the said period was expunged from the claim of taxes that had been made by the respondent, but that for the years 2011 to 2012 was upheld.

8. In the end, the Tribunal partially allowed the appellant's appeal and made an order for the respondent's assessment vide its objection decision dated 23rd November, 2017 to be upheld subject to the same being varied by expunging the penalty imposed against the appellant for the period 2013 to 2015. Dissatisfied with the Tribunal's decision, the appellant has lodged the instant appeal against the

said decision vide a Memorandum of Appeal dated 13th January, 2020. The appellant has raised the following grounds of appeal –

i. The Tribunal erred in holding that the respondent has powers by virtue of Section 59(1) of the *Tax Procedures Act* to request for bank statements for purposes of carrying out tax assessments;

ii. The Tribunal failed to appreciate, as it ought to have done, that the Local Purchase Orders may form the basis of a procurement contract;

iii. The Tribunal erred in law and fact by allowing the charging by the respondent of Output Value Added Tax on sales of non-vatable medical supplies contrary to the provisions of the *Value Added Tax Act*;

iv. The Tribunal erred in treating bank deposits as business income despite evidence of the source of funds;

v. The Tribunal erred in law by failing to consider the principle of separate corporate entity of a company by taxing funds belonging to an individual and other companies on the appellant;

vi. The Tribunal failed to consider the submissions made on behalf of the appellant as well as the grounds enumerated in the appellant's submissions to the Tribunal on the issues subject of this appeal; and

vii. The findings of the local committee are therefore wrong in law and in fact.

9. The appellant's prayer is for this Court to allow the appeal with costs, set aside the decision of the Tribunal upholding the appeal subject to variation of penalties imposed against the appellant for the period 2013 to 2015 and award any other or further relief as it may deem fit.

10. This Appeal was canvassed by way of written submissions which were highlighted on 13th June, 2023. The appellant's submissions were filed on 3rd May, 2021 by Paula Atukunda Advocate, whereas the respondent's submissions were filed by the law firm of Ibrahim S. Mutua on 1st April, 2021.

11. It is important to note that parties had earlier on recorded a consent dated 23rd January, 2023 settling all the issues between the parties herein save for the issue on Value Added Tax of Kshs.203,520,806.00. In addition, on perusal of the Alternative Dispute Resolution Agreement dated 22nd August, 2022, it is clear at paragraph 60 of the said agreement that the parties herein agreed to refer the Value Added Tax (VAT) dispute to the High Court for determination.

12. Ms. Atukunda, learned Counsel for the appellant submitted that it is not in dispute that the appellant deals in medical supplies which are categorized as non-vatable medical supplies by the VAT Act, Cap 476 Laws of Kenya. She relied on the Black's Law Dictionary definition of a Local Purchase Order and the Court of Appeal case of Mwanzo Shirandula v Marko Mukhweso [1987] eKLR and contended that a Local Purchase Order issued by a purchaser to a supplier and accepted by a supplier constitutes a formal contract.

13. Learned Counsel contended that the Tribunal failed to appreciate that the Local Purchase Orders provided by the appellant as proof of a tender to supply medical equipment to the Nairobi City County were apart of the trade usage of doing business/supply of goods thus a reasonable expectation arises that they are treated as a form of contract. She contended that the respondent's unsupported suggestion that the goods were not brought or delivered is untenable and inaccurate. It was stated by Counsel that in as much as the bank account transactions were taken into account, not all bank transactions are subject to VAT

14. Ms. Atukunda stated that it is punitive for a claim of Kshs.203,520,806.00 to be claimed in this economy. She submitted that the appellant sought leave to produce charge sheets and witness statements to prove that it was a party to on-going criminal proceedings in ACC No. 32 of 2018 before the Milimani Chief Magistrate's Court, Anti-Corruption and Economic Crimes Division in regard to the same tax matters within the same period, but the Tribunal did not grant the leave sought and stated that it had taken judicial notice of the said proceedings because they were in a duly established Court and within the public domain.

15. Counsel contended that looking at the judgment delivered by the Tribunal, it is evident that the it changed its position since it stated that given that the appellant had not availed any shred of evidence on the existence of the said criminal case, the Tribunal was deprived of the opportunity to adjudicate on the same and whether it would amount to double jeopardy as claimed. Ms. Atukunda cited the provisions of Section 80(1) of the *Tax Procedures Act* and stated that the Anti-Corruption and Economic Crimes Court has the jurisdiction to try tax related matters by virtue of the *Anti-Corruption and Economic Crimes Act*, No. 3 of 2003 thus the tax matters against the appellant were rightly before it. In view of the above, Counsel contended that the appellant was subjected to double jeopardy by the Tribunal.

16. Mr. Said, learned Counsel for the respondent cited the provisions of Section 23 of the *Tax Procedures Act*, 2015 and submitted that the appellant is required to keep records to enable its tax liability to be easily ascertained. In addition, that pursuant to the provisions of Section 56(1) of the *Tax Procedures Act*, 2015, the appellant has the onus of proving that a tax decision is wrong. He submitted that the respondent's position is that the appellant's Local Purchase Orders from the Nairobi City County do not form sufficient evidence that goods or services were provided, as all what they demonstrate is an intention to supply and not evidence of actual purchase.

17. Counsel stated that the appellant failed to supply the respondent with invoices in support of the non-vatable supplies when requested to do so. Mr. Said stated that vide a letter dated 28th June, 2017, the appellant admitted not to have kept the necessary records for those supplies in clear contravention of the provisions of Section 43 of the VAT Act. He further stated that despite the fact that the appellant alleged to have been supplying medical equipment to the County Government of Nairobi, the said claims were not supported by any evidence of tendering or award to tender from the said County Government. Counsel submitted that since the appellant failed to prove purchase of the said medical supplies through purchase invoices from their suppliers, the respondent made an assessment in accordance with Section 45(2) of the VAT Act.

18. Mr. Said referred to the provisions of Section 17(2) of the VAT Act which provides that a tax payer cannot claim input VAT after the lapse of six months. He stated that it is now settled law that the respondent is allowed to look into the accounts of any Tax Payer and determine the tax payable as is the case herein, unless a Tax Payer proves that the deposit in the bank account is not income.

19. In a rejoinder, Ms. Atukunda submitted that there was no basis for the respondent to demand Kshs.203,520,806.00 from the appellant and in any event, Nairobi City County should have provided the documents sought by the respondent. She further submitted that pursuant to the provisions of Section 17(2) of the VAT Act, this Court has the discretion to consider input VAT even after the elapse of six (6) months.

Analysis And Determination

20. Under the provisions of Section 56(2) of the *Tax Procedures Act*, an Appeal to the High Court from the decision of the Tribunal or to the Court of Appeal shall be on a question of law only. The Court of

Appeal in the case of John Munuve Mati v Returning Officer Mwingi North Constituency & 2 others [2018] eKLR summarized what amounts to "matters of law" as hereunder -

> "The interpretation or construction of *the Constitution*, statute or regulations made thereunder or their application to the sets of facts established by the trial Court. As far as facts are concerned, our engagement with them is limited to background and context and to satisfy ourselves, when the issue is raised, whether the conclusions of the trial judge are based on the evidence on record or whether they are so perverse that no reasonable tribunal would have arrived at them. We cannot be drawn into considerations of the credibility of witnesses or which witnesses are more believable than others; by law that is the province of the trial court."

21. This Court is therefore not permitted to substitute the Tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts unless the Tribunal's decision cannot be supported by any evidence.

22. Having considered the Memorandum of Appeal, Record of Appeal and statement of facts filed by the appellant, the statement of facts filed by the respondent together with the written submissions filed by Counsel for the parties, the issues that arise for determination are –

    i. Whether the respondent erred by charging output VAT of Kshs.203,520,806.00 on sales of non-vatable medical supplies for the years 2011 to 2015; and

    ii. Whether the appellant was subjected to double jeopardy by the Tribunal in view of the on-going criminal proceedings against the appellant.

Whether The Respondent Erred By Charging Output Vat Of Kshs. 203,520,806.00 On Sales Of Non-vatable Medical Supplies For The Years 2011 To 2015.

23. Under the provisions of the VAT Act, 2013, supply of medical equipment and/or items is exempted from Value Added Tax. The appellant contended that the variance between the analysis conducted on the banking-sales and the turnover as declared in the VAT3 returns filed for the years 2011 to 2015 comprised non-vatable items being supply of medical equipment to the County Government of Nairobi thus the respondent erred in charging VAT on the same. In support of the allegation that the appellant supplied medical supplies to the County Government of Nairobi, the appellant handed over to the respondent Local Purchase Orders issued by the County Government of Nairobi.

24. The respondent's position is that Local Purchase Orders are not sufficient evidence of supply of goods/items, as they only demonstrate an intention to supply and not evidence of actual purchase. The respondent's Counsel submitted that the appellant failed to avail invoices to the respondent in support of the non-vatable supplies when requested to do so. In addition, that the appellant admitted not to have kept the necessary records for those supplies in clear contravention of the provisions of Section 43 of the VAT Act. The respondent's Counsel stated that despite the fact that the appellant alleged to have been supplying medical equipment to the County Government of Nairobi, the said claims were not supported by any evidence of tendering or award to tender from the said County Government.

25. Pursuant to the provisions Section 30 of the *Tax Appeals Tribunal Act* and Section 56(1) of the *Tax Procedures Act*, the appellant bears the burden of proving that a tax assessment and/or decision is incorrect. It is worth noting that that when the respondent requested for documentation from the appellant in support of the allegation that the variance between the analysis conducted on the banking-sales and the turnover as declared in the VAT3 returns filed for the years 2011 to 2015 comprised non-vatable items being supply of medical equipment to the County Government of Nairobi, the appellant

handed over to the respondent Local Purchase Orders issued by the said County Government and admitted in its letter dated 28th June, 2017 not to have kept the necessary records for the alleged supplies.

26. Section 43 of the VAT Act, 2013 provides for the requirement that a Tax Payer is required to maintain records and that the Commissioner has the power to request for the production of such records. The said provisions state the following –

> " 1) A person shall, for the purposes of this Act, keep in the course of his business, a full and true written record, whether in electronic form or otherwise, in English or Kiswahili of every transaction he makes and the record shall be kept in Kenya for a period of five years from the date of the last entry made therein.
>
> 2. The records to be kept under subsection (1) shall include-
>
> a. copies of all tax invoices and simplified tax invoices issued in serial number order;
>
> b. copies of all credit and debit notes issued, in chronological order;
>
> c. purchase invoices, copies of customs entries, receipts for the payment of customs duty or tax, and credit and debit notes received, to be filed chronologically either by date of receipt or under each supplier's name;
>
> d. details of the amounts of tax charged on each supply made or received and in relation to all services to which section 10 applies, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for a particular purpose;
>
> e. tax account showing the totals of the output tax and the input tax in each period and a net total of the tax payable or the excess tax carried forward, as the case may be, at the end of each period;
>
> f. copies of stock records kept periodically as the Commissioner may determine;
>
> g. details of each supply of goods and services from the business premises, unless such details are available at the time of supply on invoices issued at, or before, that time; and
>
> h. such other accounts or records as may be specified, in writing, by the Commissioner.
>
> 3. Every person required under subsection (1) to keep records shall, at all reasonable times, avail the records to an authorised officer for inspection and shall give the officer every facility necessary to inspect the records.
>
> 4. For the purposes of this section, the Commissioner may, in accordance with the regulations, require any person to use an electronic tax register, of such type and description as may be prescribed, for the purpose of accessing information

regarding any matter or transaction which may affect the tax liability of the person.

5. A person who contravenes any of the provisions of this section commits an offence."

27. Similarly, Section 59(1) of the *Tax Procedures Act* also provides that a Tax Payer shall produce records when required to do so by the Commissioner. The said provisions state as follows -

> " For the purposes of obtaining full information in respect of the tax liability of any person or class of persons, or for any other purposes relating to a tax law, the Commissioner or an authorised officer may require any person, by notice in writing, to -
>
> a. produce for examination, at such time and place as may be specified in the notice, any documents (including in electronic format) that are in the person's custody or under the person's control relating to the tax liability of any person;
>
> b. furnish information relating to the tax liability of any person in the manner and by the time as specified in the notice; or
>
> c. attend, at the time and place specified in the notice, for the purpose of giving evidence in respect of any matter or transaction appearing to be relevant to the tax liability of any person."

28. Sections 107 and 109 of the *Evidence Act*, Cap 80 Laws of Kenya place the burden of proof on the party who wishes the Court to believe that a particular fact exists. Further, it is worth noting that the burden of proof in tax matters is not stationary but is like a pendulum that swings between the Tax Payer and the Taxman at different points of a tax dispute. The Kenyan tax system however places the evidential burden of proof on the Tax Payer. In Republic v Kenya Revenue Authority; Proto Energy Limited (Exparte) (Judicial Review Application E023 of 2021) [2022] KEHC 5 (KLR), the Court made the following observation in that regard -

> " The most significant justification for placing the burden of proof on the tax payer is the practical consideration that the Commissioner cannot sustain the burden because he does not possess the needed evidence. Under the system of self-reporting tax liability, the taxpayer possesses the evidence relevant to the determination of tax liability. It is simply fair to place the burden of persuasion on the taxpayer, given that he knows the facts relating to his liability, because the commissioner must rely on circumstantial evidence, most of it coming from the taxpayer and the taxpayer's records. The taxpayer must present a minimum amount of information necessary to support his position. This safety valve seems to place the burden of production on the taxpayer without relieving the Commissioner of the overall burden of proof. The tax payers' evidence must meet this minimum threshold.
>
> A presumption of correctness arises from the Commissioner's determination/assessment. The presumption remains until the taxpayer produces competent and relevant evidence to support his/her position. When the taxpayer comes forward with such evidence, the presumption vanishes and the case must be decided upon the evidence presented."

29. As per the provisions of Section 43 of the VAT Act, 2013 and Section 59(1) of the *Tax Procedures Act*, the appellant had the burden and/or duty to produce evidence to the effect that it actually supplied medical equipment/items to the County Government of Nairobi. The appellant was of the view that it discharged its burden of proof since it supplied the respondent with Local Purchase Orders issued

by the County Government of Nairobi in respect to supply of the said medical equipment. It also submitted that a Local Purchase Order issued by a purchaser to a supplier and accepted by a supplier constitutes a formal contract. It therefore contended that the Local Purchase Orders it handed over to the respondent were part of the trade usage of doing business hence a reasonable expectation arises that they are treated as a form of contract.

30. Legally, a Local Purchase Order is not sufficient proof that supply was indeed made to the purchaser. It is not uncommon to find instances where an entity has been issued with a Local Purchase Order but the entity is incapable of making the supply/delivery for one reason or another. Local Purchase Orders are just proof of the intention to supply the items ordered for. The actual supply must however be proved. This Court holds that in order for a supplier to prove that it indeed supplied the goods ordered for, there has to be proof of issuance of invoices, delivery notes and receipts to the purchaser. This Court agrees with the Tribunal that Local Purchase Orders can only be considered as an intention to supply and nothing more. For that reason, this Court finds that the appellant failed to prove on a balance of probability that it actually supplied medical equipment to the County Government of Nairobi.

31. Consequently, I hold that the respondent did not err by charging output VAT of Kshs.203,520,806.00 on the variance between the analysis conducted on the banking-sales and the turnover as declared on the VAT3 returns filed for the years 2011 to 2015.

32. On the issue of whether this Court can consider the issue of input VAT pursuant to the provisions of Section 17(2) of the VAT Act, it cannot. VAT is tax chargeable on supply of taxable goods or services made or provided in Kenya and on importation of taxable goods or services into Kenya. It works under the input and output tax system. Output tax refers to the VAT charged on the sales of taxable goods or services, while input tax refers to VAT charged on taxable purchases of goods and services for business purposes. The tax payable is the difference between the output tax and input tax. See Highlands Mineral Water Limited v Commissioner of Domestic Taxes ML HC ITA No. E026 OF 2020 [2021] eKLR.

33. It is evident from the above explanation that a Tax Payer has the right to deduct input tax from its vatable transactions. Input Tax is provided for under Section 17 of the VAT Act, 2013 which states as follows –

> " 17. Credit for input tax against output tax
>
> 1. Subject to the provisions of this section and the regulations, input tax on a taxable supply to, or importation made by, a registered person may, at the end of the tax period in which the supply or importation occurred, be deducted by the registered person, subject to the exceptions provided under this section, from the tax payable by the person on supplies by him in that tax period, but only to the extent that the supply or importation was acquired to make taxable supplies.
>
> 2. If, at the time when a deduction for input tax would otherwise be allowable under subsection (1), the person does not hold the documentation referred to in subsection (3), the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation.

> Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred."

34. Pursuant to the provisions of Section 17(2) of the VAT Act, 2013 reproduced here before, input tax is allowable for a deduction within six (6) months after the end of the tax period in which the supply or importation occurred. It is trite that tax statutes should be interpreted strictly, with no room for implication or intendment and if there is any ambiguity, the same ought to be interpreted in the Tax Payer's favour. This was the position held by the Court in the case of Republic vs. Commissioner of Domestic Taxes Large Tax Payer's Office Ex-Parte Barclays Bank of Kenya Ltd [2012] Eklr, where it was held that -

> " The approach to this case is that stated in the oft cited case of Cape Brandy Syndicate v Inland Revenue Commissioners [1920] 1 KB as applied in T.M. Bell v Commissioner of Income Tax [1960] EALR 224 where Roland J. stated, " ...in a taxing Act, one has to look at what is clearly said. There is no room for intendment as to a tax. Nothing is to be read in, nothing it to be implied. One can only look fairly at the language used... If a person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be"

35. The dispute between the parties herein was filed in the year 2020, whereas the respondent has charged the appellant VAT on supplies made in the years 2010 to 2015. The appellant cannot now be seen to claim input tax for supplies made in the years 2010 to 2015 under the provisions of Section 17(2) of the VAT Act, 2013, which are couched in mandatory terms.

Whether The Appellant Was Subjected To Double Jeopardy By The Tribunal In View Of The Ongoing Criminal Proceedings Against The Appellant.

36. It was the appellant's contention that the Tribunal did not deal with the issue of whether the appellant shall be subjected to double jeopardy in view of the ongoing criminal proceedings. On perusal of the Tribunal's judgment, it is evident from paragraphs 39-45 of the said judgment that the Tribunal considered the ongoing criminal proceedings against the appellant vis a vis the respondent's assessment and/or decision on the appellant's tax matters.

37. The Tribunal referred to the provisions of Section 80 of the *Tax Procedures Act* and held that the respondent was in breach of the said Section in respect to the penalty imposed against the appellant for the period 2013 to 2015 since it was the same period to be considered in Criminal Case No. 32 of 2018, in Count 34 of the charge sheet. Consequently, the penalty for the said period was expunged but that for the years 2011 to 2012 was upheld. This Court therefore finds that this issue was dealt with comprehensively and exhaustively by the Tribunal. I agree with the Tribunal's finding on the same. The appellant was therefore not subjected to or shall not be subjected to double jeopardy.

38. This Court finds that the instant appeal is devoid of merit. It is hereby dismissed with costs to the respondent.

It is so ordered.

DELIVERED, DATED AND SIGNED AT NAIROB ON THIS 29TH DAY OF SEPTEMBER, 2023. JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

NJOKI MWANGI

JUDGE

In the presence of:

Ms Atukund for the appellant

No appearance for the respondent