GI (PVT) LTD
versus
ZIMBABWE REVENUE AUTHORITY

SPECIAL COURT FOR INCOME TAX APPEALS
KUDYA J
HARARE 17 May 2018 and 20 February 2020.

Capital Gains Tax Appeal

F. Girach with *D. Muchada* for the Appellant
S. Bhebhe with *H. Muromba* for the Respondent

KUDYA J: The main issue for determination is whether or not capital gains tax, CGT accrued in terms of s 19 (1) of the Capital Gains Tax Act to DGL, a foreign majority shareholder in a local company PAM (Pvt) Ltd, PAM, that sought to comply with local indigenisation legislation, from a share purchase agreement, SPA, concluded between the appellant and DGL. The other two subsidiary issues concerned the purchase price of the shares that would be subject to CGT between the initial purchase price of 28 May 2013, and the amended purchase price of 29 January 2014, and the propriety of imposing a penalty in the particular circumstances of this case.

The background

On 5 November 2015 the respondent issued a CGT notice of assessment comprising of the principal amount and 100% penalty in the aggregate sum of US$1 512 000[1]. Between 20 November 2015 and 9 June 2016 the appellant and respondent held meetings and exchanged various letters on the matter. The correspondence included the aborted objection of 24 March 2016 and further amended assessments of 9 June 2016. The appellant eventually filed objection, with the consent of the respondent, on 10 August 2016. The respondent made determination on 3 November 2016. On 25 November 2016, and 24 January 2017, the appellant filed its notice of appeal and case, respectively. The respondent filed the Commissioner's case on 19 April 2017. The matter was referred on appeal by way of a statement of agreed facts at the final pre-trial hearing held on 12 February 2018.

[1] P 160-163 of the appellant's bundle.

The Statement of Agreed Facts

1. The appellant was appointed as the representative taxpayer of DGL in terms of s 53 (d) of the Income Tax Act [*Chapter 23:06]* as read with s 24 (b) of the CGT Act *[Chapter 23:01*].
2. Prior to 28 May 2013, 85% of the shareholding of PAM (Pvt) Ltd, a local mining concern, was held by DGL while the balance was held by a local individual and citizen.
3. DGL was incorporated in the British Virgin Island, BVI and was thus a foreign shareholder.
4. PAM sought to comply with the provisions of the Indigenisation and Economic Empowerment Act *[Chapter 14:33*] and submitted an indigenisation plan to the appropriate Ministry.
5. In anticipation of the approval of its indigenisation plan, DGL sold it shares in PAM to the appellant, an indigenous company for US$ 15 120 000 and agreed to fund the purchase price on consensual terms while the shares that used to belong to the local individual were sold on the same date to the Special Community Trust and the Employees' Trust, hereinafter called the two Trusts.
6. The appellant and DGL executed a written agreement[2] for the sale of 11 520 shares constituting 36% of the issued share capital of PAM.
7. The purchase price was loan funded and secured by "the Charge and Pledge of Shares" agreement signed by each new shareholder with DGL.
8. The initial SPA was amended on 11 December 2013[3] and only signed by DGL, the lender and not GAT, the borrower.
9. On 10 December 2013, PAM sought exchange control authority through its bankers to undertake a rights issue of 100 000 shares to existing shareholders consisting of DGL, the and the appellant and the two Trusts, in the ratio of their shareholding and access a loan from DGL of US$9m.
10. On 6 January 2014[4], the central bank declined to consider the application before PAM had regularised the localisation transaction of 28 May 2013, with Exchange Control. PAM was

[2] Pp1-13 of Appellant's bundle filed 10 January 2018 and pp 30-49 of r 11 documents.
[3] Pp 14-17 of Appellant's bundle the parties' added clause 6.3 to initial agreement to include to purchase price valuation uplift computed at fair market value negotiated between knowledgeable and willing but not anxious buyer and seller acting at arm's length within a reasonable time.
[4] P33 -34 and 26-27 of Appellant's bundle and pp 1-2 of the r11 documents.

requested to supply Exchange Control with the details of its business, shareholders and their holdings before and after localization, sale agreement of the shares, justification of the valuation certificate and methods of the claims used to compute the purchase price, the vendor-financing agreements, the board resolution sanctioning the sale of shares to locals and supporting letter from the Ministry of Youth, Indigenisation and Economic Empowerment. The information was supplied on 15 January 2014.

11. On 29 January 2014, PAM sought exchange control approval to localise 36% of its shareholding based on the 28 May 2013, agreement and the net asset value, NAV, of its shares as at 30 November 2013. Apparently, between the date of signing the initial agreement and valuation, the value of PAM's mining claims had drastically fallen and prompted the reduction in the purchase price from US$15.12 million to US$3.9 million[5]. The reduction was captured in the amendment to the SPA of 29 January 2014.
12. On 4 February 2014, the central bank requested, *inter alia*, PAM's dividend payment history from 2006 to 2013, cash flow projections from 2014 to 2020 showing potential dividends for the period. In addition, PAM was directed to seek the External Loans Coordinating Committee, ELCC, approval for the vendor financing arrangements between DGL and the local shareholders. The requested information was duly supplied on 6 February 2014.
13. On 8 April 2014, the central bank placed the localisation application in abeyance pending the formulation of policy on vendor financing and only considered the application on 19 November 2014. Even then, the central bank requested PAM to make specified changes to the 29 May 2013 agreement, as amended.
14. In the interim, frustrated by the inaction of the central bank on the applications for localisation and capitalisation, on 2 June 2014, the appellant and DGL "reversed" the agreement of the sale of shares for lack of exchange control approval to the localisation, and reverted to the pre-28 May 2013, shareholding structure in respect of DGL only. The two retained the approved PAM indigenisation plan. The new arrangement was that the appellant would directly subscribe to 36% equity in PAM at a cost of US$3.9 million

[5] P 18-21 of Appellant's bundle amended clause 4 in its entirety and restated repayments in clause 6.1 to US$557 140 plus interest payable yearly on 1 June from 2014 to 1 June 2020, but all the other clause saved.

through loan finance, which was advanced by a local company and secured by a "Charge and Pledge of the Shares"[6] while the two Trusts maintained their respective shareholdings of 10% and 5%.

15. On 31 October 2014, PAM duly passed a resolution to issue new ordinary shares to the appellant and the two Trusts, which effectively increased its issued share capital to 55 510 and achieved the shareholding structure specified in the approved indigenisation plan[7]. The share certificates for each shareholder were duly issued on that day[8].
16. On 16 April 2015, PAM applied for exchange control approval to raise US$30 million for capital expenditure[9].
17. By letter of 12 June 2015, Exchange Control approved the regularisation of the localisation of 51% equity in PAM through the allotment of new shares representing 36% equity to appellant and 10% and 5% to each of the two Trusts. In addition, it approved the US$30million capitalisation of PAM, on specified conditions[10].
18. On 5 November 2015, the respondent duly issued a CGT notice of assessment on the appellant in the principal amount of US$ 756 000 and a penalty of 100% plus interest in terms of s 23 (i) of the CGT Act as read with s 46 of the Income Tax Act. A further notice of assessment on the same terms was issued on 9 June 2016.
19. The appellant contended that the agreement of 28 May 2013, for lack of exchange control approval, was of no force or effect and did not have any CGT implications while the respondent contended that it resulted in the accrual of s 9 of the CGT Act as read with s 10 (1) (b) of the Income Tax Act deemed income which became liable to CGT in terms of s 6 as read with s 19 (1) of the CGT Act and was unaffected by the later interventions of the Exchange Control Authority.

<u>The issues</u>

The following 7 issues were referred on appeal at the pre-trial hearing of 12 February 2018.

[6] P 153-159 of the appellant's bundle.
[7] P 143 of the appellant's bundle, comprised of 27 200 shares held by DGL, 19 894 by appellant, and 5 551 and 2 775 held by each Trust respectively. The respective equity percentages were 49%, 36%, 10% and 5%.
[8] Pp144-147 of Appellant's bundle.
[9] Pp 148-150 of appellant's bundle.
[10] P151-152 of Appellant's bundle.

1. Whether exchange control approval in terms of s 11 of the Exchange Control Regulations, 1996, was a suspensive condition implied by law in the agreement of 28 May 2013.
2. Whether the agreement of 28 May 2013, is valid without exchange control approval.
3. Whether a gross capital amount accrued to DGL, notwithstanding the absence of exchange control approval of the arrangement of 28 May 2013.
4. Whether the effect of the agreement of 28 May 2013, was such that ownership of the shares referred in that agreement would pass to the appellant upon delivery of the shares.
5. Whether DGL transferred its ownership of 36% shareholding in PAM (Pvt) Ltd to the appellant in terms of the agreement of 28 May 2013, or the appellant acquired the 36% shareholding in PAM (Pvt) Ltd through new shares issued to it on or about 31 October 2014.
6. Whether the price of the shares was reduced from US$15 120 000 to US$3 900 000 and if so, what is the effect of the price reduction on the alleged tax liability.
7. Whether the penalty imposed should be set aside or reduced in this matter.

At the commencement of the appeal hearing, counsel for both parties agreed to conflate the issues to the following:

1. Whether or not the appellant and DGL consummated a valid Share Purchase Agreement, SPA, on 28 May 2013.
2. If they did, whether the purchase price of the shares was the sum of US$15 120 000 or US$3.9 million?
3. Whether or not the imposition of any measure of penalty was appropriate?

<u>The determination of the issues</u>

Whether or not the appellant and DGL consummated a valid Share Purchase Agreement on 29 May 2013.

The appellant contended that the SPA of 29 May 2013 was cancelled on 2 June 2014, alternatively, that it was invalid for lack of exchange control approval, notwithstanding that the parties had treated it as valid prior to that date. The alternative contention was characterised by NESTADT JA in his dissenting judgment in *Commissioner for Inland Revenue* v *Insolvent Estate Botha t/a 'Trio Kulture'* 1990 (2) SA 548 (A) at 562 F as "an objective approach" because it mattered not that the parties may not have realised the legal effect of their agreement. The respondent made the contrary contention that the agreement, which existed on 28 May 2013, was valid and alternatively, that even if it was invalid, it had CGT consequences.

It was common cause that the appellant treated the SPA as a valid agreement from the date of consummation until 2 June 2014, when DGL agreed to a new arrangement with the appellant and PAM. The treatment of the agreement as valid was confirmed by a director of the appellant in a letter addressed to PAM on 18 June 2013, and by the letter of 21 August 2013, and its accompanying IDG 04 Form, written to the Minister of Youth, Indigenisation and Economic Empowerment. The shareholders of PAM and their respective equity percentages were identified as DGL, the appellant and the two Trusts. The shares and equity percentage in PAM of DGL was 15 680 shares and 49%, appellant 11 520 shares and 36%, the Special Community Trust 3 200 shares and 10% and the Employees' Trust 1 600 shares and 5%. It was further confirmed by the first amendment to the SPA of 11 December 2013, and the Charge and Pledge of Shares agreements of the same date. Indeed, the second amendment to the SPA of 29 January 2014, which reduced the purchase price of the shares and the instalment repayments of the loan advanced to the appellant for the purchase confirmed the validity treatment of the SPA. It was only on 2 June 2014 that DGL and the appellant purportedly agreed to cancel the SPA and resorted to the new arrangement in which the appellant surrendered the 11 520 shares to DGL, which then retained the 27 200 shares it held prior to the SPA and remained an 85% shareholder in PAM, and effected through the resolutions passed by PAM on 31 October 2014. Apparently, the two Trusts retained the shares they had purchased on 28 May 2013.

On 31 October 2014, PAM passed several resolutions through which it increased its issued share capital to 55 510, consisting of 27 200 held by DGL and private placements of 19 984 shares to the appellant, 2 351 shares to the Community Trust and 1 175 to the Employees' Trust. The total shares held by each Trust, inclusive of the shares purchased on 28 May 2013, became 5 551 and 2 775, respectively. On the same day, PAM issued new share certificates to these four shareholders. The effect of the resolutions and the rights issue was that the equity percentages embodied in the indigenisation implementation plan in respect of each shareholder were maintained.

It was further common cause that in terms of clause 6.1.1 as read with clause 6.1.2 and 7.11 of the SPA, the Charge and Pledge of Shares was to be preceded by the transfer of the Sale

Shares into the purchaser. Again, as noted above, the appellant conceded in its letter of 18 June 2013 and in para 11 of the Appellant's Case that all the conditions precedent outlined in clause 3 of the SPA, which included the transfer of the purchased shares, had been fulfilled by 18 June 2013.

It was common cause that the consummation of the SPA was not preceded by any s 11 (1) (b) of the Exchange Control Regulations 1996, approval. The section reads:

> "***11. Payments outside Zimbabwe***
> (1) Subject to subsection (2), unless otherwise authorised by an exchange control authority, no Zimbabwean resident shall—
> (*a*) make any payment outside Zimbabwe; or
> (*b*) incur any obligation to make a payment outside Zimbabwe.
> (2) Subsection (1) shall not apply to—
> (*a*) any act done by an individual with free funds which were available to him at the time of the act concerned; or
> (*b*) any lawful transaction with money in a foreign currency account.

The position, in regards to s 11 (1), enunciated in *Barker* v *African Homesteads Touring & Safaris (Pvt) Ltd & Anor* 2003 (2) ZLR 6 (S) at 9D by SANDURA JA is that both the actual payment and agreement to make payment outside Zimbabwe would be unlawful unless authorised by the exchange control authority. See also *International Who's Who Ltd* v *Bernstein Clothing (Pvt) Ltd* SC 28/99. However, in terms of s 10 (1) (a) of the same regulations, an agreement to pay to or for the credit of the foreign resident in Zimbabwe would not be unlawful but the actual payment would be unlawful unless authorized by the exchange control authority.

I have carefully scrutinized both the SPA and the "Charge and Pledge of Share" agreement and have not found the place of payment clause in either of these documents. Clause 5 of the SPA, which dealt with the payment of the purchase price, did not indicate where payment was to be made. It was only in clause 6.2.1 that an oblique but opaque payment instruction was made to PAM to "transmit all dividends due to the purchaser directly to the seller". It appears from clause 6.2.1 in the original SPA that DGL held bank accounts both inside and outside Zimbabwe. Although reference to DGL accounts was omitted in the 11 December 2013 amendment of that clause, the instruction "to transmit all dividends due to the purchaser directly to the seller" was retained. There is no reason to find the direct payments to seller instruction to have been analogous with payments outside rather than inside Zimbabwe. This finding negates the application of s 11 (1) (b) to the instalment method of payment prescribed in the SPA. Simply put, the appellant did not incur an obligation to make payment to a foreign resident outside Zimbabwe. Rather it agreed to make payment to a foreign resident in Zimbabwe, which, according to the *Barker* case, *supra*, at 9B-C was in itself lawful and did not require exchange control authority. In the premises, the alternative contention raised by the appellant fails.

Whether an illegal agreement bears legally recognized tax consequences

I would have upheld the respondent's contention that even an illegal agreement is subject to taxation had I found the transaction illegal by virtue of contravening s 11 (1) (a) of the Exchange Control Regulations of 1996. I would have done so for the following reasons. The appellant relied on such cases as *Waste Management Services v City of Harare* 2000 (1) ZLR 172 (H) at 175C-G which relied on *Sasfin (Pty) Ltd* v *Beukes* 1989 (1) SA 1 (A) and *Schierhout* v *Minister of Justice* 1926 AD 99 at 109 for the general proposition that our Courts will not enforce an illegal contract. This approach received the i*mprimatur* of law in this jurisdiction in the Supreme Court case of *Dube* v *Khumalo* 1986 (2) ZLR 103 (S) at 109D-F.

It seems to me that the South African position on the matter reflects the correct position of our tax law on the point. The South African position is that an illegal transaction is liable to taxation as long as the requirements of the respective taxing statutes are met. This position has been consistently stated in cases such as *CIR* v *Delagoa Bay Cigarette Co. Ltd* 1918 TPD 391 at 394, *Commissioner for Inland Revenue* v *Insolvent Estate Botha t/a 'Trio Kulture'* 1990 (2) SA 548 (A) at 556A-558D and 565J-566A and even in the case cited by Mr *Girach*, for the appellant, *MP Finance Group* v *CSARS* 2007 (5) SA 521 (SCA).

In *CIR* v *Delagoa Bay Cigarette Co. Ltd*, *supra*, at 394 BRISTOWE J answered the question whether an illegal transaction would be liable to tax in this illuminating manner:

> "I do not think it is material for the purposes of this case whether the business carried on by the company is legal or illegal. Excess profits duty, like income tax, is leviable on all incomes exceeding the specified minimum, and after making the prescribed calculations and deducting the exemptions, abatements and deductions enumerated in the statute. The source of the income is immaterial. This was so held in *Partridge v Mallandaine* (18 QBD 276), where the profits of a betting business was held to be taxable to income tax; DENMAN J, saying that "even the fact of a vocation being unlawful could not be set up against the demand for income tax". If the income itself is taxable it follows I think that if the prizes would have been a legitimate deduction, had the business been legal, they would equally be a legitimate deduction if the business is illegal. The deductions permitted by our statute are not made to depend on any question of legality or illegality; and in *Partridge v Mallandaine* it was not suggested that betting losses could not be deducted. Indeed, it seems common sense that if illegal profits are taxable they must be subject to the same deductions as if they were legal."

Again, in *Commissioner for Inland Revenue* v *Insolvent Estate Botha t/a 'Trio Kulture'*, *supra,* at 556A-558D where the question for determination was whether sales tax was payable in respect of void transactions, HOEXTER JA, who wrote the majority judgment incisively noted that the general proposition that a contract forbidden by or performed in defiance of a statute is *inter partes* illegal and void and cannot be enforced, upheld or ratified by a Court was jurisprudentially sound but inapplicable and ineffective to a charge by the tax collector arising from a statutory enactment as long as the taxpayer falls within the ambit of the clear and unambiguous letter of the taxing enactment. He stated at 560 B-H that:

> "In its ordinary meaning the word agreement signifies an accord or concurrence of minds…To read 'an agreement whereby a party agrees to sell' in the statutory definition as signifying 'an agreement enforceable at law whereby a party agrees to sell' involves, so I consider, an arbitrary retrenchment of the ordinary and natural meaning…NESTADT JA detects in ss 5 (2) (a) and 7 of the Act indications that Parliament contemplated the payment of sales tax by vendors only in respect of 'valid sales'. With that appraisal I would respectfully disagree. In my judgment the provisions cited by my Brother do not in fact conduce to the conclusion reached by him…..The conclusion at which I arrive is that the definition of sale in s 1 of the Act comprehends agreements of sale whether they be legal or illegal. This construction is not, I consider, an unreasonable one. Nor does it produce any obvious repugnance or inconsistency. In particular such construction does not in any way serve to perpetuate any illegality or criminal infraction. It seems to me rather to accord both with common sense and sound commercial principle. Beyond the context of a statute itself any speculation upon the intention of Parliament in enacting it is dangerous. Bearing in mind this hazard it is nevertheless difficult not to be repelled, more particularly perhaps in the case of a fiscal statute, by the notion of a capricious legislative intent to discriminate in favour of vendors in illicit sales."

It seems to me that even NESTADT JA recognised in his dissenting judgment that the application of the Income Tax Act was unaffected by the notion of illegality. He said at 565J-566A:

> "On the contrary, the indications are that, differing from the Income Tax Act, under which income is taxed even if it arises from an illegal source (Meyerowitz and Spiro *Income Tax in South Africa* para 300), Parliament contemplated only valid sales being taxed under the Sales Tax Act."

The same principle was restated in the *MP Finance Group* case, *supra*.

I would have found the case of *Commissioner of Taxes* v *G* 1981 ZLR 275 (AD), which held that the receipt of stolen money did not constitute the kind of receipt envisaged in s 8 (1) of the Income Tax and was therefore not taxable in the hands of the thief, distinguishable with the present case on the facts. The present matter did not involve any questions of theft or the receipt of any benefits, derived from theft. As I said, I would have found that the sentiments expressed in the above cited 1918, 1990 and 2007 South African cases correctly reflect the position in our own law and would have upheld the Commissioner's contention on the point.

I, therefore, hold that the 28 May 2013, SPA was valid and unaffected by the provisions of s 11 (1) (b) of the Exchange Control Regulations, SI 109 of 1996 or as I will demonstrate in dealing with the second issue the subsequent events of 31 October 2014.

Whether the purchase price was US$15 120 000 or US$3.8 million

The answer to this issue is to be found in the provisions of s 19 (1) of the CGT Act, which stipulates that:

> "**19 Provisions relating to credit sales where ownership passes**
>
> (1) If any taxpayer has entered into any agreement with any other person in respect of any specified asset the effect of which is that—
>
> (*a*) the ownership shall pass to that other person on delivery of the specified asset; and
>
> (*b*) the amount payable to the taxpayer under the agreement shall be paid in instalments;
>
> the whole of that amount shall, for the purposes of this Act, be deemed to have accrued to the taxpayer on the date on which the agreement was entered into:

The essential requirements of s 19 (1) consist of the consummation of any credit sale agreement for the acquisition of a specified asset where ownership will pass to the purchaser on delivery and for which the whole amount is deemed to have accrued on the date the credit sale was consummated.

I have already found that the SPA was a valid agreement for the disposal of shares. It contemplated the passing of ownership on delivery of the shares, especially in clauses 6 and 7. The appellant did not disclose the date, in 2013, on which the ownership of shares passed. However, the letter of 18 June 2013, the indigenization plan letter of 21 August 2013, the first application for the US$9 million rights issue of 10 December 2013 and the first Charge and Pledge of Shares Agreement of 11 December 2013 showed that the ownership of 11 520 shares had passed to the appellant as contemplated in the SPA of 28 May 2013 by 18 June 2013. It was a credit sale payable in 7 annual instalments. The whole purchase price was deemed to have accrued on the date the agreement was executed. All the essential requisites of s 19 (1) were thus met.

It was common cause that DGL, as a foreign resident, was liable to CGT in terms of both the provisions of s 6 of the CGT Act and Article 6 (1) as read with Article 14 (1) of the Double Taxation Agreement between Zimbabwe and the United Kingdom for the disposal of its shares in PAM to the appellant. Section 9 of the CGT Act as read with s 10 (1) (b) of the Income Tax Act provides for the taxation of deemed income. The deemed income accrued to DGL on 28 May

2013, which was the date the agreement took effect. That date fell into the 2013 capital gains tax year of assessment. DGL and in its place, appellant, as its lawfully appointed representative taxpayer, became liable for the payment of CGT on 28 May 2013. This was before the purported amendment to the purchase price of 29 January 2014 or the purported cancellation of the agreement on 31 October 2014, which in any event fell into a separate capital gains tax year of assessment. In my view, the subsequent amendment and events of 31 October 2014 did not have any bearing on the capital gains tax due in the 2013 year of assessment.

It seems to me, that the very existence of the SPA on 28 May 2013 created capital gains tax consequences in the 2013 tax year, which could not be erased by both the purported amendment to the purchase price of 29 January 2014 and the purported cancellation of that agreement of 31 October 2014. These purported events took place in a different tax year of assessment and would not retrospectively affect the events which took place in the 2013 capital gains tax year of assessment on 28 May 2013. After, all it is a matter of hard fact that the SPA was in existence on 28 May 2013.

Accordingly, the appellant was liable for capital gains tax on the sum of US$15 120 000, which was the amount deemed, by operation of law, to have accrued on 28 May 2013.

The appropriate penalty

The respondent imposed the maximum penalty prescribed by s 23 (i) of the CGT Act as read with s 46 (1) and (6) of the Income Tax Act. In terms of s 46 (6) of the Income Tax Act, as incorporated by s 23(i) of the CGT Act, the dollar for dollar penalty can only be imposed where the default in rendering the return was motivated by either an intention to evade, avoid or postpone the payment of the tax due.

In the present case, the appellant, on behalf of DGL, indicated that it did not pay any CGT on the transaction because it genuinely believed that the SPA was invalid. I find this explanation to have been a contrived after thought. This is because the appellant was unaware of the potential invalidity of the SPA at the time it ought to have filed the CGT return. The awareness was precipitated by the request of 6 January 2014 from the Exchange Control Authority to regularize the localization of the indigenization transaction. The appellant, on behalf of DGL, did not, therefore, provide any explanation for failing to render the CGT return in respect of this transaction. Accordingly, I find that it deliberately intended to evade the payment of the appropriate CGT due from the disposal of the shares.

In the result, the only appropriate penalty for such misconduct is the dollar for dollar penalty. The Commissioner correctly imposed the 100% penalty on the appellant.

Costs

The appellant was within its legal rights to raise the issue of the invalidity of the SPA on objection to the Commissioner and on appeal to this Court. The grounds of appeal were arguable and not frivolous. I cannot, therefore, make any adverse order for costs against the appellant. Rather, each party shall bear its own costs

Disposition

Accordingly, it is ordered that:

1. The appeal be and is hereby dismissed in its entirety.
2. The capital gains tax assessment number 20329198 issued by the Commissioner on 9 June 2016 in respect of the 2013 tax year be and is hereby confirmed.
3. Each party shall bear its own costs.

Dube Manikai and Hwacha, the appellant's legal practitioners
Kantor and Immerman, the respondent's legal practitioners.