IN THE HIGH COURT OF MALAWI

REVENUE DIVISION

JUDICIAL REVIEW NUMBER 43 OF 2016

BETWEEN:

THE STATE

AND

THE COMMISSIONER GENERAL OF MALAWI REVENUE AUTHORITY — RESPONDENT

EX-PARTE EASTERN PRODUCE MALAWI LIMITED — APPLICANT

CORAM: THE HONOURABLE JUSTICE JOSEPH CHIGONA

M. SAUTI & H. NGUTWA, OF COUNSEL FOR THE APPLICANT

C. LIKOMWA, OF COUNSEL FOR THE RESPONDENT

MR. FELIX KAMCHIPUTU, OFFICIAL COURT INTERPRETER

JUDGMENT

The applicant, Eastern Produce Malawi Limited, is engaged in the growing, production and processing of tea in Malawi. It is said that the respondent, Malawi Revenue Authority, a public body responsible for collection of taxes, conducted a tax audit on the applicant from 13th to 31st October 2014. Following the audit, the

respondent, issued notices of amended assessments for income tax dated 3rd November 2015, as follows:

(a) For year of assessment ended June 2009, an additional tax charge of K97, 394, 224
(b) For year of assessment ended June 2010, an additional tax charge of K109, 388, 463
(c) For year of assessment ended June 2011, an additional tax charge of K120, 801, 195
(d) For year of assessment ended June 2012, an additional tax charge of K163, 385, 788
(e) For year of assessment ended June 2013, an additional tax charge of K286, 639, 738

It is said that the results of the audit were communicated to the applicant through letters, the first letter dated 10th December 2014 and the last letter dated 21st April 2016. The applicant and the respondent had also meetings, of which the last meeting took place on 23rd November 2015. It is also stated by the applicant that the respondent is also demanding payment of Non Resident Tax in respect of dividends paid by the applicant to its UK based shareholder, John Ingham &sons Ltd. It is said that the applicant has made payments through PWC in relation to corporate taxes not in dispute of K697, 000, 000. The total additional corporate tax on demand is K777, 609, 408 which is being disputed and the NRT tax on demand is estimated to be K300, 000, 000.

It is said that the applicant appealed to the Commissioner General challenging the assessments pursuant to the Rules of Procedure for Appeals. In this Judicial Review, the applicant is challenging the respondent's illegality and irrationality whilst it performed a public function.

The applicant is seeking relief on the following decisions made by the respondent:

(a) The decision and proceeding by MRA to use OECD Guidelines whilst performing transfer pricing analysis and as a basis for effecting amendments to tax assessments

(b) The decision and proceeding by MRA not to use the Taxation (Transfer Pricing) Regulation of 2009 whilst performing transfer pricing analysis

(c) The decision by MRA to raise an amended notice of assessment in respect of the year of assessment ended 3o June 2009 outside the period allowed by the law

(d) The determination by MRA that NRT on dividends paid by EPM to John Ingham & Sons Ltd in the year 2008, but received in 2009, and all dividends arising from 1 January 2013, is payable.

The applicant is therefore seeking the following reliefs:

(a) A declaration that the decision and proceeding by MRA to apply OECD Guidelines as law in Malawi is illegal and ultra vires MRA powers under the Taxation Act

(b) A declaration that the decision and proceeding by MRA not to apply the Taxation (Transfer Pricing) Regulations made under the Taxation Act was an abdication of duty and, therefore, an error of law

(c) A declaration that the use by MRA of OECD Guidelines, which are not law, and the failure on the part of MRA to apply transfer pricing regulations under the Taxation Act of Malawi, which is law, has resulted in MRA arriving at an arbitrary assessment

(d) A declaration that the decision by MRA to disallow 94.4% of the 4% commission (and effectively imposing a commission of only 0.0024% of turnover) paid to RBDA under the transfer pricing analysis was irrational and unreasonable in the wednesbury sense.

(e) A declaration that the notice of amended assessment for the year ended June 2009 is time barred

(f) A declaration that MRA's failure to respond to HMR&C's letter of 6th may 2015 is a failure to perform its public functions under the competent authority obligations contained in Article XIV of the Malawi/UK DTA

(g) An order similar to certiorari quashing the decision by MRA to disallow 94.4% of the 4% commission paid to RBDA

(h) An order similar to certiorari quashing the notice of amended assessment for the year ended June 2009
(i) An order similar to certiorari quashing the determination that Non Resident Tax (NRT) is payable by EPM
(j) An order similar to an interim injunction staying the implementation or enforcement of the assessments pending the determination of the substantive judicial review
(k) Further or other relief
(l) An order for costs; and
(m) That all necessary and consequential directions be given

It has to put on record that during hearing of the substantive judicial review, counsel for the applicant told the court that the main issue before this court is the issue of use of OECD Guidelines by the respondent. Since there was a notice to cross examine the deponent of the affidavit in opposition, Mr Tembo, the deponent was accordingly cross examined by the applicant. The deponent, Mr Tembo recognised and duly adopted his affidavit in opposition.

In cross-examination, the deponent told the court that he conducted the audit together with his three colleagues. He told the court that he was aware that the main issue in this application is the transfer prices between the applicant and its parent company in the UK. He submitted that he has the requisite experience in issues of transfer pricing, which as per his own words, sometimes turns to be complex. He told the court that he has been trained in transfer pricing issues by well-known experts and that he has practised for 8 years now. He submitted that in Transfer Pricing, the aim is to arrive at arm's length price between related parties. He defined arm's length price to be a price established for the parties in a controlled set up. He submitted that in transfer pricing, through functional analysis, it has to be proved that the service was indeed rendered and that documentation is always needed in order to arrive at arm's length price.

The deponent told the court that Section 127A of the Taxation Act and Taxation (Transfer Pricing) Regulations, 2009 is the law in as far as transfer pricing issues are concerned in Malawi. He submitted

that Section 127A of the Taxation Act is a specific provision. He told the court that Section 127A is not a stand-alone provision as it has to be used together with the Taxation (Transfer Pricing) Regulations 2009. The deponent told the court that any auditor in transfer pricing needs to use Section 127A and the Regulations. He submitted that he did not make any reference to these Regulations in his affidavit as these were not subject of the appeal before the Commissioner General. However, the deponent told the court that in all their communications with the applicant, reference was made to Section 127A and Regulations, 2009. He told the court that they applied the Regulations and that they were able to dismiss the method used by the applicant. The deponent told the court that he did not make reference to the Regulations in his initial letter to the applicant after the audit-**ET2.** He told the court that **ET2,** which is the letter, does not mention the Regulations. He also told the court that **ET4,** which is the audit report, is not making reference to the Regulations. The deponent told the court that in his audit report, he wrote that MRA would rely on the OECD Guidelines and its arm's length principle. He confirmed that in the audit report, they discussed Article 9 of the OECD Guidelines and that the Regulations, 2009 were not fully discussed. The deponent confirmed in court that the revised audit report, which he authored, **ET6,** also make reference to the OECD Guidelines. The deponent also articulated to this court the procedures for arriving at arm's length prices. He told the court that if procedures are not complied with by the parties, then MRA disallows the transaction. In the present case, the deponent stated that they did not tax basing on arm's length price. The deponent told the court that he is aware of functional, asset and risk analysis in transfer pricing. The deponent submitted that the onus on arriving at a correct method using functional analysis is on the taxpayer. He said as an auditor, his function is to verify if the law has been complied. If not complied, MRA rejects the transaction and proceed to tax. He told the court that the law puts the onus on choosing a method to arrive at arm's length on the taxpayer.

The deponent told the court that the law does not allow MRA to choose a method for the taxpayer. He emphasised to the court

that the taxpayer is responsible for arriving at arm's length price and the tax administrator only verifies the method used. The deponent told the court that one has to understand the business context to arrive at arm's length price. He told the court that 94.4% was disallowed and only 5.6% allowed basing on number of visits undertaken to Malawi. He told the court that out of 126 visits projected, only 7 visits took place. On humanitarian grounds, the deponent told the court that they allowed 5.6% to recognise the 7 visits. He told the court that they were not looking at market arm's length but rather whether services were really rendered. He said, in this case, a service was rendered by number of visits into Malawi. He told the court that they did not consider intentional services rendered as those were not listed in the Contract Service Agreement. The deponent accepted that the tea is sold both locally and internationally.

In re-examination, the deponent told the court that not all prices in controlled transactions will amount to arm's length price since if a wrong method is used, then there will be no arm's length price. The deponent told the court that OECD Guidelines are not law in Malawi but can be used a standard. He told the court that OECD Guidelines were used to interpret issues in the present case. He submitted that arm's length principle is contained in 2009 Regulations. He told the court that they made reference to OECD Guidelines bearing in mind that transfer pricing is universal.

The deponent told the court that in disallowing the 94.4% commission, they applied Section 127A, 28 and 127 of the Taxation Act. He told the court that they did not refer to 2009 Regulations since taxpayers will know the law locally to apply in those transactions. He told the court that issues contained in the letter of findings were not responded to by the applicant. He submitted that they anticipated to see evidence such as air tickets, cost of accommodation, communication between the parties and activity report, which were not provided by the applicant. He told the court that they did not get the transfer pricing documentation from the applicant as required by comparability analysis in transfer pricing. On method used, the deponent told the court that the

applicant used gross turnover of 4% as payment of services, which is not listed under the 2009 Regulations. The deponent told the court that after rejection, MRA is not mandated by law to choose a method for the taxpayer even at international level. He said 5.6% commission was allowed looking at the number of visits undertaken. He told the court that no evidence was adduced that the services were provided and that the services were unique and added some economic value to the applicant. So far, this was the evidence from the deponent.

In conclusion, counsel for the respondent submitted that the respondent is opposing grant of the reliefs sought by the applicant. He told the court that MRA simply applied the Taxation Act and the 2009 Regulations. He submitted that it is not a requirement that a specific provision be cited in the audit report as long as MRA applied Malawi Laws. He submitted that faulting MRA for failure to cite a provision would be overstretching the law. He said the OECD guidelines were only used as interpretation aid. He said the process followed by the respondent was not attacked hence it was his prayer that the court should dismiss the application and refuse to grant the reliefs sought.

Counsel for the applicant submitted that there was no dispute that OECD Guidelines are not law in Malawi. He submitted that the central issue is the use of the OECD Guidelines by the respondent, them being not law in Malawi. He told the court that the respondent's exhibits show that OECD Guidelines were applied as law in Malawi. Counsel also submitted that after rejection, MRA was supposed to substitute a method to arrive at arm's length price. He said the arbitrariness was arrived at by simply dividing 7 into 126.

THE LAW ON JUDICIAL REVIEW

Judicial review as has been stated in many cases is aimed at reviewing the decision making process and not the merits of the decision itself. In the case of **JAMADAR-V-ATTORNEY GENERAL**[1], Justice Chimasula Phiri, as he then was, had the following to say:

[1] [2000-2001]MLR 175, pp 179-180

"One has got to understand the nature and scope 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. 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 the judiciary or individual judges for that of the authority constituted by law to decide the matters in question.....Thus, a decision of an inferior court or a public authority, may be quashed where the court or authority acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where those rules are applicable or where the decision is unreasonable in the Wednesbury sense. The function of the court is to see that lawful authority is not abused by unfair treatment. Judicial review applies whether or not there is some avenue or appeal against the decision on the merits. In judicial review proceedings, the court can grant orders of mandamus, prohibition and certiorari. The court too has power in judicial review proceedings, to grant declarations and injunctions, and to award damages."

In the case of **Gable Masangano (suing on His Own Behalf and on Behalf of All Prisoners in Malawi) v Attorney General, Minister of Home Affairs and Internal Security and the Commissioner for Prisons**[2], the Court had the following to say on 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. It is to ensure

[2] Constitutional Case No 15 of 2007

that the applicant is given fair treatment by the authority to which he has been subjected. It is not intended to substitute the opinion of the judiciary or indeed the individual judges for that of the authority constituted by law to decide the matters in question."

THE LAW AND THE EVIDENCE

With regard to transfer pricing in 2014, the law was contained in Section 127A. Section 127A provides as follows:

> "where a person who is not resident in Malawi carries on business with a person resident in Malawi and the course of such business is so arranged that it produces to the person resident in Malawi either no profits or less than profits which might be expected from that business if there had been no such relationship, then the profits of that resident person from that business shall be deemed to be the amount that might have been expected to accrue if the course of that business had been conducted by independent persons".

Section 127A of the Taxation Act is not a stand-alone provision. The Taxation (Transfer Pricing) Regulations, 2009 guide the application of Section 127A of the Taxation Act on transfer pricing issues in Malawi. In the Regulations, Section 3 provides the objectives of the Regulations as follows:

> "(a) To provide guidelines to be applied by enterprises, in determining the arm's length prices of goods and services in transactions involving them; and
>
> (b) To provide administrative rules, including the types of records and documentation to be submitted to the Commissioner by a person involved in transfer pricing arrangements."

The Regulations have defined arm's length price to mean the price payable in a transaction between independent enterprises and has also defined controlled transaction as follows:

> "(a) is between related parties and the relationship is able to influence the transfer price set; and
>
> (b) is monitored to ensure payment of an arm's length price for goods or services;

Section 6(1) of the Regulations provides as follows:

> "A taxpayer may choose a method to employ in determining the arm's length price from among the methods set out in subregulation 2 below:
>
> Provided that-
>
> (a) The methods shall be applied in determining the price payable for goods and services in transactions between related enterprises for the purposes of Section 127A of the Act; and
> (b) A person shall apply the method most appropriate for his enterprise, having regard to the nature of the transaction, or class of transaction, or class of related persons or function performed by such persons in relation to the transaction."

I have to mention that Section 127A of the Taxation Act and the Regulations 2009 were reviewed and a new regime came into force in 2017. We are applying the old law as the issues herein arose before the new transfer pricing regime came into force.

Reverting to the present case, there is no dispute between the applicant and the respondent that the law on transfer pricing issues in Malawi was governed by Section 127A and the Taxation (Transfer Pricing) Regulations, 2009, as cited above. This legal position was even accepted and confirmed by the deponent in cross-examination. What this means is that any transfer pricing issues arising from controlled transactions between related enterprises, as is the case at hand, was to be resolved by the Act and the Regulations, and not OECD Guidelines. As alluded to, the parties are in agreement on this legal position.

The question that I have to resolve now is whether the respondent used OECD Guidelines and not the Act and the Regulations in the present case. In resolving this issue, I have to refer to **ET 2**, letter of findings after the audit. **ET2**, as admitted by the deponent does not make reference to the Regulations, 2009. What **ET 2** does is to make reference to Transfer Pricing (TP) Guidelines and Regulations of the Organisation for Economic Co-operation and Development (OECD) and its arm's length principle. The respondent states as follows:

> "We will also rely on the Transfer Pricing (TP) Guidelines and Regulations of the Organisation for Economic Co-operation and Development (OECD) and its arm's length principle (ALP)".

Reading **ET 2** shows that the respondent did not refer to Taxation (Transfer Pricing) Regulations, 2009. The respondent even went further to quote Article 9 of the OECD Model Tax Convention on Income and on Capital in defining arm's length principle. The same applies to, **ET4,** the audit report. **ET 6**, which is a revised audit report, also makes reference to OECD and not 2009 Regulations. (Refer to paragraph 4.3 of the report). Of much relevance is paragraph 4 (1) (c), where the respondent states as follows:

> "In its Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (July 2010 edition, page 206), the OECD states that there are two main issues in the analysis of transfer pricing for intra group services (which the Agreement purports)...."

The deponent in cross-examination admitted that Section 127A has to be applied together with the 2009 Regulations. The deponent admitted that the Guidelines are sometimes used as an interpretation tool/aid.

I have to mention that, looking at **ET 2**, **ET4** and **ET6**, it is very clear that the respondent did not make any reference to the Transfer Pricing Regulations, 2009. Instead, the respondent placed much emphasis on the OECD Guidelines as cited above. I am even at pains to note that the respondent did not even use the OECD Guidelines as an interpretation tool to the local Transfer Pricing Regulations. **ET2**, **ET4** and **ET6** are not showing that the OECD Guidelines were only used as an interpretation aid. Any person reading these exhibits will definitely conclude that the respondent applied the law contained in the OECD Guidelines. It was better if the respondent applied the local Transfer Pricing Regulations 2009 and in certain instances use the OECD Guidelines to interpret these local Regulations. Nothing of that nature happened in this case. I am of the humble view that where local legislation provides for the law, it is always imperative to apply that law and use any international instruments in interpreting that local law. I do not think that using the international instruments while sidelining local legislation is allowed. Doing that, in my considered view, will defeat

the intention of the framers of the local legislation. Section 127A of the Taxation Act and Transfer Pricing Regulations 2009 provided for the law in as far as transfer pricing issues are concerned in Malawi. It does not matter that these local pieces of legislation are modelled on OECD Guidelines as to warrant use of the OECD Guidelines at the expense of the Taxation Act and the Transfer Pricing Regulations, 2009. The respondent was at liberty to cite and use these OECD Guidelines only as an interpretation aid. As a tax administrator, the respondent is to strictly follow the dictates of the law as enacted by the Legislature. Any slight departure from the law is not allowed. Having said that, it is my finding that the respondent used the OECD Guidelines and not the Transfer Pricing Regulations 2009. The use of these Guidelines at the expense of the Transfer Pricing Regulations, 2009 is illegal.

The other issue I have to resolve is the rejection and its aftermath of the method used by the applicant. There is no dispute that the transaction involved herein is a controlled transaction. There is therefore no dispute that it involves transfer pricing issues. Definitely, the transfer price that was to be set between the applicant and its parent company was to be based on the arm's length principle as per Section 127A of the Taxation Act read together with Taxation (Transfer Pricing) Regulations, 2009.

Section 6(2) of the Transfer Pricing Regulations, 2009 have placed the burden of choosing a Transfer Pricing method on the taxpayer. In the present case, that burden was with the applicant. Again, Section 7 of the Regulations provides for documentation that may be required by the Commissioner General where a taxpayer has applied a transfer price. In the present case, it was submitted by the deponent that they rejected the transfer price set by the applicant and disallowed the commission on humanitarian grounds. In the first place, let me state that enterprises are under an obligation to keep documentation that assist them in arriving at appropriate transfer price basing on the arm's length principle. This information may as well be requested by the Commissioner General to assist in assessing whether the correct analysis was done before arriving at an appropriate transfer price as provided for in

Section 7 of the Transfer Pricing Regulations, 2009. I am of the considered view that where a taxpayer fails to provide such information, the Commissioner General is indeed at liberty to reject the transfer price or method used by the taxpayer. It is my humble view that though the Regulations places the burden on the taxpayer to choose a method, after the Commissioner General has rejected the method, the Commissioner General has to arrive at an appropriate method to be used. I am of this view since the transaction cannot be divorced from being a controlled transaction. It has to be decided/resolved within the dictates of transfer pricing rules. Rejection does not convert the controlled transaction to uncontrolled transaction. It still remains the ambit of Section 127A and Taxation (Transfer Pricing) Regulations, 2009. The Regulations are not providing for such taxation of controlled transactions using general provisions where a rejection has occurred. I am of the view that the Commissioner General is mandated to guide the taxpayer in choosing a method where a rejection has taken place. In other words, where the Commissioner General has rejected a method, there is no room on his part to use any other method apart from what Section 6(2) of the Transfer Pricing Regulations provides. Moreover, Section 6(2)(f) gives power to the Commissioner General to apply any other method where in his opinion and in view of the nature of the transactions, the arm's length price cannot be determined using any of the methods contained in the Regulations. To apply any other method or analysis contrary to the Regulations is illegal. In the present case, to apply humanitarian grounds, as the deponent did, in my considered view, is illegal. Further, to apply general provisions in taxing these related enterprises is illegal. The law is Section 127A and Taxation (Transfer Pricing) Regulations, 2009. I therefore find the disallowance of the commission on humanitarian grounds unreasonable and illegal, and that any tax adjustment basing on these humanitarian grounds cannot stand.

On whether the notice of amended assessment for the year ended June 2009 is time barred, the applicant contends that the notice of assessment is time barred as 6 years elapsed before its issuance. The applicant submitted that pursuant to Section 91 of the Taxation Act,

the limitation period of 6 years elapsed. The applicant submitted that for the year of assessment that ended 30th June 2009, its limitation period expired on 30th June 2015. The applicant states that despite this limitation period, the respondent amended the assessment by notice dated 3rd November 2015. The applicant submitted that the respondent had no power or authority to do that.

The respondent argues that the notice is not caught by the limitation period in Section 91 of the Taxation Act as the applicant was aware of the taxes that were due before such a date arising from the tax audit. Even in their submissions, the respondent submits that the applicant was aware of the taxes as the audit results were communicated to the applicant much earlier as shown by the audit report and that the applicant was aware of the outstanding taxes not settled in respect of 2009 assessment. The respondent therefore submits that the applicant is under an obligation to pay the tax in the notice of amended assessment.

The starting point in resolving this issue is Section 91 of the Taxation Act, which provides as follows:

> "(1) If the Commissioner discovers or is of the opinion at any time that any taxpayer has not been assessed or has been assessed at a less amount than that which ought to have been charged he may within the year of assessment or within six years after the expiration thereof and as often as may be necessary assess such person at such amount or additional amount as according to the best of his judgment ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings under this Act shall apply to such assessment or additional assessment and to the tax charged thereunder.
>
> (2) Where any fraud or wilful default has been committed by or on behalf of any person in connexion with or in relation to tax for any year of assessment the Commissioner may, for the purpose of making good to the revenue of Malawi any loss of tax attributable to the fraud or wilful default, exercise the powers conferred by this section at any time, whether before or after the expiration of the period specified in this section:
>
> Provided that where the person by or on whose behalf the fraud or wilful default was committed has died an assessment on his

personal representatives to tax for any year of assessment ending not earlier than six years before his death shall be made at any time before the end of the third year next following the year of assessment in which he died".

My reading of Section 91 above is that there is a limitation period of 6 years after the expiration of year of assessment. Section 91(2) of the Taxation Act provides for an exception where fraud or wilful default is attributed to the taxpayer, in which case, tax assessed or additional tax, is to be paid even after the limitation period.

There is no dispute from the respondent that the limitation period in the present case ended on 30th June 2015, whose year of assessment ended 30th June 2009. There is no dispute that the respondent issued the notice of amended assessment on 3rd November 2015, almost four months after the expiry of the limitation period. The respondent has justified that action on the basis that the applicant was aware of these taxes from the audit report that was sent to them.

I am at pains to accept the respondent's submission that the applicant was aware of the taxes through the audit report sent to them. Accepting the respondent argument is tantamount to extending the limitation period provided for in Section 91 of the Taxation Act. I do not think that I have such powers to extend the limitation period as provided for by the Legislature. I am of the considered view that the Legislature had a purpose in providing that limitation period. What this means is that the respondent is to conduct its business including audits within the prescribed time and issue a notice of assessment or notice of amended assessment. I am of the considered view that though the applicant knew of the findings of the audit, that in itself did not constitute a notice of assessment or notice of amended assessment. My understanding of audit findings is that they tend to be contentious. The respondent cannot rely on them to constitute notice of assessment. Where tax is due and payable, the respondent issues a notice of assessment or a notice of amended assessment. In conclusion, I find the actions of the respondent to issue a notice of amended assessment beyond the limitation period unprocedural, unfair and illegal.

On the issue of Non-Resident Tax on dividends, the applicant did not pursue that issue as the respondent communicated that they were no longer interested in pursuing it.

RELIEFS SOUGHT BY THE APPLICANT

The applicant prayed for several reliefs. I therefore make the following declarations/orders

- That OECD Guidelines are not law in Malawi and that Section 127A and Taxation (Transfer Pricing) Regulations, 2009 were the applicable law.
- That the application of OECD Guidelines at the expense of the Taxation (Transfer Pricing) Regulations is illegal and ultravires the respondent's powers under the Taxation Act.
- An order similar to certiorari quashing the decision by the respondent to disallow 94.4% of the 4% commission paid to RBDA on humanitarian grounds. I order therefore the applicant within the next 14 days, to submit to the respondent all the necessary documentation pursuant to Section 7 of the Regulations, 2009 for the respondent to undertake a comprehensive analysis of the transfer pricing issues and arrive at an appropriate transfer price method. The respondent to communicate its decision after 21 days of its receipt of such documentation. Thereafter, the respondent to communicate the correct tax payable by the applicant.
- An order similar to certiorari quashing the notice of amended assessment for the year ended June 2009 as the same was issued beyond the limitation period provided under the law in Section 91 of the Taxation Act.

COSTS

On costs, I am aware that the award of the same is in the discretion of the court and that a successful applicant is entitled to costs unless otherwise. I am of the considered view that transfer pricing issues are emerging issues in our jurisdiction. We are still developing the jurisprudence on the subject. Both parties herein raised pertinent issues with regard to transfer pricing in Malawi. I am of the

considered view that both parties will benefit from this decision. I therefore exercise my discretion to order that each party should bear its own costs.

Pronounced in Open Court this 27th day of July 2018 at Principal Registry, Revenue Division.

Joseph Chigona

JUDGE