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EX-TEMPORE

**ZIMBABWE REVENUE AUTHORITY
v
CONWAL CHEMICALS STATIONERY & HARDWARE**

**SUPREME COURT OF ZIMBABWE
MAVANGIRA JA, MAKONI JA & CHITAKUNYE JA
HARARE: 21 SEPTEMBER 2021**

S. Bhebhe, for the appellant

No appearance for the respondent

MAKONI JA: After hearing the parties the court delivered an ex tempore judgment. The respondent has now requested a copy of the same. Hereunder is the requested judgment:

This is the unanimous decision of this Court.

This is an appeal against the whole judgment of the Fiscal Appeal Court handed down on 8 September 2020 in which it allowed the respondent's appeal and set aside the Value Added Tax assessments issued against the respondent for the years 2009, 2010, 2011, 2012 and 2013.

Aggrieved by the decision of the court *a quo*, the appellant noted this appeal. It raised 8 grounds of appeal. In our view, the first ground of appeal resolves this appeal. The ground of appeal reads as follows:

“The *court a quo* erred in law in allowing an appeal and consequently setting aside the Value Added Tax assessments issued in respect of the tax years 2009, 2010, 2011, 2012 and 2013 where no such issues or relief had been sought by the respondent in its objection before the Appellant’s Commissioner.”

In its objection before the Commissioner the respondent sought the setting aside of the Income Tax Act assessment’s made by the Commissioner. It also sought the setting aside of the penalties imposed by the appellant.

In its grounds of appeal in the court *a quo* the respondent departed from the relief that it sought before the Commissioner in its letter of objection. It rather sought to challenge the Commissioner’s Value Added Tax assessments for the period alluded to above and sought that the appeal be allowed and that the determination of the Commissioner dated 9 November 2018 be set aside and substituted with an Order allowing its objection dated 30 April 2018.

Before the *court a quo* the appellant raised a point of law that in terms of s 33(3)(a) and (b) of the Value Added Tax Act, [*Chapter 23:12*], the Fiscal Appeal Court, at hearing any appeal to that court, shall be limited to the grounds of objection stated in the Notice of objection.

The *court a quo* did not pronounce its determination on this pivotal point. Instead it delved into issues that were not before the Commissioner and thereby grossly erred. In view of

the clear provisions of the law, the error vitiates the proceedings of the court *a quo* whose judgment must be vacated.

Accordingly it is ordered as follows:

1. The appeal be and is hereby allowed with costs.
2. The judgment of the *court a quo* is hereby set aside and substituted with the following:

“The appeal be and is hereby dismissed”

The reasons are handed down.

MAVANGIRA JA:

I agree

CHITAKUNYE JA:

I agree

Kantor & Immerman, appellant’s legal practitioners

Alex F & Associates, respondent’s legal practitioners