...HE TAX APPEALS TRIBUNAL
...OLDEN AT LUSAKA

2016/RAT/03/VAT/DT

BETWEEN:

POST NEWSPAPERS LIMITED **APPELLANT**

AND

ZAMBIA REVENUE AUTHORITY **RESPONDENT**

BEFORE: **Mrs. C. Shapi-Mutambo** (*Registrar*)

FOR THE APPELLANT: **Mr. N. Nchito S. C.** and **C. Hamwela** - *Messrs Nchito & Nchito*

FOR THE RESPONDENT: **Mrs. D. B. Garamota** (*Legal Counsel*) **N. Kantumoya-Katongo** and **Mr. G. K. Mwamba** (*Legal Officers*) - *Zambia Revenue Authority*

(18th and 19th July, 2016)

INTERLOCUTORY RULING

CASES REFERRED TO:

1. *Zambia Sugar Plc & Illovo Group Marketing Services – 2006/RAT/03/DT and*
2. *Chibuluma Mines Plc – 2012/RAT/05/DT*
3. *The Post Newspaper Vs Zambia Revenue Authority – 2014/HP/1490*
4. *Copperbelt Energy Corporation Plc Vs Zambia Revenue Authority – 2004/RAT/23/DT*
5. *Credit Africa Bank Vs Kundiona – 2003 ZR 61 (SC)*
6. *Mwansa Kapeya & Regina Chisanga Kapeya Vs Patrick Chikwanda & Joseph Mukupa – 2009/HP/0143*
7. *Zambian Breweries Plc, Zambia Bottlers Limited, Northern Breweries Limited & Copperbelt Bottling Limited Vs Zambia Revenue Authority – 2011/RAT/08/C&E*
8. *Vangelatos Vs Metro Investments – SCZ No. 10 of 2007*

LEGISLATION REFERRED TO:

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

On 27th June, 2016 the **Post Newspapers Limited** (*whom we shall refer to as the Appellant*) caused a Notice of Appeal to be filed in the Tax Appeals Tribunal wherein one of the grounds of appeal, inter alia was that the amounts assessed as being owed to the Zambia Revenue Authority (*the Respondent herein*) were excessive and therefore wrong in fact and were arrived at on the basis of miscalculations and fundamental misapplication of the law.

The Notice of Appeal was accompanied by a Certificate of Urgency with an Ex-Parte Application for an Order to Set Aside and/or Stay Execution of the Warrant of Distress Pending Hearing and Determination of the Appeal. An Affidavit in Support of this application was also filed.

Facts leading to the filing of the Notice of Appeal are as follows:

On 15th June, 2016 following an investigations assessment concluded sometime in April 2016, the Appellant was issued with a Demand Notice of **K53,878,401.60**. This amount was arrived at after objections and discussions to the initial assessment of **K101,786,104.96.** On 15th June, 2016 the same day the Demand Notice was served on the Appellant, the Appellant wrote to the Respondent objecting to the said amount of K53,878,401.60. On 21st June, 2016 the Respondent, through the Director - Investigations wrote to the Post Newspapers Limited confirming the assessed amount of K53,878,401.60 and on the same day presented a Warrant of Distress bearing only the names of the Appellant and the Respondent to the Appellant and proceeded to execute the Warrant by locking the Appellant's printing plant and head office. On 23rd June, 2016 the Appellant's advocates wrote to the Respondent requesting it show the basis of execution upon which, on the date instant, the Legal Counsel of the Respondent responded to the Appellant's advocates enclosing a signed copy of a Warrant of Distress in the amount of K53,878,401.60.

On 24th June, 2016 the Appellant, by letter, appealed to the Commissioner-General against the decision of the Director - Investigations' assessment of 21st June, 2016 wherein formal objections where lodged. The Commissioner-General responded by acknowledging receipt of the letter of Appeal and stated that he was available to meet the Appellant only on the 7th of July, 2016 as he was scheduled to be out of town.

It was then that on 27th June, 2016 the Appellant filed a Notice of Appeal and applied for a Stay of Execution which was granted on a conditional basis. The Stay of Execution Order was as follows:-

1. That the Appellant handover possession of the trucks, trailers and other property to the tune of **K53,878,401.83**, the amount being demanded by the Respondent before the return date of this Order.

2. That the Appellant pay to the Respondent what it deems it owes to the Respondent on or before 11th July, 2016.

3. That the Respondent forthwith handover control of the Appellant's Bwinjimfumu Property, Industrial Area Plant and the instruments necessary to the running of the Appellant's business.

The Tribunal then set the return date for Inter-Parte Hearing on 11th July, 2016.

Following the grant of the Ex-Parte Order of Stay on 27th July, 2016, the following day, 28th July, 2016, the Respondent applied Ex-Parte to Dismiss the Notice of Appeal and discharged the Ex-Parte Order granted to the Appellant.

There were a number of preliminary applications before the Inter-Parte Hearing could take off (which I will not go into now) but finally on 11th July, 2016 the Application to Dismiss the Notice of Appeal and to Discharge the Ex-Parte Order was heard with both parties arguing the matter at length. I must mention here that it was agreed that this hearing will also serve the Inter-Parte hearing of the Ex-Parte Order application. I will now deliver my Ruling on the said application.

The Notice of Appeal which is the subject of this application, states that:

> *"Take Notice that the Appellant, being dissatisfied with the decision of the Commissioner-General under the Income Tax Act, Chapter 323 of the Laws of Zambia, by way of determination of Corporation Tax, Pay As You Earn and penalties thereon and under the Value Added Tax Act, Chapter 331 of the Laws of Zambia by way of determination of Value Added Tax and penalties thereon, allegedly due from the Appellant to the Respondent dated 21st June, 2016 on the following grounds.."*

The Respondent, through summons, applied to set aside the said Notice of Appeal for irregularity and dismiss the matter on a point of Law pursuant to *Sections 6(2)(e)* and *13* of the *Tax Appeals Tribunal Act* as read with *Sections 30, 31 and 32* of the *Value Added Tax Act* and *Sections 77(6), 108 and 109* of the *Income Tax Act*.

In advancing its argument, the Respondent posed the question whether or not the Appellant's Appeal was properly before the Tribunal regard being had to the fact that the Appellant has not exhausted the appellate procedure.

It was the Respondent' submission that the Appeal was improperly before the Tribunal as the Appellant had not exhausted the statutory procedure. Counsel indicated that following the Appellant's Letter of Appeal to the Commissioner-General against the assessment of 21st June, 2016, the Commissioner-General was yet to determine the appeal. The Appeals of **ZAMBIA SUGAR PLC AND ILLOVO GROUP MARKETING SERVICES Vs ZAMBIA REVENUE AUTHORITY - 2006/RAT/03/DT** and **CHIBULUMA MINES PLC Vs ZAMBIA REVENUE AUTHORITY - 2012/RAT/05/DT** were cited to support this assertion.

In response, **Mr. N. Nchito S. C.** for the Appellant argued that the matter was properly before the Tribunal. He stated that under *Section 6* of the *Income Tax Act*, it is the Commissioner-General who has the power to enforce the Act.

Section 7(1) of the *Income Tax Act* places upon the Commissioner-General power to assess tax. This is evidenced in the exhibit marked **"RZ 3"** in the *Affidavit in Support of Ex-Parte application for Stay*.

He argued that there was an original assessment issued on 27th April, 2016 of **K101,786,104.96** which was objected to and appealed against. This was brought to **K53,878,401.60.** This was the final position of the Zambia Revenue Authority.
Section 7 of the *Income Tax Act* says decisions made on behalf of the Commissioner-General have to be taken as his own.

The case of **THE POST NEWSPAPER Vs ZAMBIA REVENUE AUTHORITY - 2014/HP/1490** was cited where **Siavwapa J.** stated that:-

"The Act does not place the Commissioner-General at Appellant level in the administration of the Act. That he is instead placed as the primary player and decision maker".

Mr. Nchito S. C went on to say that since the decision of the Interlocutory Stay, the Appellant appeared before the Commissioner-General on 7th July, 2016. Therefore the Appellant is properly before this Tribunal he submitted.

In addition, **Mr. C. Hamwela** cited the appeal of **COPPERBELT ENERGY CORPORATION PLC Vs ZAMBIA REVENUE AUTHORITY - 2004/RAT/23/DT** and quoted **page 22** saying *"we agreed with the Respondent that the Appeal had been commenced prematurely but we held the view that since the Respondent had confirmed its assessment on 2nd February, 2005, way had been paved for the Appellant to commence a sustainable appeal. We treated the error by the Appellant as curable and in order to avoid wasting more time by ordering the Appellant to commence fresh proceedings, we ordered that the Appeal be treated as if it were filed after 2nd February, 2005".*

The alleged defect by the Zambia Revenue Authority had been cured by the fact that prior to the hearing of the matter, the Commissioner-General made a decision.

Mr. Hamwela adopted State Counsel's submission that the power to assess lies with the Commissioner-General and therefore the assessments that have led to the parties to before the Tribunal are decisions of the Commissioner-General.

That notwithstanding, even if the Commissioner-General needed to make another decision before the decision could be ripe for the Tribunal, the Commissioner-General has gone ahead and refused to hear the Appellant's objections. Any defect has been cured by the **Amended Notice of Appeal** filed on 11th July, 2016 just like the decision in **Copperbelt Energy Corporation Plc Vs Zambia Revenue Authority**.

In reply, Counsel for the Respondent insisted and emphasised that in the current appeal there is no decision by the Commissioner-General that would allow the Appellant before the Tribunal. The Appellant appealed before the meeting with the Commissioner-General set for 7th July, 2016.

Counsel alluded to *Section 108* of the *Income Tax Act* stating that the said section is very clear, when an objection is lodged the Commissioner-General should give final decision.

The defect has not been cured. The current Appeal is different from the **Copperbelt Energy Corporation Plc Vs Zambia Revenue Authority** appeal. In this Appeal the decision is being awaited.

It was further stated that in the case before Siavwapa J., there was no objection to the assessment. The Commissioner-General is the primary player of the *Income Tax Act*. The appeals process only has a single tier.

In the current case, there is an assessment and a formal lodgement of objection.

It was submitted that the Tribunal had no jurisdiction until such a time when the Commissioner-General determined the matter.

With regard to the issue of whether the Appellant's Appeal is properly before this Tribunal and the Notice of Appeal to be set aside on that basis, I have considered the arguments from both sides and I am grateful for all the provisions and authorities sited.

The basis for the application to set aside lies in provision of *Section 5(a)* of the *Tax Appeals Tribunal Act* which states that:-

> *"Section 5 The functions of the Tribunal are to hear and determine:-*
>
> *a) Appeals from decisions of the Commissioner-General under the Customs and Excise Act, the Income Tax Act, the Property Transfer Tax Act, the Value Added Tax Act and other tax legislations"*

This is coupled with the two recent rulings of the Tax Appeals Tribunal in the appeals of **Zambia Sugar Plc and Illovo Group Marketing Services Vs Zambia Revenue Authority** and **Chibuluma Mines Plc Vs Zambia Revenue Authority** where it was pronounced that the Tribunal had noted with dismay the trend of parties rushing matters to the Tribunal before exhausting the appeals procedure provided in the tax statutes. In such circumstances the Tribunal stated that it did not have jurisdiction to entertain the appeals.

Clearly, and it is not in dispute that the various tax acts provide an internal appellate procedure within the Zambia Revenue Authority from which, after exhaustion, matters can proceed to the Tribunal under *Section 5* of the *Tax Appeals Tribunal* Act.

However, I would like to go further by showing that in the same two appeals cited herein, the Tribunal stated that, in the **Chibuluma Mines Plc Vs Zambia Revenue Authority** appeal "*we further note that the Appellant did not file any objections to the assessment to the Commissioner-General, at least there is no evidence before us, but instead rushed to the Tribunal without following statutory procedure*".

In the **Zambia Sugar Plc and Illovo Group Marketing Services Vs Zambia Revenue Authority** appeal it was stated that "*there is no written notice of the Commissioner-General's decision and the Notice of Appeal clearly states that the Appeal lies from the decision of the Acting Commissioner-Domestic Taxes. The Tribunal is not satisfied that the Applicant has exhausted all administrative appeals channels provided in the Income Tax Act, or the Revenue Appeals Tribunal Act and the Revenue Appeals Tribunal Regulations for the resolution of this dispute*".

In the same appeal of **Zambia Sugar Plc and Illovo Group Marketing Services Vs Zambia Revenue Authority** the Tribunal went further and stated that "*The Tribunal will not interfere with the exercise of power which has been conferred on the Commissioner-General by statute to have the final determination in tax disputes before they are brought to the Tribunal* ***unless the power has been exercised in a manner which is not within his office's jurisdiction***" (emphasis is mine).

On this basis I would like to distinguish the current appeal before us. There is clear evidence through the affidavits filed by both the Appellant and the Respondent that an Appeal was lodged to the Commissioner-General which appeal was acknowledged by the Commissioner-General himself and upon which he set time and date to consider the objections embedded in the Appeal. Unfortunately, while waiting for the appointed meeting, execution of the Warrant of Distress issued by the Respondent was ongoing. This prompted the Appellant to cause a Notice of Appeal to be filed and seek relief from the Tribunal. At that point there was evidence to show that objections had been filed before the Commissioner-General.

On 11th July 2016 and after the scheduled meeting of the Appellant with the Respondent on 7th July, 2016, the Appellant caused to be filed within the Tribunal an Amended Notice of Appeal in which the Appellant included Notice of Dissatisfaction of the Decision of the Commissioner-General, stating as follows:-

> *".....and the decision of the Commissioner-General of 8th July, 2016, not to hear the Appellant's objections and continue disobeying the ex-parte order of the Tribunal dated 27th June, 2016..."*

The decision of the Commissioner-General not to hear the Appellant on its objections filed on appeal to him was confirmed by the Respondent's Legal Counsel on 11th July 2016 wherein the Tribunal was told that the Respondent could not proceed to discuss any issues as the matter was currently before the Tribunal.

It is not uncommon for parties to amend any document before the Tribunal including a Notice of Appeal. In support, the Appeal of **Copperbelt Energy Corporation Plc Vs Zambia Revenue Authority** is referred to wherein this Tribunal did allow the Appellant to amend its Notice of Appeal before the main hearing but after the Commissioner-General made decisions with regard to the Appellant's objections which were already before the Tribunal.

Other leading cases which have sanctioned the amendment of documents for procedural lapses before courts include **CREDIT AFRICA BANK Vs KUNDIONA - SCZ No. 9 of 2003** where the Supreme Court stated that when an application is defeated on procedural lapse, it is upon the concerned party to bring the application afresh under the correct order and manner. The Appellant, following its Notice of Appeal being challenged, proceeded to file an Amended Notice of Appeal on 11th July, 2016.

This now brings me to tackle the question on whether the filing of the Amended Notice of Appeal cured the irregularity envisaged by the Respondent. First of all, I have already stated that in the statutory appellate procedure there was evidence of objections having been brought to the attention of the Commissioner-General which objections, through the Appellant's appeal to the Commissioner-General, had been acknowledged. The Notice of Appeal was later amended to include an appeal against the Commissioner-General's decision not to hear the objections. The

Respondent's Counsel insists that the Appeal is still improperly or prematurely before the Tribunal as there is no decision from the Commissioner-General regarding the Appellant's objections.

What is the effect of refusal by the Commissioner-General to address the Appellant's objections? The Respondent has had two opportunities; first on the 7th of July, 2016 when there was a scheduled meeting and secondly when the Registrar adjourned hearing to allow seven days for the parties to meet and discuss issues surrounding the Appeal in casu.

My view is that refusal to hear the objections of the Appellant is as good as confirming the assessment. By refusing to discuss, is the Commissioner-General saying that there may be some objections which are worth considering but would not be considered at this point because the matter is before the Tribunal? Is this giving leeway to the Tribunal to proceed with the Appeal before it? Or is he saying that the objections before him are not worth looking at and the assessed amounts are confirmed?

My answer is that it is either way; either way meaning that his refusal has paved way for the Appellant to commence a sustainable appeal and the matter must proceed to be determined on merit. Whichever way one looks at it, there is a strong suggestion that the objections be looked at by an independent, competent body. As per **Justice M. S. Mulenga** in the case of **MWANSA KAPEYA and REGINA CHISANGA KAPEYA Vs PATRUCJ CHIKWANDA and JOSEPH MUKUPA - 2003 ZR 61 (SC)** at ***page 8***, the general principle of the justice system is that matters must be determined on merit hence where there are procedural lapses, the Court will allow the parties to correct them even if it means recommencing an action afresh and the correct mode.

I believe, if indeed there was a procedural lapse in the commencement of this Appeal through an irregular Notice of Appeal this has been cured by the Amended Notice of Appeal (there is evidence to show that the Appellant has appeared before the Commissioner-General) and the matter must proceed to be heard on its merits. That is, on the disputed assessment amount. Refusal to entertain the appeal is tantamount to confirming the assessment amount and giving a go ahead for the matter to be heard on its merit by an independent and competent body. Indeed the mandate of the Tribunal cannot be put on hold where it has been shown that the appellate procedures have been adhered to save for the Commissioner-General's meditated refusal to consider the objections.

The appeal case of **Zambia Sugar Plc and Illovo Group Marketing Services Vs Zambia Revenue Authority** which illustrated that the Tribunal can only interfere with the exercise of the Commissioner-General's appellate power where the power has been exercised in a manner which is not within the Commissioner-General's office's jurisdiction, gives leeway for the Tribunal to indeed have jurisdiction over any such appeal as the one before us. Refusal to hear objections on appeal is not within the Commissioner-General's office's jurisdiction. The Commissioner-General is mandated by *Section 108* of the *Income Tax Act* and *Section 32* of the *Value Added Tax Act* to render a decision. It is against the rules of natural justice to simply refuse to consider objections to an assessment brought on appeal by a taxpayer. This, in a way, is hindering the justice system.

It is not uncommon for the Commissioner-General to hold discussions and render decisions on matters that are already before the Tribunal. Cited examples of these instances include the case of the already cited appeal of **Copperbelt Energy Corporation Plc Vs Zambia Revenue Authority** where the matter was already before the Tribunal and the Commissioner-General proceeded to make decisions on the objections. This merely caused the Appellant to amend its Notice of Appeal at the time of hearing the Appeal. Another such appeal is **ZAMBIAN BREWERIES PLC, ZAMBIA BOTTLERS LIMITED, NORTHERN BREWERIES LIMITED AND COPPERBELT BOTTLING LIMITED VS ZAMBIA REVENUE AUTHORITY - 2011/RAT/08/C&E** where again the Appellants amended their Notice of Appeal because the Commissioner-General rendered decisions while the matter was before the Tribunal.

In both matters it is clear that nothing had stopped the Commissioner-General from discussing and considering the objections even though the matters were before the Tribunal. The Commissioner-General is not and has never been precluded from rendering his decisions by virtue of matters being before the Tribunal.

On the basis of what has been stated above, I find nothing irregular with the Notice of Appeal that warrants the setting aside of the said Notice. I am satisfied that the Appellant has indeed adhered to and exhausted all the administrative channels as provided in the relevant tax statutes for the resolution of the dispute to proceed to the Tax Appeals Tribunal. The adamant refusal by the Commissioner-General to hear the objections of the Appellant is in itself a decision of the Commissioner-General which paves way for this Tribunal to have jurisdiction.

The Notice of Appeal as filed on 27th June 2016 and amended on 11th July, 2016 is hereby sustained and shall be processed for hearing before the Tribunal as provided in the Tax Appeals Tribunal Act.

In the application to Dismiss the Notice of Appeal, the Respondent proceed to request that the Ex-Parte Order to be discharged. In advancing its arguments to have the Ex Parte Order discharged, the Respondent relied on what it terms the principle of "pay now, talk later". The question posed in this regard is whether or not the Tribunal can Stay an assessment in light of *Sections 77(4)* and *77(6)* of the *Income Tax Act*. It was the Respondent's view that by issuing a Stay, the Tribunal overruled the Supreme Court. The case of **The Post Newspaper Vs Zambia Revenue Authority** was cited.

In considering the argument put across, I ask the question "what was stayed?"

Going back to the Ex-Parte Order (referred to at ***page 3*** of this Ruling), the said Order is Staying the Warrant of Distress and other execution. The Stay of the Warrant of Distress was followed with various Orders among them the Order to the Appellant to handover to the Respondent horses and trailers and/or real estate property worth the amount demanded by the Respondent.

It is clear from the onset that what was stayed was not the assessment per se. The assessment stands. The Appellant was further ordered to pay to the Respondent amounts of tax not in dispute.

In the famous case of the **Zambia Revenue Authority Vs The Post Newspapers Limited** cited by the Respondent in support of its assertions, the Supreme Court stated:

> *"... that in issuing a Stay, the learned trial Judge disregarded section seventy-seven subsection four (S77(4)) of the income Tax Act which requires that tax be paid on the date due. The Stay prevented the ZRA from levying distress for the tax under the Income Tax Act"*

The said *Section 77(4)* reads:-

> *"Any tax payable by any person under an assessment made under subsection three of section sixty-three (S.63(3)) or section sixty four (S.64) shall be due on and payable on the date the Notice of the Assessment is given to*

the person under section sixty-five (S.65)

Section 77(6) reads:

> *"Subsection four shall have effect notwithstanding that the person assessed objects or appeals against the assessment"*

In distinguishing the "Stay" envisaged by the Supreme Court, the honourable justices stated that the Stay prevented the Zambia Revenue Authority from levying distress for tax thereby disregarding *Section 77(4)* which requires a taxpayer to pay on the date the Notice of Assessment is given to the taxpayer.

In our current scenario, the question we must answer is whether the granting of the Stay has stopped the Zambia Revenue Authority, the Respondent herein, from levying distress. The answer is in the negative, the Stay granted herein does not have an effect of preventing the Zambia Revenue Authority from levying distress. The Stay has not in any way stayed the assessment of the Respondent in the amount of **K53,878,401.60**.

The Order of Stay herein has merely substituted the goods and chattels held by the Respondent, that is, has ordered that the Appellant give up possession of its horses and trailers and/or other real estate property in exchange for the printing plant and head office seized by the Respondent. The Order has not any where stated that the amount of K53,878,401.60 as demanded by the Respondent must not be paid.

We reiterate that the Staying of the Warrant of Distress has not in any way stayed the assessment, it stands good until proved otherwise. The Tribunal, on this basis, disagrees with the Respondent's submission that the Tribunal has overruled the Judgment of the Supreme Court.

I now turn to the Respondent's further argument in seeking to discharge the Ex-Parte Order. The Respondent has posed a question whether the Tribunal can Stay a Warrant of Distress already executed. In advancing its argument, the Respondent has cited the case of **VANGELATOS Vs METRO INVESTMENTS - SCZ No. 10 of 2007** where the Supreme Court stated that in that particular case there was nothing to be stayed as the High Court Judgment which was sought to be stayed pending appeal was executed five months before the motion was filed.

In reply, Mr. Nchito S.C. argued that the case cited referred to a period of five months. He went on to state that in the current Appeal before the Tribunal, execution of the Warrant of Distress was on-going. In this regard he referred the Tribunal to the Affidavit of Compliance filed by the Appellant on 18th July, 2016 in which it was shown that the Respondent had in fact continued to seize the Appellant's property. He argued that the only estoppel against a Stay is when the Warrant of Distress Order is perfected and perfection was said not to be the completion of seizure but the sell of the assets seized.

First and for most, I take note that in this particular matter before the Tribunal we are dealing with Stay of an administrative action as opposed to a Stay involving a Court Ruling which normally carries a relief of some sort that would normally warrant application for a Stay Order. In my view, a Stay of an administrative action would normally just require stay of an action that would be detrimental to the person on whom such action is to be performed.

In this particular instance, following the issue of the Demand Notice to the Appellant, the Respondent invoked the provisions of *Section 79A* of the *Income Tax Act* to recover from the Appellant the tax due. In this regard a Warrant of Distress was issued on 21st June, 2016. On 27th June, 2016 six days later, the Appellant applied to the Tax Appeals Tribunal to Stay Execution of the Warrant. This was after an attempt to meet the Commissioner-General of the Respondent failed and a date that was about sixteen days from the date of the issue of the warrant was given as a day appointed for the meeting with the Commissioner-General.

Upon the Appellant's application to the Tribunal, a conditional Order of Stay of Execution was granted wherein the Warrant of Distress of 21st June 2016 and other execution action was stayed. Other Orders were included (refer to the cited Order on ***page 3*** of this Ruling).

Section 79A under which the Warrant of Distress was issued and in particular *Section 79A(3)* states that "*a distress levied under this section shall be kept for ten (10) days*". *Subsection four* (4) of the same *Section 79A* goes further to state that "*if the tax due is not paid within the specified period of 10 days then the goods and chattels upon which distress has been levied would be sold*".

I agree with State Counsel's submission that at the time the Appellant caused the motion of a Stay to be moved into the Tribunal execution of the Warrant was on-going. Execution was not complete. In any case, the Stay granted was also on "other execution". There was much to be stayed at this particular time.

It must also be noted that the Ex-Parte Order granted by the Tribunal did contain other Orders by way of obligations on either party's side which orders did not in any way go against or thwart the Respondent's recovery of the tax debt by way of Distress.

The Warrant of Distress and the action to be taken for its execution is a process. I find the assertion by the Respondent that the Stay granted herein is not tenable, not to hold water

All in all, I find that the Respondent's application to dismiss the Notice of Appeal and Discharge the Ex-Parte Order has no merit to justify such an action. I accordingly dismiss this application with costs to the Appellant.

The Ex-Parte Order granted herein continues and extends to such a time when the main appeal will be heard.

THUS delivered at Lusaka this 27TH of JULY 2016

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C. Shapi-Mutambo
(Registrar)