**Commissioner-General v MacArthur and Baker International (Inc)**

**Division:** Court of Appeal of Tanzania at Dar-es-Salaam

**Date of judgment:** 20 December 2000

**Case Number:** 42/99

**Before:** Makame, Kisanga and lugakingira JJA

**Sourced by:** L J S Mwandambo

**Summarised by:** H K Mutai

*[1] Companies – Resident company – Registration – Effect of registration – Whether a foreign company*

*registered under sections 320A and 321 was entitled to resident status – Companies Ordinance (Chapter*

*212), sections 14, 15, 320A and 321.*

*[2] Statutes – Construction – “Registered” –* Ejusdem generis *– Natural meaning – Whether the term*

*“registered” should be construed narrowly.*

*[3] Tax – Foreign corporation – Management fees withholding tax – Resident company – Exemption*

*from payment – Whether the Respondent was a resident company for the purposes of paying withholding*

*tax – Income Tax Act No 33 of 1974, sections 2(1), (2)(*b*)(i) and 34(1).*

**Editor’s Summary**

On 15 May 1997 MacArthur and Baker International (Inc) (“MBI”) concluded a debt collection agreement with the then National Bank of Commerce. At that time, MBI, a Delaware, USA-incorporated Company, was not yet registered in Tanzania. Registration was subsequently effected on 25 August 1997 under sections 320A and 321 of the Companies Ordinance. On 31 May 1997, National Bank of Commerce wired a sum of TShs 147 865 625 to MBI, pursuant to the contract terms, without paying any management fees withholding tax on it to the Tanzanian authorities. Upon learning of this, the Income Tax Commissioner, purportedly acting under section 34(1) of the Income Tax Act, recovered the tax on this sum from National Bank of Commerce and on five further payments to MBI effected between 2 October 1997 and 19 May 1998. MBI sought redress from the High Court in the form of orders of *certiorari* quashing the decisions of the Appellants. The application was granted. The Appellants now appealed on the grounds, *inter alia*, that the trial Judge erred in finding that compliance with sections 320A and 321 of the Companies Ordinance amounted to the registration required by section 2(2)(*b*)(i) of the Income Tax Act, and in finding that MBI was a resident company. Counsel for MBI contended that the word “registered” in the Income Tax Act should not be construed under the *ejusdem generis* rule with the words “incorporated” and “established”, as suggested by the Appellants. Rather it had to be construed literally with the effect that, in this context, the certificate issued to MBI under sections 320A and 321 conferred upon it the status of residence.

**Held** – Tax provisions were to be interpreted strictly and, in construing a taxing Act, one had to look merely at what was clearly stated. Applying this principle to sections 2(1) and (2)(*b*)(i), the word “registered” had to be given its natural meaning and in this instance registration under sections 14 and 15 of the Companies Ordinance was not contemplated. Registration under sections 320A and 321 was sufficient to confer resident status on MBI. As registration did not take place until 25 August 1997, MBI was not a registered company at the time of the first payment by National Bank of Commerce and it was, therefore, liable to pay management fees withholding tax on the first sum it received. Section 34(1) of the Income Tax Act clearly imposed an obligation to pay tax at the time of payment of “any amount to any non-resident” and it was therefore incorrect to argue, as counsel for MBI did, that where a foreign company subsequently had itself registered, it was liable to pay only corporation tax. The appeal would be allowed in part and the Appellants would therefore have to refund the collections made in respect of all payments save the first. **No cases referred to in judgment**