IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: VISRAM, KARANJA & KOOME JJ.A)

CIVIL APPEAL NO. 158 OF 2017

BETWEEN

FLEUR INVESTMENTS LIMITED.....APPELLANT

VERSUS

COMMISSIONER OF DOMESTIC TAXES.....1ST RESPONDENT

KENYA REVENUE AUTHORITY.....2ND RESPONDENT

(*Being an appeal from the Judgment and/or Order of the High Court of Kenya at Nairobi (G. V. Odunga J.) dated 25th January 2017)*

in

(H.C.CR Case No. 28 of 2010)

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JUDGMENT OF THE COURT

1. Fleur Investment Company (the appellant) is a limited liability company involved in carrying out the business of property developers and landlord. Among its properties were **LR NO. 209/634/1** and **LR NO. 209.634/2**; and **LR NO. 209/8300** which it had leased out to Tusker Mattresses Limited and Uchumi Supermarkets Limited but which properties according to the appellant were sold in the year 2008 at Kshs.135,000,000. This information was contained in its audited financial statement for the year of income ending 31st December, 2008 which was attached to the duly completed self-assessment income tax return (form I.T.C) and which was duly received by the respondents.

2. The 1st Respondent is the Commissioner for Domestic Taxes, an office established under Section 13 of the Kenya Revenue Authority Act, Cap 469 of the Laws of Kenya and the 2nd respondent is a statutory Authority established under the same Act and is charged with *inter alia* the responsibility to levy and collect taxes whenever and wherever they fall due.

3. According to the appellant, it has always filed its income tax and value added tax (VAT) returns with the respondent dutifully as required by law through its agent M/s Delloite and Touche, and it has always disclosed to the respondents all information regarding its income, assets and liabilities. That notwithstanding the 1st respondent sometime in November, 2013 sought to conduct a compliance check on the books of the appellant pursuant to Section 56 and Section 30 of the Income Tax Act (Cap 470) and the value added Tax Act (Cap 476). After exchange of several letters on suitability of the dates for such exercise to be conducted, the same was done and the 1st respondent was given full access to the appellant's books and availed accounts and all other documents that it had asked for.

4. After the exercise, which covered the period between 2010-2014, the 1st respondent passed and communicated to the appellant the following verdict.

> ***"INCOME TAX- A scrutiny of your accounts revealed that the audited accounts had been filed and there are no outstanding issues under this tax.***
>
> ***PAYE - The company has no employees.***
>
> ***VAT - was administered correctly and there were no outstanding issues."***

Following this endorsement, the applicant was issued with tax compliance certificate for the period up to 2015. The appellant must have breathed a sigh of relief but before the compliance date expired, the 1st respondent raised an assessment notice under Section 73 of the Income Tax Act and 45 of the VAT Act and demanded payment of whopping Kshs.656,372,183 being purported corporation tax, VAT, penalties and interest owed by the appellant for the years 2008 to 2012. This assessment was said to have been based on computations of the appellant's estimated "banking income". The reasons given for raising this assessment were that the appellant had failed to honour a notice of 10th June, 2013 scheduling compliance checks and postponing the same due to various reasons, and allegedly failing to provide supporting documents to the respondents to enable it ascertain its income.

5. The appellant read malice in this assessment because firstly, although the meeting had been rescheduled on several occasions, the same had eventually taken place and the respondents had conducted the compliance check and were contented with the results of the audit. Secondly, all the documents requested for had been availed to the respondents to enable it conduct the exercise. Indeed it was after the exercise that the respondents wrote the letter we have referred to earlier and issued the compliance certificate dated 29th October, 2014.

6. According to the appellant it continued filing its self-assessment returns and financial statements for the years 2008-2014 and so they were utterly surprised when on 29th June, 2015, the 1st respondent purported to raise tax by way of an assessment of an amount totalling Kshs.415,949,749 and Kshs.240,422, 433 being corporation tax and VAT (inclusive of penalties and interest) respectively for the period 2008, to 2012 for the reasons we gave earlier. As we have indicated, the scheduled meeting had already taken place; appellant's books and financial statements had already been scrutinized and passed and the reasons given in the first respondent's letter could not have been the basis for the impugned assessment.

7. After the assessment, the appellant filed an objection vide its long and detailed letter dated 14th July, 2015, parts of which we find necessary to replicate here under:-

> ***"…we are surprised by the large tax demand particularly because no reasonable explanation has been given as to how the amount demanded was arrived at. Indeed we note that an assessment notice was issued without giving us an opportunity to be heard which is inconsistent with your obligation under Article 47 of the Constitution to accord each tax payer fair administrative action. It follows that the issuance of the assessment notice amounted to abuse of power on your part and is meant to intimidate us. It is not true that we did not respond to your letter of 10th June 2013. We confirm that we indeed responded to that letter and subsequently, we exchanged several correspondences with Kenya Revenue Authority thereafter. It follows that the assessment is premised on the wrong assumption. The aforesaid notwithstanding, we wish to say the following in respect the matters set out in the said demand: -***
>
> ***We note that a substantial amount of the sum demanded is comprised of corporation tax. In making the said demand, you merely invoked the provision of Section 73 of the ITA to raise the assessment but did not indicate how the amount demanded became due. In the absence of a basis for demanding the tax, it can only be concluded that the assessment is not genuine and is meant to serve an ulterior purpose. In any event, the said assessment is inaccurate as it failed to take into account the fact that we have consistently filed income tax returns though our tax consultants and agents, Deloitte & Touche in respect of all the years in question. To our knowledge, the said returns have never been questioned. Indeed it has not been suggested that we under declared income in the returns filed for the period in issue. In view of the aforesaid, we do not accept that Section 73 of the ITA applies to our case. In the circumstances, the tax resulting from your computations is not due.***
>
> ***As regards the claim for VAT under paragraph 9(1) of the seventh schedule to the VAT Act, CAP 476, again it is not clear what this claim is in respect of. We say so because a claim under paragraph 9 (1) of the seventh schedule could arise from failure to pay tax owing to the failure to keep proper books of accounts, records or documents or incorrectness or inadequacy of those books, records or documents. The provisions can also be invoked in a situation where one has failed or delayed in filing the returns or where the returns filed are incorrect or inadequate. We confirm that we have also filed monthly returns for the period in issue to date in time. It is therefore not clear how you would conclude that we are chargeable to tax under the said provision. Indeed the rental income as computed in the assessment notice is erroneous. As a consequence, the demand for payment of VAT similarly lacks merit."***

In response to the said objection, the 1st respondent wrote the letter dated 14th September, 2015 which read in part.

> ***"Please note your objection was not accompanied by any supporting documents that would uphold the objection. However, the amounts paid between 2008 and 2012 towards your taxes have now been adjusted for. This means, the assessments has been partially amended to reflect this but all other amounts raised in the said assessments are still due. I would like to bring to your attention that in our notice referred above; we stated clearly that taxes are based on the income reflected in your banks statements during the period under review. We have time and again requested you to avail your books for review as evidence by the enormous amount of correspondence between yourselves and ourselves. This office did inform you through a letter dated 25th March, 2014 that if you did not avail the sought records and documents, within the stated period, then this office would be left with no alternative but to assess taxes based on the best evidence."***

8. As demonstrated by the appellant however, and as evidenced from the record, it is clear this last paragraph was not correct as the 1st respondent acknowledged having had the meeting with the appellant in which they scrutinized the appellant's books and all the financial statements and other documents they requested after which they issued the compliance certificate. Would this assessment have been based on the wrong presumption? We shall advert to that issue later. It is noted also that no explanation was given for the huge assessment or the slightly reduced amount.

9. The appellant made good its threat as contained in its letter of 14th July, 2015 and sought legal redress by way of the Judicial Review motion which was predicated not only on the traditional Order 53 Rule 1, 2 & 4 of the Civil Procedure Rules, 2010 and Sections 8 and 9 of the Law Reform Act, but also on Section 11 of the Fair administrative Action Act, 2015. In its Notice of Motion dated 18th December, 2015 the appellant sought two orders from the High Court. An order to quash the said assessment by the 1st respondent and an order prohibiting

the respondents from implementing and effecting the assessment and demand of the amount in question.

10. In his verifying affidavit, Alex Trachenberg the appellant's General Manager, gave the history we have given above and the sequence of events culminating in the filing of the Judicial Review motion. According to the appellant, the assessment was based on fictitious or assumed "banking income" in total disregard of the appellant's financial statements and books of accounts which had already been availed to the respondents. According to Mr. Trachenburg, the respondent having given the appellant a clean bill of health, could not barely nine months thereafter raise an assessment of Ksh.656,372,183 without any explanation other than for the incorrect assertion that the appellant had declined to meet the respondents and also to avail its records for audit. The appellant concluded that the respondents had acted illegally, unreasonably, irrationally, capriciously and contrary to the Income Tax Act and the VAT Act, and their assessment was therefore null and void and hence amenable to Judicial review.

11. In response to the Motion, the respondents through Stanley Mutugi , one of their managers in the Domestic Taxes Department deposed that the appellant was a Landlord during the period of the audit, i.e 2008 to December 2012 and had rented out some premises to Tusker mattresses Limited and to Uchumi Supermarkets and the assessment in question was in respect of assumed rent. According to Mr. Mutugi, there was a tax dispute of Ksh. 3,909,884.00 which they were claiming from the appellant, which amount continued to accrue interest. The appellant on the other hand was insisting that from its records which it had already filed with the respondents, it was actually the respondents who owed it Ksh.2,274,143 as refund. According to Mr Mutugi, the information they used to arrive at the impugned assessment was provided by the appellant's Bankers and tenants.

12. This information does not however appear to have been presented to the appellant, or any explanation given as to why the said information was never brought to the appellants attention. That is the basis for the appellant invoking Article 46 of the Constitution and the Fair Administrative Action Act in its motion. The respondents insisted that the issues raised by the appellant were merit based and could not therefore be determined by way of Judicial Review. They therefore urged the High Court to dismiss the appellants motion and allow the matter to be determined by the Appellate Tribunal Committee.

13. This argument seemed to carry favour with the learned Judge who observed that the appellant had actually initiated the appeal process and should have seen it through to the end. The learned Judge rendered himself as follows:-

> ***"… In my view, since the applicant had invoked the internal dispute resolution mechanism provided under the Income Tax Act the intended appeal would have enabled the determination of the dispute herein on merit." He went on to hold "In my considered view, the issues raised herein could have been properly dealt with by the appellate Tribunal rather than this court that does not deal with merits. Even if this Court was to find that the said issues were not dealt with the best option for the court could be an order remitting the issues to be considered by the respondent and a decision made thereon one way or the other. However, the Tribunal would be able to consider the same and arrive at a decision on the merits".***

In the end, the Court declined to grant the orders sought saying that doing so would mean having to determine the merits of the case and doing so was likely to embarrass the appellate process that the appellant had already initiated. Curiously instead of dismissing the Notice of Motion, the learned Judge struck it out with costs to the respondents. The appellant has challenged that decision by way of this appeal in which it has proffered eight grounds of appeal.

14. We have re-analysed and re-evaluated the evidence presented before the High Court as we are mandated to do by **Rule 29(1)** a of the rules of this Court which mandate we have executed and amplified in many of our decisions. We have also considered the grounds of appeal raised in this appeal and both written submissions and counsel's oral highlights. The challenge on jurisdiction as we understand it is two pronged. The first one is on jurisdiction of the court to entertain the matter on judicial review. According to the appellant the High Court was the right forum to determine the dispute and not the tribunal as found by the court. This argument is based on the fact that as far as the appellant is concerned, the dispute was not merit based but rather that the respondents' act of raising the arbitrary assessment was illegal, unreasonable, capricious and thus met all the parameters for judicial review. Second, that the case fell within the exception stipulated in **section 9(4)** of the Fair Administrative Action Act because it was premised on the respondents' arbitrariness and abuse of office.

15. The other prong is on failure of the learned Judge to set aside the impugned assessment, it being illegal, unreasonable and improper and therefore falling squarely within the definition of Wednesbury unreasonableness, which is in the realm of Judicial review.

16. The appellant has also raised the issue of legitimate expectation on grounds that having issued the appellant a certificate of compliance after examining its books and satisfying itself that there was no tax owed, the respondent could not turn around and raise the impugned assessment. The appellant urged us to allow this appeal, reverse the impugned order striking out the Notice of Motion and allow the two prayers sought in the Notice of Motion.

17. The appellant through Oraro and company Advocates filed submissions dated 28th July, 2017 and 7th November, 2017 in support of the appeal. On the other hand, the respondent filed their submissions in opposition to the appeal through Pius Nyaga Advocate. Mr Oraro learned SC and Mr Nyaga learned counsel also highlighted their respective submissions.

18. In the written submissions, Mr Oraro took issue with the learned Judge's finding that ***"in order to have a valid objection with the respondent, it must be accompanied by the supporting documents even if the same had been filed and accepted by it".*** Mr Nyaga did not address us on that point. Before we get into the other more serious issues arising from this appeal, we feel that the said point, innocuous as in may seem, is a germane one which deserves our attention and comment. In our view, this was an orbiter remark by the learned Judge which was however in our considered view a misdirection on his part. We say so because the respondents upon receipt of all tax records and any other documents from a taxpayer has the responsibility to take proper charge of such documents and ensure they are kept in safe custody. That is a responsibility it cannot shirk or abdicate and expect another person to take care of. In point of fact a tax payer who misplaces or for any other reason needs to refer to any of their documents in the custody of the respondents should be able to get certified copies of the same from the respondents on application and not the other way round. This is what is expected of every responsible state organ or officer in a position such as the respondents'. Penalising the appellant for failing to attach the documents which it had already submitted to the

respondents was to say the least high handed and unacceptable. It is like the court blatantly refusing to supply typed proceedings to a party and then penalising him/her for filing an appeal out of time!

19. According to the learned Judge, **section 84(1)** as read with the proviso to **subsection (2)** of the Income Tax Act requires an appeal to be accompanied by the returns of income and all supporting documents. Mr Oraro faulted the learned Judge on that interpretation and maintained that the words "*where applicable"* used in the proviso connotes that the proviso only applies where no documents had been filed or attached in the first place. We are inclined to agree with Mr Oraro on this interpretation. Why would the respondents insist on being supplied copies of documents whose originals are already in their custody?

20. On the Judge's finding that the respondent seems to have considered the objection and reduced the assessment, our respectful view is that that was an issue touching on merit which as pronounced by the learned Judge was not for him to try and determine.

21. We now come to the jurisdictional issue. It goes without saying that jurisdiction is everything and without it every act or decision by a court or tribunal is rendered a nullity. Jurisdiction must be acquired before a court can issue a valid judgment or order. See this Court's decision in; **The Owners of Motor Vessel 'Lillian "S' " vs Caltex Oil (Kenya) Ltd [1989] KLR 1.** Where the Court emphasized that establishing jurisdiction is a condition precedent to the whole case as set out and mandated by statute or the Constitution. Nyarangi JA succinctly expressed as follows;-

> ***"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction"***

Did the learned Judge have jurisdiction to deal with the matter or was it in the domain of the Income Tax Appeals tribunal? It is not in dispute that the appellant had decided to pursue its dispute through the Income tax tribunal by filing a notice but decided to pend the same and moved to the High Court by way of judicial review. The appellant's argument is that theirs was not a case of a legitimate demand for tax due, but an ultra vires act by the respondents to levy tax where it had not accrued. For them the respondents' illegal and irrational acts amounted to an abuse of power and the most efficacious forum for addressing those issues was the High Court given the special circumstances of their case, where the respondents had behaved with Wednesbury unreasonableness.

22. For this proposition the appellant called in aid this Court's finding in the case of **Speaker of National Assembly vs Njenga Karume** (1990-1994) EA 546 where the Court expressed itself in relevant part as follows:-

> **"…where there was an alternative remedy and especially where parliament has provided a statutory procedure, it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully to the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it…"** (Emphasis provided)

23. For the reasons we have given earlier and others that will become apparent, there were definitely exceptional circumstances that existed in this case that were outside the ambit of the Income Tax Tribunal which called for intervention by way of judicial review. Whereas courts of Law are enjoined to defer to specialised Tribunals and other Alternative Dispute Resolution Statutory bodies created by Parliament to resolve certain specific disputes, the court cannot, being a bastion of Justice, sit back and watch such institutions ride roughshod on the rights of citizens who seek refuge under the Constitution and other legislations for protection. The court is perfectly in order to intervene where there is clear abuse of discretion by such bodies, where arbitrariness, malice, capriciousness and disrespect of the Rules of natural justice are manifest. Persons charged with statutory powers and duties ought to exercise the same reasonably and fairly.

24. Accordingly, the court is perfectly entitled to intervene where it is alleged that the discretion is not being exercised judicially, that is to say, rationally and fairly and not arbitrarily, whimsically, capriciously or in flagrant disregard of the rules of natural justice. See **Jotham Mulati Welamondi vs. The Electoral Commission of Kenya Bungoma HC MISC. APPL. No. 81 of 2002 [2002] 1 KLR 486; [2008] 2 KLR (EP) 393**. If the discretion is used arbitrarily and unreasonably, the court may step in to remedy the situation. As was held by this Court in **Republic vs. Commissioner of Co- Operatives, Kirinyaga Tea Growers Co-operative & Savings & Credit Society Ltd. Civil Appeal No. 39 of 1997 [1999] 1 EA 245;**

> ***" it is axiomatic that statutory power can only be exercised validly if exercised reasonably and not arbitrarily or in bad faith."***

Also in **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd another** [2002] eKLR it was stated that although judicial review is concerned with the decision making process, not with merits of the decision itself; the court would concern itself with issues as to whether the decision makers had jurisdiction; whether persons affected by the decision were heard before it was made and whether in making the decision the maker took into account relevant matters or did take into account irrelevant matters. We shall later in this judgment consider whether the respondents herein fell into error by considering irrelevant material or failed to consider relevant matters that had been placed before it.

25. In this case from the record before us and the voluminous correspondence between the parties herein, and the clear inconsistencies in the respondents' responses and actions, it is clear that the respondents in making the assessment in question proceeded on erroneous state of facts, either mistakenly or mischievously in a bid to punish the appellant for no justifiable reason, and in doing so did not act in good faith whatsoever. Therefore, whereas this Court is not entitled to question the merits of the decision of taxing authority, that authority must exercise its powers fairly and there ought to be a basis for the exercise of such powers. A taxing authority is not entitled to pluck a figure from the air and impose it upon a taxpayer without some rational basis for arriving at that figure and not another figure. Such action would be

arbitrary, capricious and in bad faith. It would be an unreasonable exercise of power and discretion and that would justify the Court in intervening. In **Republic vs. Institute of Certified Public Accountants of Kenya ex parte Vipichandra Bhatt T/A J V Bhatt & Company Nairobi HCMA No. 285 of 2006**, it was held that in the absence of a rational explanation, one must conclude that the decision challenged can only be termed irrational within the meaning of the *Wednesbury* unreasonableness, was in bad faith and constitutes a serious abuse of statutory power since no statute can ever allow anyone on whom it confers a power to exercise such power arbitrarily and capriciously or in bad faith. Faced with circumstances similar to the present case in **Republic vs Kenya Revenue Authority Ex parte Jaffer Mujtab Mohammed** (2015) eKLR, Odunga J held as follows;

> ***"a taxing authority is not entitled to pluck a figure from the air and impose it upon a taxpayer without some rational basis for arriving at that figure and not another figure. Such action would be arbitrary, capricious and in bad faith. It would be an unreasonable exercise of power and discretion and that would justify the court intervening."***

In this case the respondents clearly plucked the figure from the air. No explanation was given to the appellant as to how that figure was arrived at. No explanation was sought as to the alleged deposits in the appellants accounts. According to the respondent, they only realised later that the appellant was a landlord and hence the assessment. However, from their own document, an email from Josephine Mugure dated 21st June, 2013 in which the respondent was rescheduling the interview meeting with the appellant, they were already seized of the information that the appellant was a Landlord and that was part of the reasons the audit was sought. This was therefore a live issue even as at the time the audit was conducted. If indeed the respondents were acting in good faith why did they not deal with that issue during the audit, yet they went ahead and issued the compliance certificate and lauded the appellant for being a good tax payer? If the respondents were acting in good faith, how could they accuse the appellant for failing to meet them and subject itself to tax audit when they had already participated in the said audit?

26. As observed earlier also, one of the reasons given for the arbitrary assessment was that the appellant had refused to avail itself for auditing, yet it is not disputed that the meeting took place, all the books asked for had been availed and the exercise had been successfully carried out and a certificate of compliance issued thereafter. This case falls squarely on all fours with the case of **Municipal Council of Mombasa vs. Republic & Umoja Consultants Ltd** *(supra),* because clearly, the respondents failed to consider the very relevant facts that their request for an audit meeting had already been met, all documents requested for had been availed and examined, and yet the assessment was premised on the erroneous premise that the appellant had failed to comply with the said requests. The need to take into account relevant considerations and ignore irrelevant facts in the decision making has close nexus with the need to act reasonably. This much was appreciated by Lord Greene MR in **Associated Provincial Picture Houses Ltd vs. Wednesbury Corporation** [1948] 1 KB 223 thus,

> ***"For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'.***

27. It is clear from the foregoing that the respondents were guilty of Wednesbury unreasonableness and this made their decision amenable to Court intervention by way of judicial review. The circumstances surrounding this matter were exceptional and called for the intervention of the court. This case is distinguishable from the case of **Pili Management Consultants Ltd vs Commissioner of Income Tax, Kenya Revenue Authority (2010) eKLR** cited by the respondents because that case dealt with merit hearing as to whether the money in the bank was liable to taxation or not, while in this case it is a clear case of arbitrariness and bad faith. This was not a case for merit hearing. It was about the respondents arbitrarily and maliciously out of the blues imposing a tax that was not owed based on the incorrect premise that the appellant had declined to present itself for tax audit when it had already done so. As we have stated before (See **Cimbria E.A limited vs Kenya Revenue Authority** Civil Appeal No, 61of 2011) whereas the respondent is mandated by law to collect taxes where the same is lawfully owed, imposing taxes where none is owed and arbitrarily imposing sanctions to enforce payment is acting in excess of its jurisdiction and is *ultra vires* and thus amenable to judicial review.

28. In this case, the 1st respondent was less than candid when it claimed that it discovered that the appellant was a landlord, if at all, after the tax audit had been done and it appears to have been driven by malice in imposing the hefty tax without any basis whatsoever. This was a good case for Court intervention and the learned Judge ought not to have struck out the Judicial review application, as the same raised issues that were outside the purview of the Income tax appeal committee or tribunal regime.

29. Having arrived at this conclusion, we do not find it necessary to consider the ground on legitimate expectation. We appreciate that remedies of judicial review are discretionary, and certain parameters or guidelines have been set to guide appellate courts when called upon to interfere with judicial discretion of a trial court. As a general principle, this Court will not interfere with such discretion, save on narrow principles which are well settled. They were summarized by Madan, J.A in ***United India Insurance Co Ltd & 2 Others vs East African Underwriters (Kenya) Ltd [1985] KLR 898*** thus:

> ***"(a) The Judge misdirected himself on law; or***
>
> ***(b) That he misapprehended the facts; or***
>
> ***(c) That he took into account of considerations of which he should not have taken account; or***
>
> ***(d) That he failed to take into account of considerations which he should have taken account of; or***
>
> ***(e) That his decision, albeit discretionary one, was plainly wrong".***

See also ***Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others (2003) KLR 125***, and the ageless case of ***Mbogo & Another vs Shah [1968] EA 93.***

We are satisfied in this case that the learned Judge misapprehended the facts herein when he concluded that the issues before the court were merit based, as it was explicit that the said assessment on which all other issues were premised was *ultra vires ,null and void* for reasons we have given above. The circumstances herein were similar to those in **Republic vs Kenya Revenue Authority Ex parte Jaffer Mujtab Mohammed (*supra*)** where the learned Judge heard the matter and granted the judicial review remedies sought. We therefore find it appropriate to interfere with the learned Judge's exercise of discretion in this matter.

30. We think we have said enough to demonstrate that this appeal has merit. We allow the same and set aside the impugned Ruling dated 25th January, 2017 striking out the appellant's Notice of Motion dated !8th December, 2015, and consequently grant the following orders:

i) An order of certiorari quashing the decision of the respondents contained in the assessment and letter of demand dated 29th June, 2015and 14th September ,2015 directing the applicant to remit an amount totalling Ksh.656,372,183 and Ksh.644,342,189 respectively and all consequential orders arising therefrom.

ii) An order of prohibition restraining the respondents from implementing and effecting the assessment and demand as contained in the assessment and letter of demand dated 29th June, 2015 and 14th September, 2015 respectively.

iii) An order that each party bears its own costs both here and before the High Court.

Dated and delivered at Nairobi this 20th day of April, 2018.

ALNASHIR VISRAM

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JUDGE OF APPEAL

W. KARANJA

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JUDGE OF APPEAL

M. K. KOOME

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR