Uganda Revenue Authority

DEVELOPING UGANDA TOGETHER

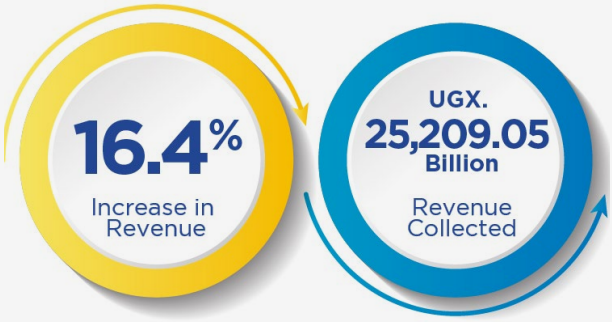
CASE DIGEST

VOLUME VI

July-September 2023

FOREWORD

On behalf of the Management of the Uganda Revenue Authority, I take this opportunity to extend my gratitude to our taxpayers who enabled us to surpass the revenue target of the last Financial Year 2022/23 with collections of UGX. 25,209.05 billion against the target of UGX. 25,151.57 billion. This indicated performance at 100.23% with a year on year revenue growth of 16.4%. Thank you for diligently paying your taxes.



As URA, we undertake to continue supporting our taxpayers and their representatives in whatever way we can. One such way is the tax education and sensitization which we deliver through the quarterly publications of the URA Case Digest.

In the wise words of the American Writer, Louis Dearborn L'Amour:

> ***Knowledge is like money: to be of value it must circulate, and in circulating it can increase in quantity and, hopefully, in value.***

In circulating these decisions of the Courts of Law and the Tax Appeals Tribunal, we hope that the knowledge therein adds value to you and serves as a useful guide on how to handle your tax affairs. We also hope that the information shall lead to open discussions regarding how we can seamlessly improve tax administration and tax collection so as to deliver our motherland, Uganda from economic dependence, well within our mandate.

We are pleased to present Volume VI of the URA Case Digest which contains decisions delivered in the 1st Quarter of the Financial Year 2023/24. One of the key decisions in this volume is the Judgment in Commissioner General, Uganda Revenue Authority Versus Airtel

Uganda Limited, Supreme Court Civil Appeal No. 32 of 2020. This decision, delivered by the Supreme Court which is the highest court of the land, is crucial for revenue collection because it settled the vital issue of penalty on Value Added Tax during the pendency of tax objection proceedings and any appeals arising therefrom. Several other issues are canvassed in the 19 decisions contained in this volume. I am certain that you will find the information of great value.

We recognize and appreciate our stakeholders including the Courts of Law and the Tax Appeals Tribunal, who facilitate the resolution of disputes; the legal fraternity, the tax representatives and agents, plus the auditors and accountants, who represent our taxpayers and with whom we walk this noble journey.

We commend our team of astute lawyers in the Litigation Division, Legal Services and Board Affairs Department of URA, for the proficient representation they deliver. We are also grateful to our clients from all the departments of the URA for the technical support offered in resolution of the disputes. Finally, we laud the entire editorial team of the URA Case Digest for yet again facilitating the publication of this exciting volume. Thank you all for the great work you are doing.

"Developing Uganda Together"

Stella Nyapendi Chombo (Mrs.)

Ag. COMMISSIONER LEGAL SERVICES & BOARD AFFAIRS DEPARTMENT

EDITORIAL NOTE

Dear Reader,

In September of 2022, we published our Inaugural Volume of the URA Case Digest, with a commitment to quarterly publications of the decisions of the Courts of Law and the Tax Appeals Tribunal. One year down the road, I am pleased to report that we have delivered on this promise.

On behalf of the editorial team, we are grateful to God who has enabled us to deliver on this pledge. We cannot forget to thank you, our dear reader, for your unwavering support and encouraging commendations given on the last 5 volumes.

We are delighted to present Volume VI of the URA Case Digest containing judgments and rulings delivered in the months of July to September of 2023. The decisions of the Courts of Law and the Tax Appeals Tribunal determine the application of tax laws to the facts. This is very key given the constant reviews and amendments of tax laws. At the Uganda Revenue Authority, our interest is not just to collect tax, but to collect the right tax. To this end, these decisions guide us in executing our mandate of assessment, collection and administration of taxes, fees and non-tax revenue in Uganda.

This volume contains a total of 20 decisions. The areas of the law covered under domestic taxes include penal tax on unpaid VAT, VAT on imported services, forceful registration for VAT, re-characterization of transactions, and the duty to file returns, among others. In respect of customs, this Volume covers issues relating to customs valuation methods, customs classification, certificates of origin, and preferential treatment. Also covered are several other areas of the law such as the right to be heard and the right to a fair hearing in employment matters, jurisdiction, statutory timelines for filing cases, the requirement to pay 30% of the tax in dispute, temporary injunctions, among others.

The editorial team wishes to re-echo its commitment to ensure quality and timely publication of the URA Case Digest, with the aim of contributing to knowledge sharing and easing research for our audience.

Have a good read!

> ***"Disseminating knowledge is the human duty, sharing it about so that all can benefit."***
>
> – Tracy Rees (British Author)

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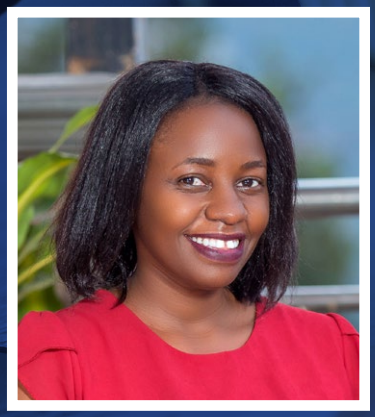

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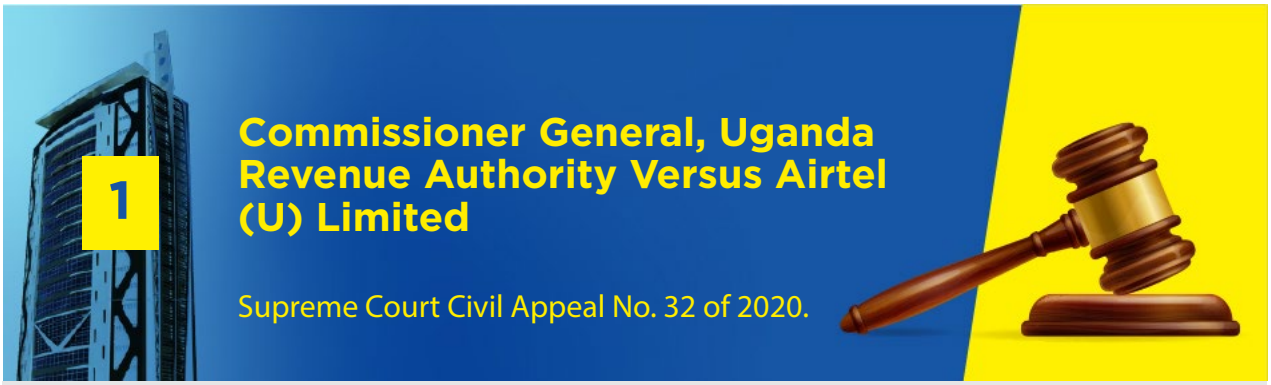
THE URA CASE DIGEST, VOLUME VI

SUPREME COURT DECISION



1 Commissioner General, Uganda Revenue Authority Versus Airtel (U) Limited

Supreme Court Civil Appeal No. 32 of 2020.

Brief Facts:

Airtel (U) Limited is engaged in the business of providing various telecommunication services and started operating in Uganda after acquiring the assets and assuming the liabilities of Celtel Uganda Ltd.

On 26th February, 2004, URA issued Celtel with a tax assessment consisting of Excise Duty, VAT and Penal tax totaling to UGX. 1,024,209,566. Celtel had prior to its acquisition, accepted partial liability but disputed VAT of UGX. 358,652,458 and Penal Tax of UGX. 253,161,660, all totaling to UGX. 611,814,118.

Celtel lodged objections against the tax debt in the Tax Appeals Tribunal (TAT) which, upon consideration, dismissed the objection. Being dissatisfied with the Tax Appeals Tribunal's findings, Celtel lodged appeals in the High Court and Court of Appeal which appeals were dismissed and the decision of the Tax Appeals Tribunal upheld.

Upon acquisition of the assets and liabilities of Celtel in 2010, Airtel (U) Ltd opted to pay the unpaid tax balance left by Celtel of UGX. 428,269,883. However, URA informed Airtel (U) Ltd that, the unpaid tax had accrued interest during the pendency of the tax objection proceedings and therefore, the tax liability had increased to UGX. 1,555,836,915. Airtel disputed this increased tax liability, but went ahead to pay the same while reserving the right to challenge the validity of the assessment and the interest accrual, which it did through filing a suit in the High Court.

At the High Court, Airtel (U) Ltd sought for a declaration that the accumulated interest was unjust, that the assessment had been imposed contrary to the law and prayed for an order directing URA to refund the sum collected with interest, general damages and costs of the suit.

The High Court found that the interest imposed by URA for failing to pay outstanding VAT by the due date as is stipulated under the VAT Act, was penal tax and therefore, there was no merit in Airtel's suit and dismissed it with costs.

Airtel (U) Ltd subsequently lodged an appeal in the Court of Appeal seeking for orders as to whether a taxpayer who objects to a tax assessment in the Tax Appeals Tribunal ought to be subjected to a penal tax in the event that the taxpayer's objection is subsequently dismissed.

The Court of Appeal consequently ruled in favor of Airtel holding that the due lodgment of an objection in the Tax Appeal Tribunal and payment of 30% of the disputed tax, suspends the requirement to pay the sum objected to, until the objection is dismissed. It held that interest/penal tax does not accrue on the unpaid balance of the disputed tax during the pendency of the objection

proceedings and any appeals arising therefrom.

URA being dissatisfied with the findings of the Court of Appeal lodged an appeal to the Supreme Court detailing 6 grounds of appeal.

Issue for determination:

Whether the Court of Appeal gave the proper import of the relevant legal provision on penal tax in reaching its judgment.

> ***The imposition of penal tax does not, per se, affect the right to fair hearing or the right to access to courts as the taxpayer is still permitted to institute court process despite the imposed penal tax***
>
> **Elizabeth Musoke, JSC**

Judgment of the Supreme Court:

a) Section 65(3) of the VAT Act imposes a penal tax where a taxpayer does not pay tax on the due date.

b) It goes without saying that a person notified of outstanding VAT and penal tax is obligated to clear his debt. The consequence of failure to clear one's debt is obviously that further penal tax will accrue.

c) Section 14 of the TAT Act provides for appeals to the TAT while Section 15(1) of the TAT Act imposes procedural requirements that must be fulfilled before lodging the appeal to TAT. Basing on the language employed, none of these provisions provide for suspension of penal tax during the pendency of tax objection proceedings. The principle is that any such suspension may only be justified upon what is clearly stated in a statute and not by intendment.

d) The imposition of penal tax does not, per se, affect the right to fair hearing or the right to access to courts as the taxpayer is still permitted to institute court process despite the imposed penal tax.

e) Article 44(c) of the 1995 Constitution was inapplicable in the present case.

f) Penal tax is payable where a person fails to pay tax by the due date, which in this case is the date the person was served with an assessment. The person may choose to file objection proceedings but the penal tax will continue to accrue until the date of payment of the outstanding tax in full.

g) If Parliament had intended for the penal tax to be suspended until after the conclusion of the tax objection proceedings and any appeals arising therefrom, it would have expressly stated so.

h) It is not for court to introduce a new position by intendment as the Court of Appeal, with the greatest of respect, did in the present case. It is not for the Court, while conducting statutory interpretation, to frame policy one way or the other. The Court must merely state the position of the law as it is.

i) Tax penalties are aimed at ensuring compliance with tax laws thus where a person has failed to file timely tax returns which leads to retaining revenue that is due to URA and the public, penal tax serves the purpose of ensuring tax compliance in the future.

j) The Court of Appeal erred in finding that accrual of penal tax is suspended during the pendency of tax objection proceedings as the finding is not supported by the relevant tax laws.

k) The Court of Appeal therefore erred in ordering a refund of UGX. 1,555,836,915 paid by Airtel as unpaid VAT and penal tax thereon that accrued during the pendency of the tax objection proceedings.

The Supreme Court set aside the decision of the Court of Appeal, and reinstated the decision of the High Court dismissing Airtel's suit. URA was also granted costs in the Supreme Court and the Courts below.

> ***"The Court of Appeal erred in finding that accrual of penal tax is suspended during the pendency of tax objection proceedings as the finding is not supported by the relevant tax laws."***
>
> **-Elizabeth Musoke, JSC**

DOMESTIC TAXES

Brief Facts:

The Appellant, a company engaged in the hotel and hospitality industry, entered into an international license agreement with Sheraton International Inc for the right to operate its hotel in Kampala under the 'Sheraton' brand and also to use Sheraton International's centralized reservations system. The Appellant made payments for use of the brand and the centralized reservation system, upon which the Respondent imposed VAT of UGX. 398,418,385 on the basis that use of the brand and centralized reservation system amounted to imported services. The Appellant objected to the assessment, which was consequently disallowed by the Respondent. The Appellant challenged the decision and the Tax Appeals Tribunal delivered its ruling dismissing the Application, hence this appeal.

Grounds of Appeal:

- The Tax Appeals Tribunal erred in law when it held that the Central Reservation System was an imported service.
- The Tax Appeals Tribunal erred in law when it held that the supply of the central reservation system was merely an ancillary service to the principal service, namely the right to operate the hotel under the Sheraton brand using the system, thereby attracting VAT.

Judgment of the High Court:

a) Import of services involves the provision of a service by a person who is resident or carries on business outside Uganda to a person that is resident or carries on business in Uganda.

b) It must be noted that VAT is a destination-based consumption tax, one levied on commercial activities, not as a charge on the business, but on the consumer. It is therefore a tax on activity.

c) Court relied on the OECD International VAT/VST Guidelines which provide that, in respect to trade in intangibles, and in respect of business to business supplies, the jurisdiction in which the customer is located has the taxing rights over internationally traded services or intangibles.

d) Court concluded that a review of the license agreement demonstrates that there is an agreement under which one party allows the other to use the Sheraton Brand to operate its hotel in exchange for consideration. Such an agreement is not one for the provision of money or goods and therefore is a service.

e) The Appellant conflated the taxable activity of consumption leading to VAT. In the instant case, there is a provision of a software through which third- parties outside of Uganda can make bookings.

f) The consumer of the service is therefore not the person booking, but the Appellant which procured the service to enable prospective customers book with it.

g) In determining who the consumer is, one does not, except otherwise provided for by law or other permissible exceptions, consider non-parties to the contract for the supply of services.

h) The service was utilized by the Appellant in respect of its hotel business in Uganda and was provided by a person not resident of or having a place of business in Uganda. It accordingly follows that there was an import of services.

i) Court noted that the provision of the CRS is inseparably linked to the provision of the license by Sheraton International Limited to the Appellant, as this was part of the effort to brand, operate and position the Appellant's hotel as a Sheraton Hotel.

j) There would be no provision of the CRS from Starwood to the Appellant without the broad brand license relationship with Sheraton.

k) The CRS is provided to an associated company of the licensor. The purpose is the provision of a uniform CRS to all member hotels, including hotels which are members by license.

l) A hotel needs a CRS to operate. Prior to the licensing agreement, it is inconceivable that the Appellant did not have a CRS.

m) As noted above, the requirement to use the CRS from Starwood was part and parcel of the licensing relationship in order to bring the Appellant's hotel within the Sheraton Group by adopting and using the same software as the other members of the group.

n) The Tax Appeals Tribunal correctly held that the supply of the central reservation system was merely an ancillary service to the principal service, namely the right to operate the hotel under the Sheraton brand using the system, thereby attracting VAT.

Court found that the grounds of appeal were without merit and dismissed the appeal with costs to the Respondent.

3

Bullion Refinery Limited Versus Uganda Revenue Authority

TAT Application No. 87 of 2021.2022.

Brief Facts:

The Applicant deals in the business of refining gold in Uganda. Around June 2020, the respondent conducted an audit on the Applicant for the period February 2018 to June 2019 and issued additional income tax assessments of UGX. 486,299,992 and UGX. 200,422,051 respectively.

The income tax assessment was issued firstly because the Applicant's loan was recharacterized as income because it had no supporting documents; secondly it was issued due to undeclared sales from underdeclared refinery charges. The VAT assessment arose from the Respondent using a retrospective VAT registration certificate on the Applicant. It also arose from adjustments in the income tax of the Applicant. The Respondent also assessed an additional VAT assessment of UGX. 1,512,479 resulting from using exchange rates of VAT as opposed to those of income tax. The Applicant objected and the Respondent disallowed the objection.

Issues for Determination:

- Whether the Applicant is liable to pay the taxes assessed?
- What remedies are available?

Ruling of the Tax Appeals Tribunal:

a) The powers of the Respondent to re-characterize a transaction are statutory. The Tribunal will not interfere with such powers unless it is shown that the decision of the Respondent was illegal, irrational or was made with procedural impropriety.

> ***"The powers of the Respondent to re-characterize a transaction are statutory. The Tribunal will not interfere with such powers unless it is shown that the decision of the Respondent was illegal, irrational or was made with procedural impropriety."***
>
> **-Tax Appeals Tribunal-**

b) The Tribunal has to decide whether the Respondent did not exercise proper discretion when it decided to recharacterize the loan.

c) The Applicant obtained a loan of US$ 500,000 from Top Straight-line General Trading LLC for purposes of procuring refinery equipment.

d) The loan agreement was in Arabic. There is nothing to show that it was translated from Arabic to the language of the signatory or the Applicant.

e) The Illiterates Protection Act requires verification of signatures of illiterate people and documents written for them. It is the duty of the person who writes the name of the illiterate or who writes a document on behalf of the illiterate to prove that the contents were understood.

f) The Applicant failed to show supporting documents for this loan agreement, like movement of the money to it or a resolution supporting the loan.

> ***The Commissioner General may register a person if there are reasonable grounds for believing that the person is required to apply for registration.***
>
> **-Tax Appeals Tribunal-**

g) The Applicant did not show any movement of loan amounts into its accounts or have any bank statements in that regard or an acknowledgment of receipt of the money. Additionally, the loan did not show any consideration for it.

h) The value of receipts tendered in as evidence add up to USD 218,500 while the balance of USD 281,500 was not accounted for.

i) Additionally, the loan raises money laundering concerns where for a loan of US$500,000, the Applicant claimed to bring in amounts less than USD 9,000 in order to circumvent the Anti-Money Laundering Act.

j) The Respondent was justified in recharacterizing the Applicant's loan and unexplained sums as undeclared income.

k) On the issue of refining charges, the Respondent claimed to have used the average refining charges of other industrial players. However, the evidence of these other players was not adduced in Court.

l) The Respondent claimed that the industrial charge was USD 100 per kilogram. It was not clear why the Respondent chose the charge of USD 50.

m) The Respondent did not disclose who the other two industrial players were and as a result, the Respondent's recharacterization of the refinery charge was not justified and any assessment thereon had to be set aside.

n) On forceful registration of VAT, the Commissioner General may register a person if there are reasonable grounds for believing that the person is required to apply for registration.

o) The Applicant does not deny that it was making taxable supplies in September or November 2018.

p) Though the application for VAT registration was rejected, the Commissioner General had reasonable grounds for believing the Applicant should have been registered.

q) The registration takes effect from the date specified in the certificate of registration.

r) The Commissioner was justified to forcibly register the Applicant and this registration took effect from the date of registration.

s) As a result, any taxable supplies made from the date of registration attract VAT.

t) The Applicant is therefore liable to pay income tax on unsecured loans that were recharacterized. The Respondent was not justified to use an industrial average of USD 50 and the Respondent was justified to register the Applicant forcibly.

The Applicant was ordered to pay Income Tax of UGX. 353,106,000, VAT of UGX. 211,863,360, VAT of UGX. 1,512,000 resulting from using different exchange rates, and costs of the suit.

4 Capital Shoppers Limited Versus Uganda Revenue Authority

TAT Application No. 34 of 2021.

Brief Facts:

The Applicant is a limited liability company carrying on the business of operating supermarkets. In March 2020, the Respondent commenced an audit into the affairs of the Applicant for the period March 2012 to December 2019 and assessed the Applicant a sum of UGX. 6,984,601,254. The Applicant objected and the Respondent made an objection decision allowing the Applicant's objection in part and revised the assessment to UGX. 1,100,403,000.

The Applicant filed an Application for review challenging PAYE of UGX. 140,403,000 and VAT of UGX. 360,000,000 which resulted from the re-characterization of the loan of 2 billion from Rwanda as income from sales.

Issues for determination:

- Whether the Applicant is liable to pay the additional tax assessed?
- What remedies are available?

Ruling of the Tax Appeals Tribunal:

a) In respect of UGX. 600,000,000 being the corporation tax on recharacterization a perusal of the objection decisions shows that the question of re-characterization of the Applicant's director's loan formed part of the decision. But was never part of the application or the joint scheduling memorandum.

b) Without prejudice, the Applicant's witness testified that the company agreed to pay the corporation tax because it could not show that the money was transferred from Rwanda to Uganda.

c) If the corporation tax on recharacterization was part of the dispute, the Tribunal would still have gone ahead to find the Applicant liable to pay it.

d) In respect of VAT of UGX. 360,000,000 on re-characterization of the Applicant's director's loan, the question which the Tribunal must answer is whether the Respondent can deem that amounts re-characterized as sales give rise to VAT, without a deeming provision clearly set out in the VAT Act.

e) One of the canons of taxation is certainty. The taxpayer should know how much tax, what tax and why it is paying tax.

f) The problem with re-characterization of income for VAT purposes arises from the nature of supplies. Under the VAT Act, VAT is charged on standard rated and zero-rated supplies while exempt supplies attract no VAT.

g) If the Respondent was to re characterize income, in order to charge VAT,

there has to be evidence on the nature of supplies the Applicant made. Suppose the Applicant made zero rated and exempt supplies only, would VAT be due?

h) In this case, there is no evidence that the Applicant was only making standard-rated supplies. In the absence of such evidence the Tribunal cannot say that the VAT of UGX. 360,000,000 is due.

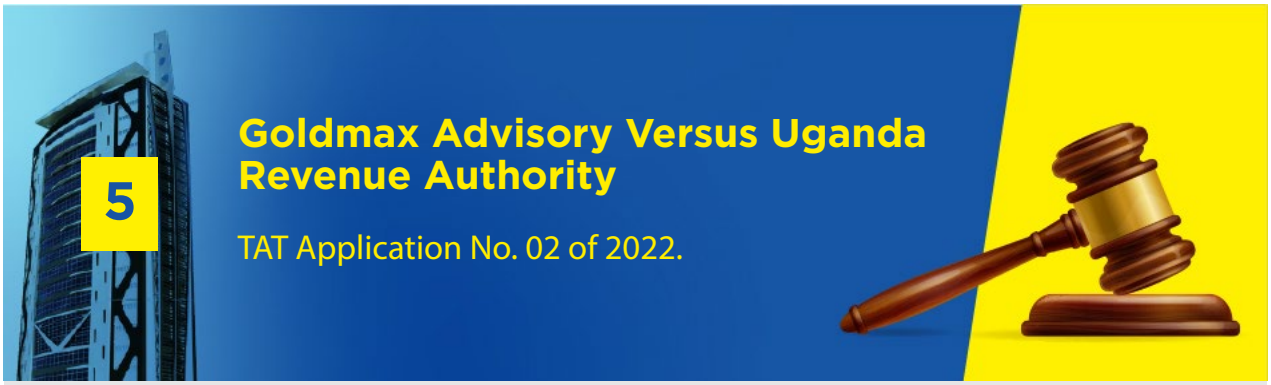
i) In respect of PAYE of UGX. 140,403,000, the Applicant presented a board resolution where it had been resolved that staff were to be paid a transport allowance of UGX. 5000 per working day.

j) Section 19 (2) (d) of the Income Tax Act excludes from employment income, any allowance given while undertaking travel in the course of performing duties of employment.

k) However, a perusal of the resolution and minutes do not show that the transport allowance paid to the Applicant's employees was for travel in the course of performing duties of employment.

l) The fact that transport allowances are deductible does not bar a taxpayer from withholding PAYE on the allowance. Therefore, the Applicant is obliged to pay UGX. 140,403,000.

The Tribunal held that the Applicant is liable to pay corporation tax assessment of UGX. 600,000,000, and PAYE of UGX. 140,403,000. VAT of UGX. 360,000,00 was set aside and the Respondent was awarded ¾ of the costs.



Brief Facts:

The Applicant is in the business of consultancy and hedge fund investments. In the Financial Year 2018/2019, the Applicant defaulted in filing an income tax return and was penalized UGX. 1,260,000. The Applicant objected to the penalty contending that it had engaged the Respondent and notified it of the failure to file its return. In support of its objection the Applicant furnished the Respondent with a copy of its bank statement. The Respondent discovered that the Applicant had undeclared deposits amounting to USD 13,552 which was the equivalent of UGX. 50,638,375. In the Applicant's submitted financial statements, the Applicant had listed its capital as UGX. 10,000,000. The Respondent therefore treated the extra money on the Applicant's bank account as undeclared income and issued the Applicant with an additional Income Tax Assessment of UGX. 12,215,783.

The Respondent raised a preliminary objection that the Applicant had not objected to the additional assessment of UGX 12,215,783 and as such, was prematurely before the Tribunal in respect of the said assessment.

Issues for determination:

- ❖ Whether the Applicant is liable to pay the taxes assessed?
- ❖ What are the available remedies?

Ruling of the Tax Appeals Tribunal:

a) The second assessment of UGX 12,215,783 was issued as an additional administrative assessment. It was not necessary for the Applicant to lodge a separate objection to it as it was a continuation of the dispute in respect of non-filing of returns. The preliminary objection was therefore overruled.

b) In respect of the first penal assessment, the Tribunal relied on Section 92A of the Income Tax Act which imposes on the Applicant a duty to file returns for every year of income and Section 21 of the Tax Procedure Code Act which allows the Commissioner to issue an assessment where a taxpayer fails to furnish a self-assessment for a tax period as required by the law.

c) Where the Applicant fails to file its return through the Respondent's online channels, it ought to have served the Respondent with a hard copy of the same and ensured that the same was filed.

d) The Applicant did not avail the Tribunal with any evidence that a hard copy of its return was ever served on the Respondent.

e) The Applicant waited for two years to pass before it sought a physical meeting with the Respondent to discuss the non-filing of its return.

f) The Applicant was found liable to pay the penal tax of UGX. 1,260,000.

g) In respect of the second assessment, it was the Tribunal's decision that the Respondent's attempt to recharacterize the Applicant's bank deposits as income is irrational because businesses are known to operate with amounts that are larger than what is stated as their share capital. Accordingly, the assessment of UGX. 12,215,783 was set aside.

The Application was partially allowed and each party ordered to bear their own costs of the suit.

6

Easy Save Supermarket Ltd Versus Uganda Revenue Authority

TAT Application No. 3 of 2023

Brief Facts:

The Applicant, a company operating supermarket business in Uganda, filed this Application challenging the Respondent's decision to impose on it penal tax of UGX. 84,000,000 on account of the Applicant's failure to use the Electronic Fiscal Receipting and Invoicing Solution (EFRIS) during the period of 1st Nov 2021 to 14th Nov 2021. The Applicant objected and the Respondent issued an objection decision disallowing the objection, hence this Application. The matter was heard and the parties filed submissions, wherein the Respondent raised a preliminary objection to the effect that the Applicant had not paid 30% of the tax in dispute as required by Section 15 of the Tax Appeals Tribunal Act.

Issues for determination:

- Whether the Applicant is liable to pay the taxes assessed?
- What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

a) A preliminary objection can be raised at any point during the trial.

b) The Applicant submitted that non-payment of 30% is a question of fact and law which can only be resolved by presentation of evidence and which cannot be presented after the parties have closed their cases.

c) However, the Applicant's witness in his witness statement testified that the Applicant was not able to deposit 30% of the tax in dispute because of the challenges caused by the effects of the COVID-19 Pandemic.

d) The Applicant was not prevented from adducing proof of payment of the 30% of the tax in dispute but rather its witness admitted that it failed to pay the requisite sum.

e) The Provisions of Section 15 of the Tax Appeals Tribunal Act are mandatory and the Applicant ought to have paid 30% of the tax in dispute as required.

f) In the circumstances, the Tribunal found that the Application was not properly before the Tribunal.

The Application was dismissed with costs to the Respondent.

CUSTOMS

7

Malkara Burlik Sut Ve Sut Mamulleri A.S Versus Sky Rocket Agency Co. Ltd, The Commissioner Customs, Uganda Revenue Authority & 4 others

HCCS No. 240 of 2023, No. 345 Of 2023 and No. 305 of 2023.

Brief Facts:

Court consolidated three suits to expedite the hearing because the subject matter were perishable goods, the suits involved the same parties and the parties sought related remedies.

In HCCS No. 240 of 2023, Malkara Burlik Sut Ve Sut Mamulleri A.S, sued Admirals, Adim Foods, Dumba Hadadi & Good Brothers International Ltd seeking a declaration of breach of contract, payment of the contractual sum of $82,500, a permanent injunction, among others. The Commissioner Customs, Uganda Revenue Authority was later added as party upon court's guidance.

In HCCS No. 305 of 2023, Sky Rocket Agency Co. Ltd sued Commissioner Customs, Uganda Revenue Authority seeking an order compelling URA to finalize the process of clearance of goods and to release them to Sky Rocket upon payment of the taxes.

In HCCS No. 345 of 2023, Malkara Burlik Sut Ve Sut Mamulleri A.S sued Sky Rocket Agency Co. Ltd, The Commissioner Customs, Uganda Revenue Authority, Admirals, Adim Foods, Dumba Hadadi & Good Brothers International Ltd seeking remedies of declaration that the goods are the property of Malkara Burlik Sut Ve Sut Mamulleri A.S, orders directing URA to release the container to Malkara Burlik Sut Ve Sut Mamulleri A.S for re-export, an injunction stopping URA from breaking the seal, clearing or releasing the consignment to any other party, damages, interest and costs.

Issues for determination:

- Whether the suit filed by the Plaintiff is competently before this Court?
- Who is the lawful owner of the goods in container No. MRU 369933 and whether the Plaintiff holds a lien over the goods?
- Whether the 3rd, 4th and 5th Defendants are liable for breach of contract?
- What remedies are available to the parties?

Judgment of the High Court:

a) Court reviewed the sale agreement dated 2nd March 2023 and noted that the two parties are Dumba Hadadi T/A Adim Foods & Fruits Supplies as the "Seller" and the 1st Defendant, Sky Rocket Agency Co. Ltd as the "Buyer".

b) The contract also stated that the seller is the owner of the consignment of the suit goods and the buyer has paid consideration of USD 50,000.

c) The general rule in the practice of international trade is that the Bill of Lading is the document of title.

d) Evidence was adduced of a Notice of Cessation of Business from Uganda Registration Services Bureau (URSB) stating that the 4th Defendant, Adim Foods & Fruit Supplies, ceased to carry on business from 21st February 2023. This was eight days before the Sale Agreement.

e) This means that at the time the sale agreement was executed, the purported seller did not legally exist and this was a fact in the knowledge of the buyer.

f) The Bill of Lading mentioned the 4th Defendant as the consignee and not the 5th Defendant, Mr. Dumba Hadadi. Court did not agree with the argument that since the 5th Defendant, who possessed the original Bill of Lading, was claiming to trade as the 4th Defendant who was the consignee, then he passed good title to the 1st Defendant.

g) Under common law basic principle of Nemo dat quod non habet, a seller/ transferor cannot give a better title to property than he or she possesses.

h) Therefore, since the 4th Defendant who was the consignee mentioned in the Bill of Lading had ceased to exist prior to the sale agreement, the 5th Defendant could not purport to be trading as the 4th Defendant that was a non-existent entity and claim to have capacity to contract and pass on good title to the 1st Defendant. The 1st Defendant could not acquire a better title to the goods if the 5th Defendant did not have any title in the first place.

i) From the evidence adduced, Court found that the 5th Defendant had no capacity to contract and this rendered the sale agreement illegal. Since the resultant sale agreement is tainted by illegality, it is a nullity and unenforceable.

j) Court further found that the Plaintiff company remains the rightful owner of the suit goods.

k) The 1st Defendant did not acquire the suit goods in good faith and the documents of title were not lawfully transferred to the 1st Defendant.

l) Further, Court found that the 3rd Defendant, Admirals Trading LLC, breached the terms of payment as agreed under the Commercial Invoice. However, there was no breach by the 4th and 5th Defendants since the Plaintiff had no contractual relationship with them.

m) Uganda Revenue Authority did not make any legal claim over the suit goods which were in their custody by virtue of their mandate as the Government tax collection agent and were being held by the 6th defendant for the same reason.

n) The URA adduced evidence vide an Interim Order from Misc. Application No. 373 of 2023 arising from HCCS No. 240 of 2023 stopping the URA from clearing or dealing with the suit goods in container No. MRU 369933.

o) In light of this evidence adduced, Court found that the claims against the 2nd Defendant (URA) and the 6th defendant (Good Brothers International Limited) had no merit.

Court found for the Plaintiff but dismissed the case against URA and Good Brothers International Limited.

8

Regal Paints Limited Versus Uganda Revenue Authority

TAT Application No. 10 of 2021.

Brief Facts:

The Applicant imports raw materials for manufacture of decorative paints. This was an Application challenging misclassification of imports by the Applicant and the denial of preferential treatment for goods imported under the COMESA and EAC treaties. In 2020, the Respondent conducted a customs post clearance audit on the Applicant for the period January, 2017 to December, 2019 and issued additional assessments of UGX. 3,741,720,936 against the Applicant. The additional assessments were as a result of re-classifying the following imports and/or revoking certificates of origin.

- Pigments were reclassified by the Respondent to HSCs 3214 and 3212 resulting in a tax liability of UGX 194,709,262
- An import known as 'Dr. Fixit' was re-classified by the Respondent under HSC 3214 resulting in a tax liability of UGX. 570,642,674.
- Sadolin Paint which the Applicant claimed was imported from Crown Paints Kenya Limited was disputed by the Respondent. The Respondent issued an additional assessment of UGX. 2,628,320,440.
- Alkyd resins which the Applicant claimed were manufactured and imported from within the EAC was disputed by the Respondent which issued a tax assessment of UGX. 348,048,559

Issues for Determination:

❖ Whether the Applicant is liable to pay the taxes assessed?

❖ What remedies are available?

Ruling of the Tax Appeals Tribunal:

Pigments:

a) Chapter 32 of East African Community Common External Tariff (EACCET/ CET) deals with pigments generally while 3212.90.10 deals with pigments in particular. These attract a duty rate of 0%.

b) The Applicant testified that it imported pigments for manufacture of paint. Therefore, the pigments most likely fall under HSC 3212.90.10. The Respondent did not adduce any evidence to show that the items were automotive paints and not pigments used in the manufacture of paints.

c) Under the CET, pigments appear in different headings and subheadings where they attract different duty rates. In some cases, they attract duty rate of 0% while in others 25%. Maybe the pigments imported by Crown Paints Kenya Limited

into Kenya attracted 25% while those imported by the Applicant into Uganda attracted 0%.

d) Since there were different headings affecting pigments, some giving different rates, in order to ascertain under which headings, the Applicant's imports actually fell, there was need to take them to a laboratory to analyze them so as to ascertain which pigments, they actually were.

Strainers:

e) Goods originating from partner states shall be accorded community tariff treatment in accordance with the Rules of Origin provided under the Protocol.

f) Goods shall be accepted as eligible for community tariff treatment if they originate in partner states and meet the criteria set out in the Rules of Origin. Under COMESA, goods qualify for preferential tariff treatment if they originate from member states.

g) The Applicant had certificates of origin to show that the goods originated from the EAC. The Respondent did not seek verification from a competent authority and therefore was wrong not to consider the certificates of origin as declared at import. Therefore, the tax of UGX. 194,709,262 was wrongly assessed.

Dr. Fixit:

h) The Applicant classified Dr. Fixit under HSC 3824.40.00 which relates to prepared additives for cement.

i) A perusal of the certificates of analysis and samples that were provided as exhibits, indicates that Dr. Fixit does not qualify to fall under HSC 3823.40. It may make concrete more cohesive but it is not concrete nor cement or motor.

j) Since there is no evidence rebutting the reclassification by the Respondent, the Tribunal finds that Respondent rightfully reclassified Dr. Fixit under HSC 3214.10.00 attracting a rate of 25% which led to a tax liability of UGX. 570,642,674.

k) Where information that was relied on to give a classification ruling changes, the Respondent is entitled to change its classification rulings and therefore, no legitimate expectation is created on the basis of the first classification ruling.

Sadolin Paints:

l) The Applicant testified that Akzo Nobel was imported and the import documents and the certificate of origin show that the imports were from Kenya. The Respondent ought to have looked at the certificate of origin as to the origin of the imports and not agreements.

m) Section 111 of the EACCMA clearly provides that goods originating from partner states shall be accorded Community tariff treatment in accordance with the Rules of Origin.

n) A competent authority of a partner state can issue a certificate of origin to the exporter where it is satisfied with the application and originating status.

o) A Certificate of Origin is an official document required by some countries upon the entry of imported goods, listing the places of production and what goods are included, certified by a customs officer.

p) For one to be accorded preferential treatment, goods must originate from the partner states and treatment shall be in accordance with the Rules of Origin provided under the Protocol.

q) Goods are considered to originate in the Partner States where they meet the criteria set out in the Rules of Origin. Where there is doubt, a party can seek clarification within three months of the request.

r) If the Respondent doubted whether Sadolin Paint originated from Kenya, it should have sought clarification from the competent authority (Kenya Revenue Authority) in absence of which the Respondent has no basis to ignore the certificates of origin.

s) There is no evidence that the certificates of origin used by the Applicant to import paint were queried by the Respondent and no evidence that the customs authorities of the exporting Partner States were informed. As a result, the assessment of UGX. 2,628,320,440 was set aside.

Alkyd Resins:

t) Re-exportation shall be allowed if originating goods were not under customs control and do not undergo any operations except those meant to preserve goods.

u) There was no evidence adduced by the Respondent to indicate that the imports left their storage facility in Kenya and were thus outside customs control.

v) Housing alkyd resins with other goods in one storage may not mean that the goods were not subjected to customs control. Customs may still control the items that are in bonded warehouses.

w) The alkyd resins had Certificates of Origin entitling them to preferential treatment. There is no evidence that the imports of alkyd resins were not subjected to customs control. As a result, the assessment of UGX. 348,048,559 was set aside.

Xylenes:

x) The taxes relating to Xylenes were agreed to at objection and paid. Since it was resolved, the Tribunal can only set aside any outstanding assessment of UGX. 9,767,616 on Xylenes.

The Applicant was ordered to pay taxes of UGX. 570,642,674 relating to Dr. Fixit. However, the assessments of UGX. 197,709,262 on pigments, UGX. 2,628,320,440 on Sadolin paint, UGX. 348,048,559 on alkyd resins, UGX. 9,767,616 on xylenes were set aside.

9 Rwimi EP Co. Ltd Versus Uganda Revenue Authority

TAT Application No. 132 of 2022.

Brief Facts:

The Applicant, a company engaged in hydro power generation, purchased a hydraulic turbine from Kolektor Turboinstitut D.O.O of Solvenia for purposes of generating electricity in Uganda. In March 2022, the Respondent conducted an audit of the Applicant's imports which culminated into a re-classification of valves from HS Code 8410.90.00, with a 0% rate of tax, to HS Code 8481.80.00 with a 10% rate, thus resulting into import duty of UGX. 105,491,720. The Applicant objected to the assessment on grounds that the relief valves are an integral part of the hydraulic turbine and the Respondent maintained that the valves should be classified under HSC 8481.80.

Issues for determination:

- Whether the Respondent's re-classification of the valves from HSC 8410.90 to 8481.80 was lawful?
- Whether the Applicant is liable to pay import duty of UGX. 105,491,720 assessed?
- What remedies are available?

> ***"Though the valves were part of the electricity generating project, they were not part of the turbines."***
>
> **-Tax Appeal Tribunal-**

Ruling of the Tax Appeals Tribunal:

a) The dispute between the parties revolves around the classification of relief valves and whether they form part of the turbine?

b) The East African Community Common External Tariff (EAC-CET) is used to determine the import duty payable on goods that originate from outside the East African Community.

c) HSC 84.10 which was relied on by the Applicant provides for hydraulic turbines, water wheels, and regulators. HSC 84.81 relied on by the Respondent provides for taps, cocks, valves and similar appliances for pipes, boiler, shell tanks, vats or the like, including pressure reducing valves and thermostatically controlled valves.

d) The Applicant imported different packages which it asserted were too big to be imported at once, and as such, the said turbine and valves were imported in disassembled state.

e) We have to ascertain whether valves and a turbine were two different goods or if the valve was a composite part of the turbine.

f) At times, when classifying items, their functions may not be useful where the

subheading is clear. The fact that the valves reduce the pressure of a turbine does not itself mean that they are part of the latter for purposes of classification.

g) The valves were itemized separately in the packing list; and they were also priced differently from the other items. In most cases, where an item is a composite part of a good, the seller would not charge the parts differently as their prices are included in those goods they are part of.

h) The locus visit showed that the valves were not in the turbine. They were outside the turbine, further buttressing the argument that they were not in a disassembled state.

i) The function of the turbine is to convert kinetic and or potential energy of water into mechanical energy as stated in the instruction manual. The reading of the functional description or what a turbine consists of does not included a pressure valve.

> ***"If the transaction value of the valves cannot be determined from the importation documents, the Respondent was well within the law when it applied the value of similar valves."***
>
> **- Tax Appeals Tribunal-**

j) Therefore, one would not be wrong to conclude that the valves were not composite or disassembled parts of the turbines but are fixed in the pipeline system to regulate pressure. Though the valves were part of the electricity generating project, they were not part of the turbines.

k) Where the East African Community Common External Tariff (EACCET) provides specifically for valves, the Tribunal would be reluctant to consider them as turbine.

l) The Applicant submitted that the Respondent failed to use the transaction value method. This issue was not part of the objection decision nor was it part of the scheduling or issues agreed upon before the Tribunal.

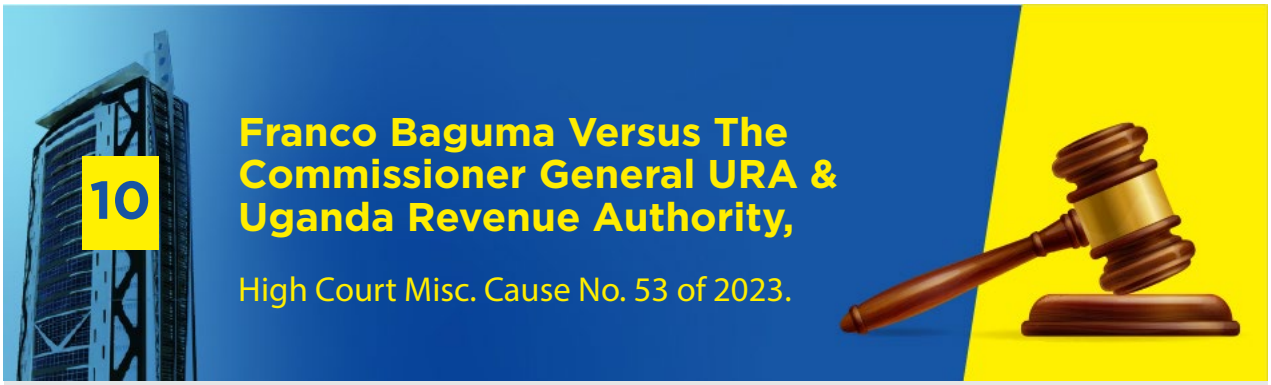
m) The Respondent has to be given a chance or right to be heard so as to explain why it did not use the transactional value. The said submission fell outside the ambit of the dispute.

n) Without prejudice to the foregoing, the commercial invoices do not indicate the actual price for the turbine and the accessories separately. No receipts were tendered in as exhibits to ascertain the price of the valves.

o) If the transaction value of the valves cannot be determined from the importation documents, the Respondent was well within the law when it applied the value of similar valves as imported by other companies with turbines for purposes of generation of electricity.

The Application was dismissed with costs and the Applicant was ordered to pay import duty of UGX. 105,491,720.

LABOUR & EMPLOYMENT CASE



Brief Facts:
The Applicant filed this Application for Judicial Review in the High Court challenging the termination of his employment contract, contending that he was not accorded a fair hearing and praying for general damages and costs.

Issues for determination:

- Whether or not the Applicant was denied the right to be heard?
- Whether or not the Applicant was accorded a fair hearing?
- Whether the Respondent's decision to terminate the Applicant's services was illegal and irrational?
- What remedies are available to the parties?

Ruling of the High Court:

a) The Applicant in his affidavit stated that he appeared before the Management Disciplinary Committee (MDC) and explained the facts to the Committee.

b) The Applicant also stated that he wrote to the Secretary to the Staff Appeals Committee (SAC) appealing against the decision of the MDC.

c) From the above, the Applicant was given an opportunity to be heard at MDC when he appeared and gave a detailed explanation of the facts about his case.

d) It should also be noted that the Applicant submitted a detailed appeal against the MDC's decision before the SAC, which was evaluated and upheld.

e) The Staff Appeals Committee had enough information to base on to achieve the required degree of fairness to resolve the appeal. The Respondent took all the necessary steps to address the concerns of the Applicant when the decision of the MDC was upheld.

f) The Applicant was not denied a right to be heard and was accorded a fair hearing, hence he did not suffer any prejudice.

g) The Respondent followed the due process of disciplinary steps as stipulated in the Human Resource Manual.

h) The Respondents' decision did not amount to illegality, irrationality or impropriety to warrant exercise of this court's supervisory power to grant judicial review.

Court found that the Applicant is not entitled to any of the reliefs sought. The Application was dismissed with no order as to costs.

PRELIMINARY & INTERLOCUTORY MATTERS

11

Benam Agencies (U) Ltd Versus Commissioner Customs URA & Marco (U) Ltd

Nakawa Chief Magistrate's Civil Suit No 643 of 2020.

Brief Facts:

The Plaintiff was contracted by the 2nd Defendant to be his clearing agent for its goods. The Manager Warehousing of the 1st Defendant informed the Plaintiff that the goods had not been received at Liberty ICD and accordingly suspended the Plaintiff from operating as a clearing agent for nonpayment of taxes.

The Plaintiff instituted this suit against the Defendants for declarations that the 1st Defendant unlawfully suspended the Plaintiff's operations as a clearing agent and that the Plaintiff is not liable for taxes due on goods in entry numbers D11629 and D146229. The Plaintiff prayed for an order directing the 1st Defendant to lift its suspension, general damages, and costs of the suit.

Issues for determination:

- Whether the facts as gathered from the pleadings disclose a tax dispute and if so, whether the suit is prematurely brought?
- Whether this Honourable court has original jurisdiction to entertain and adjudicate upon this suit?
- What remedies are available to the parties?

Ruling of the Learned Magistrate:

a) From the facts, the actual dispute giving rise to the claim in the suit arose when the Plaintiff's operations were suspended on ground that he had not remitted taxes relating to the goods of the 2nd Defendant for which he has been contracted to clear.

b) Section 229 of the East African Community Customs Management Act lays down the procedure to be followed by a person or entity that considers itself aggrieved by the decision of the Commissioner Customs.

c) The Plaintiff stated that it applied for review of the decision of the 1st Defendant to the Commissioner Customs.

d) Court noted that the Applications were filed out of the required time and before applying for leave from the Commissioner to file the stated Applications out of time.

e) It is a requirement of the law that such an Application be filed within 30 days from the date of the decision and that filing outside the required timeline can only be done when the Commissioner grants the extension.

f) Filing the Application out of time without the requisite leave tantamounted to not filing the Application at all.

g) Court found that this suit was prematurely brought because not all processes were exhausted before it was filed.

h) Upon failure to obtain a suitable solution from the Commissioner, the Plaintiff would have proceeded to file the matter in the Tax Appeals Tribunal and if dissatisfied, the Plaintiff should have filed the matter before the High Court in form of an appeal and not the Magistrate's Court.

The preliminary objections were allowed and the suit was dismissed for having being brought prematurely and for lack of jurisdiction. The Plaintiff was ordered to pay the 1st Defendant's costs of the suit.

Brief Facts:

The Applicant, a dealer in the manufacture of plastics, was issued with an additional Value Added Tax assessment of UGX. -758,451.42 and penal tax of UGX. 66,005,085 for the period June 2022 on account of disallowed input VAT claimed on fictitious invoices from Ganwell Investments Uganda SMC Limited. The Applicant objected on the grounds that the assessment was unfair. On 7th December 2022, the Respondent made its objection decision disallowing the Applicant's objection.

On 25th May 2023, the Applicant applied to be granted an extension of time to apply for a review of taxation decision before the Tax Appeals Tribunal.

Issues for determination:

1. Whether the Application for an extension of time to file the main Application to review the taxation decision should be granted?
2. What are the remedies to the parties?

Ruling of the Tax Appeals Tribunal:

- Section 16(1) of the Tax Appeals Tribunal Act provides that an Application to the tribunal for review of a tax decision shall be made within 30 days of being served with notice of the decision.
- The Objection decision was served upon the Applicant on 7th December 2022 and this Application was brought on 25th May 2023; way after the mandatory 30 days.
- Rule 11(1) of the Tax Appeals Tribunal (Procedure) Rules provides that the Tribunal may, in its discretion, upon the application of the applicant in writing, extend the time for making an application. Rule 11(6) further provides the reasons for the grant of extension of time to include; absence from Uganda, illness, or any other reasonable cause.

- When this Application came up for hearing, the Applicant, represented by its Director, told the Court that the reason for their delay in filing an Application before the tribunal was due to attempts to resolve the matter through Alternative Dispute Resolution (ADR.)
- Section 24(11) of the Tax Procedure Code Act states that a taxpayer who is dissatisfied with a decision of the Commissioner may apply to the Commissioner to resolve the dispute using alternative dispute resolution procedure, as may be described.
- The Respondent submitted that the Applicant's decision to pursue ADR does not suffice as reasonable cause for the grant of an extension of time.
- Regulation 4(3) of the Tax Procedure Code (Alternative Dispute Resolution Procedure) Regulations states that where an alternative dispute resolution procedure is commenced between a taxpayer and the Commissioner, the time within which the Taxpayer is required to file an Application with the Tribunal or a suit with Court, shall not be affected by the alternative dispute resolution procedure.
- Further to that, Regulation 4(4) states that, "For the avoidance of doubt, the alternative dispute resolution procedure under these Regulations shall not have any effect or negate the rights of the Commissioner or taxpayer to file an application with or suit with the Court or have an effect on the rules and procedures of the Tribunal or Court".
- Where a statute of subsidiary legislature is clear, words have to be given their ordinary meaning. Since the Regulations clearly spell out that the time within which to file an Application before the Tribunal shall not be affected by ADR, an attempt to use ADR as a ground for an extension of time to file an application for review does not amount to sufficient ground.

The Tribunal held that the Application had no merit and dismissed it with costs to the Respondent.

Brief Facts:

The Applicant is a company dealing in the business of electric power services, electrical, civil works and general merchandise. The Respondent carried out investigations into the input VAT claimed by the Applicant for the period of January 2018 and June 2020 which resulted into Income Tax and VAT assessments of UGX. 69,246,943 and UGX. 60,300,906. The Applicant objected to the said assessments and the Respondent disallowed the objections, whereupon the Applicant filed this Application.

Issue for determination:

- Whether the Applicant's TAT application is not properly before the tribunal on grounds of payment of 30% of the tax assessed or that part of the tax assessed not in dispute?

Ruling of the Tax Appeals Tribunal:

a) The Applicant submitted that it had fulfilled its obligation of paying 30% and that the Respondent had utilized its Withholding Tax (WHT) credits of UGX. 38,893,440 thus reducing its outstanding assessment.

b) The Tribunal noted the WHT credit had the effect of reducing the Income Tax assessment from UGX. 69,246,943 to UGX. 30,353,502, which if added to the VAT assessments of UGX. 60,300,906 would be UGX 92,245,542, 30% of which would be UGX. 27,673,662.

c) The Applicant would be required to furnish evidence that it has paid UGX. 27,673,662, but the same has not been furnished.

d) Although a ledger was tendered in by the Applicant before the Tribunal, the Respondent did not admit that the ledger is a true and accurate record of the Applicant's tax affairs.

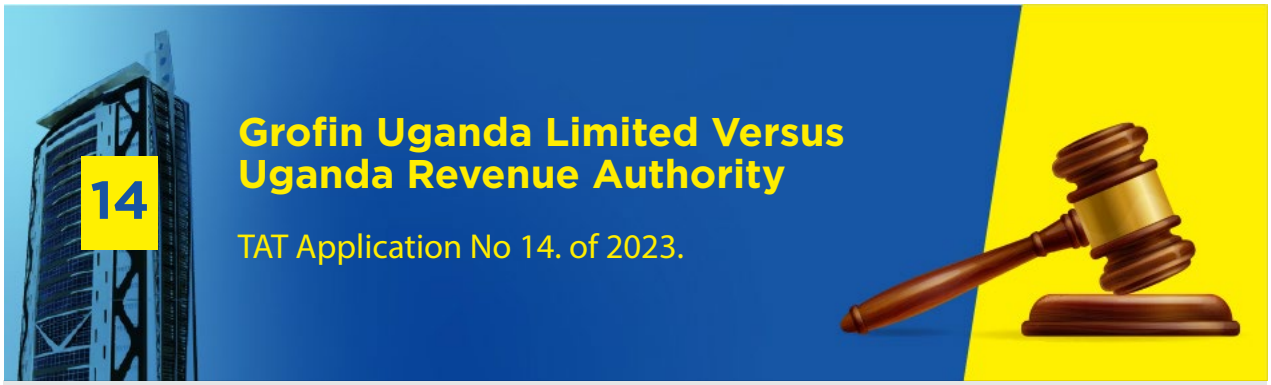
e) There was no evidence adduced to prove that the Applicant had overpaid tax. Furthermore, the accuracy of the ledger availed by the Applicant was still in doubt.

f) The tax credit the Applicant is trying to rely on was before the assessment was issued and not after. It raises issues of reconciliation which can only be determined after evidence has been heard.

g) Using credits before the assessment was issued, that may still be in contention, will complicate their application and the implication of Section 15 of the Tax Appeals Tribunal Act.

h) The Tribunal found that there was no evidence provided to prove that the Applicant had paid 30% of the tax in dispute.

The Respondent's preliminary objection was sustained and the main Application was dismissed with costs.



14

Grofin Uganda Limited Versus Uganda Revenue Authority

TAT Application No 14. of 2023.

Brief Facts:

The Applicant deals in establishment and management of the development funds to small and medium enterprises. On 21st September 2015, the Respondent issued the Applicant with an Administrative Income Tax Assessment of UGX. 32,245,292. On 2nd November 2015, the Applicant objected to the Assessment. On 12th January 2016, the Respondent issued its objection decision disallowing the objection. On 20th January 2023, the Applicant lodged this Application for review of the objection.

At the hearing, the Respondent raised two preliminary objections to the effect that this Application was filed out of time and that the Applicant had not paid 30% of the tax in dispute

Issues for determination:

- Whether this Application was filed out of time?
- Whether the Applicant has paid the 30%?

Ruling of the Tax Appeals Tribunal:

a) Section 12(1) (c) of the Tax Appeals Tribunal Act provides that an Application for Review shall be lodged within 30 days after a person has been served with that decision.

b) Section 16(2) and (7) of the Tax Appeals Tribunal Act provides that an Application for Review shall be lodged within 6 months after the date of the taxation decision.

c) These provisions are in the principal Act which takes precedence over other statutes including the Civil Procedure Rules, which is a subsidiary legislation.

d) Where the Act is clear, one cannot look for a remedy in a subsidiary legislation. The Civil Procedure Rules do not provide for extension of time while the Tax Appeals Tribunal Act provides for extension of time.

e) If the Applicant was affected during the time of public holidays, it ought to have applied for extension of time showing how it was affected.

f) The Applicant did not adduce evidence to show that at the time when it was required to file its Application, the registry at the Tribunal was closed.

g) If the Applicant was inconvenienced by the public holidays around Christmas time and the beginning of the year it ought to have applied for extension of time.

h) Taking the above into consideration, the Tribunal found that the Application is time barred.

i) On the second preliminary objection, the Tribunal cited Section 15(1) of the Tax Appeals Tribunal Act which provides that a tax payer who has lodged a notice of objection to an assessment shall pending final resolution of the objection pay 30% of the tax assessed or that part of the tax assessed not in dispute whichever is greater.

j) The Tribunal also relied on Uganda Projects Implementation and Management Centre Vs. Uganda Revenue Authority, SCCA No. 2 of 1999, where the Supreme Court upheld that the statutory requirement in the then VAT Act (similar to Section 15 of the TAT Act), requiring a taxpayer who has lodged a notice of objection to an assessment, to pay 30% of the Tax assessed pending final resolution of the objection.

k) Where the 30% has not been paid, the taxpayer loses its right to access the Tribunal as it shows that the taxpayer does not have any intention of paying any tax in dispute.

l) In such circumstances, the taxpayer is deemed to have not come to the Tribunal with clean hands.

The Respondent succeeded on both preliminary objections. The main Application was dismissed with costs to the Respondent.

Brief Facts:

By a warrant of distress dated 29th March 2023, the 1st Respondent seized and attached a motor vehicle (UAZ 797 M Toyota Prado) belonging to the HRN Services Limited (debtor), following failure by the debtor to clear its outstanding tax liability. The Applicant instituted a suit alleging ownership of the motor vehicle and seeking orders that the same be returned to them. The Applicant also sought a temporary injunction order restraining Uganda Revenue Authority, from selling the motor vehicle.

At the hearing, the Respondent raised a preliminary point of law that the Court lacked jurisdiction to entertain the matter as it amounted to a taxation decision and the Tax Appeals Tribunal is vested with jurisdiction to entertain such matters as per Section 14 of the Tax Appeals Tribunal Act.

Issues for Determination:

- Whether the Court has jurisdiction to entertain the matter?
- What remedies are available?

Decision of the Magistrates Court:

a) The warrant of distress issued by the Commissioner General amounted to a tax decision under Section 1(1)(k) of the Tax Procedure Code Act.

b) The Applicant in this case having been dissatisfied, ought to have applied to the Tax Appeals Tribunal under S. 14(1) of the Tax Appeals Tribunal Act to review the said decision of the Commissioner General.

c) This Court lacks the jurisdiction to determine this Application having arisen from a decision of the Commissioner General to impound motor vehicle UAZ 707M Toyota Prado through a warrant of distress.

d) This Court need not go into the merits of the Application for grant of a temporary injunction.

The Application was dismissed with costs to the Respondent.

Brief Facts:

The Plaintiff filed this suit challenging the Defendant's decision to attach motor vehicle Registration No. UAP 700E. The Plaintiff stated that he was the owner of the motor vehicle and that he had used it for over 12 years without interruption until September 2018 when he was informed by the Defendant's Enforcement Officers that the car had been attached and was due for impoundment on sight. The Defendant's case was that the motor vehicle was due for impoundment as result of having a false registration plate. Further that the Plaintiff had failed to heed to the Defendant's advice and requests to deposit the car with the customs warehouse for physical inspection and pay the outstanding taxes thereon.

The Plaintiff brought this suit against the Defendant seeking orders for the release of his motor vehicle from attachment, a permanent injunction restraining the Defendant from impounding and disturbing his enjoyment of his motor vehicle, general damages, special damages and costs.

At the hearing, the Defendant raised two preliminary objections. Firstly, that the dispute before the Court was a tax dispute which fell outside the jurisdiction of the Chief Magistrate Court. Secondly that the Suit was prematurely before the court since the Plaintiff had not exhausted the procedures and remedies provided for under the East African Community Customs Management Act (EACCMA).

Issues for determination:

- ❖ Whether the dispute before the Court is a tax dispute in respect of which the Chief Magistrates Court lacked jurisdiction?

- ❖ Whether the suit is prematurely before the Court?

Ruling of the Learned Magistrate:

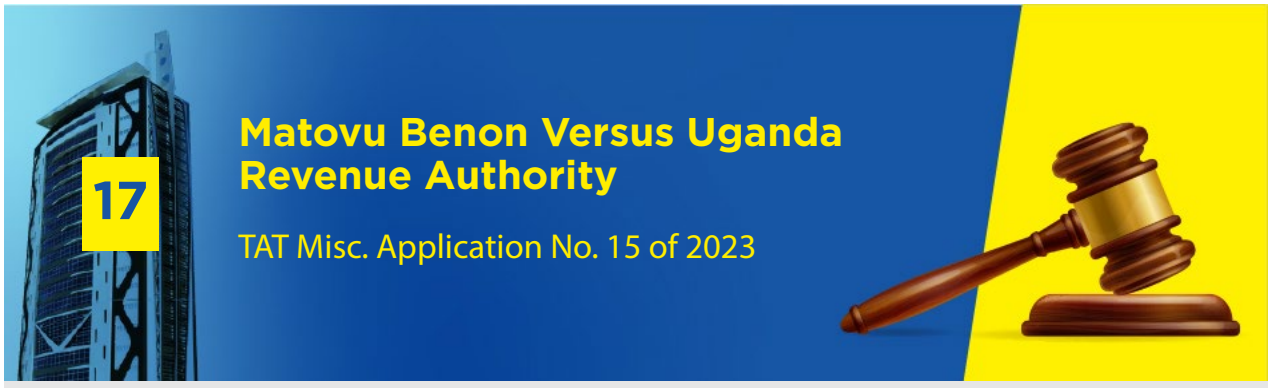
a) The attachment of the Plaintiff's vehicle was to enforce payment of taxes on the Motor Vehicle.

b) Determining the propriety of the attachment would necessitate ascertaining whether or not the Plaintiff was liable to pay taxes on the motor vehicle.

c) Accordingly, based on the authority of the case of Uganda Revenue Authority Vs Rabbo Enterprises (U) Ltd & Anor SCCA No.12 of 2004 the dispute between the parties amounted to a tax dispute for which the Chief Magistrate's Court lacked jurisdiction.

d) Furthermore, the Plaintiff ought to have explored and exhausted the remedies stipulated by law for persons aggrieved by decisions made by the Defendant.

The Learned Magistrate dismissed the suit with costs.



Brief Facts:

The Applicant applied for a refund pursuant to which the Respondent carried out a return examination on the Applicant and raised a VAT assessment of UGX. 22,035,011. In June 2020, the Applicant objected and on 22nd July 2021, the Respondent issued objection decisions disallowing the objections.

On 13th December 2021, the Applicant filed an Application for review in the Tribunal. On 14th July 2023, 2 years after the issuance of the objection decision and one and a half years after filing the review application, the Applicant filed the present application seeking extension of time within which to file the application for review. The Respondent filed an Affidavit in Reply opposing the same on grounds that the Application was made out of time; that there were no sufficient grounds for extension of time; and that the Application for extension of time sought to validate an already irregularly filed Review Application.

Issues for determination:

- ❖ Whether there is justifiable cause to extend time for the Applicant to lodge an application for review of the tax decision?
- ❖ What remedies are available?

Ruling of the Tax Appeals Tribunal:

a) In order to qualify for extension of time, the Applicant has to show that he was ill, absent from Uganda, or has reasonable cause as to why the application was not made in time.

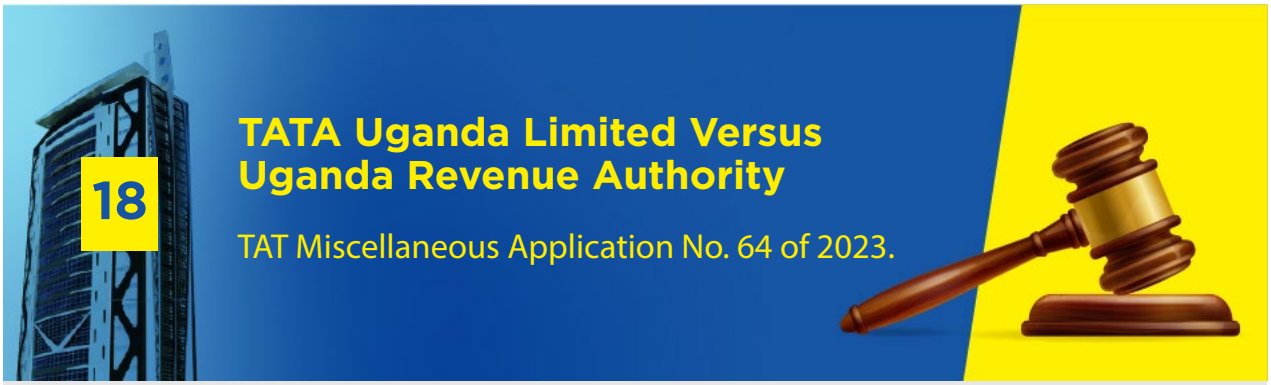
b) The Objection Decision was issued on 22nd July 2021 and the Applicant ought to have filed the application for review by 22nd August 2021.

c) The Applicant contended that he was suffering from post-covid complications. The illness came a year after issuance of the objection decision. He had ample time to file the application for review.

d) An application brought after a year cannot be extended. The issues of covid-19 cannot arise.

e) There was inexcusable laxity on the part of the Applicant.

The Application to validate TAT Application No. 109 of 2021 was declined and the Application was dismissed with costs to the Respondent.



Brief Facts:

The Applicant, a company that imports and assembles motor vehicles, was assessed to tax of UGX. 5,711,183,952 pursuant to an audit carried out by the Respondent. The audit also disclosed that the Applicant was entitled to a tax refund of UGX. 621,915,246. The Applicant objected and the Respondent disallowed the objection. The Applicant made an Application to the Commissioner to be allowed to pay 30% of the tax in dispute in installments and also to use the refund to offset part of the tax in dispute, which Application was disallowed.

Issues for determination:

- ❖ Whether the Tribunal has the mandate to review decisions of the Commissioner?
- ❖ Whether the tax refund of UGX. 621,915,246 can offset part of the liability?
- ❖ Whether the Applicant can be allowed to pay the 30% of the tax in installments?

Ruling of the Tax Appeals Tribunal:

a) The Applicant is willing to pay 30% of the tax assessed but is unable to pay a hefty sum at once, as it will adversely affect its liquidity and ruin its financial reputation.

b) According to Section 28 (3) of the Tax Procedures Code Act, the power to allow payment of 30% is given to the Commissioner of the Uganda Revenue Authority.

c) The power to review his decisions are given to the Tax Appeals Tribunal

d) The right party to address the issue of when a taxpayer wants to pay in installments would be the Respondent at the time of objection.

e) Given that the decisions of the Commissioner are tax decisions, this gives the Tribunal mandate to review his decision.

f) The Respondent acted irrationally and in ignorance of the law when it stated that it did not have powers to allow the Applicant to pay in instalments.

g) The Applicant contended that it had a refund of UGX. 621,915,246 and the Respondent is aware of the same as stated in the Respondent's letter dated 16th December 2022.

h) The refusal by the Respondent to allow the Applicant to use the refund was irrational. The Tribunal does not see why the Respondent should not use the refund to offset payment of 30% of the tax in dispute.

i) Where a refund is not paid interest accrues. Where a taxpayer requests for an offset, the Respondent is relieved from paying interest.

The Tribunal held that the tax refund of UGX. 621,915,246 be used to offset part of the liability; the Applicant be allowed to pay 30% of the tax in 4 equal monthly installments; and costs shall be in the main cause.

Brief Facts:

Davex Company Limited filed an Application challenging a decision by the Applicant (Uganda Revenue Authority) to cancel its Withholding Tax (WHT) exemption for its business of importation of rice from Tanzania to Uganda. It filed Miscellaneous Application No. 37 of 2023 seeking to restrain URA and its agents from enforcing collection measures in respect of paying WHT of UGX. 1,849,416,192. The temporary injunction was granted on condition that the Respondent pays 30% of the tax in dispute. Subsequently, the Applicant discovered that at the time of the grant of the temporary injunction, the exemption certificate had already been revoked and was of no legal effect. The Applicant filed this Application seeking review of the temporary injunction.

Issue for determination:

❖ Whether there was sufficient cause for the court to review the order granted?

Ruling of the Tax Appeals Tribunal:

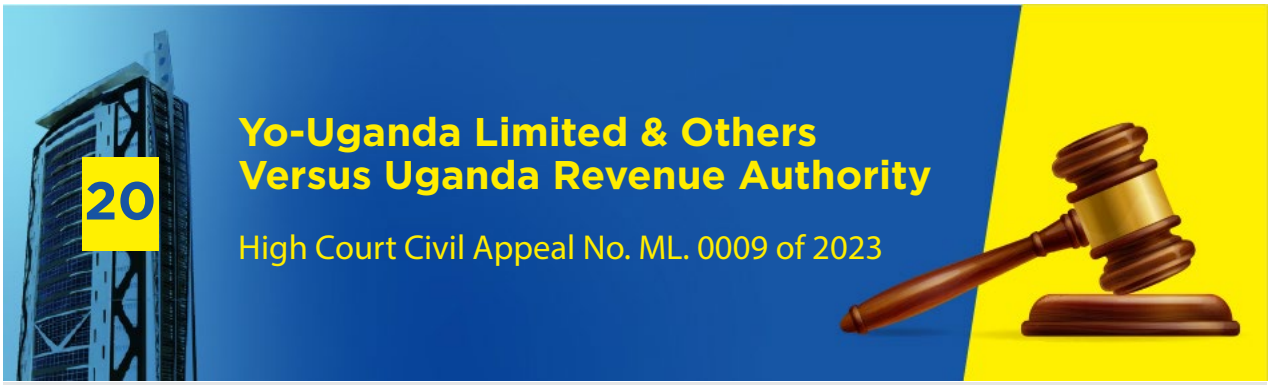
a) The Applicant contended that the Respondent did not object to the decision to revoke its certificates; that the said certificate had expired hence the main Application was prematurely lodged before the Tribunal.

b) The above contention ought to have been brought up at the hearing of the application for a temporary injunction and not at time of review.

c) It is the Applicant who issued the WHT exemption certificate and it ought to have known when it expired or should have expired.

d) At the time the temporary injunction was granted, the information on the status of the certificate was within the purview of the Applicant. It is not new information nor is there any error on the face of the record.

The Application was accordingly dismissed with costs as there was no evidence to warrant the review of the order of the temporary injunction.



Brief Facts:
The Appellants filed a suit and an Application seeking a temporary injunction restraining the URA from opening and reviewing information contained in the electronic and manual records seized from the Yo-Uganda Limited. The Appellants also sought a mandatory injunction compelling URA to return the said electronic and manual records. The Registrar of High Court heard the Application for a temporary injunction and a mandatory injunction and dismissed the same. The Appellants were aggrieved and filed this appeal challenging the decision of the Learned Registrar. The Appellants contended that the seized information contains third-party information of account holders of Yo-Uganda and third-party transaction data held by virtue of Yo-Uganda's operations as a regulated financial institution.

Issue for determination:

❖ Whether there are grounds for the grant of a temporary injunction?

> ***"The Appellants cannot use the court to assist them in breach of the law as this would become an open floodgate for all potential tax evaders to use this precedent to avoid investigation by claiming possible violation of constitutional rights."***
>
> **- Hon. Justice Musa Ssekaana -**

Ruling of the High Court:

a. The award of an injunctive order is discretionary and shall not be interfered with by an appellate court unless it is shown that the trial judge exercised his discretion wrongly and arbitrarily.

b. The main question for determination by this Court is whether the Respondent should not review, access, process or disclose the information seized from the Yo-Uganda and whether the same should be returned without analysis.

c. Where there is a legal right either at law or in equity, the Court has power to grant an injunction in protection of that right.

d. The Courts should be slow in granting injunctions against government projects which are meant for the interest of the public at large as against the private proprietary interest or otherwise for a few individuals.

e. Public interest is one of the paramount and relevant considerations for granting or refusing to grant or discharge an interim injunction.

f. The courts should be reluctant to restrain the public body from doing what the law allows it to do or o execute its core mandate or function. In such circumstances, the grant of an injunction may perpetrate breach of the law which they are mandated to uphold or apply.

g. The main rationale for this is rooted in the fact that the courts cannot as a matter of law grant an injunction which will have the effect of suspending the operation of legislation.

h. Public bodies should not be prevented from exercising the powers conferred under the statute unless the person seeking an injunction can establish a prima facie case that the public authority is acting unlawfully.

i. Courts of law should be loath or slow to grant an injunction when a public project for the beneficial interest of the public at large is sought to be delayed or prevented by an order of injunction.

j. Between the conflicting interests, interests of the public at large and the interests of a few individuals, the interests of the public at large should or must prevail over the interests of a few individuals.

k. In the present circumstances, the Respondent was carrying out investigations of FINTECH companies for possible tax evasion because of the Intelligence Reports from Financial Intelligence Authority.

l. The review is intended to establish possible tax evasion and/or money laundering claims involving FINTECH companies that had consistently declared losses despite the quick adaptation of their services.

m. The Respondent is empowered in the execution of its mandate when carrying out investigations to access premises, records, and data storage devices under Section 41 of the Tax Procedures Code Act.

n. The effect of the orders sought by the Appellants is to stop the Respondent from enforcing the law simply because the Appellants allege a possible violation of their constitutional right to privacy or personal data rights which is remote and is yet to be proved before the court.

> ***"The public bodies should not be prevented from exercising the powers conferred under the statute unless the person seeking an injunction can establish a prima facie case that the public authority is acting unlawfully."***
>
> **- Hon. Justice Musa Ssekaana -**

o. The Appellants cannot use the court to assist them in breach of the law as this would become an open floodgate for all potential tax evaders to use this precedent to avoid investigation by claiming possible violation of constitutional rights.

p. This Court deprecates the practice of granting temporary injunctions which practically give the principal relief sought in the main application for no better reason than that a prima facie case has been made out, without being concerned about the balance of convenience, public interest and a host of other considerations.

q. The Court should not restrain the Respondent in collecting revenue or managing revenue collections save under very exceptional circumstances.

r. The Learned Trial Deputy Registrar justifiably refused to grant an interlocutory injunction because the right of the Appellants to be protected was outweighed by the corresponding duty or need of the Respondent to also be protected against injury resulting to it by being prevented from exercising its own legal right or statutory mandate of collecting revenue.

The Appeal failed and was dismissed with costs to the Respondent.

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Place	
MV Reg	
Car Make	SUBARU
Car Model	SUBARU
Officer Name	AGUTI
Officer Id	CPL
Amount	100,000
Surcharge	50,000
Total Amount	150,000
Offence Code	11

Description: Careless or inconsiderate use of motor vehicle

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