



**JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
JUDICIAL REVIEW CASE NO. 33 OF 2015**



BETWEEN:

THE STATE

-AND-

**THE COMMISSIONER GENERAL OF
THE MALAWI REVENUE AUTHORITY RESPONDENT**

EX PARTE: AIRTEL MALAWI LIMITED APPLICANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA

Mr. Sauti Phiri, of Counsel, for the Applicant

Ms. Makwinja, of Counsel, for the Respondent

Mrs. A. Mpasu, Court Clerk

JUDGEMENT

Kenyatta Nyirenda, J.

This case is before this Court, through the judicial review machinery within the purview of section 43 of the Constitution and order 53 of the Rules of the Supreme Court, so that this Court can judicially review the decision by the Respondent “to enforce the collection of non resident tax from Airtel Malawi Limited, which is a resident of Malawi, when MRA has an issue with Zain International BV, which is not resident in Malawi and is not the same as Airtel Malawi Limited” [hereinafter referred to as the “challenged decision”].

The Applicant seeks (a) a declaration that the challenged decision is unlawful for being ultra-vires, alternatively, outside the limits of its tax jurisdiction (b) a declaration that MRA lacks jurisdiction both in the narrow and wider senses, (c) a declaration that the Respondent has erred in law by misinterpreting the Taxation Act and the rule that a shareholder of a company is not the same as the company, (d) an order similar to certiorari quashing the challenged decision and an injunction



