



REPUBLIC OF MALAWI
THE JUDICIARY
IN THE SUPREME COURT OF APPEAL
SITTING AT BLANTYRE
MSCA CIVIL APPEAL No. 8 OF 2025
(being High Court, Revenue Division, Civil Appeal No. 1 of 2023)

BETWEEN:

ILLOVO SUGAR (MALAWI) PLC

APPELLANT

AND

MALAWI REVENUE AUTHORITY

RESPONDENT

CASE SUMMARY

Presiding Justices: *Mzikamanda, SC CJ; Kapanda, SC JA;
Potani, SC JA; Chatha-Kamanga, SC JA;
Kalembera, SC JA; Madise, SC JA;
nyaKaunda Kamanga, SC JA.*

Date delivered: 21 May 2026

Brief Facts: In 2019, Illovo Sugar (Malawi) PLC (the Appellant) sought Tax Clearance Certificates from the Malawi Revenue Authority (the Respondent) in respect of remittance of funds, to two South African Information Technology (IT) service providers: Bytes Systems Integration and Adapt IT (Pty) Ltd. The Appellant contended that these payments were exempt from non-resident tax as "industrial or commercial profits" under the Malawi–South Africa Double Taxation Agreement (DTA). The Respondent rejected this, demanding deduction and remittance of tax under Section 76A of the Taxation Act. After the Commissioner General of MRA dismissed an administrative appeal, a Special Arbitrator ruled in the Appellant's favour, finding it was a "representative taxpayer" with legal standing to challenge the tax. After the High Court reversed the Special Arbitrator's decision, holding that

the Appellant was a mere "withholding agent" without legal standing to contest the substantive liability of non-residents, the Appellant approached the Supreme Court of Appeal.

The legal issues: The Supreme Court of Appeal determined the following issues:

- i. whether the Appellant is a representative taxpayer under Part VIII (sections 77–79) or solely a withholding agent under section 76A of the Taxation Act;
- ii. Whether a withholding agent has legal standing to challenge the substantive tax liability of a third party or to invoke DTA protections reserved for non-residents; and
- iii. Whether the Appellant qualified as a “taxpayer” entitled to pursue appeals under sections 97 and 98 of the Taxation Act.

The Finding: The Supreme Court of Appeal made the following findings:

- i. Part VIIA and Part VIII of the Taxation Act clearly provide for a representative taxpayer. Under sections 77 and 78 of the Taxation Act, a representative taxpayer stands in the shoes of the actual taxpayer and assumes the rights, liabilities, and obligations of that taxpayer.
- ii. That the Appellant in the present appeal was merely discharging its own contractual obligation to pay for IT services rendered by the South African entities, Bytes Systems Integration and Adapt IT (Pty) Ltd.
- iii. That the Appellant’s obligation to deduct and remit non-resident tax at source arose solely under section 76A of the Taxation Act. Therefore, rather than being the person legally chargeable for the underlying tax liability, the Appellant only acted as a withholding agent responsible for collecting and remitting the tax.
- iv. That the two South African IT service providers whose income was subject to tax under section 76A of the Taxation Act were exclusively legally liable for the non-resident tax.
- v. That according to the principles of *locus standi*, the Appellant lacked sufficient legal interest to challenge the non-resident entities' substantive tax liability or to invoke the protections of the Malawi–South Africa Double Taxation Agreement on their behalf.

- vi. Although section 113 of the Taxation Act permits an appeal in respect of penalties imposed for failure to deduct or remit tax, such right of appeal is confined to the validity of the penalty itself and does not extend to litigation of third parties' underlying tax liability.
- vii. That any rights arising under the Malawi–South Africa Double Taxation Agreement belong exclusively to the non-resident taxpayers who earned the income or to a properly recognised representative taxpayer under Part VIII of the Taxation Act and not to the Appellant in its capacity as a withholding agent.
- viii. Sections 97 and 98 of the Taxation Act confer on a taxpayer the right to appeal. The terminology used in the statute is important. Only a person who is a taxpayer and is aggrieved by an assessment, decision, or determination falling within the Act may appeal to the Commissioner General or the Special Arbitrator.
- ix. In the present case, the South African IT service providers were the taxpayers in relation to the income. The Appellant's obligation was limited to deducting and remitting tax from the payments due to them. The Appellant was not chargeable to taxation in respect of that income. It follows that the Appellant lacked standing under sections 97 and 98 of the Act to bring a statutory appeal challenging the non-residents' substantive tax liability. Therefore, the Special Arbitrator erred in treating the Appellant as a representative taxpayer. The High Court was correct to reverse that ruling.

Orders: The Supreme Court of Appeal made the following orders:

- i. The appeal is hereby dismissed in its entirety for want of *locus standi*.
- ii. The judgment of the High Court dated 10 April 2025 is upheld.
- iii. The Appellant shall pay the Respondent's costs of this appeal.
- iv. The Appellant shall further pay the Respondent's costs in the court below and in the proceedings before the Special Arbitrator. Such costs to be taxed, if not agreed.

DISCLAIMER - NB: *The Supreme Court of Appeal and the Honourable Justices are not bound by this explanatory note, which is provided by the Office of the Chief Registrar to facilitate public understanding of this case and to assist the media in reporting on it.*