IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OUKO, (P), MUSINGA & KANTAI, JJ.A)

CIVIL APPEAL NO. 58 OF 2015

BETWEEN

KENYA REVENUE AUTHORITY.....1ST APPELLANT

COMMISSIONER OF DOMESTIC TAXES.....2ND APPELLANT

AND

REPUBLIC (*EX PARTE*)

KENYA NUT COMPANY LIMITED.....RESPONDENT

(Being an appeal form the Judgment of the High Court

at Nairobi (G. V. Odunga, J.)dated 14th July, 2014

in

Judicial Review Misc. Civil Application No. 610 of 2008)

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JUDGMENT OF THE COURT

The Income Tax Act was, according to its title enacted to, among other purposes, **"make provision for the charge, assessment and collection of income tax; for the ascertainment of the income to be charged; for the administrative and general provisions relating thereto".**

Because this appeal relates to withholding tax as a type of income tax, it is necessary to state at this early stage that it is specifically governed by **sections 10** and **35** of the Income Tax Act and the Income Tax (Withholding Tax Rules) 2001; and to explain that it is a tax that is chargeable on, among others, interest, dividends, royalties, management or professional fees, commissions, pension or retirement annuity, creating an obligation on the tax payer, whether resident or non-resident, to deduct and remit the tax on eligible income which accrued in or was derived from Kenya.

This is how this dispute arose. The respondent, a limited liability company, is engaged in the business of growing, purchasing and processing of macadamia and cashew nuts for both domestic and overseas markets. It sells the processed macadamia and cashew nuts in the overseas market through agents.

From a tax audit carried out by the appellant on the respondent's business between 2002 and 2005 and after being given an opportunity to provide an explanation on some of the issues arising from the audit, the respondent was ultimately informed through a letter dated on 1st October, 2007 that it owed Ksh. 33,534,855 in withholding tax based on the commissions paid to their overseas selling and marketing agents.

By a subsequent letter of 10th June, 2008 the respondent was advised to make payment to avoid further accrual of penalties and interest.

The respondent objected to the assessment and insisted that no withholding tax was owed. The letter dated 23rd July, 2008 addressed to the respondent reconfirmed the taxes assessed and demanded, and so did that dated 19th August, 2008.

To forestall the intended action by the appellant, the respondent filed in the High Court a judicial review application in which it prayed that;

> **"1. An order of *certiorari* do issue to remove and bring to this court the decision contained in the letter/assessment notice dated 19th August, 2008 and in the assessment notices attached thereto in so far as they relate to withholding tax amounting to Kshs 33,534,855/= in respect of the Applicant issued by the Respondents for purposes of being quashed.**
>
> **2. An order of prohibition do issue to prohibit and/or restrain the Respondents from enforcing, whether by themselves or through any agent or howsoever, recovery of the amount of Kshs 33,534,855/= or taking any adverse action against the Applicant based on the decision contained in or referred to in the letters/assessment notices dated 19th August 2008 and 10th June 2008 in so far as the said letters/assessment notices relate to withholding tax".**

According to the respondent, foreign entities having deducted their commissions and expenses at source, the respondent had no platform or means of collecting withholding tax from them; that all it was paid were the sale proceeds of its goods net of commissions and expenses; that the respondent had no control over the payments and found it impossible to withhold tax since it had no control over overseas entities nor could it exercise agency under **section 96** of the Income Tax Act over the funds held by those entities; that the funds retained by the said foreign entities were a mixture of commissions and expenses; and that in respect of expenses no withholding tax was payable.

The respondent explained that to the knowledge of the appellants, the said commissions and expenses deducted by overseas trading partners were imposed on the respondent for a specific amount and period of time to enable the respondent access markets in Europe and the USA; that once a contract with customers was made by the overseas partners, no further commissions or expenses would be paid to that customer in subsequent contracts; that, with the exception of a few invoices and purchase contracts, all the other confirmations of order, invoices and purchase contracts, were not subjected to any commissions or expenses as these were direct sales, yet the appellants imposed withholding tax on them; that the expenses were to be recovered from the proceeds of the initial contracts which expenses the trading partners labelled as commissions and expenses when they actually were not; that not all contracts with overseas partners had a provision for payment of commissions or expenses; and that indeed no expenses were payable where the respondent had sourced a customer for itself without the assistance or involvement of the overseas trading partners; and that by rejecting the respondent's aforesaid explanations the appellant's action constitutes **Wednesbury unreasonableness.**

The appellant, in the circumstances incorrectly assessed withholding tax by erroneously assuming that all the goods exported by the respondent were subject to the promotional expenses retained by overseas trading partners. This amounted to an **abuse and excess of statutory authority** by the appellants. It was contended therefore, that it was incumbent on the appellants to demonstrate that the respondent's trading partners in fact received taxable income that would justify the assessed tax; that by **section 35 (1)** of the Act, deduction of withholding tax is predicated on the condition that the agent appointed to collect the tax for the appellants under **section 96** of the Act has in fact made a payment to a non-resident person. That being the case, the respondent submitted that it could not make a deduction from funds that it was not holding; that from a reading of **section 35** it is clear the deduction of tax from taxpayer's income for withholding purposes is predicated on a **real** or **actual** taxable payment being effected, made and received by the tax payer. Therefore, the word "payment" in **section 35**, is not to be interpreted to mean "paid" as defined in **section 2**. The word "paid" appears in numerous other sections of the Act including **sections 7A, 11, 12, 25, 28, 31, 36, 39, 57, 65, 66, 67, 68**, **74A**, **93**, **97** and **98** of the Act; that there is no compelling reason to import this definition into **section 35** which specifically uses the word "payment"; that to use "paid" as demanded by the appellant would create a "deeming" provision everywhere it is used in the Act to the extent that money may be deemed to have been paid though it has not in fact been paid, creating a legal fiction that can lead to absurd results.

To illustrate the point, the respondent relied on the English case of **Lambe V. Commissioners of Inland Revenue** (1934) 1 KB 178, where it was posited that income means that which comes in, and refers to what is actually received; that in order to attract tax there must be income in the sense of something coming in, and therefore withholding tax is leviable on the total income. It follows from this argument that, before a demand for payment can be made, there must be an income and a deduction.

Regarding the penalty, it was argued that under **rule 4** of the Income Tax (Withholding Tax) Rules 2001 as amended on 10th June 2004, the maximum penalty that can be imposed for failing to deduct and remit withholding tax is one million shillings. It was argued, that the imposition of a penalty of Kshs. 16,179,482 and further interest thereon was in violation of the rule.

The learned Judge (Odunga, J.) isolated for his determination this solitary question: At what stage is the taxpayer liable to deduct tax from a non-resident? In answering the question, he sought to construe the words **"upon payment of an amount"** in **section 35**. In his opinion, though the commission in question was paid by the respondent to the overseas agents, it was improper to expect the respondent to deduct the sum at the time the agents were receiving payments due to the fact that the commission was deducted at source, overseas; that;

> **"…had the proceeds of the sale transaction been remitted to the applicant before the payment of the said commission, there would have been no question of the applicant's liability to deduct the same in form of withholding tax".**

The Judge appreciated the opinion expressed by the High Court in **Kenya Commercial Bank V. Kenya Revenue Authority**, Civil Appeal No. 14 of 2007, that in situations like the one the respondent found itself, it was upon the tax payer to devise workable procedures to ensure that withholding taxes were accounted for. The Judge was alive to the effect of not having such arrangement; that it will create a window for unscrupulous agents to engage in tax evasion. Even after making this observation, the Judge was nonetheless of the opinion that to require a tax payer to surrender what he has not collected would infringe, not only the decisions of the court guiding the interpretation of tax legislation but also the express provisions of the law. For this view, he cited, among other authorities,

Tanganyika Mine Workers Union V. The Registrar of Trade Unions (1961) EA 629, where it was decided that where the provisions of an enactment are penal in nature, they must be construed strictly and that in such circumstances, violence ought not be done to its language so as to bring people within it. With that he concluded saying;

"51. In my view to expand the phrase "upon payment of an amount" to include situations where commission is deducted by foreign agents from the source would be to overstretch the said phrase in order to bring those not expressly within the provision inside it…..

56. Whereas the obligation to pay taxes is a statutory obligation and the failure to collect the tax by way of withholding and remitting taxes by the principals in respect of commissions in my view ought not to be lightly excused, taking into account the language of section 35 of the Act, the court must, not without a little anguish, find that the decision by the Respondent was in the circumstances unjustified under the law …...

57. In this case, payment was by way of deduction of the Commission at source. Therefore the applicant was not in a position to effect deduction at the time when the agents paid themselves the said commission. I am not prepared to interpret the said phrase to mean anything else apart from what the phrase connotes in ordinary English language."

Finding merit in the motion, the learned Judge issued an order of ***certiorari*** and quashed the decision of the appellant contained in the letter dated 19th August, 2008 as well as the assessment notices attached thereto in so far as they related to withholding tax amounting to Kshs 33,534,855. He also **prohibited** the appellants from enforcing or recovering the sum of Kshs 33,534,855 based on the decision contained in the two letters of 19th August, 2008 and 10th June, 2008 respectively. Costs of the application were awarded to the respondent.

This conclusion aggrieved the appellant, who now brings this appeal on 10 grounds which were argued in clusters, and whose combined effect is that the respondent's agents received the goods and after sale remitted the proceeds less their selling and marketing commission which, no doubt they were entitled; that the learned Judge therefore erred in failing to find that it was the duty of the respondent to ensure that withholding tax was deducted and remitted to the appellants irrespective of whether the proceeds of sale were remitted to it or its agents; that the learned Judge erred in interpreting the phrase "upon payment" in a restricted manner; that the judge also erred in failing to apply the basic principles of principal/agents relationship; that the judge further erred in stating that there was no provision in the Income Tax Act that justified the levying of penalties and interests; and that it was also in error for the judge to hold that the appellant had no jurisdiction to impose withholding tax

Accordingly, the appellants urged that it was erroneous to excuse the failure to deduct withholding tax merely because the respondent was not in a position to effect deduction at the time when the agent paid themselves the commissions. Yet, the agents upon receipt of all the payments on behalf of the respondent were expected to deduct their commissions at source, but taking into account the withholding tax as an element on those commissions, and to remit the same to the respondent. The appellant argued that, in the circumstances of this dispute, the respondent's main intention was to evade tax.

Regarding penalties and interest on withholding tax, the appellant submitted that **sections 35, 72D** and **94** of the Act provide that unpaid tax would attract both a penalty at the rate of 20% and a late payment interest of 2% monthly; that the two sections which provide for the general methodology of calculating penalties and interest of late payment of tax should be construed together with **Rule 14A**; and that, in any case **section 35 (6)** of the Act empowers the Commissioner to impose such penalties and interest as may be prescribed from time to time.

Although the learned Judge was of the view that the issue, whether there was exemption of fruits and vegetables from taxation had been abandoned when the motion was argued before him, the appellant conceded that that may have been so, but asked us to express our opinion on it as it was a critical question. We reserve our opinion on this point to the end of this judgment.

The respondent, for their part, reiterated the arguments made before the court below and maintained the three main points, that the commission was deducted at source by their trading partners and that it was paid the sale proceeds of its goods net of commissions and expenses; that it had no control over the payments and found it impossible to withhold tax since it had no control nor could it exercise agency under **section 96** of the Income Tax Act over the funds held by foreign entities; and that the funds retained by the said foreign entities were a mixture of commissions and expenses.

The respondent was in agreement with the Judge on the construction of **section 35** and submitted that it could only "withhold" what it had or was holding.

On the application of **rule 4** of the Income Tax (Withholding Tax) Rules 2001, as amended on 10th June, 2004 the respondent urged us to accept the proposition that the maximum penalty that the Commissioner could impose on a tax payer for failing to deduct and remit withholding tax was Kshs. 1,000,000; and that the penalty of Kshs. 16, 179,482 imposed on the respondent and a further interest thereon violated the law.

On a first appeal, as we keep reminding ourselves, the appellant expects us to subject the evidence as a whole to a fresh and exhaustive examination in order to arrive at our own independent conclusion on that evidence, of course making allowance for the fact that the trial court had the advantage of hearing and seeing the witnesses. See **Peters V. Sunday Post** (1958) E.A 424.

It is common factor that during the period of tax audit conducted by the appellant in respect of the respondent's exports between 2002 and 2005, it was confirmed that the foreign selling and marketing agents were paid commission. On such commission, being to a non-resident without a permanent establishment in Kenya, withholding tax was levied.

Section 35(1) of the Act provides that;

"A person shall, upon payment of an amount to a non-resident person not having a permanent establishment in Kenya in respect of-

(a) a management or professional fee…..;

(b) a royalty;

(c) interest, including interest arising from a discount upon final redemption of a bond, loan, claim, obligation or other evidence of indebtedness measured as the original issue discount;

Provided that:

(d) …..

(e) interest which is chargeable to tax, deduct therefrom tax at the appropriate non-resident rate." (Our Emphasis)

What the respondent sought before the court below was the quashing by *certiorari* of the letter dated 19th August, 2008 assessing the withholding tax at Kshs 33,534,855 and further, that the appellant be prohibited from enforcing the recovery of the aforesaid Kshs 33,534,855.

The application was based on the **Wednesbury** unreasonableness, as it was contended that it was unconscionable for the appellants to demand withholding tax from the respondent, yet payment was made at source without opportunity to deduct the same from the commission paid to the overseas agents. It was also based on breach of legitimate expectation as the respondent believed that, in view of the difficulty and or impossibility of recovering withholding tax from foreign traders, the appellant would not insist on the remittance of the withholding tax; that without actual deductions being made by the respondent, there was no obligation to recover and remit withholding tax; and that the demand by the appellant was not only absurd but also arbitrary and capricious.

In **Republic V. Kenya Revenue Authority *Ex parte* Yaya Towers Limited** (2008) eKLR, on which the learned Judge relied, the Court restated what has been said many times before, that the remedy of judicial review is concerned with reviewing not the merits of the decision of which the application for judicial review is made, but the decision making process itself; that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected; that it is no part of that purpose to substitute the opinion of the judge for that of the authority constituted by law to decide the matter in question; that merit consideration will be entertained in exceptional cases, especially where it is shown that there was no evidence upon which such a finding could be made so as to render the finding Wednesbury unreasonable. See also **Halsbury's Laws of England** *4th Edition Vol (1)(1) Para 60.*

On account of recent judicial opinion, in such cases as **Suchan Investment Limited V. Ministry of National Heritage & Culture & 3 Others** (2016) KLR, **Kenya Revenue Authority & 2 others V. Darasa Investments Limited** (2018) eKLR and **Rentco East Africa Limited, Lantech Africa Limited,Toshiba Corporation Consortium V. The Public Procurement Administrative Review Board & Another**, Civil Appeal No. 24 of 2017, it is now accepted that on account of consideration of proportionality and unreasonableness of a decision in issue, analysis of **Article 47** of the Constitution of Kenya, 2010, as read with the provisions of the **Fair Administrative Action Act,** there is an implicit shift of judicial review to include aspects of merit review of administrative action. Those decisions have also emphasized that even if the merits of the decision is undertaken, the court has no mandate to substitute its own decision for that of the administrative body. We shall return to this question shortly. We must, at this stage consider whether the learned Judge properly exercised his discretion when he granted the orders of *certiorari* and prohibition.

It has long been established that the two remedies are issued as a matter of discretion and judicial discretion is exercisable in the interests of justice, rationally but not capriciously or whimsically. This Court will therefore only interfere with the exercise of that discretion if it is satisfied that the Judge misdirected himself in some matter as a result of which he arrived at a wrong decision, or if it is manifest from the case as a whole that the Judge was clearly wrong in the exercise of discretion and accordingly occasioned injustice.

Certiorari, according to **Kenya National Examination Council V. Republic *Ex-parte* Geoffrey Gathenji Njoroge & 9 Others** (1997) eKLR, the *locus classicus*, will issue to;

"….quash a decision already made and an order of *certiorari* will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons".(Our emphasis).

Prohibition, on the other hand, as the Court in the above authority said;

"…..is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules of natural justice". (Our Emphasis)

In the circumstances of this dispute, can it be said that the decision of the appellants contained in the letters under review was made without or in excess of jurisdiction, or that in arriving at it the appellant did not observe the rules of natural justice, or that the appellant's actions were in contravention of the laws of the land?

In those letters the appellant, first conveyed the outcome of the audit and tax assessment and subsequently demanded taxes due. Of immediate relevance, they demanded Kshs 33,534,855 in withholding tax.

Under the Income Tax Act and the Kenya Revenue Authority Act, the Commissioner wields immense power and is generally **"responsible**

for the control and the collection of, and accounting for, tax". See **sections 122** and **123** of the Act. With that, the Commissioner is empowered to assess and recover tax from payers. By the same token he has discretion to, *inter alia*, refrain from assessing or recovering taxes, penalties or interest. From the contents of the two letters in question we cannot find anything to suggest that the appellants had no jurisdiction to assess withholding tax, or that they exceeded their powers, or that their actions were in contravention of any law. In addition, from the evidence on record, there is no doubt that the tax assessment was shared with the respondent by the appellant. The latter made comments in their letter to the appellants dated 29th June, 2006 and even engaged tax experts, M/s Ernst & Young, to analyze the assessment. Further, there was a meeting between the parties held at the appellants' offices at Times Tower on 12th July, 2006, to discuss the issues relating to that audit. At the meeting the respondent was availed an opportunity to state its position by providing certain details and particulars. It therefore cannot be correct to assert that, in arriving at the impugned decision, the appellant did not observe the rules of natural justice.

Turning briefly, and to the extent permitted, to the merit of the dispute in order to answer the question whether it was unconscionable for the appellant to demand withholding tax from the respondent in a situation where payment was made at source and when it was not possible to deduct the tax from the overseas agents' commission. Was the demand by the appellant unreasonable in the Wednesbury sense; was it, as Lord Diplock said;

> **"So outrageous in defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."**

See **Council Of Civil Service Union V. Minister For The Civil Service** [1984] 3 ALL ER 935.

Was the impugned decision so devoid of any plausible justification that no reasonable body of persons could have reached it; did it verge on absurdity? See **Bromley London Borough Council V. Greater London Council** (1983) 1 AC 768 at 821.

Unlike the situation in **Kenya Revenue Authority V. Republic (*Exparte* Fintel Ltd)** (2019) eKLR, where withholding tax was found to be payable even though the interest was not actually paid by Fintel to the contractor, in the present case it has been admitted that the overseas agents were paid at source. The only problem, as far as we can see from the respondent's perspective, was that it had no means of ensuring that the withholding tax was deducted and transmitted; secondly, that the funds retained by the foreign entities contained a mixture of commissions and (promotional) expenses; and finally, that, since expenses do not constitute withholding tax, it was erroneous for the appellant to demand Kshs 33,534,855 which did not take this fact into account. We believe that, given its exposure and involvement in international trade, the respondent had the capacity to device practical technique, methods and systems that would ensure collection and remission of tax from source. For instance, provision ought to have been made in the contract between them and the foreign agents to ensure that at the point the commission was paid, withholding tax should have been factored in and thereafter remitted to the respondent.

The learned Judge himself appreciated in the judgment the importance and prudence of placing the responsibility of devising workable procedures to ensure compliance with tax law upon the tax payer and decried the effect the converse would have on tax administration and enforcement. To leave no doubt, we revisit those words;

> **"In this case one may argue that the applicant ought to have devised a system by which its contractual terms with its agents would ensure that withholding taxes were accounted for. In my view this may be a prudent course since the converse may very well open an avenue for tax evasion by unscrupulous agents thus render the whole idea of deducting taxes on commissions payable to non-residents a mirage".**

It is with this conclusion in mind that we are unable to understand the ultimate determination by the Judge on this point, primarily to the effect that, though the commission in question was paid by the respondent, the respondent was unable to deduct the tax at the time its agents were receiving payments due to the fact that the commissions were deducted at source; and that had the proceeds of sale been remitted, first, to the respondent before the payment of the said commission **"there would have been no question of the applicant's liability to deduct the same in form of withholding tax"**

With regard to withholding tax due from a non-resident person not having a permanent establishment in Kenya, but trading with a Kenyan entity, it becomes the business of the latter to ensure that the tax is deducted from such payment and remitted. This obligation, needless to say, is mandatory. It is deemed to have full knowledge of the provisions of **sections 10**, **35** and **96** of the Act. To enter into a contract with foreign agents which allowed foreigners to deduct and retain at source their commissions without putting in place mechanisms of taking into account withholding tax was not only reckless on the part of the respondent but was also intended to deny the country revenue. The argument that the amount retained by the agents comprised commissions and expenses is, in our view immaterial. The respondent was under an obligation to identify and satisfy the appellants what portions were expenses and which ones were commissions.

The appellants were also accused of breaching the respondent's legitimate expectation that no withholding tax was expected to be collected by it from foreign traders after it was disclosed that payment had been made at source. It has long been established that legitimate expectation can only operate within the law and it can only be relied on when the law has been complied with. It cannot, however be relied on to shield a person from paying tax. In the **Communications Commission of Kenya & 5 others V. Royal Media Services Limited & 5 others** [2014] eKLR, the Supreme Court, after acknowledging that a public body can create legitimate expectation, qualified the statement by saying that for legitimate expectation to arise, there must be an express, clear and unambiguous promise given by a public authority; that the expectation itself must be reasonable; that the representation must be one that the decision-maker was competent to make; and that there cannot be a legitimate expectation against clear provisions of the law or the Constitution.

The next issue concerns penalties and interest charged on withholding tax: whether **sections 72D** and **94** of the Act justified the payment and whether **rule 14A** of the Income Tax (Withholding Tax) Rules 2001 exclusively deals with penalties and interests chargeable on withholding tax.

The learned Judge found that the imposition of 20% as penalty for failure to deduct and remit the tax under **section 35(6)**, was unlawful since the rules allowed only 10% of the amount of the tax involved, subject to a maximum penalty of Kshs. 1,000,000.

By Act No. 4 of 2004 the amendments to **section 35 (6)** gave the Commissioner power to **"impose such penalty as may, from time to time, be prescribed under the rules". Rule 14A** has prescribed that the penalty for failure to deduct or remit withholding tax for the purposes of **section 35(6)**, the Commissioner may impose a penalty **"equal to 10% of the amount of the tax involved, subject to a maximum penalty of one million shillings".**

The first thing to observe is that **rule 14A** is headed and specific to "penalty for failure to deduct or remit withholding tax" under **section 35** aforesaid. It is the relevant provision on the point under consideration. It is, however relevant only to this small extent. **Rule 14 A** came into effect by virtue of Legal Notice No. 54 which took effect from 1st July, 2004. The withholding tax demanded from the respondent was for the years 2000-2005. **Rule 14A**, it follows, could not apply to the years between 2000 and June, 2004. This period was covered by **section 72D**, which had been introduced by Act No. 8 of 1997 and which increased the penalty to 20% from the original 15%. **Section 94** provides that, in addition to the penalty under **Section 72D**, a late payment interest of 2% per month will also be charged on any amount due until it is fully recovered, provided the interest does not exceed 100% of the principal tax owing. See Finance Act, No 8 of 2008, which was applicable because the tax period for which the withholding tax was demanded was 2000-2005. That is the extent to which we adjust the percentage payable on the penalty.

The final point relates to the question which we had reserved; whether there was exemption of fruits and vegetables from taxation. As we have already observed, this point was not argued before the learned Judge, who, in fact found that it had been abandoned by the appellants. Before us, however the same appellants through counsel pleaded that the point was important and that the Court ought "to take note of as it considers this appeal". We do not know how we are expected to take note of an argument that was not presented to or determined by the court below.

We think we have said enough to dispose of this appeal. It is our finding, from our analysis in the preceding paragraphs that the learned Judge erred in allowing the motion of 7th October, 2008 and issuing an orders of *certiorari* and prohibition. This appeal, accordingly succeeds with costs. We, however, in light of our observation regarding penalty, adjust the percentage to 10% of the amount of the tax involved, subject to a maximum penalty of Kshs. 1,000,000 for the period July, 2004 to 2005. The rate of interest on late payment remains that provided under **Section 94.**

Orders accordingly.

Dated and delivered at Nairobi at 24th day of April, 2020.

W. OUKO, (P)

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JUDGE OF APPEAL

D.K. MUSINGA

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JUDGE OF APPEAL

S. ole KANTAI

……

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR