IN THE SUPREME COURT FOR ZAMBIA
HOLDEN AT LUSAKA
(Civil Jurisdiction)

APPEAL NO. 07/2016

BETWEEN:

POST NEWSPAPERS LIMITED **APPELLANT**

AND

ZAMBIA REVENUE AUTHORITY **RESPONDENT**

Coram: **Kaoma, Musonda and Chinyama, JJS**
On 12th July, 2016 and 28th September, 2016

For the Appellant: Mr. N. Nchito S.C., of Messrs Nchito and Nchito

For the Respondent: Mrs. D.B. Goramota, Legal Counsel for Zambia Revenue Authority, appearing with Ms. N. Kantumoya-Katongo and G. Mwamba, In-House Counsel

JUDGMENT

MUSONDA,JS, delivered the Judgment of the Court.

Cases referred to:

1. **The Attorney General vs. Kang'ombe (1973) Z.R. 114.**
2. **Council for Civil Services Unions and Others vs. Minister for Civil Service (1985) A.C. 374.**
3. **Nkhata and Others vs. The Attorney General (1966) Z.R. 124.**
4. **Chief Constable of North Wales Police vs. Evans (1982) 3 All ER 141.**
5. **Fredrick Jacob Titus Chiluba vs. the Attorney General (2005) Z.R. 153.**
6. **Nyampala Safaris (Z) Limited & Others vs. Zambia Wildlife Authority & Others (2003) Z.R. 118.**
7. **Attorney General vs. Marcus Kampumba Achiume (1983) Z.R. 1.**

8. **Zambia Revenue Authority vs. Dorothy Mwanza & Others (2010) Z.R. Vol. 1 181.**
9. **Simwanza Namposhya vs. Zambia State Insurance Corporation Limited (2010) Z.R. Vol. 2 39.**
10. **Zambia Consolidated Copper Mines Investment Holdings Plc. vs. Woodgate Holdings Limited (2011) Z.R. Vol. 3 110.**
11. **Commonwealth Development Corporation vs. Central African Power Corporation (1968) Z.R. 70.**
12. **Buchman vs. Attorney General (1993-1994) Z.R. 131.**
13. **Mususu Kalenga Building Limited and Another vs. Richman's Money Lenders Enterprises (1999) Z.R. 27.**
14. **Zambia Revenue Authority vs. Barclays Bank Zambia SCZ/15/2015.**
15. **Zambia Revenue Authority vs. Post Newspapers Limited: Appeal No. 36 of 2016**
16. **Sonny Mulenga vs. Investrust Merchant Bank Limited [1999] ZR 101**

Legislation referred to:

1. **Zambia Revenue Authority Act, Chapter 321 of the Laws of Zambia.**
2. **Income Tax Act, Chapter 323 of the Laws of Zambia.**
3. **Value Added Tax Act, Chapter 331 of the Laws of Zambia.**
4. **The Tax Appeals Tribunal Act No.1 of 2015.**

Works referred to:

1. **Lord Woolf and Professor J. Jowell, Q.C, de Smith, Woolf & Jowell's Judicial Review of Administrative Action, 5th edition, (1995)**
2. **Halsbury's Laws of England, (4th edition, Re-issue),**

This is an appeal from a judgment of the High Court of Zambia dated 30th October, 2015 in terms of which the learned High Court Judge refused to grant an application by the Appellant (then Applicant) for judicial review and the Appellant's related search for the prerogative remedies of certiorari and mandamus.

The facts, circumstances and background surrounding this Appeal are scarcely in dispute and can briefly be recounted.

On 9th September, 2014, Zambia Revenue Authority (the Respondent in this appeal), acting by its Commissioner, Domestic Taxes, wrote to the Appellant's Deputy Managing Director advising that the Appellant had accumulated *"further"* tax liabilities amounting to K26,856,230.91, inclusive of penalties and interest, and invited the Appellant's representatives to a meeting which was set for 11th September, 2014, to discuss *"...the settlement of [the tax] liabilities"* in question .In this judgment, we shall, for convenience, alternately refer to the Appellant and the Respondent as ***"the Post"*** and ***"ZRA"*** respectively.

According to the Post's letter on the record relating to the proceedings in the Court below (**"the Record"**) which had been addressed to The Commissioner-Domestic Taxes, and which was dated 18th September, 2014, the meeting which ZRA had proposed in its letter to the Post of 9th September, 2014 did take place on 11th September, 2014 at the former's offices.

It appears quite evident from a reading of the two letters referred to above (and the issue was not disputed below) that when the meeting of 11th September, 2014 took place, the ZRA Commissioner-Domestic Taxes or the ZRA team invited the Post's representatives to avail it, that is, ZRA, with their company's proposal for the settlement of the tax liabilities referred to above.

A week after the said 11th September, 2014 meeting, the Post's General Manager in charge of Finance wrote the said 18th September, 2014 letter to the Respondent's Commissioner-Domestic Taxes, "*...proposing to pay the principal amount in 6 equal monthly instalments of ZMW 2,000,000.00 payable at the end of each month effective 30th September, 2014 and the balance of ZMW 1,758,180.20 in the 7th month on the 30th March, 2014* (The reference to '2014' would appear to have been an error; the year should read '2015')...". The letter went on to say: "*We will then make payments towards the penalty charges in 4 equal monthly instalments of ZMW 1,957,635.05 effective 30th April, 2015 and finally pay the interest of ZMW 929,231.63 on the 31st August, 2015...*".

On 19th September, 2014, the Commissioner-General of ZRA wrote to Mr. Fred M'Membe, the Managing Director of the Post, by way of responding to the Post's proposed tax settlement plan as highlighted above. In his letter, the ZRA Commissioner-General advised the Post's Managing Director that, as of 19th September, 2014 the Post owed a total of K22,517,952.04 in unremitted *PAY AS YOU EARN* (PAYE), Value Added Tax (VAT) and the consequential interest and penalties. The Commissioner-General's letter then went on to state the following:

> *"...As you are aware, in about October, 2011, we approved your appeal for a waiver of penalties and interest after you successfully paid the principal taxes in instalments. Our expectation was that you would be a compliant tax payer. However, you accumulated another tax liability of K4,013,205.06 which resulted in us entering into a Time to Pay Agreement (TPA). Whilst the TPA is in place, you have neglected to remain current with your tax obligations and accumulated yet another tax liability..."*.

The Commissioner-General accordingly advised the Post's Chief Executive Officer that ZRA could not "*...once more, exercise [its] discretion and allow [the Post] to settle [its] tax obligations in instalments...*" and, consequently, demanded immediate payment of the Post's "*... total tax liability of K22,517,952.04*".

The judgment of the Court below suggests (and the issue appears not to have been disputed by either party to this appeal) that subsequent to the events outlined above, a meeting between the Post representatives and the ZRA Commissioner-General took place on 22nd September, 2014 at which the Post presented an improved proposal for the liquidation of its tax liabilities. However, the ZRA Commissioner-General rejected the Post's fresh proposal and went on to indicate to the company's representatives that ZRA would proceed with taking adverse measures against the Post which would involve seizure of its assets if the company failed to act positively on its (i.e, ZRA's) demand for full and immediate settlement of its tax liability.

Having failed to secure a favourable response from ZRA, the Post decided to resort to Court intervention. Accordingly, on 23rd September, 2014, the company sought and was granted leave to apply for judicial review and promptly filed the application on the same day. By the said application, the Post sought the following substantive relief or reliefs, namely:

(a)An order of certiorari to remove into the High Court of Zambia, for the purpose of quashing the same, the decisions of the Commissioner-General of the Zambia Revenue Authority whereby he refused to allow the Post's proposal to settle its tax liability in instalments;

(b) An order of mandamus to compel the Respondent to allow the Post to settle its tax obligations in instalments.

For the removal of any doubt, following the granting of leave in favour of the Post to apply for judicial review, the decisions of the ZRA Commissioner-General as set out above were stayed pursuant to Order 53 Rule 3 of the White Book which governs judicial review proceedings.

According to the proceedings in the Court below, the grounds upon which the Post had premised its application for judicial review were ***procedural impropriety*** and ***irrationality***.

With regard, firstly, to the ground alleging procedural impropriety, the Post contended that, as the Commissioner-Domestic Taxes, was under a duty to attend to its proposal to settle its tax liabilities in instalments, the decision by the ZRA Commissioner-General to get involved and to deal with the matter himself in the manner he did was procedurally improper as it took

away or negated the procedural right which was available or open to the Post not only to appeal to the Commissioner-General against the decision of the Commissioner-Domestic Taxes, but to be heard in respect thereof.

As regards the ground alleging irrationality, the Post contended that ZRA's refusal to allow it to settle its tax obligations in instalments was irrational and unreasonable in the *Wednesbury* sense especially that, between the period September, 2011and September, 2014, the company had paid a total sum of K45,858,624.07 to ZRA in various forms of taxes (PAYE, VAT, corporation tax and import duty). The company further argued that ZRA's demand to have it settle the K26,856,230.91tax liability *"immediately"* and in a single instalment was tantamount to demanding to have the Post *square the circle*, so to speak, or to achieve what was impossible for the company to achieve, even in the light of the fact that its failure to oblige exposed the company to the risk of having its assets seized and its operations totally crippled. The Post further argued that having its assets seized and its operations halted would hardly help the Government of the

Republic of Zambia in that the country's tax basket will diminish and the jobs of innocent and hard-working citizens lost. Having regard to the foregoing, the Post accordingly invited the Court below to find ZRA guilty of having acted irrationally and unreasonably in the *Wednesbury* sense by refusing to accept its proposal to resolve its tax liability in instalments.

For its part, ZRA vehemently opposed the Post's search for judicial review and the remedies which the company was seeking through such coercive judicial intervention. In so doing, ZRA argued that the Authority's enabling statute designates the ZRA Commissioner-General as the Chief Executive Officer of ZRA, with power to delegate any of his functions to his subordinates who include the Commissioner-Domestic Taxes. The Revenue Authority further contended that the Commissioner-General, as the *"...person responsible for carrying out the provisions of [the Zambia Revenue Authority] Act"*, CAP 321, remained entitled to undertake any or whatever function or functions he chooses to delegate as he had done in the context of the matter at hand in relation to the ZRA Commissioner-Domestic Taxes and that, therefore, there was

absolutely nothing which was procedurally improper in what the ZRA Commissioner-General did when he responded to the tax payment proposal which had arisen from the Post and which had been addressed to the ZRA Commissioner-Domestic Taxes.

With regard to the Post's argument alleging irrationality on the part of ZRA, the Revenue Authority contended that there was also absolutely nothing irrational about its Commissioner-General's refusal to allow the Post to discharge its tax liabilities in instalments as it had proposed.

In a fairly detailed opposing Affidavit to the Post's application, ZRA traced the genesis of the Post's tax liabilities pointing out that the Company's tax woes had their roots in its failure to remit taxes which the company had either deducted from its employees' salaries by way of Pay As You Earn (PAYE) or collected from its clients (Value Added Tax or VAT) on behalf of ZRA. It was ZRA's further contention that, aside from the unremitted PAYE and VAT, the Post's tax liability had been compounded by its failure to pay Company Tax and that the cumulative effect of its failure to be tax compliant has been to push the company's tax liability to the level

which the Appellant was perceiving to be high, particularly when regard is had to the application of interest and penalties.

ZRA further argued that, quite apart from the Post having benefitted from some tax respite to the tune of K16,411,679.00 in January, 2012, the company had a documented history of persistent tax default and general tax delinquency.

After hearing the parties and upon considering the Affidavit evidence which had been deployed before him together with the parties' respective Skeleton Arguments, the learned Judge in the Court below came to the conclusion that the Appellant's application for Judicial Review could not possibly succeed. In reaching this conclusion, the learned Judge drew broad inspiration from the following passages which deal with the purpose of judicial review:

> *"The remedy of judicial review is concerned with reviewing, not the merits of the decision in respect of which the application for judicial review is made, but the decision-making process itself"* (Order 53/14/19, THE WHITE BOOK, 1999 edition).
>
> ...
>
> *"It is important to remember in every case 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 and that it is no part of that purpose to substitute the opinion of the judiciary or of*

> *individual judges for that of the authority constituted by law to decide the matters in question" (per: Lord Hailsham, L.C, in Chief Constable of North Wales Police v Evans [1982] 3All E.R. 141, at* 143).

The learned Judge then went on to observe that, in exercising its supervisory role over public officials or institutions who or which wield or exercise public power through the medium of judicial review, the High Court had a duty to observe the principles which have been set out above.

Citing sections 6, 7 and 79 of the Income Tax Act, the learned Judge noted that the ZRA Commissioner-General enjoyed immense powers vis-a-vis the recovery of tax on behalf of the Government of the Republic of Zambia and in the general administration of the Income Tax Act, including delegating his power to any ZRA staff member as he deems appropriate.

With regard to the specific context of the complaint by the Post over the ZRA Commissioner-General's decision to take-over the communication between the Commissioner-Domestic Taxes and the Post, the Court below opined that section 7(2) of the Income Tax Act specifically invested the ZRA Commissioner-General with the

authority to take over the communication in question and to make the decisions that the latter had made. The learned Judge was of the view that the Post's allegation of procedural impropriety against the ZRA Commissioner-General could not stick as the same could only have arisen if it was shown that, in taking over the communication and the decision-making function from his subordinate, the Commissioner-General did not act in accordance with the law. According to the Judge below, whether or not the Commissioner-General had made a bad decision was outside the province of judicial review adding that, in the process of administering the relevant Tax statutes from which the ZRA Commissioner-General draws his powers, he does not exercise any appellate authority but merely discharges his role as ZRA's primary decision-maker and foremost functionary. The Judge, accordingly, opined that since the law only recognizes the Commissioner-General as the primary decision-maker, the question of any appeal lying from a decision made by any ZRA officer who exercises power on behalf of or at the pleasure of the Commissioner-General cannot arise.

The Judge below further noted that the law did not clothe the ZRA Commissioner-Domestic Taxes with power to recover taxes because this is a role which the law in question specifically assigns to the Commissioner-General who alone can delegate the same or any aspect thereof to any of his subordinates. The learned Judge also observed that the law in question also invests the Commissioner-General with the liberty to withdraw any power whose exercise he would have delegated to any of his subordinates.

The Court was also of the view that the Commissioner-General did not have to hear the Post before taking over the matter from the Commissioner-Domestic Taxes because this was one of those cases where the rules of natural justice did not apply. In this regard, the Judge noted that even the case law which had been cited to him in connection with *'the rules of natural justice argument'* recognized that those rules did not apply in every situation. The Judge went on to observe that, in any case, the alleged denial of natural justice or the right to be heard on the part of the Post could not hold given the dealings and interactions which had transpired between the Post on the one hand, and the ZRA Commissioner-General in the form of

correspondence exchanged and meetings held between the two parties, on the other.

The learned Judge also dismissed, as being without any legal basis, the Post's contention that once the Commissioner-Domestic Taxes had invited the Post to avail her (the Commissioner-Domestic Taxes) with a settlement proposal for the tax liability in question, the Commissioner-General was bound by his delegate's decision and could not resile from it.

The Court below accordingly found no basis for exercising the discretionary power of issuing the prerogative ordered certiorari as had been sought by the Post in relation to the decision of the Commissioner-General to respond to the letter which the Post had addressed to the Commissioner-Domestic Taxes.

As regards the grounds of irrationality and Wednesbury unreasonableness, the lower Court reasoned that, having regard to the Post's history of defaults and non-compliance vis-a-vis its tax obligations, Zambia Revenue Authority's refusal to allow the Post to pay its tax liabilities in instalments did not look like a decision in

defiance of logic or accepted moral standards nor could the same be justifiably labeled as being outrageous. According to the learned Judge, the decision in question was, in fact, one which any right-thinking person, more so, a person tasked with the responsibility of receiving and collecting revenue on behalf of the Republic of Zambia would have made.

The learned Judge accordingly adjudged that the motion for judicial review had failed and all the remedies which the Post had sought were refused.

The Post was unhappy with the Judgment of the Court below and sought to contest the same by appealing to this Court on the basis of the three Grounds which are set out in the Memorandum of Appeal in the following terms:-

"***i) The learned Judge erred in law and fact when he held that the Commissioner-General had authority to take over the communication between the Appellant and the Commissioner Domestic Taxes and to make the decisions that he made, namely, taking over the decision from the Commissioner Domestic Taxes; and treating the Applicant without fairness by refusing it to discharge its tax obligation in instalments. The said decisions were made without regard to the rules of procedural justice and fairness.***

ii) The learned trial Judge erred in law and fact by totally ignoring

the Appellant's evidence of the Respondent's bias rising from interference by the Minister of Finance, which evidence was not challenged by the Respondent.

iii) The learned trial Judge erred in law and fact in proceeding to render Judgment without hearing the Appellant's application to file a Further Affidavit which Affidavit established that Zambia Daily Mail Limited and Times Printpak Limited owed the Respondent more than the Appellant in taxes but were not being subjected to the same harsh treatment as the Appellants.

Prior to the hearing of the appeal, both the Appellant's and the Respondent's counsel filed their respective Heads of Argument to buttress their clients' respective positions.

For their part, counsel for the Appellant prefaced their arguments with some background narrative around the genesis of the matter which was subsequently deployed before the Court below and which has now been escalated to this Court. We can confirm that we have examined and taken due note of that narrative, particularly in the light of the fact that the same formed part of the affidavit evidence which the Appellant had placed before the Court below.

In arguing Ground One, which attacks the learned trial Judge's determination that the Commissioner-General had the authority to take over the communication between the Appellant

and the Commissioner-Domestic Taxes and to make the decisions that he made, namely, taking over the decision of the Commissioner-Domestic Taxes regarding the Appellant's proposal to discharge its tax obligations in instalments and the attendant rejection of that proposal by the Respondent, Counsel for the Appellant submitted that the Appellant was treated without fairness while the decisions by the Commissioner-General were made without regard to the rules of procedural justice and fairness.

The Appellant's Counsel proposed to argue Ground One by splitting it into two limbs namely, *procedural impropriety* and *irrationality*.

Regarding procedural impropriety or injustice, counsel contended that the Respondent flouted procedural justice when its Commissioner-General, having delegated his authority to the Commissioner-Domestic Taxes to consider the Appellant's proposals to pay its tax liabilities in instalments, decided to respond to a proposal which the Appellant had addressed to and pursuant to a request by the Commissioner-Domestic Taxes, and that, in so doing, the Commissioner-General took away the Appellant's right of

appeal to him. Counsel submitted that, having delegated the power in question, the Commissioner-General could not, whilst the power remained delegated, exercise the same power and that even if the Commissioner-General was at liberty to do so, he could not exercise that power in a manner which was inconsistent with the way his delegate, the Commissioner-Domestic Taxes, had exercised it. Counsel argued that since the Commissioner-Domestic Taxes had requested for a proposal from the Appellant with respect to the discharge of its tax liability in installments, the Commissioner-General could not overlook this. Counsel buttressed his argument by citing the case of **The Attorney General vs. Kang'ombe**[1].

Counsel further submitted that it was wrong for the Commissioner-General to have used the 2012 tax amnesty which the Respondent had previously availed to the Appellant as the basis or justification for the Respondent's rejection of the Appellant's proposal to discharge its tax obligations in instalments. Counsel argued that the 2012 tax amnesty had already been availed and was known to the Respondent and was not an issue when the Commissioner-Domestic Taxes sought to have the Appellant avail

her with proposals for the settlement of the Appellant's tax liability in instalments and further that the Appellant was never given a chance to make representations on the issue of the 2012 amnesty before the Commissioner-General decided to use it against the Appellant.

It was Counsel's further contention that, having delegated the relevant power to the Commissioner-Domestic Taxes, the Commissioner-General was bound by the decision of the Commissioner-Domestic Taxes with regard to the latter's request to have the Appellant submit its proposal to settle its tax liability in instalments and could not disregard this. Counsel accordingly submitted that the Commissioner-General was bound by the decision of his delegate and could not reverse it without hearing the Appellant, more so that he reversed the decision without offering a counter proposal.

As regards the second limb of Ground One, namely, irrationality or Wednesbury unreasonableness, it was the Appellant's Counsel's contention that it was unreasonable and unfair for the Respondent to have rejected the Appellant's proposal

to settle its tax liabilities in question given that the same had been prepared by way of the Appellant's invitation to prepare and submit the same. Counsel relied on the case of **Council for Civil Services Unions and Others vs. Minister for the Civil Service**[2] where the court stated that a decision is irrational in the Wednesbury sense if it *"is so outrageous in its defiance of logic or of acceptable moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it".*

Counsel further submitted that the Respondent's decision against allowing the Appellant to discharge its tax obligations in instalments as it (the Appellant) had proposed was irrational and Wednesbury unreasonable because of the following reasons which counsel advanced:

Firstly, from September, 2011 to September, 2014, the Appellant had dutifully paid the Respondent in excess of ZMW45,858,624.07 in taxes in instalments, therefore the Respondent's insistence that the Appellant forthwith and in a single instalment pay the entire ZMW26,856,230.91tax liability or risk having its assets seized was an impossible condition with negative repercussions;

secondly, inviting the Appellant to propose a plan for the discharge of its tax liabilities and then rejecting the proposal without a counter-proposal and *thirdly*, opting for measures which were going to cripple the Appellant's operations over the sum of ZMW26,856,230.91 which the Appellant was unable to pay.

Counsel argued that the Respondent's irrational and ulterior motives as well as its determination to close down the Appellant were confirmed by a recording which was in the Appellant's possession and in which the then Minister of Finance, Honourable A.B. Chikwanda, was informing a third party that he had asked the ZRA Commissioner-General to fix the Appellant by using its outstanding tax obligations to the Respondent.

The Appellant's counsel went on to refer to Diplock J's definition of 'irrationality' in the case of **Council for Civil Services Unions and Others vs. Minister for the Civil Service**[2] and concluded their arguments around Ground One by contending that the Respondent's decision of refusing to allow the Appellant to liquidate its tax liability in instalments as had been proposed to it was not only plainly irrational and Wednesbury unreasonable, but

was also procedurally flawed and clearly in breach of the general principles of fairness.

In relation to Ground Two, counsel argued that the Judge below fell in error when he totally ignored the Appellant's uncontested evidence which pointed to bias on the part of the Respondent arising from interference by the Minister of Finance. According to Counsel, the evidence suggesting bias and interference in relation to the Respondent and which had been deployed before the lower Court was overwhelming and ought to have been considered to tilt the scales of justice in favour of the Appellant. Counsel cited the case of **Nkhata and Others vs. The Attorney General**[3] in support of his argument that there was clear bias in the Commissioner-General's decision to take over the negotiations between the Appellant and the Commissioner-Domestic Taxes as borne out by the shift from the initial decision of allowing the Appellant to make proposals for the discharge of its tax liability in instalments to the rejection of the said proposals coupled with threats to levy distress against the Appellant and closing the company down altogether. Counsel contended that the learned trial

Judge should have considered the evidence referred to above and that the Court's failure to do so constituted a grave misdirection which warranted interference by this superior Court.

In relation to Ground Three, the learned Counsel for the Appellant argued that the failure by the Judge in the Court below to hear the Appellant's application to file a Further Affidavit which established that Zambia Daily Mail Limited and Times Printpak Limited owed the Respondent more taxes than the Appellant but were not being subjected to the same harsh treatment as the Appellant was an indication that the Respondent's intention was not to collect tax but to use the same as a mere cloak to treat the Appellant unfairly.

Counsel cited the case of **Chief Constable of North Wales Police vs. Evans**[4] where, at page 143, Lord Hailsham stated as follows:-

> **"It is important to remember in every case 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 and that it is not part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question."**

Counsel further argued that the Appellant was not treated fairly by the Respondent, particularly its rejection of the Appellant's proposal to pay its tax liabilities in instalments and its insistence on crippling the Appellant's business.

The Appellant's Counsel concluded their written arguments by reiterating the principle in the case of **Nkhata and Others vs. The Attorney General**[3] cited above and submitted that this was a proper case for this Court to overturn the lower court's decision.

We were accordingly urged to allow the Appellant's appeal.

In opposing this Appeal, the learned Counsel for the Respondent also filed Heads of Argument on behalf of the Respondent. Counsel begun by giving a brief background to the matter which we shall not repeat here, suffice it to say that we have read and taken due note of the same.

In response to Ground One, counsel for the Respondent submitted that the Appellant's first Ground of appeal was misconceived as the Court below neither erred in law nor in fact

when it held that the Commissioner-General had authority to take over the communication between the Appellant and the Commissioner-Domestic Taxes and against allowing the Respondent to settle its tax liabilities in instalments.

As regards the Appellant's allegation imputing procedural impropriety to the Respondent, Counsel for the Respondent begun by agreeing with the Court below and pointing out that this allegation, and the case law relied upon to advance the same (namely, **The Attorney-General vs. Kang'ombe**[1]) was totally misconceived and misapprehended and could not be related to the facts and circumstances which led to the institution of Court proceedings by the Appellant. Counsel accordingly invited us to uphold the lower Court's finding that the Commissioner-General had authority to take over the communication which the Appellant had directed to the Commissioner-Domestic Taxes and to deal with the same in the manner that the Commissioner-General did.

Learned counsel then went on to recount the purpose of judicial review by referring to the following passage which was

drawn from the case of **Fredrick Jacob Titus Chiluba vs. the Attorney General**[5]:-

> **"The remedy of Judicial Review is concerned with reviewing, not the merits of the decision in respect of which the application for Judicial Review is made but the decision-making process itself. The purpose of Judicial Review is to ensure that an individual is given fair treatment by the authority to which he has been subjected and that it is not part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. The court will not on Judicial Review application act as a "court of appeal," from the body concerned, nor will the court interfere in any way with the exercise of any power or discretion which has been conferred on that body, unless it has been exercised in a way which is not within that body's jurisdiction or the decision is Wednesbury unreasonable. When the High Court is reviewing the decision of a public body it will not admit evidence which is relevant to whether the decision is a reasonable one; but it will permit evidence which is relevant to whether the decision is one which the body had power to make or whether it was made in circumstances in which a reasonable body could have made it."**

Counsel for the Respondent then proceeded to repeat the arguments which were canvassed on behalf of the Respondent in the Court below with regard to the position of the ZRA Commissioner-General under the Authority's enabling statute as well as the Tax statutes which imbues him with immense powers

not only to enforce these statutes but, in the specific case of the Income Tax Act to appoint staff or officers in the Domestic Tax Division of the Authority and to delegate any of his functions to such appointees. It was counsel's further argument that, in terms of section 7(1) of the Income Tax Act,

"...***any decision made or any notice or communication issued or signed by any such officer may be amended or withdrawn by the Commissioner-General, or by the officer concerned, and shall, for the purposes of this Act, until it has been so withdrawn, be treated as having been made, issued or signed by the Commissioner-General".***

It was counsel for the Respondent's further contention that, on the basis of the law as cited above, there was nothing procedurally improper in having the Commissioner-General respond to the letter which the Appellant had addressed to the Commissioner-Domestic Taxes because the law specifically and unambiguously empowers the Commissioner- General not only to implement the provisions of the **Income Tax Act, Chapter 323 of the Laws of Zambia** and the **Value Added Tax Act, Chapter 331 of the Laws of Zambia** but

also to delegate any of his functions to any of the officers of the Respondent. Counsel also contended that a person who delegates his/her functions remained accountable and that nothing would prevent a person who delegates a function or functions from doing that which he would have delegated.

Counsel also argued that the import of section 7(1) of the Income Tax Act, as quoted above, was that it empowered the Commissioner-General to amend or to withdraw any decision made or any notice or communication issued, as the case may be, by any officer in the Domestic Taxes Division and that such intervention by the Commissioner-General may arise at any time as there is no prescribed time frame within which the Commissioner-General can exercise the power which the law gives him. Counsel further argued that the suggestion by the Appellant that the decision of the Commissioner-Domestic Taxes could only be reviewed on appeal was a gross misapprehension of Section 7(1) of the **Income Tax Act** adding that the power conferred on the Commissioner-General under Section 7(1) can be exercised at any time and that therefore, by acting the way he did, the Commissioner-General merely

exercised his powers under the **Income Tax Act** by amending or indeed withdrawing the decision of the Commissioner-Domestic Taxes.

The Respondent's Counsel further submitted that Section 7(1) of the **Income Tax Act** does not set any preconditions which have to be met before the Commissioner-General can either amend any decision or withdraw any communication issued or signed by any officer in the Domestic Taxes Division, nor does it require him to hear the concerned party before amending or withdrawing any decision or communication.

Relying on the observations which we made in ***Chiluba vs. Attorney-General***[5] and ***Nyampala Safaris (Z) Limited & Others vs. ZAWA & Others***[6] (*to the effect that it is not in all cases that the rules of natural justice apply*) Counsel argued that, as the right to be heard was unavailable in the circumstances in question, the question of breach of the rules of natural justice by the Respondent did not arise and that, in any event, and as the court below correctly noted, the Appellant was heard in that there was full engagement between the parties both in writing as well as verbally

over the Appellant's tax indebtedness and the settlement of the same. Counsel insisted that the fact that the engagement between the Appellant and the Respondent did not yield the outcome which the former was seeking or had hoped for did not discount or negative the fact of such engagement having taken place.

The Respondent's Counsel fervently contended that there was nothing unfair, illegal or irregular about the manner in which the Appellant was treated by the Respondent adding that the Appellant had failed in its civic responsibility to pay taxes on their due dates in spite of the Respondent having given it time within which to pay its tax arrears and impressing upon it to remain current with its tax obligations.

Counsel also argued that the issue of procedural impropriety did not arise given that the Commissioner-General acted within the provisions of the law.

With regard to the Appellant's allegation suggesting irrationality and Wednesbury unreasonableness, Counsel for the Respondent contended that the Appellant's arguments around

these allegations constituted an assault upon the merits of the Respondent's decision which it was not competent for this Court or the Court below to inquire into. In this regard, Counsel insisted that the apparent invitation by the Appellant to have the Court review the merits of the Respondent's decision was misconceived and clearly offended the purpose of judicial review which, consistent with the decisions of this Court in ***Fredrick Jacob Titus Chiluba vs. the Attorney General***[5] and ***Nyampala Safaris (Z) Limited & Others vs. Zambia Wildlife Authority & Others***[6] cited above, is concerned, not with the merits of the decision, but with the decision making process itself. Counsel also insisted that it was not even open to a Court of law to substitute the decision of the decision maker in question, such as the Respondent in the instant case, with the Court's own decision.

The Respondent's Counsel further contended that there was nothing irrational in the manner in which the Appellant was treated by the Respondent when the Respondent declined to allow the Appellant to pay the tax debt in instalments. Counsel further submitted that the Respondent's decision was not in defiance of

logic or of acceptable moral standards and that any reasonable body in the same circumstances as the Respondent would have made the same decision which the Respondent had made in relation to the Appellant. Counsel accordingly urged us to dismiss the Appellant's first ground of appeal in its entirety.

In response to Ground Two, Counsel for the Respondent submitted, referring to the Record relating to the proceedings below, that, contrary to the Appellant's allegation that the Respondent did not challenge the allegation by the Appellant that there was interference from the Minister of Finance, the evidence before the Court below indicated that the Respondent did challenge this allegation at paragraph 33 of its Affidavit in Opposition by averring that at no time was the Commissioner-General ever directed by the Minister of Finance to fix the Appellant and that the Respondent was not even privy to the exhibit which the Appellant had produced to buttress its allegation. Counsel contended that the Respondent did challenge the evidence which the Appellant was relying on and that, in any event, it was open to the Appellant to sue or join the

Minister of Finance to the proceedings and have the issues that it was alleging against him proven but chose not do so.

Counsel further argued that the Court below established as a matter of fact that tax recovery on behalf of the Government is the preserve of the Commissioner-General and that the Commissioner-General could not, therefore, be accused of wrong-doing by demanding payment of tax owing to the Government.

In the view of Counsel for the Respondent, this was not a proper case for this Court to set aside the Judgment of the Court below adding that doing so would contradict well-settled principles in the following cases which dealt with circumstances when an appellate court can interfere with findings of fact by a trial court:-

1. **Nkhata and Others vs. The Attorney General of Zambia[3];**
2. **Attorney General vs. Marcus Kampumba Achiume[7];**
3. **Zambia Revenue Authority vs. Dorothy Mwanza & Others[8]; and**
4. **Simwanza Namposhya vs. Zambia State Insurance Corporation Limited[9]**

Counsel further argued that the onus was upon the Appellant to prove its case and that, in the case at hand, the Appellant's allegation of interference by the Minister of Finance was never

proven. Counsel cited the case of **Zambia Consolidated Copper Mines Investment Holdings Plc vs. Woodgate Holdings Limited**[10] where we held that where a Plaintiff makes an allegation, it is generally for him to prove those allegations adding that in the instant case, the Appellant failed to prove its allegations.

In response to Ground Three, the Respondent's Counsel submitted that the Judge in the court below was on firm ground when he proceeded to render his Judgment without hearing the Appellant's application to file a Further Affidavit which was only filed into court on or about 3rd September, 2015 way after both parties had filed their final submissions in line with the Order which was made by the Judge below with the consent of the parties on 13th July, 2015. Counsel argued that if the Appellant had any further evidence that it had wished to introduce it should have applied to file the same before consenting to have the matter adjourned by the court for Judgment. Counsel relied on the principle laid down in the case of **Commonwealth Development Corporation vs. Central African Power Corporation**[11] where the court held that Affidavits in excess of the number normally

admitted under the High Court Rules and Practice may be admitted into evidence in the discretion of the judge. Counsel contended that, as the Further Affidavit in question had not been admitted in evidence in the Court below, the same did not form part of the proceedings in that Court and, therefore, cannot properly be the subject of the present appeal. To buttress her argument, Counsel relied on the cases of **Buchman vs. Attorney General**[12], **Mususu Kalenga Building Limited and Another vs. Richman's Money Lenders Enterprises**[13] and **Zambia Revenue Authority vs. Barclays Bank Zambia**[14], where we held, *inter alia,* that matters not raised in the lower court cannot be raised in a higher court as a ground of appeal. Counsel, accordingly, invited us not to consider this particular ground and repeated the earlier invitation to have us dismiss this appeal as totally lacking in merit.

At the hearing of the appeal, we sought to know from Mr. Nchito, S.C., as to whether, in the light of the position which we took in our judgment in ***Zambia Revenue Authority vs. Post Newspapers Limited***[15] in relation to this very appeal, there was

anything that remained to be determined or to be said by this Court as regards the fate of this appeal.

In response, Mr. Nchito, S.C. indicated to us that the issues which were determined by this Court in Appeal Number 36 of 2016 related to whether or not the Appellant in this matter should have been granted a stay. According to the learned State Counsel, the issues surrounding the manner in which the Post was treated by ZRA remained to be determined by this Court. Counsel further informed us that "*some of the issues*" that required our determination in this appeal were "*mentioned in passing*" in Appeal Number 36 of 2016 but that there were still "*important issues*" raised in this appeal which this Court should specifically determine. Counsel went on to say that, "...*of particular importance [was] the issue relating to the powers of the Commissioner-General in section 7(1) and 7(2) of the Income Tax Act,* his right to delegate those powers *vis-a-vis* his power to hear or determine appeals arising from decisions of officers who decide on his behalf coupled with legitimate expectations that decisions of his officers could be appealed against and that such appeals would lie to him.

Mr. Nchito, SC emphasized that the issue of whether ZRA officers who act on behalf of the ZRA Commissioner-General as the latter's delegates can have their decisions appealed against to the same Commissioner-General was the central issue which we were invited to pronounce ourselves upon with finality. According to the learned State Counsel, this specific issue was not decided upon in Appeal Number 36 of 2016 and, consequently, stood in need of being specifically pronounced upon by us.

If we understood Mr. Nchito, S.C's *viva voce* exertions correctly, our judgment in Appeal Number 36 of 2016 somewhat narrowed the issues upon which the Appellant would now like to have us pronounce ourselves in relation to this appeal.

For their part, Counsel for the Respondent indicated to us that they were relying on the Respondent's Heads of Argument as filed which they considered sufficiently detailed.

We are greatly indebted to learned counsel for both parties for their undoubted industry and their perspicuous exertions.

Having regard to the question which we had put to Mr. N. Nchito, S.C, the learned Counsel for the Appellant as set out above,

and the response which our question had attracted thereby, we propose to begin our reflections by quoting, verbatim, the following excerpts from our judgment in Appeal No. 36 of 2016:

> ***"Mr. Nchito pointed out that the current appeal and that of the Post Newspaper Limited Number 07 of 2016 are inextricably linked. That if this appeal is granted, it would have the effect of rendering Appeal No. 07/2016 nugatory, as ZRA would levy distress and close down operations of the Post....***
>
> ***Mr. Nchito, State Counsel, vehemently argued that the pending appeal by the Post has prospect of success. And, therefore, the learned trial Judge was right in granting stay of his Judgment of 30th October. This argument invites us to comment on the prospect of success or otherwise, of the pending appeal. Indeed, decided cases, such as Sonny Mulenga vs. Investrust Merchant Bank Limited[16] allow us to do so.***
>
> ***We are of the view and indeed agree with the learned trial Judge and the two Counsel for ZRA, that the pending appeal by the Post has no prospect of success. We say so for two reasons.***
>
> ***One is that the grounds on which the Post sought judicial review against ZRA do not exist. We agree with the learned trial Judge that there was no illegality, unreasonableness or procedural impropriety, in the manner the Director General of ZRA, demanded immediate payment of tax arrears and refused payment in instalments. There is evidence on record that before this case arose, the Post had defaulted on tax payments.***

It incurred statutory penalties on the default. It applied to ZRA to be allowed to pay the tax arrears in instalments. It was allowed to do so. Also on its request, ZRA waived the penalties. Given the Post's past record of defaults on tax payment, it cannot be seriously argued that the Commissioner-General behaved unreasonably in not allowing the Post to pay tax owing by instalments. The Income Tax Act allowed him to demand payment at one go. So, the learned trial Judge was justified in refusing to grant certiorari.

Second, is the way the remedy of mandamus was pleaded. Mandamus will issue to compel an authority to exercise jurisdiction that it has wrongfully declined; and to enforce the exercise of statutory duties and discretion in accordance with law: See De Smith's Judicial Review 6th Edition,2007, page 704 (paragraph10-035). Mandamus must not order an authority to do, what needs to be done, in a particular way; but to do so according to law. It must allow exercise of discretion. If an authority is ordered to do a specified act in a particular way, then that becomes a mandatory injunction and not mandamus.

In this case, the Post sought an order of mandamus, to compel ZRA (i.e. the Commissioner-General), to allow the Post to pay its tax liabilities in instalments. It was asked for, in the form of a mandatory injunction that left no room for the exercise of discretion. It was sought in a wrong way. So, in addition to the considerations of the Post's claim on merit, mandamus was not available in the incorrect manner it was pleaded..."
(at pp. J.21-J23).

We wish to make the following immediate observations in relation to what we said in our judgment in Appeal No. 36 of 2016 as reproduced in the above excerpt:

Firstly, according to the above excerpt, and, for the removal of any doubt, the present appeal, that is, No.7 of 2016, is the one which, on 7th June, 2016 (being the date when Appeal No. 36 of 2016 was argued) learned State Counsel, Mr. Nchito, considered to have been '***inextricably linked***' to Appeal No. 36 of 2016. Learned State Counsel also opined that, granting Appeal No. 36 of 2016 ***was going to have the effect of rendering Appeal No. 07/2016 nugatory, as ZRA would levy distress and close down the operations of the Post.***

Secondly, when we heard counsel for the parties on 12th July, 2016, Mr. N. Nchito, S.C. unambiguously indicated to us that the issues which were determined by this Court in Appeal Number 36 of 2016 were *different* and that "*some of the issues*" that required our determination in this appeal were "*mentioned in passing*" in Appeal Number 36 of 2016 but that there were still "*important issues*"

raised in this appeal which this Court should specifically determine in this appeal.

In effect, learned State Counsel, Mr. Nchito, was of the strong view that, in spite of this Court having unambiguously and unequivocally said, in relation to the present appeal, that "***the [same had] no prospect of success***", he remained inclined to contend otherwise.

It is worthy of note from the above excerpt that, in reaching the conclusion that we had reached in that judgment, namely that the Appellant's present appeal had ***"...no prospect of success",*** we duly assigned our reasons as clearly borne out in that judgment. Needless to say, when we reached our conclusion, as aforestated, ***we did so in relation to <u>the whole of the appeal</u> which we were referring to, that is, this very appeal***. At no point did we suggest, even faintly, that this appeal or some aspect or aspects thereof had even the minutest or remotest prospect of success. For the avoidance of doubt, while we agree with Mr. Nchito, S.C that ***the purpose*** which Appeal No. 36 of 2016 was seeking to achieve was different from the one which the present one seeks to achieve,

the substantive factual matrix of that earlier appeal was exactly the same as the present appeal. Indeed, even a cursory reading of the background facts in our judgment in Appeal No. 36/2016 clearly confirms this position.

In all seriousness, we consider that the above observations do encapsulate the view that we have taken in relation to this appeal. In short, the fate of this appeal was effectively resolved in favour of the Respondent in our judgment in Appeal Number 36 of 2016. For the avoidance of doubt, the words,

"...***we agree with the learned trial Judge that there was no illegality, unreasonableness or procedural impropriety in the manner the Director General of ZRA demanded immediate payment of tax arrears and refused payment in instalments...***'which occur in that judgment effectively resolved this appeal in the manner earlier indicated, particularly in the light of the fact that this whole appeal was primarily anchored on Ground One. Indeed, in the view that we have taken, both Grounds Two and Three were distinctly peripheral and without any real effect on the outcome of this appeal.

Indeed, if there be any appetite for more to be said about Ground Two, we would venture to suggest that Courts of law cannot be properly invited to make binding pronouncements on the basis of mysterious or murky 'evidence', particularly in matters such as the present one where such evidence is limited to Affidavit depositions without any opportunity to test such evidence for its cogency, efficacy and general reliability via cross-examination. In all seriousness, we do not feel sufficiently persuaded that an alleged or purported "*...transcript of a recording of a conversation between the Minister of Finance [Hon. Chikwanda] and a third party...*" can be of such legitimate evidential value as to form a sound basis for a binding pronouncement by this Court in a contested matter such as this one. Accordingly, Ground Two fails as it falls far too short that it does not get anywhere close to attracting our serious attention. It is dismissed.

With regard to the Third and final Ground of appeal, we have noted from the Record that when the matter came up for hearing before the Court below on 23rd July, 2015 counsel for the parties informed that Court that they had agreed to rely on the Affidavit

evidence which they had deployed before the Court and that all that they were seeking to have the Court sanction was to have them file their respective written Submissions within a total period of 7 weeks. The Record further reveals that the Court granted the two counsel involved their wish and ordered that ***"...final written submissions and a Reply, if any shall be filed by 31/08/15 and thereafter judgment shall be delivered on or before 30/10/15".***

The Record also reveals that, on 7th August, 2015 the Appellant (then Applicant's) Counsel filed their Submissions while the Respondent's counsel filed theirs on 25th August, 2015.

We have also noted from the Record (and the issue was not disputed below) that an ***"Affidavit in Support of Summons to File Further Affidavit pursuant to Order 3 Rule 2 of the High Court Rules"*** was filed into Court on 03 September, 2015. This was after the parties were deemed to have closed their respective cases and the matter was awaiting judgment. We wish to note, in relation to the Affidavit we have just alluded to above, that we were unable to locate the 'Summons' or 'Application which this Affidavit was supporting. In the absence of the said Summons, we are unable to

tell whether a hearing date was even appointed in respect of the same. Indeed, even the Appellant offered no explanation beyond its counsel alleging, in the Heads of Argument, that the Judge below '*ignored*' the Application.

In our view, a number of questions around the Appellant's application to File Further Affidavit beg answers from the Appellant:

1. ***Given the absence of evidence to affirm the correct position and the fact that the matter had drifted into the 'judgment mode', did the Appellant, as a diligent litigant, acting by its counsel, establish whether or not the Court below was aware of the belated filing of the Application in question?***

2. ***Assuming that the Court below had been aware (a fact not established) and had been inclined to hear the belated Application in question, would the Court have been at liberty to proceed to hear that Application without the Appellant first securing leave to file that application to file the Further Affidavit? In short, was there an application before the Court to re-open the proceedings so as to facilitate the reception of fresh evidence?***

3. ***Furthermore, if the Appellant had considered this Further Affidavit crucial to the cause it was pursuing but had concluded that the Court below was not inclined to entertain the same, why did the Appellant not seek to stay the proceedings and mount an appeal, after securing the Court's formal refusal to entertain the***

Application which appears to have generated disaffection at this late hour?

In the absence of answers to the questions we have posed above, how can Ground Three constitute a legitimate or viable Ground of appeal?

Given that an appeal to this Court is of the nature of a re-hearing, how can this superior Court be properly invited to '*re-hear*' complaints around an Application which the Court below did not pronounce itself upon and, in all likelihood, had no knowledge of?

Having regard to the concerns and reservations we have expressed above, Ground Three cannot possibly succeed. It accordingly stands dismissed.

In spite of the conclusions we have reached above, we do, nonetheless, propose to pronounce ourselves more incisively upon the invitation which learned State Counsel, Mr. Nchito, extended to us in relation to the powers of the Commissioner-General in sub-sections (1) and (2) of section 7of the Income Tax Act and his liberty to delegate the same and how such delegation interacts with his power to hear or determine what State Counsel described, if we

understood him correctly, as any 'appeals' arising from decisions of officers who decide or act on his behalf coupled with legitimate expectations of 'appeals' from decisions of his officers lying to him.

To start with, and by way of a precursor to our main reflections on the subject which learned State Counsel, Mr. Nchito, invited us to specifically interrogate, we are in agreement with the conclusion which was reached by the Court below that, although Part XI of the Income Tax Act provides for an appeal mechanism, the scheme of this statute does not suggest or point to the existence of any formalized internal appellate process in relation to decisions which are handed down by Commissioners such as the one who was involved in this matter. Not surprisingly, even counsel for the Appellant's suggestion regarding some '*practice*' pointing to the existence of such '*appeals*' could not be pursued beyond what we can even describe as a cursory footnote.

Put differently, State Counsel's invitation as set out above is tantamount to asking us to pronounce ourselves upon a hypothetical situation which we are precluded from venturing into.

In any event, even assuming that we are wrong in declining to pronounce ourselves on the issue we have deemed hypothetical, our reading of section 7(1) of the Income Tax Act inclines us towards the position that a formal appeal of the nature suggested to us is not tenable under that provision for the simple reason that such an "appeal" would, legally, amount to the Commissioner finding himself in the preposterous circumstances of technically appealing to himself. We have reached this conclusion on the basis of the words,

> *'**...any decision made** or any notice or communication issued or signed **by any such officer** may be amended or withdrawn by the Commissioner-General or by the officer concerned, and **shall, for the purposes of this** Act, until it has been so withdrawn, **be treated as having been made, issued or signed by the Commissioner-General'***

which occur in section 7(1) of the Income Tax Act which we have reproduced in full in the context of the discussion which follows below. For now, we do feel sufficiently comfortable to conclude that section 7(1) does not envisage that there can be such a thing as an

'appeal' which can lie from a decision of the Commissioner-Domestic Taxes to the Commissioner-General for the simple reason that the provision in question makes it clear that a decision made by any delegate of the Commissioner-General which the latter does not *withdraw* or *amend* is imputed or ascribed to the Commissioner-General himself. It seems to us that the only administrative appeal mechanism which is available to any person wishing to contest a decision of the Commissioner-General under any tax legislation is to appeal to the Tax Appeals Tribunal which was created as The Revenue Appeals Tribunal under the Revenue Appeals Tribunal Act Number11 of 1998 but which now exists under its afore-mentioned new name pursuant to the provisions of The Tax Appeals Tribunal Act No.1 of 2015.

Turning more specifically to the invitation which we received from Mr. Nchito, S.C, in relation to the Commissioner-General's powers under Section 7(1) and 7(2) of the Income Tax Act and the liberty which is available to him to delegate the same, we propose to start by quoting those provisions, including section 6(1), in full:

> ***"6. (1) "The Commissioner-General shall be responsible for carrying out the provisions of the Act".***

"7.(1) The Commissioner-General may delegate to any officer in the Direct Taxes Division any power or duty by this Act conferred or imposed upon him, other than those conferred on him by section [104] and this power of delegation and, save as especially provided by this Act, any decision made or any notice or communication issued or signed by any such officer may be amended or withdrawn by the Commissioner-General or by the officer concerned , and shall, for the purposes of this Act, until it has been so withdrawn, be treated as having been made, issued or signed by the Commissioner-General.

(2) Every officer appointed for the purposes of carrying out the provisions of this Act is under the Commissioner-General's directions and control, and shall perform such duties as may be required by the Commissioner-General".

It can scarcely be doubted, as the learned Judge below observed, that the Income Tax Act places the Commissioner-General at the heart of the administration and enforcement of the provisions of this statute. Indeed, the provisions which have been cited above make it clear that although the Commissioner-General enjoys the liberty to delegate any of his powers or duties, not only do his delegates remain amenable to his ***"directions and control"***, he, that is, the Commissioner-General, can ***'amend'*** or ***'withdraw'*** any such powers or duties so delegated.

One of the diverse arguments which were canvassed before us on behalf of the Appellant suggested that, once the Commissioner-General had delegated his power under the statute in issue to his Commissioner-Domestic Taxes for the purpose of having the latter deal with the Appellant in connection with the latter's tax difficulties, the Commissioner-General was precluded from intervening in the manner he did. We do not agree with this argument which, in any event, we consider to fly in the teeth of the clear provisions which are embedded in section 7 (1) and 7(2) of the statute in question.

Lord Woolf and Professor J. Jowell, Q.C, the learned authors of the widely respected ***de Smith, Woolf & Jowell's Judicial Review of Administrative Action***, 5th edition, (1995) have stated the following in relation to delegation of powers by a public authority:

> ***"...it has sometimes been stated that delegation implies a denudation of authority. This cannot be accepted as an accurate general proposition. On the contrary, the general rule is that an authority which delegates its powers does not divest itself of them-indeed, if it purports to abdicate it may be imposing a legally ineffective fetter on its own discretion" (at pp. 362-363) (emphasis ours).***

In relation to the statutory provisions under consideration, we can safely say, and it seems fairly plain to us, that the question of *'denudation of authority'* by the Commissioner-General or indeed, the Commissioner-General *'divesting himself'* of any power delegated by him pursuant to those statutory provisions does not and would not even arise. This is so because the statute itself makes it very clear that not only does the Commissioner-General remain in control of any legal power or duty delegated by him but can ***'amend'*** or ***'withdraw'*** the exercise of any such powers or duties so delegated.

The learned editors of ***Halsbury's Laws of England***, (*4th edition, Re-issue*), have also stated, at paragraph 31, that,

> ***"In general a delegation of power does not imply a parting with authority. The delegating body will retain not only power to revoke the grant, but also power to act concurrently on matters within the area of delegated authority except in so far as it may already have become bound by an act of its delegate."***

In the context of the matter at hand, there was a suggestion by counsel for the Appellant that, since, in her capacity as the Commissioner-General's delegate, the Commissioner-Domestic

Taxes had invited the Appellant to avail her with its proposal regarding settlement of its tax liabilities in instalments, the Commissioner-General was bound, hand and foot, by his delegate's decision. We pause here to ask: *by which decision of the Commissioner-Domestic Taxes did the Commissioner-General become bound?* If, as we understand it, the *decision* in issue was, in fact, the Commissioner-Domestic Taxes' *invitation* to have the Appellant avail her with a proposal regarding settlement of the Appellant's tax liabilities in instalments, was the power which the Commissioner-Domestic Taxes was exercising in extending the invitation in question not amenable to *withdrawal* or *amendment* by the authority (the Commissioner-General) to whom and under whose *control* and *direction* the exercise of the power in question remained subject? We certainly think so. We also think that our answer is broadly consistent not only with the nature and spirit of the Commissioner-General's powers in question but their delegation as well.

Having paused momentarily and reacted to the questions we had posed to ourselves in the manner we have done, it does follow

that the *decision* which the Director-Domestic Taxes made in the way of inviting the Appellant to avail her with its proposal to settle its tax liabilities in instalments was amenable to withdrawal by the Commissioner-General pursuant to the powers available to him under section 7(1) of the statute in question. Needless to say, and as a necessary consequence of his said power to withdraw the Commissioner-Domestic Taxes' decision, the Commissioner-General was at liberty to deal with the matter as he deemed appropriate, including taking over the communication between the Commissioner-Domestic Taxes and the Appellant. Consequently, we are inclined to dismiss counsel for the Appellant's contention that the Commissioner-General was bound by the Commissioner-Domestic Taxes Division's invitation to the Appellant as particularized above because, in our view, that contention does not find favour with the proper meaning and effect of section 7(1) of the Income Tax Act. By parity of reasoning, we find the Appellant's reliance on the Court of Appeal judgment in the case of **The Attorney General vs. Kang'ombe**[1] unhelpful to its cause.

In sum, this appeal was doomed to fail in its entirety and it does. The Respondent will have its costs and these are to be taxed if not agreed.

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R. M. C. Kaoma

SUPREME COURT JUDGE

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M. Musonda, SC

SUPREME COURT JUDGE

.....

J. Chinyama

SUPREME COURT JUDGE