IN THE FAIR COMPETITION TRIBUNAL

AT DAR ES SALAAM

TRIBUNAL APPEAL NO. 19 OF 2017

DISTELL GROUP LIMITED .....APPELLANT

VERSUS

FAIR COMPETITION COMMISSION (FCC).....RESPONDENT

JUDGMENT

The appellant, DISTELL GROUP LIMITED aggrieved by the decision of the above named respondent in its interim order dated 3rd October, 2016 and final order dated 2nd November, 2016 in the matter of Merger Application between Anheuser-Busch Inbev SA/NW and Tanzania Distillers Limited through SABMiller Plc and Tanzania Breweries appeals to this Tribunal against the decision on the following grounds, namely:-

1. That the Fair Competition Commission erred in law by holding that the Shareholding Agreement dated 31st August 1999 entered into between Distillers Corporation International Limited and Tanzania Breweries

Limited and Tanzania Distillers Limited nd South African Breweries International (Africa) B.V. is *void ab initio,* without giving the appellant the opportunity to be heard on the question of the validity of the said Shareholders Agreement.

2. That the Fair Competition Commission failed to comply with the procedures and other statutory requirements, by holding that the Shareholding Agreement dated 31st August 1999 entered into between Distillers Corporation International Limited and Tanzania Breweries Limited and Tanzania Distillers Limited and South African Breweries International (Africa) B.V. is *void ab initio* without giving the appellant an opportunity to be heard on the question of the validity of the said Shareholders Agreement.
3. That the Fair Competition Commission erred in law by holding that the Shareholding Agreement dated 31st August 1999 entered into between Distillers Corporation International Limited and Tanzania Breweries Limited and Tanzania Distillers Limited and South African Breweries International (Africa) B.V. is *void ab initio* when it was not a matter in issue pending in the Merger Application between Anheuser-Busch Inbev

SA/NW and Tanzania Distillers Limited through SABMillers Plc and Tanzania Breweries Limited.

4. That the Fair Competition Commission erred in law by holding that the Shareholding Agreement dated 31st August 1999 entered into between Distillers Corporation International Limited and Tanzania Breweries Limited and Tanzania Distillers Limited and South African Breweries International (Africa) B.V. is *void ab initio* during an application for a Merger Application in contravention of the procedures set out in the Fair Competition Act, 2003 and the Fair Competition Rules, 2013 and non-compliance of the procedures materially affected the said determination.
5. That the Fair Competition Commission erred in law by failing to provide reasons supporting its decision nullifying the Appellant's pre-emptive rights as set out in the Shareholders Agreement dated 31st August 1999 entered into between Distillers Corporation International Limited and Tanzania Breweries Limited and Tanzania Distillers Limited and South African Breweries International (Africa) B.V. and in the Memorandum and Articles of Association of Tanzania Distillers Limited, thus rendering the said decision irrational.

6. That the Fair Competition Commission erred in law by holding that the shareholders of Tanzania Distillers Limited (Tanzania Breweries Limited and Distell Group Limited) were competitors of one another, which decision was not based on the evidence produced.
7. That the Fair Competition Commission erred in law by holding that the Shareholding Agreement dated 31st August 1999 entered into between Distillers Corporation International Limited and Tanzania Breweries Limited and Tanzania Distillers Limited and South African Breweries International (Africa) B.V. contravenes section 9(1) (a) read together with section 9(2) (a) and section 9 (1) (b) read together with section 9 (2) (b) of the Fair Competition Act, 2003 as section 100 of the said Act saves all actions taken before its coming into force until amended or revoked under the provisions of the Fair Competition Act, 2003.

On the totality of the above grounds of appeal, the appellant asked the Tribunal to order and set aside the decision of the Fair Competition Commission in regard to the Shareholders Agreement to be *void ab initio,* order and set aside the decision of the Fair Competition Commission terminating Distell Group Limited's rights of first refusal to acquire the shares in Tanzania Distillers Limited as provided for in the Memorandum and Articles

of association of Tanzania Distillers limited, costs of the appeal and any other orders which the Tribunal may deem necessary.

Upon being served with memorandum of appeal, the learned counsel for the respondent guided by Rule 19 of this Tribunal's Rules filed a reply to the memorandum of appeal disputing all grounds raised as baseless, with no merits for everything done by respondent was in accordance with law and the appellant was given right to be heard and as such asked this Tribunal to affirm the decision of the Commission by dismissing the appeal in its entirety with costs and any other relief as the Tribunal may deem fit and just to grant.

It is imperative at this stage, albeit in brief, to set forth the facts pertaining to this appeal. On 6th September, 2016, before the respondent, there was Merger Application No. 28 0f 2016 between Anheuser-Busch Inbev SA/NW and Tanzania Distillers Limited (to be referred as TDL) through SABMiller Plc Limited and Tanzania Breweries Limited (to be referred as TBL) with intention to acquire SABMiller Plc and in particular Tanzania Distillers Limited and Dar Brew Limited. The respondent, before determining the matter, issued a PUBLIC NOTICE dated 8th September, 2016 inviting written submissions from any person (legal/natural) who wished to object the application. Pursuant to that notice, the facts are, that the respondent received two written

submissions from two stakeholders, namely; one, Beatrice W. Mworia of Dar es Salaam and Distell Group Limited through their legal counsel Ms. Werkmans Attorneys of South Africa.

Procedurally, during hearing, the respondent invited the stakeholders, among others, to afford them opportunity to be heard before it makes a final decision. Distell, opposed the merger application on reason that TBL and TDL are competitors. Consequently, further facts go that upon hearing all parties on the merger application and the submissions by stakeholders, the respondent gave its interim order on 3rd October, 2016 and its final order dated 2nd November, 2016 respectively declared the Shareholding Agreement null and *void ab initio* pursuant to section 9(1)(a) and (b) of the Fair Competition Act, 2003. Equally it nullified the appellant's pre-emptive rights as set out in the Shareholding Agreement and hold that the shareholders of Tanzania Distillers Limited (Tanzania Breweries Limited and Distell Group Limited) were competitors based on evidence produced. The above findings triggered this appeal for grounds set hereinabove, hence this judgement.

The appellant has been enjoying the legal services of Mr. Gaspar Nyika, learned advocate from Dar es Salaam and Mwanza cities based legal clinics of IMMMA Advocates. On the other hand, the respondent was enjoying the legal

services of Mr. Lyton Mhesa, Ms. Selina Mloge, Dr. Allan Mlula, Mr. Josephat Mkizungo, Mr. David Mawi, and Mr. Wambie Malata, learned advocates all employees of the respondent.

Both learned advocates for parties in support of their respective stances filed written skeleton arguments and list of authorities to be relied upon. We are grateful to and commend them for their insightful input on this appeal.

In this appeal we find and observed that ground one, two and three which revolves around denial of an opportunity to be heard can be consolidated and be determined as one.

Mr. Nyika in support of the appeal on these three grounds in his oral submission prayed that his written skeleton arguments and authorities filed be adopted to form part of what he is about to add now. The learned counsel gave the history of what was before the Commission and pointed out that the issue that was before the Commission was whether the merger application should be approved with or without conditions. According to Mr. Nyika, the Commission eventually after hearing parties' declared that the merger application is prohibited. However, the Commission went further to make orders of declaring the Shareholders Agreement dated 31st August 1999

between the appellant, TBL, TDL and SABL as *void ab initio.* The Commission, according to Mr. Nyika, went further and nullified the appellant's pre-emptive rights as set out in the Shareholders Agreement and Memorandum and Articles of Association of Tanzania Distillers Limited. Mr. Nyika, therefore, argued that the two orders were given in errors because there was no issue of the validity or otherwise for pre-emptive rights of the Shareholders Agreement before the Commission. Mr. Nyika went on to submit that the appellant was not invited to submit or address on these issues and as such the learned counsel concluded that these issues were decided without affording the appellant an opportunity to be heard, and that according to Mr. Nyika, that vitiated the two orders by the Commission. The learned counsel cited the case of **Milicon (Tanzania) Nv V. James Abbas Russel Bel and 5 Others, Civil Revision No. 3 of 2017, Cat (DSM) (Unreported), Abbas Sherally and Another v. Abdul Sultan Haji Mohamed Fazalboy, Civil Application No. 33 of 2002, Bank of Tanzania v. Said A. Marinda And Others, Civil Application No. 74 of 1998 And Hamis Rajab Bibagula v. The Republic, Criminal Appeal No. 53 Of 2001 Cat (Dsm) (Unreported)** all of which underscored the need to hear a person before any decision is made against him/her which affects his rights.

Mr. Nyika in strong but humble terms prayed that this Tribunal finds and holds that these grounds have merits and allow the appeal by quashing and setting aside the said orders.

Dr. Mlula in response to the submission of Mr. Nyika, on these grounds equally prayed that their reply to the memorandum of appeal and their written skeleton arguments be adopted to form part of their oral submission. According to Dr. Mlula, the issue of Shareholders Agreement was raised by the appellant and was equally argued and discussed in all respects. So, according to Dr. Mlula, the argument by Mr. Nyika that the appellant was not heard is foreign as they were equally heard and on 21/09/2016, the appellant was invited to address the Shareholder Agreement and the issue of validity of the agreement was stated there and it was observed that it was against section 9 (1) (a) and (b) of the Fair Competition Act, 2003. Further, Dr. Mlula submitted that the cases cited are distinguishable from what we have here because in our appeal the appellant was heard.

Having gone through the record of appeal and considered the three grounds of appeal together, the written submissions, list of authorities cited and the oral submissions for respective parties on these grounds, we are of the considered opinion that these grounds are akin to fail. We will endeavour to

explain. **One,** as correctly submitted by Dr. Mlula the issue of Shareholder Agreement in dispute was first raised by the appellant when counsel for the appellant was given an opportunity to make oral submissions. This is clearly seen at clause 2:4 of the proceedings. The appellant had this to say, we beg to quote him in extensor:

> **"2.4. In addition, Distell is also concern that in the post merger scenario, TBL may refuse to approve the roll-out of the additional brands through TDL (as proposed by DISTELL), by refusing to provide the necessary consent as contemplated in the Shareholders Agreement, in order to protect TBL's market share, which could again restrict competition between TDL and TBL and would limit the choice available to Tanzania."** (Emphasis ours).

Two, the hearing procedures in the Commission which is a quasi judicial body is inquisitorial hearing procedure and is not bound by the formal rules of evidence and as such is not strictly in the sense of hearing we are used in normal courts. Rule 17 of the Fair Competition Commission Procedure Rules, 2013 is very elaborative of the procedure of hearing in the Commission. Therefore, as obviously seen in the proceedings, parties are invited in the course of hearing to respond to the issue raised and this issue when raised

was discussed, and among others, it was ordered that the said agreement be submitted to the Commission for its consideration. So, the cases that were cited by the learned counsel for appellant, much as we appreciate the *ratio decidendi* therein but they are distinguishable in the circumstances of this appeal as correctly replied by the learned counsel for respondent.

Three, according to the appellant's written response to the merger application he addressed this issue which had earlier been raised at clause 27.1 and 27.2 of the proceedings. Therefore, according to the procedures of the Commission, is incorrect to say it was not raised and deliberated during the proceedings. This is even evidenced at clause 8:1- when Dr. Kapinga called submissions of the appellant that were entirely defunct, including the shareholding agreement, at page 108 of the proceedings and clause 3:10:6 of the written submission where the appellant was proposing an amendment to the Shareholders Agreement. For ease of reference we beg to quote in extensor what the learned counsel wrote:

3:10:6 Amendment of the Shareholders Agreement:

> **"The rationale for Distell's concern has been set out in part A and part B of this letter. Distell has a clear and coherent**

competition concern which it believes will be rectified, more appropriately through divestiture, but to a lesser degree through an amendment to the TDL Shareholders Agreement. As will be noted by the FCC, the proposed amendment to the TDL shareholders' agreement is not designed to benefit Distell but is designed to foster competition between TBL and TDL. It is probably for this exact reason why TBL is so opposed to the proposed amendment." (Emphasis ours).

Four, the appellant if had wanted to spare the disputed Shareholders Agreement which was found contravening the Fair Competition Act, 2003 as decided by the Commission for whatever reasons, was supposed to apply for the same to be considered for exemption or as exception under the provisions of section 12 and 14 respectively of the Fair Competition Act, 2003. The prayer for an amendment proposed by the appellant was not provided for in the law. The proposed amendment was an indication of knowing that it will not pass the test of the provisions of the Fair Competition Act, 2003 and as such when the same was dealt with under the above Act for obvious reasons was found contravening the provisions of section 9 of the Fair Competition Act, 2003.

Therefore, it is for the reasons given above, we agree with the learned counsel for respondent that the issue that the appellant was not heard on the shareholders agreement is foreign and is against the record of the respondent as demonstrated above, hence raised out of context in this appeal. Consequently, we hereby find that the arguments raised by Mr. Nyika have no merits and as such grounds number one, two, and three are wanting in merits. Therefore, grounds numbers one, two and three are hereby dismissed in their entirety for want of merits.

This takes this Tribunal to ground number four in which the main complaint is that in the merger application, the issue of validity of the Shareholders Agreement was not raised and discussed as such its validity was done without affording the appellant an opportunity to be heard. According to Mr. Nyika, the same reasons and case laws cited in the above grounds number 1, 2 and 3 do apply to this ground. The learned counsel in the same vein implored this Tribunal to find merits in this ground and set aside the decision of the Commission.

On the other hand, Dr. Mlula submitted in reply that the validity of the Shareholders Agreement was raised and argued. The learned counsel for respondent pointed out that page 65 of the record of proceedings shows that

. the appellant was invited to address this issue but prayed for more time for preparations on the issue.

We have gone through the entire proceedings of the Commission, the rival arguments on this ground and we are satisfied that the issue of the Shareholders Agreement dominated the entire proceedings and parties raised several issues including its validity and it was dully responded. For clarity we can pin point from the proceedings some obvious concern of the parties on this issue. Dr. Kapinga, for instance, raised the validity of the Shareholding Agreement at clause 8:1 where he called the appellant submissions on the issue of shareholders agreement as a defunct and that the appellant is an opportunistic. In essence this was questioning the validity of the disputed agreement. Other concerns of the agreement were throughout the proceedings. These are, at clauses 27:1, 28:2, 2:38:5, 8:1 just to mention a few. The appellant prayed for time to respond and was given that chance and duly responded on the validity of the Shareholders Agreement under clause 3:10:6 in his written response to the matter admitted that the contract had a coherent competition concern and went on to propose amendment. On this, the appellant proposed amendment or rectification through divestiture or amendment. Indeed, to our considered opinion this was clear admission that

the contract was fraught with coherent competition concern which the Commission by the powers vested under section 100(1) of the Fair Competition Act, 2003 was justified to deal with it under the aforementioned Act as it did by declaring it *void ab initio*, hence justified in the circumstances.

From the foregoing, therefore, the arguments by Mr. Nyika that the appellant was condemned unheard on this point are far from convincing this Tribunal to hold otherwise and are hereby rejected. That said, this Tribunal hereby finds this ground has no merits and is equally for the reasons explained above together with reasons we gave in grounds 1, 2, and 3 above fails and is hereby dismissed in its entirety.

Next is ground number five which the main complaint was that no reasons were provided to support the decision of the Commission in nullifying the appellant's pre-emptive rights as set out in the Shareholders Agreement as such the whole decision was irrational. In support of this ground, Mr. Nyika argued that Rule 42(14)(b) of the Competition Procedural Rules state that for each decision of the Commission is required to make available a copy of its reasons for decision. According to the learned counsel for appellant, both the interim and the final orders are silent as to why the appellant should not be entitled to acquire the TDL shares. Lack of reasons, justify that the nullification

of the appellant's pre-emptive rights in the Shareholders Agreement and the TDL's Memorandum and Articles of Association is irrational. In support of this ground, the learned counsel cited the case of **Hamis Rajab Dibagula v. The Republic** (supra) in which the Court of Appeal held that:

> **"the necessity for courts to give reasons cannot be over-emphasized. It exists for many reasons, including the need for the courts to demonstrate their recognition of the fact that litigants and accused persons are rational beings and have the right to be aggrieved."**

Mr. Nyika yet cited another case of **DPP v. S.I TESHA AND R. TESHA [1993] TLR 237** in which it was stated that:

> **"if the principle of natural justice are violated in respect of any decision it is immaterial whether the same decision would have been arrived at in the absence of departure from essential principles of natural justice.**

Mr. Nyika further added in his oral submission that the issue of pre-emptive rights was not before the Commission and that the appellant was not even invited to address this issue as such the appellant was condemned unheard.

On that account, the learned counsel implored this Tribunal to find merits in this ground.

On the other hand, Dr. Mlula in their written submissions submitted that the issue of pre-emptive rights was embedded in Shareholders Agreement and admitted that indeed the said agreement was concluded prior the enactment of the Fair Competition Act, 2003 between competitors. However, according to the learned counsel for respondent, being an agreement between competitors, the same could not have continued to be effective after the enactment of the Fair Competition Act, 2003 as it prohibits such agreements among competitors that might have negative effect to competition in the market and that to allow it would allow them to exchange and share information regarding prices and output a fact which is obviously contrary to Fair Competition Act, 2003.

According to the learned counsel for respondent, to allow such an agreement to exist will amount to perpetuating an illegality as provided under the provisions of section 23 (1) (b) of the Law of Contract Act, [Cap 345 R.E. 2002] and section 9 of the Fair Competition Act, 2003.

Further replying to the effect of nullifying the entire agreement and its pre-emptive rights, the learned counsel for respondent pointed out that an agreement which was illegal is void from the moment it is outlawed since its performance will not be possible without disobedience of the law that outlawed it. In other words, the learned counsel submitted that Shareholders Agreement was operative from 1999 to 2002, a period during which it was valid and enforceable. However, the moment the Fair Competition Act, 2003 came into operation, it paralyzed its enforceability as the agreement became *prima facie* void as rightly held by the respondent. So when was exposed before Fair Competition Commission, according to the learned counsel for respondent, during merger application, the respondent was legally justified to declared it *void ab initio.* The learned counsel for respondent pointed out that the cross directorship scenario between TDL and TBL and shared functions such as accounting and procurement which is not allowed and which was proved in the proceedings suffices not to spare it at all.

We have carefully considered the rival arguments and went through the record and we are of the increasingly considered opinion that this ground too is akin to fail. The fact that the shareholding agreement was found void and declared by the respondent as such and much as we have found that the reasons were

given at the introduction when the respondent stated that **"having considered the harm that the relevant market has suffered and is bound to suffer from the continuation of the current shareholders arrangement under the Shareholders Agreement dated 31st August 1999.....is hereby declared void ab initio."**

The above statement by this quasi judicial body contained reasons for declaring the whole agreement void and its resultant pre-emptive rights which are embedded therein as rightly argued by Dr. Mlula. Not only that but roman (ii) (iii) of the final order contained reasons as well.

In the foregoing reasons we find the arguments by Mr. Nyika that no reasons were given is misconceived and is far from convincing this Tribunal to hold otherwise. Therefore, this Tribunal hereby agrees with the learned counsel for respondent that the said agreement was correctly dealt under the Fair Competition Act, 2003 as provided under section 100(1) of the FCA, 2003 and the Commission was justified under Rule 24 (2) of the Fair Competition Rules, 2013 to make such declaration. The argument that the said agreement was saved by section 100(1) of the Fair Competition Act,2003 cannot hold water because once it was dealt within the Act and declared *void ab initio* it ceases

to be valid as was done in respect of the Shareholders Agreement. That said and done, ground number five is equally akin to fail.

This takes this Tribunal to ground number six, that is the Commission erred in law to hold that the shareholders of Tanzania Distillers Limited and Distell Group Limited were competitors of one another, which decision was not based on evidence.

In support of this ground Mr. Nyika argued that the submission before the Commission by the appellant was that Tanzania Breweries Limited and Tanzania Distillers Limited, the merging parties were competitors and that had significant possible negative effect on competition. There were no submissions made that Tanzania Breweries Limited and Distell Group Limited were competitors as such no basis upon which the Commission could have based its findings that Tanzania Breweries Limited and Distell Group Limited are competitors. According to Mr. Nyika, this finding was wrong.

On the other hand, the learned counsel for respondent charged in reply that looking in a myopic eyes one may not see the arrangement but going deeper it is evident that Distell Group Limited under the umbrella of SubMiller owned 33% of shares, a fact which they admitted and as such therefore competitors.

Having considered this ground of appeal against the record of the Commission, is our considered opinion that same will not detain this Tribunal much. There is ample evidence on record that these two are competitors and the abolition of their operative structure was decided based on the evidence. The Commission in its compliance order in romans (iii), (vi) and (v) was very clear on this point. On that note this ground has to fail as well.

The last ground is that the Commission erred to hold that the Shareholders Agreement contravened section 9(1) (a) read together with section 9(2) (a) and (b) read together with section 9(2) (b) of the Fair Competition Act, 2003 as section 100 of the said Act saves all actions taken before its coming into force until amended or revoked under the provision of the Fair Competition Act, 2003. Mr. Nyika argued in support of this ground that the Shareholders Agreement was signed before the Fair Competition Act, Cap 258 R.E. 2002 was in force and the said Act did not prohibit the contractual relationship in question. According to Mr. Nyika, the respondent applying the provisions of the Fair Competition Act, 2003 to revoke and declare the contract that was signed in 1999, null and void, was wrong. Mr. Nyika contended that the said Act could not apply retrospectively in the circumstances. Mr. Nyika argued that the respondent acknowledged this fact but went beyond and nullified the

agreement using the same Act which he admitted was not applicable. It was the strong view and submission of Mr. Nyika that the retrospective application of the Fair Competition Act, 2003 was a serious error on the part of the respondent. In that same vein the learned counsel implored this Tribunal to find and hold that this was a serious error committed by the Commission in their impugned decision.

On the other hand, the learned counsel for respondent argued in rebuttal that the Commission was justified to declare the said agreement *void ab initio* under the provisions of section 9 read together with section 100 of the FCA. According to Dr. Mlula section 9 prohibits certain agreements irrespective of their effect on competition. Dr. Mlula pointed out that its effects though signed in 1999, contravenes the current law and its effect are wrongs. Dr. Mlula was of the strong view and submission that the resultant effects of that agreement breached the provisions of the law and they dealt with the effect and found that the same is against the Act, and the only remedy was to declare it null and void as the respondent did. On that note, Dr. Mlula invited this Tribunal to find this ground with no merits and dismiss it along with others and the entire appeal be dismissed in its entirety for want of merits with costs.

Having heard the learned counsel's rival argument on this issue, the issue for determination here is whether the disputed agreement was saved under section 100 of the Fair Competition Act, 2003 and as such the Commission was wrong to look into its effect and made findings it did. To answer this issue let us visit the provision of section 100 of the FCA. This section provides as follows:

> "Section 100-(1) Notwithstanding the repeal of the Fair Competition Act,1994 any rules, regulations, certificates or anything done under the repealed Act or made immediately before the commencement of this Act shall continue to have force until **amended, revoked or otherwise dealt with under this Act.**" (Emphasis ours).

The provisions of section 100 above is loud and obvious that as general rule anything done before the current Act, 2003 is valid and is saved under the Act. However, there are three exceptions which can lead such act to stop having force or to be legal. These are: **One,** by amendment; **two,** by being revoked; and **three**, by being dealt with otherwise dealt with under this Act. This is to say that the Commission has power under that provision to revoke and to deal with anything under the Act. Now the next immediate question is, was the Commission not justified under these exceptions to deal with the

Agreement in dispute? The answer is obvious NO! The Commission was under the provisions of section 100(1) irrespective of when same was signed, empowered to deal with that agreement under the Act. It is on that note, the Commission in its decision stated and observed clearly that the said agreement is *void ab initio* under the provisions of section 9 of the Fair Competition Act, 2003.

In the foregoing, this Tribunal finds the arguments by Mr. Nyika not supported by the law. In this appeal, the Commission in the course of dealing with the merger application, the disputed agreement cropped up and the Commission could not leave it while obvious was in contravention of section 9 of the Fair Competition Act, 2003. As already held the issue of its validity was raised and the appellant replied to it and even suggested an amendment. Amendment is not envisaged under the law but the remedy was for the appellant to apply to the Commission for the contract to be dealt as exception or be exempted which he did not do. Failure to make an application for exemption or for it to be treated as an exception under sections 12 and 14 of the Fair Competition Act, 2003 and bring it to the attention of the Commission is like a person with unlicensed gun going to police post and tell them that I own a gun but I got it while it was not an offence to own a gun and tell them I want to keep it.

The appellant is the one to blame himself for raising the issue of the agreement without reading the law and wanted it to be spared while is in conflict with the law. On that note, the arguments by Mr. Nyika on this ground are found wanting and far from convincing this Tribunal otherwise. This ground for the reasons stated above has to fail as well in its entirety.

For the reasons, explained hereinabove, we are satisfied that there are no merits in this appeal and finally we are constrained to dismiss this appeal in its entirety with costs.

It is so ordered.

Dated at Dar es Salaam this 06 day of June, 2020.

Hon. Judge Stephen M. Magoiga - Chairman

Hon. Yose J. Mlyambina - Member

Hon. Butamo K. Phillip – Member

06/05/2020

Judgment delivered this 6th day of May, 2020 in the presence of Mr. Gasper Nyika, Advocate for the Appellant and Mr. Wambie Malata, Advocate for the Respondent.

Hon. Judge Stephen M. Magoiga - Chairman

Hon. Yose J. Mlyambina - Member

Hon. Butamo K. Phillip – Member

06/05/2020