CASE DIGEST

VOLUME VII

October-December 2023

Uganda Revenue Authority

DEVELOPING UGANDA TOGETHER

> **This Volume contains 34 decisions of Courts of Law and the Tax Appeals Tribunal**

FOREWORD

On behalf of the Management of Uganda Revenue Authority, we are thankful to God who steered us through 2023 and into the new year. In the same breath, we thank you our taxpayers and stakeholders for paying your taxes and constantly working with us to develop Uganda.

The benefits of the synergism is reflected in the many successes which we have collectively registered in the past year including the digital transformation and voluntary compliance policies. As URA, we are committed to strengthening this relationship even better in 2024.

Decisions of Courts of law and Tax Appeals Tribunal are an important component of the shaping and developing of tax jurisprudence. They apply the established legal principles to a particular set of factual circumstances and as such, they inform how both tax administrators and tax payers should conduct their business.

We are most privileged to present to you Volume VII of the URA Case Digest. This Volume contains 34 decisions of Courts of Law and the Tax Appeals Tribunal which all represent current aspects in tax disputes.

I wish to re-echo that all the 7 Volumes of the URA Case Digest are available on our revamped URA website- www.ura.go.ug, under Legal & Policy. Special appreciation goes to everyone who worked to make the publication of this volume a success.

"Developing Uganda Together"

Stella Nyapendi Chombo (Mrs.)

Ag. COMMISIONER LEGAL SERVICES AND BOARD AFFAIRS

EDITORIAL NOTE

Dear Reader,

Happy New Year!

It gives us great pleasure to bring you Volume VII of the URA Case Digest. We are especially thankful that you have been a consistent audience for the publications of the URA Case Digest.

Mindful of the need to keep up to pace with the evolving tax law, the URA Case Digest is one of the bespoke modes we have adopted to bring to you, on a quarterly basis, the decisions rendered by Courts of Law and the Tax Appeals Tribunal.

This volume contains a total of 34 decisions, two of which were delivered by the Supreme Court. Also included are fourteen decisions in respect of Domestic Taxes, five in respect of Customs, one relating to Labour & Employment, one relating to Contempt of Court, ten relating to preliminary and interlocutory matters, and one criminal case.

Uganda Revenue Authority has fully embraced the different modes of Alternative Dispute Resolution in both civil and criminal cases. To this end, during the second quarter of the Financial Year 2023/24, through the initiative of plea bargain, we secured thirteen convictions from eight criminal cases before the Anti-Corruption Court.

> **"During the second quarter of the Financial Year 2023/24, through the initiative of plea bargain, we secured thirteen convictions from eight criminal cases before the Anti-Corruption Court"**

On behalf of the editorial team, we wish you a good read and a fruitful 2024 ahead as we Develop Uganda Together.

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THE URA CASE DIGEST VOLUME VII

SUPREME COURT DECISIONS

01

Heritage Oil and Gas Limited Versus Uganda Revenue Authority, Supreme Court Civil Appeal No. 3 of 2021

Brief Facts:

The Appellant obtained proceeds from disposal of oil blocks located within the Albertine Graben region. The Respondent issued tax assessments of USD 404,925,000 and USD 30,000,000 against the Appellant. The Applicant objected, which objections were disallowed, hence the Applicant filed Applications in the Tax Appeals Tribunal. The Tax Appeals Tribunal upheld the assessments and the Appellant appealed to the High Court.

The parties filed written skeleton arguments in the consolidated appeals. When the matter came up for a scheduling conference, the Appellant objected to parts of the Respondent's skeleton arguments. The Learned Appellate Judge made a Conferencing Ruling to the effect that the Respondent's skeleton arguments were accepted as is and the parties were directed to prepare their final submissions. The Appellant appealed the decision to the Court of Appeal but was unsuccessful, hence this Appeal to the Supreme Court.

Grounds of Appeal:

- The Learned Justices of Appeal erred in law when they applied and misinterpreted the repealed sections 100 and 101 of the Income Tax Act, Cap. 340 and thereby held that there is no right of appeal from a decision of the High Court sitting in appeal from the decision of the Tax Appeals Tribunal.
- The Learned Justices of Appeal erred in law when they held that the Appellant's appeal was a third appeal, which required a certificate of importance under Section 73 of the Civil Procedure Act (CPA).
- The Learned Justices of Appeal erred in law when they held that there is no legal provision for striking out paragraphs 91-94 and 142-150 of the Respondent's skeleton arguments.
- The Learned Justices of Appeal erred in law when they dismissed the Appellant's appeal on grounds which were never argued before them and without affording the Appellant an opportunity to be heard on the same.

> *There is no right of appeal to the Supreme Court from interlocutory orders which are incidental to the appeal and do not result from the final determination of the appeal itself.*
>
> **-Hon. Justice Prof. Tibatemwa Ekirukubinza, JSC-**

Judgment of the Supreme Court:

a) Counsel for the Respondent sought leave of Court to raise a preliminary point of law relating to the right of appeal to the Supreme Court against the decision of the Court of Appeal emanating from a Preliminary Ruling of the High Court sitting as an Appellate Court.

b) Counsel for the Appellant argued that the High Court in hearing the matter sat as a court of original jurisdiction and therefore the Appellant had a right of appeal to the Supreme Court.

c) Court noted that the appeal before it arose from the scheduling conference ruling of the High Court where the Appellant objected to some of the paragraphs of the Respondent's skeleton arguments but was unsuccessful.

d) The jurisdiction of the Supreme Court is conferred by the Constitution and statutory law. The right of appeal is a creature of statute and must be given expressly by statute.

e) It is clear from Article 132 (2) and (3) of the Constitution of Uganda and Section 6 (1) and (2) of the Judicature Act that there is an automatic right of appeal to the Supreme Court in interlocutory matters decided by the High Court when it exercises original jurisdiction and that decision has been confirmed, varied or reversed by the Court of Appeal.

> *The Court of Appeal's decision in interlocutory matters is final and not subject to appeal. The rationale for the above position is to avoid a multiplicity of unnecessary appeals to the Supreme Court and delays in disposing of appeals which have to first wait for the decision on the interlocutory matters*
>
> **-Hon. Justice Prof. Tibatemwa Ekirukubinza, JSC-**

f) The jurisprudence arising from the Supreme Court regarding appeals against interlocutory matters is that there is no right of appeal to the Supreme Court from interlocutory orders which are incidental to the appeal and do not result from the final determination of the appeal itself.

g) The Court of Appeal's decision in interlocutory matters is final and not subject to appeal.

h) The rationale for the above position is to avoid a multiplicity of unnecessary appeals to the Supreme Court and delays in disposing of appeals which have to first wait for the decision on the interlocutory matters.

i) In order for a party to rely on the right of appeal against an interlocutory order in the Supreme Court, it has to be established that the order appealed against was passed by the High Court in exercise of its original jurisdiction.

j) Court relied on its decision in ***Uganda Revenue Authority Versus Rabbo Enterprises & Anor, SCCA No. 12 of 2004*** to hold that it is settled law that the High Court exercises appellate jurisdiction in determining matters from the Tax Appeals Tribunal.

> *Statutory law does not apply retrospectively unless the statute by express words or necessary implication states so*
>
> **-Hon. Justice Prof. Tibatemwa Ekirukubinza, JSC-**

k) Court noted that what the Appellant was seeking to appeal against was an interlocutory order given by the High Court in exercise of its appellate jurisdiction. It was held that the Supreme Court does not have jurisdiction to entertain such an appeal.

l) It was further noted that Section 27B of the Tax Appeals Tribunal (Amendment) Act, 2021 now allows appeals to the Court of Appeal and Supreme Court from tax disputes as of right but the said amendment came into effect on 1st July 2021.

m) This was approximately a year after the Court of Appeal had delivered its decision in the matter.

n) It is trite that statutory law does not apply retrospectively unless the statute by express words or necessary implication states so. Consequently, it was held that the said amendment did not apply to the instant appeal.

o) The Supreme Court upheld the Respondent's preliminary objection and found the appeal to be incompetent.

The appeal was dismissed with costs and the file was remitted to High Court for determination of the matter on merits.

02

Munobe Samuel Versus the Commissioner Customs & Anor, Supreme Court Civil Appeal No. 12 of 2022.

Brief Facts:

This was an appeal against a decision of the Court of Appeal where it was held that URA was not responsible for the vandalism of the Appellant's motor vehicles. The Appellant imported (6) motor vehicles in a consignment that was involved in an accident that damaged the motor vehicles. The Appellant wrote to URA requesting for re-verification and valuation and release of the vehicles as a result of the above damage. The Respondent applied a depreciation method to value the Appellant's damaged vehicles.

The Appellant objected to the Respondent's assessed values and challenged the depreciation method in the Chief Magistrates Court at Nakawa. Subsequently, by Consent Decree, URA agreed to consider the extent of damage of the vehicles in assessing the Appellant to taxes. The vehicles were subsequently moved to the URA's NIP warehouse at Nakawa following issuance of a release order.

URA then released the vehicles and paid to the Appellant general damages, demurrage and costs. After the release of the vehicles, the Appellant alleged that the vehicles had been vandalized by the Respondent while they were in custody of the Respondent, hence the filing of Civil Suit No. 66 of 2011 for negligence at the High Court.

Grounds of Appeal:

- That the Learned Justices of Appeal erred in law when they held that the vandalism to the Appellant's six motor vehicles, if any, on the evidence, cannot be attributed to the Respondent directly.
- That the Learned Justices of Appeal erred in law when they found no basis for the Appellant's argument that the Respondent was in custody and control of the vehicles.
- That the Learned Justices of Appeal erred in law when they held that the Respondent owed the Appellant no duty of care.
- That the Learned Justices of Appeal erred in law when they failed to properly evaluate and consider the evidence on record as a whole and as such arrived at a wrong decision.

Judgment of the Supreme Court:

a) The entire case rested on whether the Respondent had a duty of care for goods that were in the custody of a licensed Internal Container Depot (ICD).

b) Court had to determine where, in accordance with S. 16 and 17 of the East African Community Customs Management Act, URA could be held liable for negligence.

c) From the facts at hand, the vehicles were received at URA's warehouse on 29th September, 2010 when they were already in a deplorable state, according to an inspection report on the record.

d) Secondly, there was a consent decree dated 10th December, 2010 wherein the Appellant used a list of missing parts generated by Kenfreight (U) Limited to challenge the method of assessment of tax by URA to prove that the vehicles had been damaged and that he ought to have paid less taxes for the imported vehicles.

e) This was evidence that the motor vehicles had been vandalized before being handed over to the Respondent's premises. There is also no evidence on the record showing that the vehicles were vandalized after they were moved to the Respondent's warehouse.

f) On the issue of negligence of the Respondent's officers, a reading of Section 16 of the East African Community Customs Management Act, shows that URA's officers have the right to examine goods under customs control but also forbids anyone from interfering with such goods except with the authority of the Commissioner.

g) Any person who interferes with goods without authority of the Commissioner commits an offence. Imported goods can only be released upon obtaining the written authority of the Commissioner.

h) No body other than a warehouse keeper or an ICD owner can have access to an ICD except with authority of the Responsible officer. Goods entered for storage subject to customs control can be accessed and examined but cannot be taken away.

i) As a result, any loss or damage to the goods cannot be based on presumptions of law relating to a concept of goods subject to customs control but the fact of loss due to neglect of URA's officers has to be proved.

j) It has to be proved that the loss or damage was occasioned by the willful neglect of the Commissioner General and it has to be pleaded and proved to the satisfaction of Court.

k) There is no presumption of law that placing goods under the customs control makes the Commissioner the person in charge of their care and security. In fact, warehouse or ICD keepers are licensed to keep the goods safe and not to release them without the requisite authority of the responsible officer of URA.

l) The Commissioner may, on application of Sections 62 and 14, license any place as a warehouse for deposit of goods liable to import duty and such a place is under the physical control of a licensed warehouse keeper.

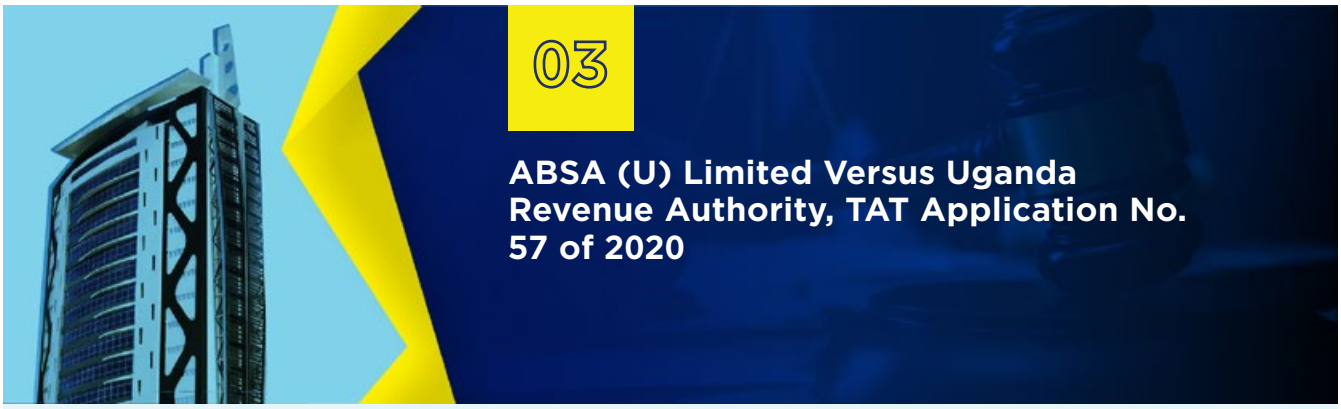
m) A warehouse keeper who takes, substitutes, causes or permits any goods in bonded warehouse to be taken or substituted commits an offence and is liable to pay a fine of 25% of the dutiable value of the goods substituted or taken.

n) This proves that the goods are under the care of the warehouse keeper or the ICD owner licensed to take care of imported goods under customs control and is liable to the owner of goods if the goods get lost or damaged under his or her care.

o) The Court of Appeal and trial Judge were therefore correct to hold that the goods were damaged before they were brought into the custody of the Respondent (URA) and this leads to the conclusion that the officers of URA were neither negligent nor did they act willfully leading to the loss or damage of the Respondent's goods.

The Supreme Court found that the Appeal has no merit and dismissed it with costs to the Respondent.

DOMESTIC TAXES



03

ABSA (U) Limited Versus Uganda Revenue Authority, TAT Application No. 57 of 2020

Brief Facts:

The Applicant provides banking services. The Respondent conducted a comprehensive audit into the Applicant's tax matters and established a tax liability of UGX 6,714,520,926 for Value Added Tax, Income Tax, Local Excise Duty and Withholding Tax and issued assessments to the Applicant. The Applicant objected to the assessments to which the Respondent issued an objection decision disallowing the objection and maintaining the assessments.

The Respondent's case before the Tribunal was in respect of UGX 3,568,154,943 broken down as follows: UGX 731,003,496 in regards to non-declaration of WHT on charges paid to corresponding banks (Nostro charges); UGX 1,156,425,588.05 in regards to non-declaration of VAT on initial customer deposits to suppliers for the leased items; and UGX 1,683,237,876 in regards to disallowed interest expense under Section 47 of the Income Tax Act.

Issues for Determination:

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

Ruling of the Tax Appeals Tribunal:

Nostro charges

a) A nostro account means an account that a country's bank holds in the bank of another country in the foreign currency.

b) Section 78 of the Income Tax Act defines a management charge to mean any payment made to a person other than a payment of employment income, as consideration for any management services.

c) Payments made by the Applicant to corresponding banks were in respect of business decisions for transactions between the banks. Since this payment was made for services, the charges can be considered as management charges as defined above.

d) However, a nexus between the charges paid to foreign banks by the Applicant and the liability to pay income tax needs to be drawn.

e) Income is sourced in Uganda to the extent to which it is a management charge paid by a resident person.

f) Where the Applicant pays the nostro charges on behalf of its clients, it is the one that actually effects payment, therefore it has an obligation to withhold taxes on behalf of its clients.

g) It does not make legal sense for clients to withhold taxes when the nostro accounts are held by the Applicant.

h) The Tribunal found that the Applicant was liable to pay WHT of UGX 731,003,496 on charges paid to the corresponding banks.

VAT Assessments

i) The Applicant enters into contracts for capital asset financing whereby its customers use their assets as security for loan facilities in order to purchase them.

j) The Applicant collects periodic payments from the customer as payments of the loan and accounts for VAT on its contribution but not the initial deposit to the supplier.

k) However, the Applicant claims 100% input VAT on the full invoice amount regardless of its contribution to purchase of the asset. If the Applicant claimed input VAT on the full invoice amount, then it should put output VAT which is similar to what it claimed.

l) One cannot claim input VAT more than the output VAT it paid and therefore the Applicant ought to account for output VAT by paying the same corresponding input VAT it claimed.

m) The Applicant cannot be seen to claim 100% input tax credit on the client's initial deposit and contribution and yet it paid output tax which was equivalent to the contribution.

n) The Respondent was therefore justified to issue an assessment of UGX 1,156,425,590 against the Applicant in regard to non-declaration of VAT on initial customer deposits.

Disallowed interest expenses

o) The Applicant claimed both paid and accrued interest expense as an allowable deduction leading to less chargeable income and therefore paid less tax.

p) The Applicant accrues interest expense on its customer accounts but pays and withholds tax at the date of maturity.

q) The Income Tax Act allows for both cash-based and accrual-based accounting methods.

r) When interest accrues, it means that the interest amount is accumulating overtime, even if it has not been physically paid out or received by the lender or borrower.

s) When a taxpayer uses the accrual method, the law allows that taxpayer to incur expenditure when it is payable by the taxpayer. Therefore, a taxpayer can incur an interest expense when it is payable under the accrual accounting system.

t) The Applicant contradicted itself when it used an accrual accounting method but also allowed paid interest as allowable deductions using the cash-based accounting method.

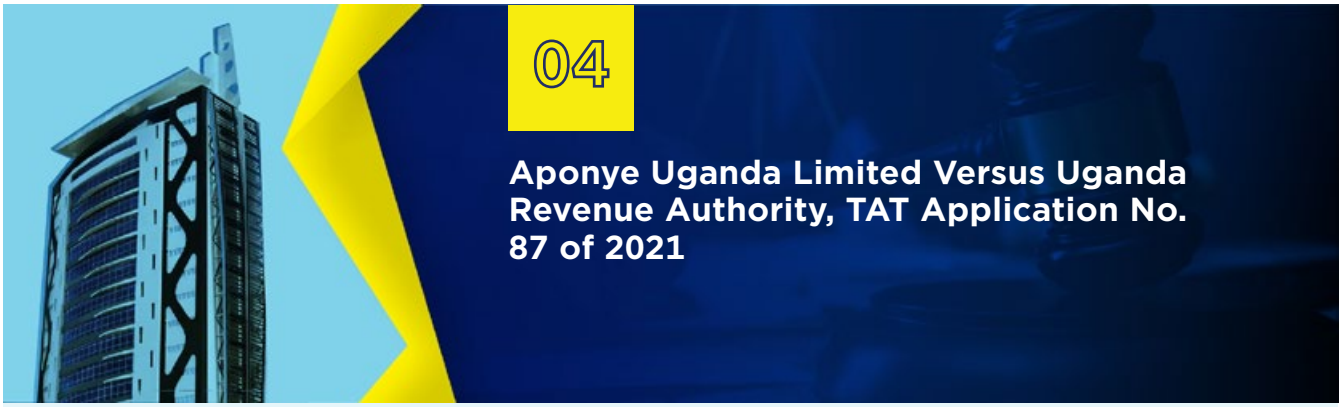
u) This led to a situation where the interest is allowed twice as a deductible expense hence leading to less chargeable income.

v) When using accrual basis accounting and the Applicant treats accrued interest as a deduction, it would have to report the accruable income that gave rise to the deduction using the same accounting method.

w) If accrual income is not included in the income statement of the financials, it means that the accrual interest was not used in the production of income included in the gross income.

x) By using paid income under the cash-based accounting system while treating accrued interest as deductible but not accruable income under the accrual basis, the Applicant distorted the chargeable income and tax it ought to pay.

The assessment of UGX 1,683,237,876 was upheld. The Application was dismissed with costs to the Respondent.



Brief Facts:

The Applicant, a company incorporated in Uganda dealing in commodity trading and transport services, filed this Application challenging an assessment of UGX 641,012,201 issued by the Respondent on grounds that the Applicant had overstated its interest expenses contrary to Section 25 of the Income Tax Act as it belonged to a group of three companies which had a common underlying ownership. The Applicant's objection to the assessment was disallowed.

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 Income Tax Act provides for interest as allowable deductible allowances. The Applicant is entitled to interest deductions; however, this interest is limited to 30% where a taxpayer is a member of a group.

b) The question to be determined was whether the Applicant is a member of a group within the meaning of S. 25(5)(b) of the Income Tax Act.

c) Under the Act, the word 'group' means 'a person other than individuals, with common underlying ownership.

d) The next question to determine was whether the Applicant is part of a group with 'underlying ownership' which phrase is defined to mean an interest held in a person directly or indirectly through interposed companies.

e) The word 'underlying' means 'an asset or other factor that gives rise to rights and obligations in a derivative contract'

f) There are many ways of determining whether persons are connected. One of them is by looking at the ownership of the Company.

g) The reason why deductible interest allowed is limited is because they may be sharing the same funding.

h) A search at the URSB revealed that the Applicant, Aponye (U) Limited, Aponye Transporters Limited and Aponye House Limited had common underlying ownership as their Memorandum and Articles of Association showed that Mr. Apollo Nyegamahe owned 60% shareholding while Mr. Peter Agaba and Mr. Harold Byamugisha each owned 10% in the companies.

i) Therefore, Section 25(3) of the ITA would limit the interest claimed by the Applicant to 30% as a result of the Applicant having interest in interposed companies.

j) The phrase 'interposed companies' denotes two different entities through which a company might control another company.

k) The definition of 'interposed companies' is also interlinked with the term 'associate' under the Act.

l) By altering Section 2(xxx) in the manner above, the anti-tax avoidance measures created by the legislature through concepts such as 'underlying ownership' or an 'associate' are compromised.

m) Properly construed, Section 2(xxx) is confined to a person other than an individual. It refers to an interest held in or over this non-individual. This interest is held over the person directly or indirectly through three different entities namely; interposed companies, partnerships, or trusts.

n) This interest is held over this person through these entities either by an individual or by a person not ultimately owned by Individuals.

o) For the reasons above, the Applicant company was a member of a group of companies and the Respondent was justified in issuing the assessment.

The Application was dismissed with costs to the Respondent.

05

Bollore Transport & Logistics Ltd Versus Uganda Revenue Authority, High Court Civil Appeal No. 49 of 2021

Brief Facts:

The Appellant is a company in the business of providing transport, clearing, and forwarding services. The Appellant offers fuel cards with fixed amounts every month to employees, which fuel is used in the employees' private cars. The Appellant also obtains casual labourers from two companies. The Respondent audited the Appellant's operations for the period January 2015 to December 2017 and issued a Withholding Tax Assessment of UGX 123,539,723 on the gross payments for the services rendered by casual labourers. The Respondent also issued a PAYE assessment of UGX 404,007,535 on the basis of fuel cards issued to the Appellant's employees.

The Appellant challenged the assessed before the Tax Appeals Tribunal which decided in favour of the Respondent, hence this appeal to High Court.

Grounds of Appeal:

- The Learned Members of the Tribunal erred in law when they found that the provision of fuel cards to the Appellant's employees was taxable as a benefit.
- The Learned Members of the Tribunal erred in law when they ordered the Appellant to pay taxes amounting to UGX 404,007,535.
- The Learned Members of the Tribunal erred in law in failing to properly evaluate the evidence on record thereby coming to the wrong conclusion.

Judgment of the High Court:

a) The Appellant filed a Notice of Appeal containing the above grounds and subsequently filed a Record of Appeal with grounds which were almost identical to those in the Notice of Appeal, except for further elaboration of ground one.

b) The Respondent raised a preliminary objection to the effect that the Appellant's submissions are defective as they are premised on the grounds contained in the Memorandum of Appeal which has no legal basis in appeals to the High Court from decisions of the Tax Appeals Tribunal.

c) It is clear from Section 27 of the Tax Appeals Tribunal Act that an appeal to the High Court from the decision of the Tax Appeals Tribunal is instituted by lodging a Notice of Appeal.

d) Court noted that the grounds in the memorandum of appeal are substantially similar to those in the notice of appeal and thus disagreed with the Respondent's submission that the Appellant's submissions be rejected.

e) The preliminary objection was sustained in principle and the Memorandum of Appeal was rejected and struck off the record. The submissions of the Appellant's counsel were preserved in the interest of justice.

f) The Applicant also raised a preliminary objection contending that the Respondent attempted to introduce new evidence without leave of Court when it filed a Supplementary Record of Appeal containing documents that were neither before nor tested by the Tribunal.

g) The Appellant in its Record of Appeal omitted the contracts constituting Exhibit R3. Court found that the documents in the Respondent's Supplementary Record of Appeal were the same as the documents referred to in the Ruling of the Tribunal. The preliminary objection was overruled.

h) Section 19(2)(d)(i) of the Income Tax Act provides that for an allowance given to an employee to qualify as an allowance for accommodation and travel, one only has to prove that: *The employee incurred or will incur those expenses in the course of performing duties of employment; and the allowance does not exceed the expenses actually incurred or likely to be incurred.*

i) In this case, since the allowance is prepaid by giving employees fuel cards, the Appellant needed to prove that the fuel provided caters for fuel expenses that will be incurred in the performance of the duties of an employee and that amount given does not exceed the expenses likely to be incurred.

j) The key question to be determined is whether the fuel allowance was used "*in the course of performing duties of employment*".

k) "*In the course of*" means "*during*". Therefore, the term "*in the course of performing duties of employment*" means that an employer has to prove that the travel allowance was to cater for transport costs during the performance of an employee's duties.

l) It is important to relate the duties of employment to the travel in question.

m) In the instant case, the Appellant did not provide information on the duties of the employees so as to provide a nexus between the travels and the duties of the employees, thus failing to prove that the travels in question were in the course of the performance of the employees' duties.

n) Court agreed with the Tribunal that in the absence of a nexus between the duties of the employee and the travel destination, the allowance was a benefit.

o) In relation to the second ground of appeal, court noted that it did not find anywhere in the record where it was brought to the attention of the Tribunal that UGX 404,007,535 included the tax of UGX 114,336,793 in regard to air tickets or that the said UGX 114,336,793 was paid by the Appellant.

Court found that UGX 404,007,535 was rightly assessed and dismissed the appeal with costs to the Respondent.

06

Eye Care Centre Uganda Limited Versus Uganda Revenue Authority, TAT Application No. 91 Of 2022

Brief Facts:

The Applicant is a company incorporated in Uganda carrying on the business of eye care and vision services. On 4th November 2021, following a reconciliation of the Applicant's tax ledger account by the Respondent, the Applicant was informed of an outstanding liability of UGX 322,509,169.59 comprised of VAT of UGX 87,155,519.55, PAYE of UGX 242,235.04 and Income Tax of UGX 235,111,325.

On 11th March 2022, the Respondent wrote a demand letter to the Applicant showing the Applicant's tax liability for Income Tax as UGX 268,568,409 and VAT of UGX 2,329,130 all as at 11th March 2022. The Respondent sent a final reminder of this liability to the Applicant on 14th March 2022. On 22nd March 2022, the Respondent issued 3rd Party Agency notices against the Applicant's bankers, out of which it recovered UGX 165,700,000 from Stanbic Bank. Being aggrieved, the Applicant instituted an Application against the Respondent in the Tax Appeals Tribunal.

Issues for determination:

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

Ruling of the Tax Appeals Tribunal:

a) The URA tax ledgers are a compilation of a taxpayer's compliance records maintained by URA.

b) The ledgers are closed with either a positive running balance, which means that additional taxes are payable or with a negative running balance which shows that a taxpayer has overpaid and is in credit.

c) The item which leads to most disputes in the ledger is the accrual of interest. Interest arises from the year 2009 when the electronic (e-tax) system was introduced.

d) Section 38 of the Tax Procedures Code Act introduced to our tax jurisprudence the concept of the order of payment.

e) Section 38(1) provides that when a taxpayer is liable for penal tax and interest in relation to a tax liability and the taxpayer makes a payment that is less than the total amount of tax, penal tax and interest due, the amount paid is applied in the following order, firstly in payment of the principal tax, secondly in payment of the penal tax and thirdly in payment of the interest due.

f) Section 38(2) which was repealed by the TPC (Amendment)Act 2021 stated that if a tax payer had more than one tax liability at the time a payment was made, Section 38(1) applied to the earliest liability first. This provision is known as the 'earliest liability rule'.

g) Section 40C of the TPCA waived all interest and penalties on unpaid principles tax as at 30th June 2020.

h) The Applicant's made payments specifically to clear its principal tax for the period 2009 to 2021 but the Respondent applied these payments to clear the interest and penalties for older periods, leaving the principal tax outstanding and reducing the outstanding interest and penalties which would have benefited from the waiver of interest and penalties as at 30th June 2020 under Section 40C above.

i) Between the period 1st January 2009 to 31st June 2016, neither the TPCA nor the order of payment nor the earliest liability rule were in existence.

j) The repeal of Section 38(2) which took effect on 1st July 2021, means that the Respondent could only apply the earliest liability rule from 1st July 2016 up to 31st June 2021.

k) A substantial part of the payments made by the Applicant between the period 1st January 2009 to 31st June 2016 were in the form of Withholding tax credits.

l) Section 128(3) expressly requires tax credits to be applied against the tax assessed on the payee for the year of income in which the payment is made.

m) The Respondent applied every tax credit due to the Applicant against the tax assessed on the Applicant for the year of income in which the payments were made. All the tax credits were properly applied by the Respondent.

n) The Applicant also made a substantial part of its payments for the period 1st January 2009 to 31st June 2016 through provisional tax payments.

o) Provisional taxes are a system through which taxpayers are required to provide for their final tax liability in advance by paying two separate amounts in the course of the year of assessment based on estimated taxable income.

p) Payments of provisional tax made in a specific year should be applied to the income tax assessments of that year.

q) The Respondent credited payments made by the Applicant in respect of a particular year of income to the earliest of the Applicant's provisional tax assessments.

r) Such application by the Respondent of the payments made by the Applicant was not in compliance with Section 111(8) of the Income Tax Act.

s) The Respondent had no legal basis for applying the payments in question towards the settlement of the Applicant's earliest liabilities.

t) By applying this rule to the period 1st January 2009 to 31st June 2016, the Respondent applied the earliest liability rule retrospectively.

u) The Applicant submitted that the Respondent had no legal justification to charge interest on late payments before the completion of a month as the law provides for interest to be paid at the rate of 2% per month.

v) Interest is normally imposed by statute as a punitive measure. The purpose of imposing interest under Section 36 is to discourage late payment of tax.

w) This purpose cannot be achieved if interest only sets in if the delay in paying the tax due is a month long.

The Tribunal remitted the matter to the Respondent for reconciliation of the Applicant's ledger and the Applicant was awarded ½ the costs of the Application.

Brief Facts:

The Applicant is a company incorporated in Uganda whose main business activity is the provision of insurance services. It cedes part of its business to re-insurance companies. It pays Withholding Tax to the Respondent based on the premium ceded minus what the Applicant referred to as a 'discount'. The Applicant contended that the alleged commission or discount is allowed by the re-insurance companies to cater for administrative expenses.

The Respondent conducted an audit on the Applicant for the period January 2014 to December 2018 and issued an Additional WHT Assessment of UGX 1,683,949,537 on the Applicant on the ground that the latter receives commissions. The Respondent also issued a VAT Assessment of UGX 376,815,272 against the Applicant on ground that the Applicant ought to have apportioned exempt and taxable supplies. The Applicant objected to the assessments and the Respondent disallowed the objections, hence this Application.

Issues for determination:

- Whether the Applicant is liable to pay the WHT assessed?
- Whether the Applicant is liable to pay the VAT Assessed?
- What remedies are available?

> *If a customer is always given back a portion of its price to meet its expense, calling it a 'discount' may not be appropriate*
>
> **-Tax Appeals Tribunal-**

Ruling of the Tax Appeals Tribunal:

a) Black's Law Dictionary defines insurance as a contract by which one party (the insurer) undertakes to indemnify another party (the insured) against risk of loss, damage or liability arising from the occurrence of some specified contingency.

b) In order to mitigate risk and meet insurance claims, insurance companies including the Applicant reinsure the risks. They cede part of the business risks to reinsurance companies.

c) Black's Law Dictionary defines 're-insurance' as insurance of all or part of one's insurer's risk by a second insurer who accepts the risk in exchange for a percentage of the original premium.

d) Section 2 of the Insurance Act defines 'reinsurance business' to mean a business of undertaking liability to pay money to insurers or reinsurers in respect of contractual liabilities in respect of insurance business incurred by insurers or reinsurers and includes retrocession.

e) The term 'ceded' is defined in Black's Law Dictionary to mean to surrender or relinquish. This means that the Applicant surrenders a portion of its insurance risks or business to the re-insurer for an amount known as premium.

f) The Applicant contended that the payment for premium for reinsurance services should not include what it called a 'discount' and the Respondent called a 'commission'.

g) The Applicant submitted that when it reinsures risk, it is given a discount on the premiums to cater for administrative costs of the insurance.

h) The problem that arises is that whereas a discount is a reduction from the full amount or value of something, it is not usually given to cater for administrative costs of a buyer.

> *As soon as one removes a discount, commission, fee or whatever one may want to call it, from the gross amount, it ceases being gross and becomes net*
>
> **-Tax Appeals Tribunal-**

i) Discounts are usually given to cater for customer's loyalty, increase sales, acquire new customers, increase the perceived value of a product, improve reputation of a product, or free up storage space, etc.

j) If customers are given perpetual discounts year in year out, then it becomes something else. If a customer is always given back a portion of its price to meet its expense, calling it a discount may not be appropriate.

k) A discount is given at the discretion if a seller or recipient but what the Applicant was given is an entitlement.

l) The Respondent called the payment a commission. Insurance companies are not employees or agents of reinsurance companies.

m) The more appropriate word would be 'fee' which is defined in the Black's Law Dictionary as a charge or payment for labour or services, especially professional services.

n) Section 118D of the Income Tax Act requires a resident person to withhold tax on the gross amount of the payment at the rate prescribed in the 3rd Schedule. It does not mention discount, commission or fee. The tax should be withheld on the gross amount.

o) As soon as one removes a discount, commission, fee or whatever one may want to call it, from the gross amount, it ceases being gross and becomes net. The Section requires that the gross amount should not be diminished.

p) The audited financial statements of the Applicant for 2017 show the gross written premiums, the reinsurance gross premiums ceded, the net written premiums and income earned. They show that the Applicant was deducting commissions.

q) The Applicant made deductions in the financial statements which it called commissions. If a commission is deducted from the gross premium, it ceases being gross amount. Therefore, it should be added back.

r) The Applicant ought to have withheld tax on the gross amount and is liable to pay WHT of UGX 1,683,949,537.

s) In respect of VAT, Paragraph 2 (vi) of the 2nd Schedule to the VAT Act provides that a supply of reinsurance service is an exempt supply for purposes of Section 19.

t) The Applicant contended that reinsurance services were provided by companies that were non-resident and that they were exported services.

u) The Applicant imported reinsurance services to Uganda and did not export them. The items insured and the insurers are in Uganda.

v) For the fee, commission or discount paid to the Applicant, it is exempt. Where exempt supplies are made with standard or zero-rated supplies, there is need to apportion under Section 28 (7) of the VAT Act.

w) The Respondent was justified to issue an additional VAT Assessment of UGX 376,815,272.

The Tribunal held that the Applicant is liable to pay WHT of UGX 1,683,949,537 and VAT of UGX 376,815,272. The Application was dismissed with costs.

08

Kampala Club Limited Versus Uganda Revenue Authority, TAT Application No. 256 of 2022

Brief Facts:

The Applicant is a company limited by guarantee. It provides health club facilities to its registered members. The Respondent issued VAT additional assessments of UGX 215,854,864 for 2020 and 2021.The Applicant objected to the assessments on grounds inter alia that the annual subscriptions and registration fees paid by the members are not taxable supplies.

The Respondent issued its objection decision partially allowing the objection for 2020 from UGX 51,217,498 to UGX 39,435,306 and for 2021 from UGX 164,637,366 to UGX 127,105,797. It maintained a VAT tax liability of UGX 39,435,306 for 2020 and UGX 127,105,797 for 2021 on grounds that the members' subscription and registration fees are taxable supplies. The Applicant filed an Application in the Tax Appeals Tribunal disputing VAT amounting to UGX 166,541,103.

Issues for determination:

- Whether the Applicant is liable to pay VAT on registration and subscription fees paid by its members?
- What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

a) The Applicant provides health club facilities to only its registered members who pay annual subscription fees. It objected to the assessment on the ground that the subscription and registration fees paid by the members are not a taxable supply.

b) The Respondent contended that it established that the Applicant is making taxable supplies through provision of health club facilities including gym, sauna, tennis, massage, swimming pool, among others.

c) The Constitution of the Applicant states that objects of the club include to provide and promote sports, recreational and entertainment facilities, as well as promote fellowship among others members.

d) Therefore, the Constitution allowed the Applicant to obtain revenue so as to provide and promote sports, recreational and entertainment facilities, as well as promote fellowship among the members.

e) Article 4.8 states that the property and income of the club shall be applied solely towards the objects of the club. Article 4.9 states that the Applicant may raise, collect, hold and expand monies for the furtherance of any objects of club.

f) Therefore, the Constitution allowed the Applicant to obtain revenue so as to provide sports, recreational and entertainment facilities.

g) The Constitution further provided for fees payable by its members. The fees in contention are the subscription fees. Article 7.1(iv) provides for subscription fees.

h) Subscription fee entitles a member access to use of any facility of the club. The Applicant provides health club facilities including gym, sauna, tennis, massage, swimming pool among others. So, the question is whether the subscription fees paid by members to access the said facilities attracts VAT?

i) The Applicant was not providing goods or money to its members. It was providing access to health club activities such as gym, sauna, tennis, swimming which should be considered as services.

j) The health services are not exempted in the second schedule of the VAT Act.

k) The Tribunal has to determine whether the subscription fees was consideration made for the provision of services? This means that for one to receive services of Kampala Club, he or she must be a member of the Club.

l) The Tribunal does not think the subscription was being paid gratuitously. The Applicant is not a church or a voluntary organisation.

m) The Applicant argued that the fees paid were used for the maintenance of the club. We note that the club carries out activities like massage, spa, sports, among others, whose profit can be used for its maintenance.

n) The subscription was being paid by members of the Applicant as consideration for the provision of health services by members.

o) The audited financial statement of the Applicant ending 31st December 2020 show that the Applicant's major source of revenue is from annual subscription fees.

p) Club members are expected to pay subscription fees which is payable on the first day of January and not later than last day of March every year. A member who fails to pay subscription fees within the prescribed time automatically ceases to be a member on 31st December of that year.

q) The economic reality of transactions is that the Applicant is engaged in business activities and offers its members a taxable supply in form of access to its facilities upon payment of subscription fees.

r) The fees contribute to a major source of income of the Applicant which enable it meet its expenses.

s) According to Section 4 of the VAT Act, the Subscription by the members leads to receipt of services, which is membership. Other people do not enjoy the services of the club unless they are registered.

t) In this case the Applicant receives that subscription fee because they supply membership to its members. This membership comes with access to health club services provided.

u) The Applicant offered a service to members and hence was taxable.

The Tribunal found that the Applicant is liable to pay VAT of UGX 166,541,103. The Application was dismissed with costs to the Respondent.

09

Living Goods Limited Versus Uganda Revenue Authority, TAT Application No. 85 of 2021

Brief Facts:

The Applicant is a non-government organization that empowers government/ community health workers to deliver quality care. It is registered for both income tax and VAT. The Respondent audited the Applicant for the period January 2016 to March 2021 and issued VAT and Withholding Tax Assessments totaling to UGX 1,072,547,208.

The Applicant objected and the Respondent issued objection decisions maintaining the Assessments, hence this Application. The Applicant's case before the Tribunal was in respect of VAT of UGX 10,263,077 and UGX 8,071,479 for the period December 2016 to January 2017.

Issues for determination:

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

Ruling of the Tax Appeals Tribunal:

a) The dispute between the parties revolves around each applying different provisions of the law that creates conflicting positions.

b) When the Applicant applied for VAT registration in 2014, the Respondent rejected its application. When it applied in 2019, it was issued with a certificate of registration effective 1st June 2019.

c) However, when the Respondent conducted an audit, it discovered that the Applicant was making taxable supplies as far back as 2014. The Respondent issued the Applicant with a VAT certificate where the registration was backdated to 2016.

d) The Tribunal has to determine what happens when the Respondent issues conflicting positions.

e) If the Commissioner General decides that a person is not a fit and proper person to be registered, he cannot turn around and register it for the period he found it unfit. A person may be taxable yet it is not a fit and proper person It may not have a fixed place of abode or business, or it may not submit regular or reliable tax returns.

f) Even where a person may make taxable supplies, the Commissioner General still has powers to reject an application under Section 8 (2) of the VAT Act.

g) In this case, the Respondent found that the Applicant was greatly an NGO, which buys and sells at a reduced price; that whereas the input was clear, the output was not clear. It was as if the Respondent was suggesting that the Applicant is

not a fit and proper person to be registered for VAT.

h) At the time of registration for VAT, the Respondent ought to have conducted a proper due diligence on the Applicant. The Respondent has to convince the Tribunal that the Commissioner General did not have reasonable grounds at the time he rejected the application for VAT registration. This was not done.

i) The Applicant notified the Respondent that 3 months and 12 months prior to the date of the application, it made sales of UGX 150,000,000 and UGX 600,000,000 respectively and anticipated to make supplies of UGX 600,000,000.

j) It also made supplies of UGX 480,000,000 which comprised of standard rated ones and UGX 240,000,000. The Respondent seems to have been convinced.

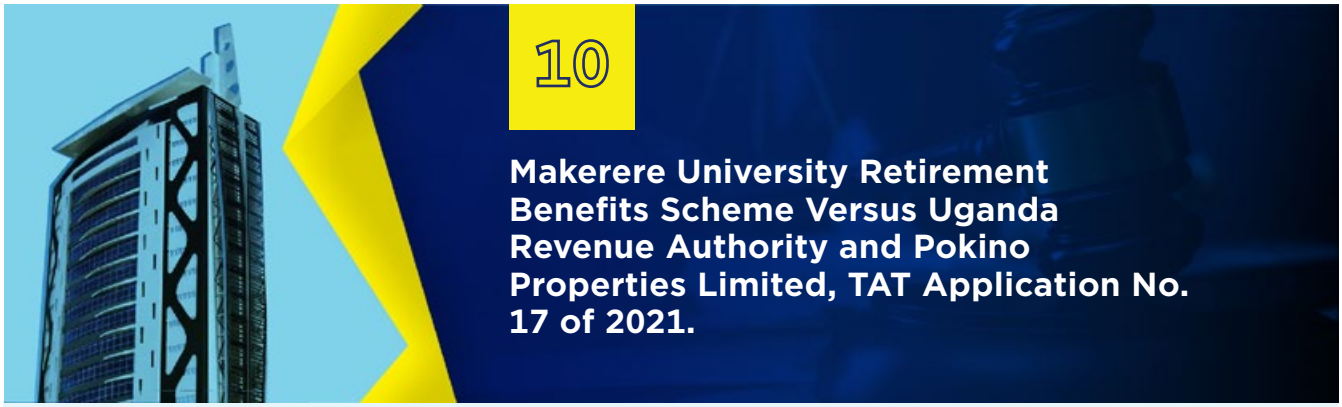
k) As a result of the rejection of the VAT Application, there is no evidence that the Applicant collected VAT from its customers. Once an application for VAT registration has been rejected and the Applicant charges and collects VAT, that is a different story.

l) When the Applicant applied for VAT registration in 2019, the Respondent issued a VAT certificate effective 1st June 2019. The Applicant started collecting VAT.

m) When the Respondent forcibly backdated the Applicant's VAT registration to 2016, it did not show that at the time the Applicant applied for registration in 2014, it did not provide correct or sufficient information.

n) It is not clear why the Respondent forcibly backdated the Applicant's registration certificate to 2016 yet it claims that the Applicant became a taxable person in 2014.

The Application was allowed; the assessments were set aside; and the costs of the portion which was referred to the Tribunal were awarded to the Applicant.



Brief Facts:

This was an application in respect of withholding tax assessment of UGX 600,000,000 issued by the Respondent to the Applicant arising out of land purchased by the Applicant. In September, 2019, the Applicant purchased 50 acres of land in Kyaggwe Block 577 Plot 24 at Ssonde, Kasariyize from Pokino Properties Limited. The Applicant did not withhold tax under Section 118(2) of the Income Tax Act on the grounds that the property purchased was purportedly not a business asset.

The Respondent issued an income tax assessment of UGX 600,000,000 against the Applicant. The Applicant objected to the assessment and the Respondent disallowed the objection, hence this Application.

Issues for Determination:

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

Ruling of the Tax Appeals Tribunal:

a) A resident person who purchases a business or a business asset is obliged to withhold tax at a rate of 6%.

b) The beginning point, therefore, is to determine if the Applicant purchased a business asset where it ought to have withheld taxes.

c) A 'business asset' means an asset which is used or held ready for use in a business and includes any asset held for sale in a business and any asset of a partnership or a company.

d) The addition of the word 'business' to the word 'asset' means that not all assets of a company attract withholding tax. It is only those that are business assets.

e) The question then becomes whether property used by the 2nd Respondent in its business of real estate can be deemed as its asset or its stock-in-trade.

f) 'Stock in trade' means inventory carried by a retail business for sale in the ordinary course of business.

g) The term 'asset' is limited to ownership and value and this implies that for an asset to be a business asset, it would need to be owned by the business in the strict term of 'ownership.' This would exclude inventory for sale in the ordinary course of the business.

h) There is need to distinguish between assets of a business which do not belong to the business but are part of its business operations to generate income and business assets which belong to the business.

i) Assets that belong to the business is what is referred to as 'business assets'. Items or goods used for trading purposes known as stock in trade though are used in the business but are not owned by the business in the strict sense of 'ownership' do not comprise business assets.

j) Business assets and stock in trade comprise assets in a business. However, it is only business assets, assets belonging to the business, and not stock in trade that attract withholding tax.

k) In the circumstances, since the land was the 2nd Respondent's stock-in-trade and not its business asset, the Applicant had no obligation to withhold.

The Application was allowed and the URA was ordered to refund 30% of the tax in dispute deposited by the Applicant.

11

Megha Industries Limited Versus Uganda Revenue Authority, TAT Application No. 32 of 2022

Brief Facts

The Applicant is a company dealing in manufacturing. On 21st September 2021, the Respondent issued Additional assessments of VAT, PAYE, and WHT amounting to UGX 120,140,292, UGX 208,152,614 and UGX 8,666,280 respectively to the Applicant. The basis of the above assessments was the Auditor General's Audit findings. The PAYE assessments of UGX 208,152,614 were established by the OAG from salary variances between PAYE schedules and audited financial statements.

On 10th November 2021, the Respondent requested for information from the Applicant to support the objection grounds. The Applicant was able to support only the VAT and WHT objections and they were accordingly vacated. The Applicant claimed that the information relating to PAYE was unavailable since the factory caught fire and all records were lost. As a result, the Respondent upheld the PAYE assessments, hence this Application.

At the hearing, the Applicant contended that the additional PAYE Assessment was issued after the statutory limitation of three years. Further, that the additional assessments were barred by the doctrine of legitimate expectation. The Respondent argued that it obtained new information leading to the additional assessments from a tax audit report commissioned by the Office of the Auditor General.

Issues for determination:

- Whether the Additional Tax Assessments in issue are barred at law?
- Whether the Applicant is liable to pay the taxes in dispute?
- What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

a) The doctrine of legitimate expectation does not override the express provision of a statute. Section 23(1) provides for certain circumstances which might require assessments to be amended, one of which is the discovery of new information by the Respondent.

b) In order to resolve the issue as to whether the Respondent had validly issued the PAYE assessments, the Tribunal had to determine whether the issuance of the additional assessments was a result of discovery of new information by the Respondent.

c) Section 23 of the Tax Procedures Code Act requires that the discovery of new information must relate to the tax payable by the taxpayer for the tax period in question.

d) The Respondent did not adduce evidence of the OAG Report based on which it issued PAYE assessments against the Applicant. Apart from stating that the findings of the OAG Audit constituted new information, the Respondent did not state what this new information was.

e) In the absence of this vital piece of evidence, the Tribunal was unable to determine whether the additional assessment was issued in accordance with the provisions of Section 23(2) (a) of the TPCA.

The Tribunal found that the additional assessment was time barred and the Application was allowed with costs.

Brief Facts:

The Applicant lets out property and imports second hand clothes. The Respondent issued an administrative amended additional assessment of UGX 36,753,00 against the Applicant for the period 1st July 2019 to 30th June 2020 arising from purported undeclared rental income received by the Applicant from Radison Hotel as per RippleNami data. On 1st February 2022, the Respondent also issued a Withholding Tax assessment of UGX 84,000,000 for the period 1st December 2022 to 31st December 2022. The Applicant objected and the Respondent issued objection decisions disallowing the objections, hence this Application. The dispute before the Tribunal was in respect of Administrative Additional Assessment of UGX 36,753,003.

Issues for determination:

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

Ruling of the Tax Appeals Tribunal:

a) The dispute between the parties boils down to the question of whether the Respondent was justified in issuing an administrative amended additional assessment of UGX 36,7353,003.

b) It is not in dispute that the Applicant is the proprietor of a building at the Applicant's property located at Plot 87, Kyadondo Block 2 Bukesa along Hoima Road in Kampala.

c) The Applicant and Radison Hotel Limited entered into a contract where the latter would run a hotel in the said building.

d) The Respondent issued an Administrative Amended Additional Assessment against the Applicant arising from purportedly undeclared rental income basing on RippleNami data.

e) The Applicant adduced an agreement between it and Radison Hotel under which the Hotel was required to pay to the Applicant rent of UGX 3,000,000 per month and 40% residual profit as its annual commission.

f) The Income Tax (Rental Rates) Regulations of 2020 apply where a taxpayer has failed to file a return in accordance with Section 4 of the Income Tax Act or where the Commissioner contests the return.

g) The Respondent stated that the property is located on Namirembe Road within Kampala Central Region while the Applicant stated that the property is located at Plot 87 Kyadondo Block 2 Bukesa, along Hoima Road in Kampala.

h) From Schedule 1, neither Namirembe Road nor Hoima Road are among the streets, roads or lanes specified under the first column of the Schedule. These Regulations do not apply to the property in question.

i) The Respondent also relied on RippleNami data which showed that rental income derived by the Applicant from the building in question as per the KCCA property rates was UGX 122,510,006.

j) The Respondent did not provide the Tribunal with the data from RippleNami which was used to guide in arriving at the assessment in question nor did it lead evidence of the officers of RippleNami to explain the basis of its conclusion that the Applicant did not declare rental income for the period in question.

k) Though the parties refer to the agreement as a tenancy agreement, it was actually a memorandum of understanding. The said memorandum does not state what residual profits are. However, using an understanding of the common man on the streets, residual profits would connote profits.

l) The Applicant is silent on the taxes of the 40% residual profit and did not tender in its financial statements to show that it did not receive the 40% residual profit.

m) It also did not tender in the financial statements of Radison Hotel Limited to show that it did not make net profits in the said financial years.

n) Though the Applicant stated the rent from the said building was UGX 32,392,000 for the period, it did not show how it arrived at the said figure.

o) The landlord was sharing in the profits of the tenant which indicates a relationship which was more than that of a landlord-tenant relationship. The landlord-tenant relationship was not at arm's length.

p) The clauses in the memorandum allowing the tenant to pay 40% of the residual profit and not to pay rent for 5 months when the tenant incurs losses, amount to directions and wishes of a tenant to the Applicant. Both should be treated as associates of each other.

q) The Applicant and its tenant shared a director. If the Applicant was entitled to 40% of the residual profit and the two parties shared a director, the Commissioner ought to have considered it as an associate and taxed the residual profit.

r) Irrespective of that, the Commissioner was justified to issue an assessment as the Applicant did not file any returns.

s) At the locus visit, it was revealed that Baguma Restaurant paid rent of UGX 1,500,000 for four rooms, while Radison Hotel paid UGX 3,000,000 for 37 rooms.

t) One cannot fail to discern that the rent by Radison Hotel if put at 3,000,000 per month for 57 rooms, is not proportionate to the rooms it was occupying, when compared to what the restaurant was paying for 4 rooms.

u) This confirms the suspicion that the Applicant was not dealing with Radison Hotel at arm's length because they were associates.

The Tribunal found that the Applicant did not present evidence to dispute the assessment. Application was dismissed with costs to the Respondent.

13

Nile Breweries Ltd Versus Uganda Revenue Authority; TAT Applications No. 46, 100 & 110 of 2022

Brief Facts:

The Applicant is a manufacturer of alcoholic beverages which are sold locally in Uganda and exported. The goods manufactured for export are clearly marked 'for export' and are exported to DRC and South Sudan. The Applicant does not pay VAT or LED on exports. The Respondent insisted that the Applicant misclassified its goods as zero rated since they were not exported by the latter and therefore should pay LED and VAT.

The Respondent audited the Applicant for the periods between January to August 2021 and September 2021 to December 2021 and issued Additional Administrative Tax Assessments of UGX 11,025,779,590.98 and UGX 7,537,585,897 for LED and VAT respectively.

Issues for Determination:

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

Ruling of the Tax Appeals Tribunal:

a) Value added tax is charged on every taxable supply made by a taxable person.

b) Excise Duty, on the other hand, is imposed in respect of manufactured goods and is paid by the person manufacturing the excisable goods and its taxing point happens when goods are removed from the manufacturer's premises.

c) In order to understand the dispute, one has to realise that if the Applicant sold beer locally, it attracts VAT and LED whereas beer that is exported does not attract VAT and LED.

d) The Applicant entered into alleged agency agreements with Kabaco Company for the export of beer to Democratic Republic of Congo and Ituri Investments Limited for the export of beer to South Sudan.

e) An agent means a person employed by a principal to do any act for that principal or to represent a principal in dealing with a third person.

f) Manufacturers are known to have agents who are distributors who buy goods at discounted prices. From the facts at hand, the Applicant was selling a beer crate to Kabaco at USD 8 per crate which Kabaco later exported at USD 11 per crate.

g) Where goods are delivered by a supplier to a person in Uganda, that is a local supply. If goods are supplied to a person or agent who is abroad, then that is an export. The VAT applicable to a local supply by the principal will apply to the agent.

h) It was pertinent to determine whether the Applicant made local sales to agents who then exported the beer, in essence making it two transactions.

i) The agreement between the two entities was to market and sell the Applicant's products abroad. It did not mention any sale. However, it had a provision that allowed the Applicant to sell its products to its agents.

j) This payment for products amounted to consideration as per the definition of Section 1(d) of the VAT Act.

k) Since invoices were issued to the agents and goods were delivered to them within Uganda, upon which title changed hands, this amounted to a local supply that attracted VAT.

l) A supply of goods is an arrangement under which the owner of goods parts with possession of goods including a lease or an agreement of sale and purchase.

m) The export agreements show that goods were delivered at the Applicant's premises in Uganda.

n) The Applicant cannot therefore pretend that it exported its beers to Ituri Investments and Kabaco when the parting of possession of goods took place in Uganda since an export can only take place where it happens in another country.

o) Since the agents were in Uganda, there was no export and when the Applicant issued tax invoices, a supply was confirmed.

p) The earliest of the delivery, payment or when tax invoice was issued was the time of supply and all these took place in Uganda.

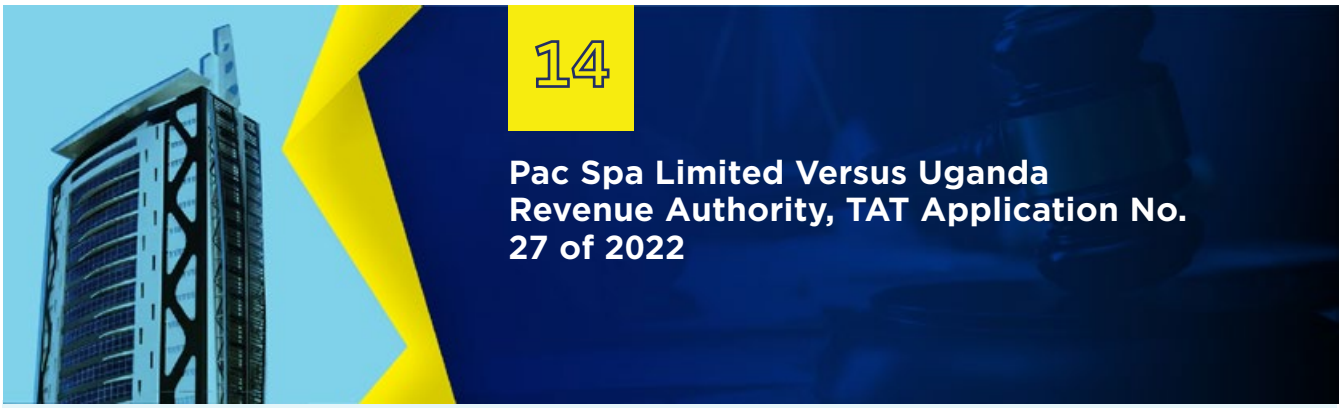
q) Since the e-invoices were issued to agents, and delivery was made to them at the Applicant's premises, and title was passed to the agents, a local sale was made. This attracted VAT.

r) In respect of Local Excise Duty, as the export agreements showed that the Applicant delivered beer at its premises to agents and these goods were removed from the manufacturer's premises, excise duty was due on them.

s) In absence of evidence of export documentation, the delivery was in Uganda and no export took place. Local Excise Duty was therefore due and chargeable.

t) In the circumstances, the Applicant was found liable to pay both VAT of UGX 7,537,585,897 and LED of UGX 11,025,779,590.98.

The Application was dismissed and the Applicant was ordered to pay costs to URA.



14

Pac Spa Limited Versus Uganda Revenue Authority, TAT Application No. 27 of 2022

Brief Facts:

The Applicant is a company registered as a branch of a company incorporated in Italy. It provides construction engineering services to hydropower projects. On 21st June 2021, the Respondent conducted a comprehensive audit on the Applicant for July 2015 to June 2019. It issued Corporation Tax Assessments of UGX 7,287,370,395 and a WHT assessment which was eventually adjusted to UGX 308,096,773. The Applicant objected, but apart from adjustments, the objection was disallowed, hence this Application.

Issues for Determination:

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

Ruling of the Tax Appeals Tribunal:

a) A long-term contract is one that is not completed within the year of income the contract commences. The Applicant's contract was therefore a long-term contract that couldn't be concluded over 12 months.

b) The Respondent was justified in applying Section 45 of the Income Tax Act since the project was a long-term contract and the Applicant failed to provide documents for determining costs allocated and incurred for the construction project.

c) The Respondent is allowed to use other methods of allocating costs as per Section 56A which provides for the use of input-output ratios and other methods of allocating cost and revenue and this involves using its best judgment.

d) The Respondent is allowed to use its best judgment when it queries the methods applied by the Applicant where it has failed to provide relevant documents to enable it to make an assessment.

e) However, while using the best judgment, the Respondent had an obligation to provide evidence of similar projects that the Respondent used to arrive at the profit margin.

f) The first witness testified that the Respondent used 4% while the second witness said 5% and the third witness used 3%. This evidence was contradictory. A small difference in percentage can make a huge difference in tax liability.

g) An improper assessment using a wrong percentage may wipe away the profits a taxpayer has earned or exaggerate it. It is important that the Respondent gets its profit margin estimates correct. It ought to have looked at margins of similar projects.

h) The Respondent in looking at this profit margin has to look at the size and magnitude of the projects, the nature of the contract and the business environment they operate in.

i) The Respondent cannot determine the profit margin, unless he is privy to the revenue of the person carrying out the project or project amount.

j) However, there is no evidence that the surveyor looked at incomes of other projects. The Respondent did not adduce evidence of a financial consultant or analyst who looked at audited financial statements of similar projects.

k) Since the Respondent did not elaborate at how it came about the percentage of 4%, its assessment was not justified.

l) As a result, the corporate tax assessment of UGX 7,287,370,395 was set aside.

m) In respect of WHT, the Applicant was a designated WHT agent effective 1st July 2018.

n) The Respondent's audit shows that the Applicant did not fully account for WHT on payments of goods and services and WHT which was adjusted to UGX 308,096,773.

o) The Respondent did not indicate the period the Applicant ought to have withheld tax.

p) The Applicant was charged under Section 119 which provides for payments to any person in Uganda. The Recipient of the payments was abroad and this Section cannot apply to them.

q) In the circumstances, the assessment of UGX 308,096,773 was also set aside.

The Application was allowed and the Respondent was ordered to pay costs to the Applicant

Brief Facts:

The Applicant is a Religious Trust whose principle activity is provision of health care services within Uganda. The Applicant charges its patients fees for its services at subsidized/discounted rates. The Applicant also carries out other income generating activities and declares surpluses in its audited financial statements. In 2017, the Applicant applied for a written ruling from the Respondent to ascertain whether it is an exempt organization under Section 2(bb)(i) (B) of the Income Tax Act, on grounds that it allegedly operates as a charitable organization.

The Respondent issued its ruling to the effect that the Applicant did not qualify as an exempt organisation. The Applicant objected and the Respondent issued an objection decision allowing the Applicant's objection and advising it to re-apply for Income Tax Exemption. Consequently, the Applicant applied for exemption for the period of 1st July 2016 to 30th June 2018. The Respondent rejected the

Applicant's application for an exemption certificate on grounds that the Applicant charges patient fees for the provision of the said services. The Applicant's financial statements indicated that patient fees make up 76% of the Applicant's total income while donations account for only 7%.

Issues for determination:

- Whether the Applicant qualifies as an exempt organisation under the Income Tax Act?
- What remedies are available?

Ruling of the Tax Appeals Tribunal:

a) The Income Tax Act, at the time the Applicant applied for the private ruling in 2018, provided for a charitable institution of a public character as one of the organisations that qualify for Income Tax exemption.

b) By allowing the Applicant's objection, the Respondent had in essence agreed that the Applicant was a charitable institution of a public character.

c) Therefore, the Respondent ought to have issued the Applicant with the exemption certificate for the period of 1st July 2017 30th June 2018 instead of requiring it to apply afresh.

d) The Respondent's actions of allowing the Applicant's objection and then rejecting its subsequent Application for exemption amounted to giving the Applicant the certificate with one hand and removing it with the other hand.

e) When the Respondent made the objection decision, it became functus officio. It was thus a wrong procedure for the Respondent to require the Applicant to make another application for exemption.

f) However, the Applicant was not entitled to Income Tax Exemption for the period after June 2018 firstly because it had not applied for exemption for that period.

g) Secondly, the law had since changed following the 2021 amendment to the Income Tax Act. According to the amendment, being a charitable institution would not qualify one for an Income Tax Exemption if its object was to make profit.

h) An organisation that offers both charitable and business services may not qualify for an income tax exemption. Its profitable or business activities may be subject to tax.

i) The fact that the Applicant does not distribute dividends but has monies to invest may make it difficult to claim to be a charitable institution.

j) An organisation whose activities generate profits cannot rely on the social impact aspects of its activities to seek exemption from Income Tax as a charitable institution under section 21(1) (f) and 2 (bb)(i)(B) of the income tax act.

k) The Applicant provides both charitable and profit-making activities. To ignore the profit-making activities and only consider the charitable activities which provide a small portion of the Applicant's income would be to deny the taxman a chance from collecting taxes on chargeable income.

l) It would also allow many profit-making institutions to hide under the guise of charitable institutions to exempt their income from taxes. This is why the Income

Tax Amendment Act, 2021 inserted "whose object is not to make profit" in section 2 (bb) B.

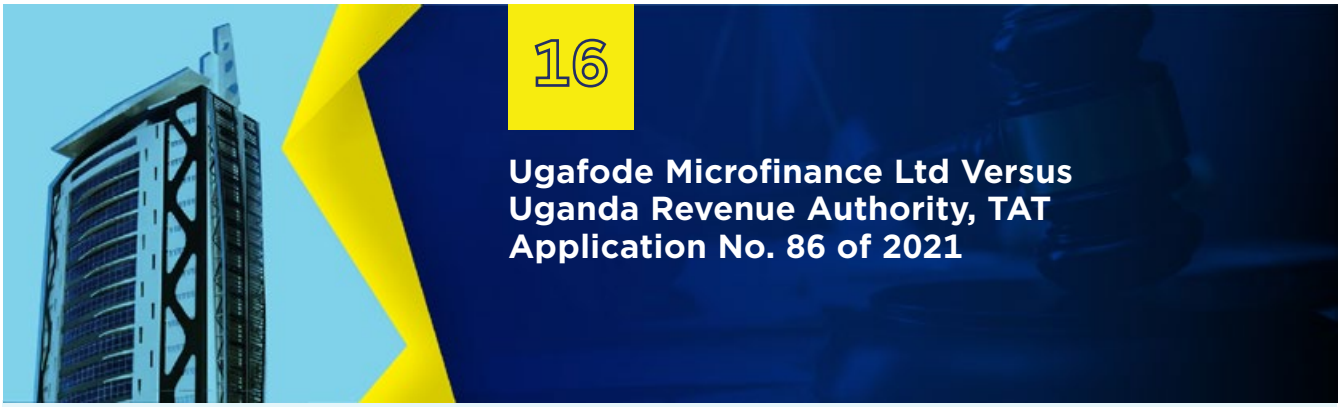
m) Giving subsidised services or discounts to a person who can afford them would not amount to being charitable.

n) The decision by the Respondent to consider the Applicant as a non-exempt organisation in light of the above and refuse to issue an exemption certificate cannot be said to be grossly irrational for the Tribunal to set aside.

o) The Respondent ought to grant the Applicant an exemption certificate for the period of 1st July 2016 to 30th June 2018.

p) The Applicant does not qualify to be an exempt organisation for the period thereafter as there was no application to the Respondent.

Accordingly, the Application was partially allowed with half the costs awarded to the Applicant.



Brief Facts:

The Applicant is a financial institution which provides financial services such as advancing loans on which it earns income. The Respondent conducted an audit on the Applicant for the period 1st January 2017 to 31st December 2019, disallowed unpaid interest which the Applicant treated as an allowable expense and consequently issued an Income Tax Assessment of UGX 577,123,658. The Applicant objected and the Respondent issued objection decisions maintaining the Assessments.

Issues for determination:

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

> *There is a contradiction when a taxpayer treats both paid interest and accrued interest as allowable deductions.*
>
> **-Tax Appeals Tribunal-**

Ruling of the Tax Appeals Tribunal:

a) To generate working capital, the Applicant obtains loans from financial institutions and non-financial institutions and from deposits from individuals, where interest is paid.

b) The dispute between the parties is on treatment of interest to the institutions where the Applicant obtains loans.

c) The Applicant treated accrued interest as a deductible allowance whereas the Respondent contended that the Applicant did not pay the interest and could not expense the same.

d) Interest incurred in the production of income included in the gross income is an allowable deduction. However, the dispute is that the Respondent contends that the Applicant included interest that it did not pay.

> *If accrual income is not included in the income statement of the financials when using accruable interest, it means that the said interest was not used in the production of income included in the gross income*
>
> **-Tax Appeals Tribunal-**

e) Whether interest that has not been paid can be considered as an allowable deduction depends on the accounting system a taxpayer uses. There are two accounting systems- cash based or accrual based.

f) Accrued interest under the accrual accounting system accumulates over time even though it has not been physically paid by the borrower or received by the lender.

g) A taxpayer can incur interest expense when it is payable under the accrual accounting system.

h) There is a contradiction when a taxpayer treats both paid interest and accrued interest as allowable deductions. Using both the accrual and cash basis accounting methods to treating unpaid and paid interest as allowable deductions, leads to less chargeable income.

i) Interest cannot be considered as payable and paid in the same income statement and/or financial statements. One cannot use both Sections 4 and 42 of the Income Tax Act which allows for opposing accrual and cash accounting systems.

j) This is because, by the time a taxpayer pays interest and treats it as an allowable expense using the cash accounting, it would have already been considered as payable under the accrual method in another financial year.

k) While interest may be payable in one financial year, it may be paid in another financial year. Using both accounting systems may distort the chargeable tax as the said interest may be allowed as an expenditure twice.

l) Therefore, the Applicant should use one of the accounting methods and not both. If a taxpayer treats accruable interest as an expense, it should also include the accruable income in the gross income for the interest to qualify as an allowable expense.

m) While the accrual system allows for accrual income and expenditure, the cash-based accounting system allows for paid income and paid expenses.

n) If accrual income is not included in the income statement of the financials when using accruable interest, it means that the said interest was not used in the production of income included in the gross income under Section 25 of the Income Tax Act.

o) A perusal of the Applicant's Financial Statements does not show that it indicated the accruable income in the gross income arising from the accruable interest.

The Tribunal found that the Applicant failed to discharge the burden that the Respondent ought to have made the decision differently. The Application was dismissed with costs to the Respondent.

CUSTOMS

17

Colas East Africa Versus Uganda Revenue Authority, High Court Civil Appeal No. 42 of 2022

Brief Facts:

The Appellant imports road construction materials. On 20th August 2010, the Respondent did a post customs clearance audit on the Applicant. The audit revealed that the Appellant imported Bitumen using Method 1 of the transaction value method. The Respondent raised an assessment of UGX 694,037,728 on the Appellant on the ground that it should have used Method 2 of Identical goods.

For the period 2015 to 2019, the Appellant imported Bitumen 80/100 183 Kg and Bitumen 60/70 183 Kg from UAE to Uganda. The Respondent carried out a Customs Post Clearance Audit and realized that the Appellant was incorrectly/ wrongly declaring the foregoing imports from UAE to have been imported from Kenya whereas not, thus benefiting from the origin criteria by not paying import duty. The Respondent corrected the origin criteria to be United Arab Emirates (UAE) and not Kenya, by computing the 25% as import duty rate on the said Bitumen and assessing the Appellant to tax of UGX 27,295,901.

The Respondent also examined the Applicant's imports declared in ASCYCUDA alongside its books of account for the period 2015 to 2019 which indicated that whereas the Appellant had paid for the imports, it had debts to pay (payables) for the same imports.

The Respondent further carried out a payables test to confirm that the amounts the Appellant declared in ASCYCUDA as imports were the true prices paid or payable for customs purposes and the Respondent realized a net variance of UGX 526,456,542 between the declared values and the expected values.

More so, the Respondent carried out a ledger analysis to confirm whether the values the Appellant posted in its ledger matched those declared in the commercial invoices, realizing a variance of UGX 53,458,341 leading to payable taxes of UGX 12,830,002. The Respondent thus rejected the Applicant's Method 1 of transaction value.

Consequently, the Respondent relied on imports of identical bitumen products from the same exporter (the Applicant's in Kenya) to Uganda for the period 2015 to 2019 and thereby used Method 2 of the transaction value of identical goods to assess the Appellant total tax of UGX 706,958,865 (being VAT of UGX 530,219,149 and WHT of 176,739,716).

The Appellant objected to the above tax and the Respondent adjusted the tax to total tax of UGX 694,037,728 (being VAT of UGX 520,528,296 and WHT of UGX 173,549,432).

The Appellant challenged the tax liability before the Tax Appeals Tribunal which dismissed the Application with costs to the Respondent, hence this Appeal to High Court.

Grounds of Appeal:

- ❖ The Tax Appeals Tribunal erred in law when it held that Method 2 which the Respondent used to assess the Appellant tax worth UGX 694,037,728 was applied correctly when the Respondent had not considered the commercial levels related to the importers.
- ❖ The Tax Appeals Tribunal erred in law in rendering a decision contravenes the express provisions of the Fourth Schedule of the EACCMA in respect to valuation of goods under Method 2 thereby arriving at the wrong decision
- ❖ The Tax Appeals Tribunal erred in law when it misapplied the criteria on establishing origin of goods for import purposes when it erroneously concluded that all the subject goods originated from UAE thereby arriving at the wrong decision.
- ❖ The Tax Appeals Tribunal erred in law when it erroneously applied Section 18 of the TAT Act on burden of proof of the Applicant in total disregard of the rules of evidence and principles of burden of proof as set in the Evidence Act, Cap. 6

Judgment of the High Court:

a) Under the Application to the tribunal, the key reasons for the same advanced by the Appellant were that the Respondent's Application of the transaction value of identical goods was flawed.

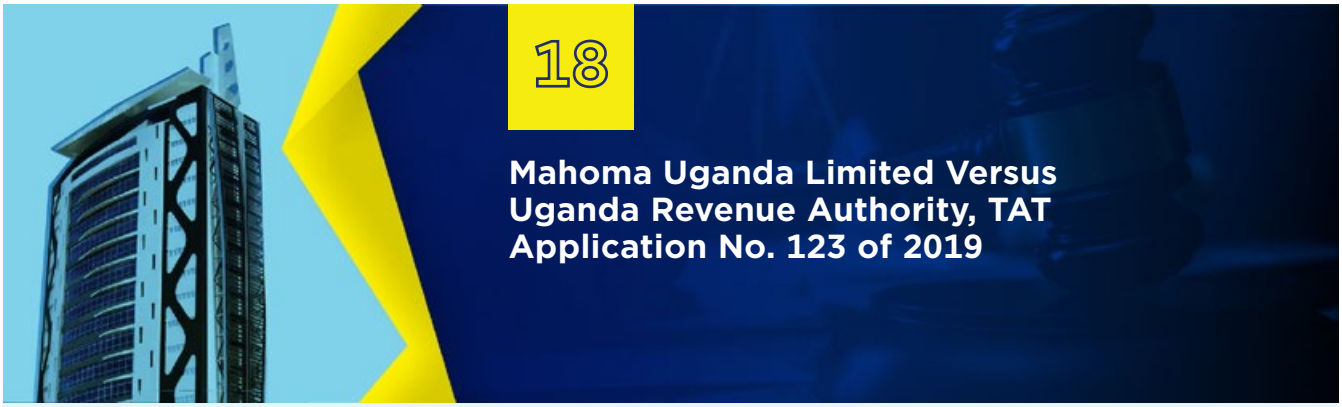
b) The Appellant's witness stated that the Applicant objected because the Respondent did not consider the commercial levels between the Applicant and its branch in Uganda vis-a-viz other unrelated importers that buy directly from it.

c) Court noted that the Tribunal seems to have addressed the issue as to whether or not the Respondent was justified in applying Method 2 as opposed to Method 1 in assessing the tax payable.

d) From the record, the real issue was whether Method 2 was applied correctly by the Respondent in the assessment of tax.

e) The Tribunal did not go a step further to determine whether the Respondent applied Method 2 in accordance with Paragraph 3 of the 4th Schedule of the East African Community Customs Management Act.

The High Court remitted the matter back to the Tax Appeals Tribunal for reconsideration.



18

Mahoma Uganda Limited Versus Uganda Revenue Authority, TAT Application No. 123 of 2019

Brief Facts:

The Applicant is a limited liability company engaged in the business of hydro power generation. The Respondent conducted a review of the Applicant's declarations on the ASYCUDA World System and reviewed the Applicant's Invoice No. 950002376, the customs entry documents under Entry No. C39600. The Applicant and Respondent disagreed on the classification of several items listed below.

a) Valves were classified by the Applicant as parts of hydraulic turbines of sub-heading 8410.90.00, attracting an import duty rate of 0% but the Respondent contended they were supposed to be classified under sub-heading 8481.80.00 with an import rate of 10%.

b) The Unit control system, auxiliary system, switch gear and Scada were classified by the Applicant as parts of hydraulic turbines of subheading 8410.90.00, attracting an import duty rate of 0% but the Respondent contended that they were supposed to be classified under sub-heading 8537.10.00, with an import rate of 10%

c) Cables and parts were classified by the Applicant as parts of hydraulic turbines of sub-heading 8410.90.00, attracting an import duty of 0% but the Respondent contended that they were supposed to be classified under sub-heading 8544.20.00 with an import duty of 25%.

The Respondent re-assessed the entries and issued an additional assessment of UGX 76,054,160. The Applicant objected and the Respondent issued an objection decision disallowing the objection.

Issues for determination:

- Whether the Applicant is liable to pay the tax of UGX 76,054,160 assessed?
- What remedies are available to the parties?

> *The EAC Common External Tariff specifically provides for valves. Where an item is specifically provided for, the Tribunal cannot ignore the provision.*
>
> **-Tax Appeals Tribunal-**

Ruling of the Tax Appeals Tribunal:

a) The Applicant contended that it classified the valves, unit control system, auxiliary system, cables and other parts under the EAC Common External Tariff HS Code 8419.90.00 attracting a rate of 0% because they were designed exclusively for a specific turbine or hydroelectric plant.

b) The World Customs Organisation developed international standards to assist revenue collections of members and to guide their customs administrations.

c) Uganda is a member of the World Customs Organisation which developed the International Convention on the Harmonised Commodity Description and Coding System to facilitate trade and information exchange by harmonising the description, classification and coding of goods in international trade.

d) Uganda uses the Harmonized System as provided for under the East African Customs Union. Article 12(4) of the Protocol on the Establishment of the East African Customs Union provides that the Partner States shall use the Harmonized Customs Commodity Description and Coding System, specified in Annex1 of the Protocol, that is the East African Community Common External Tariff (EAC-CET).

<u>The Valves</u>

e) A turbine is defined by Cambridge's Advanced Learner's Dictionary 4th Edition p. 1691 as "a type of machine through which liquid or gas flows and turns a special wheel with blades in or to produce power".

f) Heading 84.10 which forms of the chapter provides for Hydraulic turbines, water wheels, and regulators thereof.

g) Heading 84.81 which also forms part of Chapter 84 provides for "Taps, cocks, valves and similar appliances for pipes, boiler, shells tanks, vats or the like including pressure reducing valves and thermostically controlled valves".

h) The import documents, the commercial invoice on page 8 of the Applicant's Trial Bundle shows that it imported valves.

i) The EAC Common External Tariff specifically provides for valves. Where an item is specifically provided for, the Tribunal cannot ignore the provision.

> *If the exporter and/or manufacturer has classified them under the said HSC, the Tribunal does not see why it should dispute the said information.*
>
> **-Tax Appeals Tribunal-**

j) The valves imported by the Applicant form part of the hydro power generating plant but not part of the turbine. The valves should be classified under the proper HSC 8481 which shows that they attract import duty of 10%. The Respondent was justified to reclassify the valves.

<u>The Unit Control System, Auxilliary System, Switch Gear, and Scada</u>

k) The Commercial Invoice Exhibit AE1 shows that the Applicant imported a unit control system, auxiliary systems and scada which were classified under HSC 8537.10.10 on the invoice.

l) If the commercial invoices show that the Applicant should have classified the goods under HSC 8537.10.10, the Tribunal cannot dispute it because the exporter knew what it exported.

m) Therefore, the Respondent was justified to reclassify the said items.

Cables and other parts

n) The Commercial Invoice Exhibit AEX1 shows that the Applicant imported cables and other parts. In the Commercial Invoice, the said cables were classified under HSC 8544.49.95.

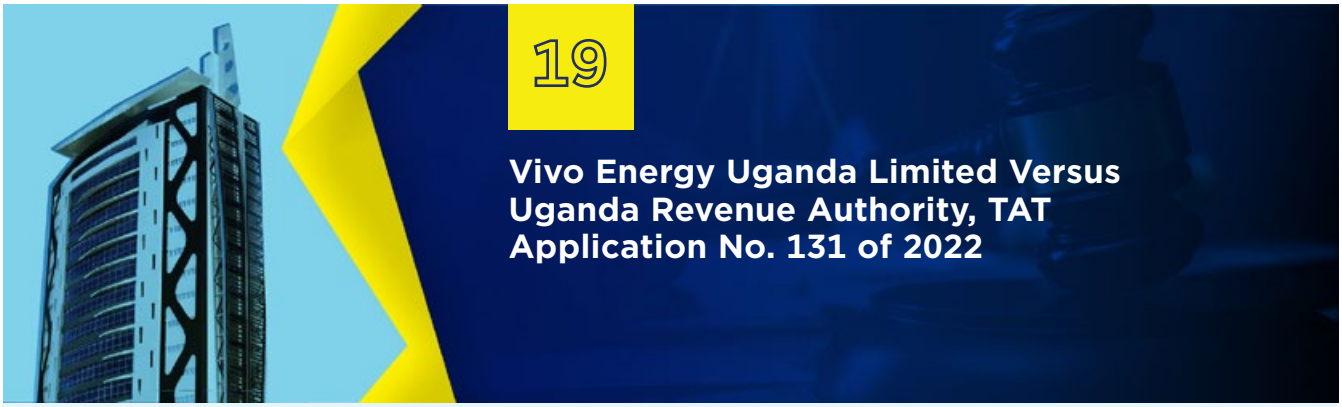
o) If the exporter and/or manufacturer has classified them under the said HSC, the Tribunal does not see why it should dispute the said information.

p) If the invoices availed by the Applicant as importer led the Respondent to believe the said items fell under the declared HSC, why would the Applicant deny their truth?

q) The said items are not turbines or parts of turbines. They may be used in the hydro power plant for electrical purposes.

r) HSC 8544.20.00 mentions co-axial cable and other co-axial electric conductors which attract a duty rate of 25%. The Respondent was justified to reclassify the items.

The Tribunal found that all the items in dispute were not part of the turbine and had been properly reclassified by the Respondent. The Application was dismissed with costs to the Respondent.



Brief Facts:

The Applicant imports petroleum lubricants as part of her business dealings in Uganda. For the period of 2014 to March, 2019, the Applicant imported into Uganda lubricants of the following brands; Tellus S2, Shell Spirax S4 Oils, Omalla S2 G680, Shell Argina S4 Oils, Air tool oils and lubrication oils. The Applicant did not pay Excise Duty on the above imports as it considered them "industrial grade" lubricants which do not attract taxes. The Respondent carried out a system analysis of past clearances in the ASYCUDA Customs System and established that the declarations made by the Applicant indicated a misclassification of lubricants imported by the Applicant. The Respondent issued a demand of UGX 1,309,486,724 and the Applicant objected to the demand on grounds that the imports were industrial grade lubricants and as such, did not attract 10% Excise Duty, which objection was disallowed.

The Respondent's position was that the petroleum lubricants in issue are applied in excavators, bull dozers, specialized motor vehicles 8705, articulated dump trucks and agricultural tractors which belong to the category of off-road motor vehicles. And as such, ought to be classified under subheading 2710.19.51.

Issues for determination:

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

Ruling of the Tax Appeals Tribunal:

a) The Term "Motor Vehicle" under clause 2(j) of the Excise Duty (Amendment) Act, 2015 is not defined.

b) The definition of items like tractors and excavators cannot be said to fall under the definition of motor vehicles. The Tribunal was cautious to extend the definition of motor vehicles to include lubricants of the said equipment.

c) In order for one to be liable to pay taxes, the subject matter must be clear and precise. Where there is ambiguity in the law, the taxpayer is given the benefit of the doubt.

d) The Respondent didn't dispute the application of the said lubricants and did not adduce evidence to show that the lubricants applied to motor vehicles not in dispute.

e) Therefore, the Tribunal held that the Respondent was not justified to issue the Excise Duty assessment of UGX 1,309,486,724.

The Application was allowed with costs.

Brief Facts:

The Applicant imports, distributes and sells motor vehicle tyres and other car accessories. The Respondent conducted an audit which showed that the latter purportedly has a tax liability of UGX 876,291,671 arising from non-declaration of freight insurance and other incidental costs during the importation of its goods and inconstancies in import documents on 15th July 2021. The Applicant objected to the assessment and the Respondent disallowed it. On 1st October 2021, the Respondent issued an adjusted tax liability of UGX 657,881,961.

Issues for determination:

- ❖ Whether the Respondent's decision was time barred?
- ❖ Whether the Applicant is liable for the tax of UGX 657,881,961?
- ❖ What remedies are available?

Ruling of the Tax Appeals Tribunal:

a) The Applicant raised an objection that the Respondent submitted its objection decision after it had elected as no communication was given to it within the stipulated 30 days under Section 229(5) of the EACCMA.

b) While the EACCMA provides for customs matters. The Tax Procedure Code Act provides for objections in domestic matters.

c) The Tax Procedures Code Act mentions objection decisions, while the EACCMA talks of a decision. Section 24(7) of the Tax Procedures Code Act clearly states that ''by notice in writing to the Commissioner, elect''. However, the provision in the EACCMA does not provide for election in writing.

d) Section 229(5) states that where the Commissioner has not communicated his or her decision to the person lodging the Application for review within the time specified, the Commissioner shall be deemed to have made a decision to allow the Application.

e) Therefore, the person under Section 229(5), does not need to elect where there is no decision, the Commissioner is deemed to have allowed the Application.

f) On 2nd September 2021, the Commissioner wrote to the Applicant where he concluded that, ''based on the above, your goods don't qualify to be declared under transaction method valuation. Therefore, the committee decision is that alternative methods of valuation shall be applied, and the results shall be communicated to you in due time''.

g) It is difficult for the tribunal to state that the said letter did not constitute a decision. Section 229(4) and (5) require the Commissioner to communicate a decision.

h) The said letter made it clear that the transaction valuation method used by the Applicant was not accepted by the Commissioner. Though the decision did not state the tax liability of the Applicant, it clearly stated that the method used by the Applicant was not accepted.

i) While the letter of 2nd September 2021 cannot be called in strict terms an objection decision, it was still a decision of the Commissioner. Section 229 of the EACMMA mentions a decision of the Commissioner. Likewise, the letter of 1st October 2021 stating the tax liability of the Applicant was a decision of the Commissioner.

j) To ignore the 1st letter of 2nd September 2021 as a decision would be just a question of semantics. The tribunal focuses on form rather than substance. The objection was overruled.

k) The Applicant contends that it declared its imports based on the actual cost of goods, insurance and freight charges to Mombasa. It presented original import documentation to the Respondent.

l) The Respondent conducted an audit and issued a tax liability of UGX 876,291,647 arising from alleged non-declaration of sea freight to Mombasa. The Respondent alleged that the freight rates were different from other importers.

m) The Dispute before the tribunal is whether the Respondent was justified in rejecting the transaction value method used by the Applicant and instead applying the transaction value of similar goods.

n) According to the Applicant, the Commissioner did not provide any further details to the Applicant with respect to the computations he used. No disclosure was made on what similar goods were used to compare to the Applicant's imports.

o) No disclosure was made with respect to when the said imports were purchased of from where they were purchased. No disclosure is made as to which ports they came from.

p) The tribunal having perused the documents, noted that though the Respondent alleges that the Applicant declared low freight values compared to other consignments from the same ports in a similar period by other importer of similar items, the Respondent did not attach or adduce information in respect of the other consignments from the sea port in a similar period.

q) Though the Respondent contends that the documentation had inconsistencies, there is no evidence that they were not genuine.

r) Whereas the Respondent was justified to query the documents, it did not show that the Applicant paid lower taxes.

s) While the Applicant may have used the wrong incoterm, it may have paid the actual freight charges. Whether the freight charges were borne by the exporter or importer does not make a difference where the charges were the amounts actually paid.

t) The Respondent did not provide a breakdown of the imports where the Applicant did not pay freight and insurance costs for the importation of its goods.

u) The Respondent further stated that the freight value was computed by comparison of freight rates or other companies vying the same route and carrying similar goods around the same time the Applicant imported the goods. This is a contradiction that the Applicant did not declare freight costs.

v) The Tribunal noted that although the Respondent says that the Applicant did not avail additional information to clarify on the transactions to reach the correct assessments, the Respondent does not show where its assessments emanated from.

The Application was allowed with costs and the Respondent was ordered to refund 30% of the tax in dispute, if any.

21

Ziba Limited Versus Uganda Revenue Authority, TAT Application No. 121 of 2019

Brief Facts:

The Applicant is a limited liability company incorporated in Uganda and engaged in the business of hydro power generation. The Respondent conducted a review of the Applicant's past clearances and found that it misclassified its imports. The Respondent subsequently issued an additional assessment of UGX 376,512,530 against the Applicant. The Applicant objected and the Respondent issued an objection decision maintaining the assessment, hence this Application.

Issues for determination:

- ❖ Whether the Applicant is liable to pay the tax of UGX 376,512,530?
- ❖ What remedies are available?

Ruling of the Tax Appeals Tribunal:

a) The World Customs Organisation developed international standards to assist revenue collections of members and to guide their customs administrations.

b) Uganda is a member of the World Customs Organisation which developed the International Convention on the Harmonised Commodity Description and Coding System to facilitate trade and information exchange by harmonising the description, classification and coding of goods in international trade.

c) Uganda uses the Harmonized System as provided for under the East African Customs Union. Article 12(4) of the Protocol on the Establishment of the East African Customs Union provides that the Partner States shall use the Harmonized Customs Commodity Description and Coding System, specified in Annex1 of the Protocol, that is the East African Community Common External Tariff (EAC-CET).

d) The Applicant contended that its imported valves are part of the turbine under. Heading 84.10 covers hydraulic turbines, water wheels, and regulators thereof.

e) The Applicant relied on sub heading 8410.90.00 which provides for parts including regulators with a duty rate of 0%.

f) The Respondent contended that the correct subheading is 8481.90 which provides for Taps, cocks, valves and similar appliances for pipes, boiler, shells, tanks, vats or the like, including pressure-reducing valves and thermostatically controlled valves.

g) The HSC dealing with valves is specific to valves and the Applicant ought to use the heading which described its imports clearly.

h) The Applicant was not right to categorize the goods to fall under a heading of parts of a turbine yet they are clearly stated in another subheading.

i) Pipes were classified as parts of a turbine under subheading 8410.90 instead of subheading 7306.90.

j) The right heading for the pipes is 7306.90.00 with a duty rate of 25%.

k) Tubes were classified by the Applicant as parts of the turbine but the Respondent contended that the correct HSC is 4009.42.

l) The Respondent was right to have classified the tubes under the said heading.

The Application was dismissed with costs to the Respondent.

LABOUR & EMPLOYMENT CASE

22

Joseph Mwangala Mugabi Versus Uganda Revenue Authority, High Court Misc. Cause No. 87 of 2021

Brief Facts:

The Applicant was employed by the Respondent under a five-year contract effective 1st January 2016. Clause 6 (i) of the contract provided for the possibility of renewal of the contract upon making an application three months prior to its expiration. On 1st October 2020, towards the end of his contract, the Applicant submitted an application for renewal of his contract which was not allowed.

The Applicant filed this Application seeking among others, a declaration that the decision not to renew his contract was illegal, unconstitutional, unjustified, unreasonable and against the principles of natural justice and fairness; and an order of Mandamus instructing the Respondent to renew his contract. The Respondent contended that the decision to renew the contract was in the full discretion of the Respondent's Board if Directors which considered the application and resolved not to renew the Applicant's contract.

Issues for determination:

- Whether the Application was brought within time as provided for by the law:
- Whether the action or decision of the Respondent was illegal or procedurally improper?
- Whether the Applicant is entitled to the remedies prayed for?

Ruling of the High Court:

a) Rule 5 (1) of the Judicature (Judicial Review) Rules, 2009 provide for time for applying for judicial review.

b) Time limitations are substantive provisions of the law and limitations of actions is not concerned with the merits of the case.

c) It is the position of the law that grounds for judicial review generally first arise when the impugned decision was made except in cases falling in the exception under sub-rule 2 of rule 5 of the Judicial Review Rules.

d) This case deals with a decision of a public body and the applicable position is that the grounds for judicial review first arose when the impugned decision was made.

> *Whatever occurrence or reason that could have led an Applicant not to bring the Application within time starting from when the decision was made, is supposed to constitute a ground for seeking extension of time within which to bring an application. It is not supposed to oscillate the point from when the computation of time starts*
>
> **-Hon. Justice Boniface Wamala-**

e) On the evidence before Court, the Applicant's challenge is in respect of two decisions; the first being the decision by the Board of the Respondent not to renew his contract; and the second is the refusal by the Board to review the earlier decision not to renew the contract.

f) The Respondent made the decision not to renew the contract on 1st December 2020, which was communicated by email on 11th December 2020.

g) It appears that by 11th December 2020, the Applicant was already aware of the decision since on10th December 2020, he has written to the Board, through his lawyers, asking for review of the decision.

h) The court found that the relevant date is 1st December 2020 when the letter was issued. The 90 days therefore, elapsed by 2nd march 2021.

i) The present Application filed on 16th March 2020 was filed outside the time provided under the law. The decision not to renew the contract cannot be competently subjected to judicial review in account of being time barred.

j) On 10th December 2020, the Applicant wrote to the Board seeking review of its decision not to renew his contract. By letter dated 29th December 2020, the Board rejected the application for review but the Applicant claimed that the decision was communicated to him on 29th January 2021.

k) Whatever occurrence or reason that could have led an Applicant not to bring the Application within time starting from when the decision was made, is supposed to constitute a ground for seeking extension of time within which to bring an application. It is not supposed to oscillate the point from when the computation of time starts.

l) Court found that in respect of the decision not to renew, the application was out of time, while in respect of the decision not to review the decision not to renew, the application was brought within time.

m) The duty of the court in judicial review is to examine the circumstances under which the impugned decision or act was done so as to determine whether it was fair, rational and/or arrived at in accordance with the rules of natural justice.

n) The complaint by the Applicant is that the decision by the Respondent's Board refusing to review the non-renewal of is contract of employment was tainted with illegality and procedural impropriety.

> *The conduct of the Respondent was in line with both the terms of the contract and the Human Resource Manual. The decision passes the test of legality*
>
> **-Hon. Justice Boniface Wamala-**

o) A public authority will be found to have acted unlawfully if it has made a decision or done something without legal power to do so. Decisions made without legal power are said to be ultra vires.

p) It was argued that the Board exercised its discretion unreasonably or arbitrarily since they neither called the Applicant for a hearing nor did they give any reasons as to why they upheld the decision for non-renewal.

q) The employment contract was a fixed term contract of 5 years with a possibility of renewal but the decision to renew or extend was reserved for the full discretion of the Respondent.

r) The Human Resource and Policies Manual of the Respondent specifically provided that when considering renewal of senior management contracts, the Board was not required to assign any reasons for either renewal or non-renewal.

s) The conduct of the Respondent was in line with both the terms of the contract and the Human Resource Manual. The decision passes the test of legality.

t) The Applicant also alleged procedural impropriety contending that he was not given a fair hearing before the Board made the decision not to review its decision refusing to renew the contract.

u) There is no evidence that the Respondent had a requirement to provide a hearing before the taking of the decision. There was no legitimate expectation of the Applicant that was breached.

v) Court found no instance of procedural impropriety or unfairness occasioned by the Respondent over the impugned decision.

The Application was dismissed with orders that each party bears their own costs.

CONTEMPT OF COURT

23

Bullion Refinery Ltd & 2 Others Versus Commissioner General URA, Commissioner Customs & Esunget, High Court Misc. Application No. 180/2023

Brief Facts:

The Applicants instituted Misc. Application No.133 of 2023 against the Attorney General and URA seeking an interim order of an injunction against the Respondents and all agents/entities deriving authority from them from enforcing Regulation 3 of the Mining and Minerals (Export Levy on Refined Gold) Regulations,2023 on all gold imported into Uganda intended for processing and subsequent export. The interim injunction order was granted in the presence of Counsel for the Attorney General and URA.

The Applicants filed this application seeking a declaration that the Respondents be held in contempt of Court for refusing, ignoring and failing to implement the orders issued on 4th April 2023 vide M.A No.133 of 2023; an order that each of the Applicants pays compensatory damages of UGX 200,000,000/= for contempt of the Court order, among others.

Issue for determination:

- **Whether the Respondents are in contempt of the Court Order issued on 4th April 2023**

Ruling of the High Court:

a) Contempt of court is defined as an act or commission tending to "unlawfully and intentionally violate the dignity, repute or authority of a judicial body, or interfering in the administration of justice in a matter pending before it".

b) Under the law, the recognition given to contempt is not to protect the tender and hurt feelings of the judge, rather it is to protect public confidence in the administration of justice, without which the standard of conduct of all those who may have business before the courts is likely to be weakened, if not destroyed.

c) Conduct is calculated to prejudice the due administration of justice if there is a real risk, as opposed to a remote possibility, that prejudice will result.

d) To constitute contempt of this nature, the act or omission which contravenes the court order must have been intentional but not necessarily deliberately contumacious (wilfully disobedient or deliberately defiant).

e) The conditions which must be proved by an application in contempt of court proceedings are; The existence of a lawful court order; the potential contemnor's knowledge of the court order; and the potential contemnor's failure or refusal to comply with the order or disobedience of the order.

f) The alleged acts of contempt of the court order according to the Applicants are that the Respondents have continued compelling the Applicants to pay the

export levy indicating that their goods will not be cleared for export unless they pay the export levy as assessed.

g) For the Respondents, it was argued that the assessments are system generated at the Applicants' request and the payments were done by the Applicants at their own volition without any demand from the Respondents.

h) Court has to establish whether the Respondents' acts or omissions amounted to disobedience of the Court order and, if so, whether the said actions or omissions were done with the intention of disobeying the court order.

i) The provision of the statutory instrument relevant to these proceedings is Regulation 3. The implementation of this regulation is what was stayed by the interim order.

j) A reading of the court order as against the relevant regulation reveals to me that what was stayed by the court is "payment of the levy on processed gold to Uganda Revenue Authority by the exporter at the time of export."

k) The order did no strip URA of its powers to regulate the export of processed gold. Specifically, the order did not stop URA from applying other customs requirements that are essential to the export of processed gold.

l) URA remained a regulator in that regard and it had the duty to devise means to ensure that the trade goes on albeit without payment of the particular levy by the exporters.

m) The argument by the Applicants sounds as if upon the court staying payment of the levy, URA remained with no role in the regulation and control of the gold export business; thus the exporters would not need any clearance by the authority in that regard. If that is the line of thought on the part of the Applicants, I would find it misguided and would reject it.

n) The Applicants ought to have considered that payment of levy was not the only customs requirement that had to be undertaken before the processed gold could be exported. As such, the authority could not simply pull down the declaration and assessment forms from the system;

o) The Authority issued a letter dated 17th April 2023 titled *"Guidance on clearance of gold exports in light of the court order halting collection of the export levy on processed gold".*

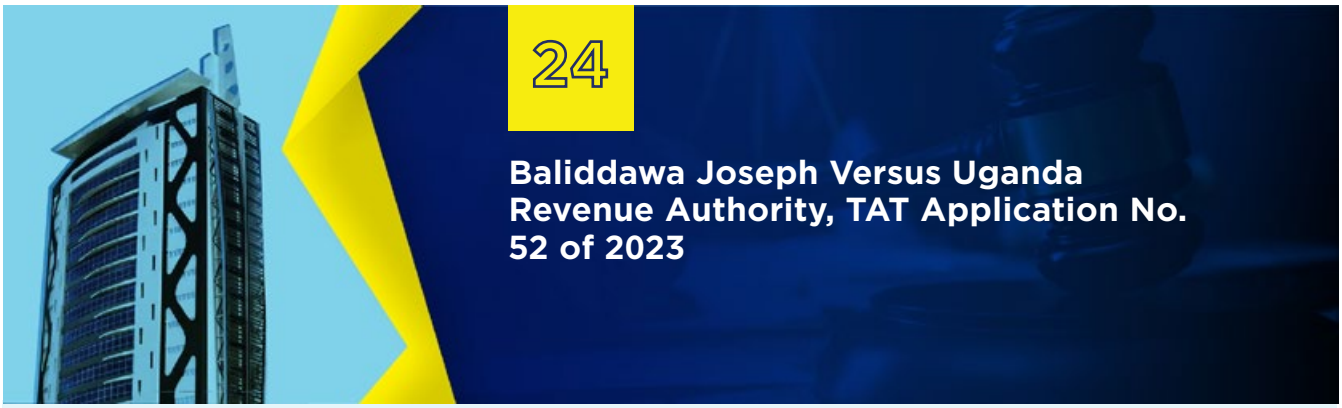
p) The guidelines included entering into indemnity agreements with URA to facilitate clearance of gold without payment of export levy, making customs declarations in the system and availing all supporting documents, depositing checks as guarantee equivalent to the tax payable and completion of form C12.

q) The evidence and circumstance reveal that URA took some steps towards compliance with the Court Order. The order didn't require the Authority to abdicate their role as a regulator of the export business.

r) It was therefore in their right and powers for them to put in place a process by which they could clear the export of processed gold at the same time without having to make the exporters pay the relevant levy in the meantime. They attempted to do so but did not get the cooperation of the Applicants.

Court found that the Applicant had failed to prove that the Respondent was in contempt of court. The Application was dismissed with costs to the Respondent.

PRELIMINARY AND INTERLOCUTORY MATTERS



24

Baliddawa Joseph Versus Uganda Revenue Authority, TAT Application No. 52 of 2023

Brief Facts:

The Applicant is in the business of real estate with his own leased property. The Applicant was assessed for Rental Income Tax to the tune of UGX 21,702,146/= for the years of income 2017/2018 and 2018/2019. On 14th December 2021, the Applicant objected and on 12th March 2022, the Respondent issued objection decisions disallowing the objection and maintaining the tax as assessed.

On 3rd April 2023, one year after the issuance of the objection decision, the Applicant filed an application seeking for review of the objection decision. The Respondent raised a preliminary objection that the Assessment was out of time.

Issues for Determination:

- Whether Application 19 of 2023 should be reinstated?
- What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

1. A person dissatisfied with an objection decision has 30 days within which to lodge an Application for review in the Tax Appeals Tribunal.
2. Where an Applicant does not file an Application for extension of time, they are locked out of the Tribunal by law.
3. Since the objection decision was made on 12th March, 2022, the Applicant ought to have filed its Application on 12th April, 2022.
4. Having filed on 3rd April, 2023, one year from date of filing, without any sufficient cause, the Applicant's Application was time barred.
5. In the circumstances, the preliminary objection is allowed and the Application is dismissed with costs to the Respondent.

The Application was dismissed with costs to the Respondent.

25

CIC Africa (Uganda) Limited Versus Uganda Revenue Authority, TAT Application No. 275 Of 2022

Brief Facts:

The applicant is a holding company with 10% shareholding in CIC General Insurance (U) Limited and CIC life Insurance (U) Ltd. In 2019, the respondent conducted an audit on the Applicant and disallowed loans acquired by the Applicant in its parent companies, CIC Insurance Group Limited for purposes of capitalizing its subsidiaries, CIC General Insurance (U) Limited and CIC life Insurance (U) Ltd, on the ground that they were not supported.

On 11th December 2019, the Respondent issued an Income Tax Administrative Additional Assessment of UGX 2,551,630,452 against the Applicant on grounds of unsupported loans for the period from 1st January 2018 to 31st December 2018. The Applicant objected to the assessment and on 24th September 2021, the Respondent issued an objection decision partially allowing the objection and reducing the tax liability to UGX 732,430,452.

The Applicant sought a review of the Respondent's objection decision under Alternative Dispute Resolution (ADR) mechanism and the Respondent revised the Applicant's tax liability to UGX 456,545,967. On 25th November 2022 the Applicant further objected to the revised tax liability of UGX 456,545,967. On 14th December 2022, the Respondent communicated to the Applicant stating that the decision communicated on 21st October 2022 was final. On 19th December 2022, the Applicant lodged this Application before the Tax Appeals Tribunal.

During the trial, the respondent raised a preliminary objection that the Application before the Tribunal is time barred.

Issues for determination:

- Whether the Application is time barred?
- What are the remedies available to the parties?

Ruling of the Tax Appeals Tribunal:

a) Where a party seeks ADR, there is nothing that precludes it from filing an Application within time before the Tribunal.

b) A party who is not satisfied with a decision in ADR cannot keep on objecting. There has to be an end to alternative dispute resolution. It cannot continue in perpetuity.

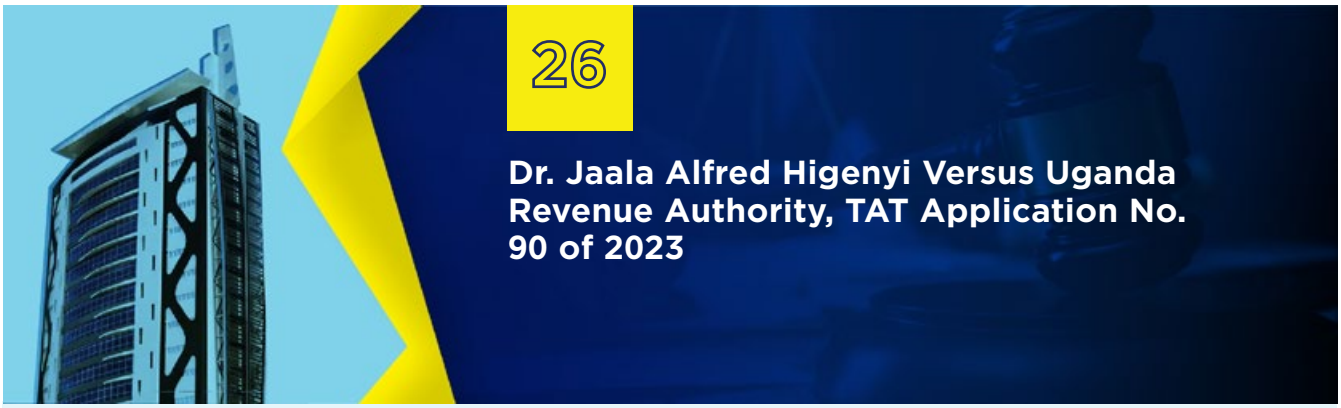
c) Where an objection decision has been made by the Respondent, it becomes functus officio.

d) ADR was set up as a mechanism to resolve disputes arising from an objection decision where a party may opt to seek further review from the Tribunal or may opt not to do so.

e) In the event a party does not seek review from the Tribunal or does so outside the prescribed time, it can be deemed to have sat on its rights in the event ADR is not successful.

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.

The Application was dismissed with costs to the Respondent.



Brief Facts:

The Applicant is a retired Civil Servant and one of the Directors of the now-defunct Ntinda View College Limited which was set up and operated on his land. On the 8th day of January 2018, the Applicant sold his land and the school as a going concern to Dr. Lawrence Mulindwa at a consideration of UGX 11,020,000,000. On the 3rd of August 2021 the Respondent issued the Applicant with an Additional Income Tax Assessment for the period of 2018/2019 amounting to UGX 3,454,679,878. The Respondent further issued the Applicant a Management Letter demanding the Applicant to pay capital gains tax of UGX 4,352,896,646 inclusive of interest.

On 6th July 2022, the Applicant lodged his objection to the tax liability. On the 25th day of October 2022, the Respondent disallowed the Applicant's objection on grounds that he had failed to provide evidence to support the objection, hence this Application.

When the matter came up, the Respondent raised a preliminary point of law that the Application was not properly before the Tribunal since the Applicant had not paid 30% of the tax assessed or that part of the not in dispute.

Issue for determination:

- Whether the Application is barred in law for nonpayment of 30% of the tax in dispute?

Ruling of the Tax Appeals Tribunal:

a) The Applicant argued that the Respondent had commenced recovery proceedings against him and impounded his armoured Motor Vehicle Toyota Land Cruiser V8 300 Series with a private plate whose value he stated to be sufficient to cover 30% of the tax in dispute. The Applicant valued his aforementioned motor vehicle at UGX 1,011,900,000.

b) The Tribunal held that a taxpayer is expected to come before the Tribunal with clean hands.

c) The duty to pay 30% of the tax in dispute or that amount not in dispute, before proceeding to the Tribunal is a mandatory statutory requirement.

d) A taxpayer has the duty to pay the aforementioned amount in cash and in full before proceeding to the Tribunal.

e) In the Application, the amount in dispute was UGX 4,352,896,646, thirty percent of which was UGX 1,305,868,993.8.

f) Even if the Tribunal considered using the impounded vehicle as payment of 30% the alleged value of the motor vehicle to wit UGX 1,011,900,000 was insufficient to cover payment of the 30% which was UGX 1,305,868,993.8.

g) In any case, Section 15 of the Tax Appeals Tribunal Act envisaged payment of 30% of the tax in dispute and not impounding and keeping of an asset.

The Application was dismissed with costs to the Respondent.

Brief Facts:

The Applicant filed TAT Application No. 019 of 2023 on 25th January 2023. The Applicant claimed that the Application was served on the Respondent on 5th July 2023. On the same day, the Deputy Registrar of the Tax Appeals Tribunal abated the Application.

Issues for Determination:

- Whether TAT Application No. 19 of 2023 should be reinstated?
- What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

a) The prescribed period for serving an Application on the decision maker (Commissioner General) is five days after lodging an Application with the Tribunal.

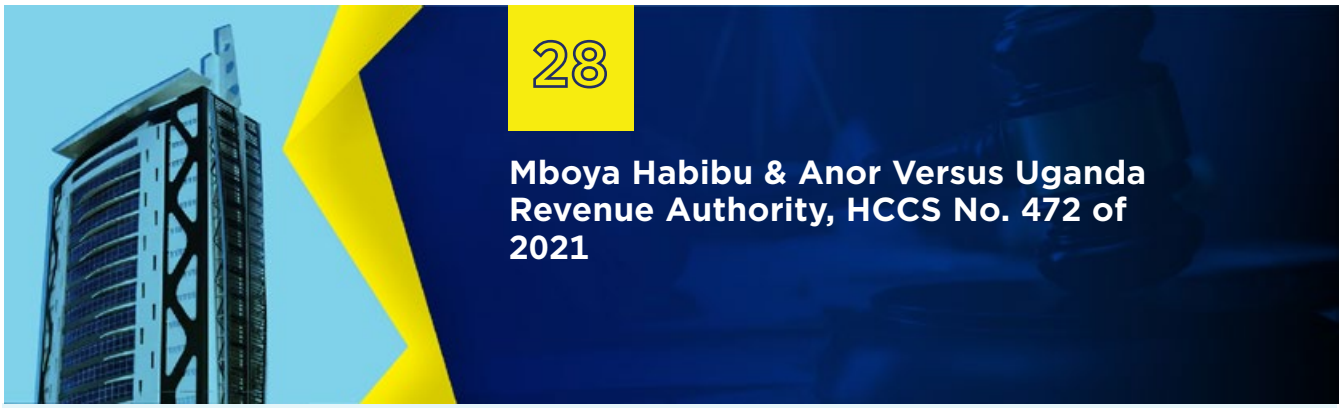
b) Having filed its Application on 25th January, 2023, the Applicant ought to have served it on the Respondent by 30th January, 2023.

c) The period for serving an application is mandatory as time limits set by statute are matters of substantive law that ought to be complied with.

d) By failing to serve the opposite party within the prescribed time, the Applicant ceased to act within the law.

e) In any case, the period between 30th January, 2023 and 5th July, 2023 is not short. It shows that the Applicant was not diligent.

The Application was dismissed with costs to the Respondent.



28

Mboya Habibu & Anor Versus Uganda Revenue Authority, HCCS No. 472 of 2021

Brief Facts:

The Plaintiffs, Mboya Habib and Yiga Frank filed this suit against Uganda Revenue Authority seeking a declaration that the Defendant's seizure of their Motor Vehicle Registration No. UAH 065 V (Fuso Truck) was unlawful. They sought an order that the Defendant returns their motor vehicle.

When the matter came up for hearing, Counsel for the Defendant raised a preliminary objection on grounds that the Court has no jurisdiction to entertain the matter as a Court of first instance.

Issues for determination:

- Whether the Court has jurisdiction to entertain the suit as a Court of first instance?

Ruling of the High Court:

a) The unlimited jurisdiction of the High Court only applies when the matter is properly before the High Court.

b) The 1st Plaintiff was convicted and sentenced in the Chief magistrates Court at Nakawa under the East African Community Customs Management Act. Court also ordered for the forfeiture of the goods and motor vehicle.

c) The 1st Plaintiff appealed up to the Court of Appeal which set aside the conviction and sentence and ordered for a retrial.

d) Upon dismissal of the case for lack of prosecution at Nakawa Magistrates Court, the Plaintiffs should have written to the Commissioner requiring him/her to return its property and the vehicle.

e) In the event the Defendant failed and or refused to return their property or made a decision that they were not comfortable with, the Plaintiffs would then apply for review to the Tax Appeals Tribunal.

f) In tax disputes, the High Court only hears appeals from the Tax Appeals Tribunal.

Court found that the case was improperly before it and dismissed the same with costs.

29

Eco Bus Company Limited Versus Uganda Revenue Authority, TAT Misc. Application No. 28 of 2023

Brief Facts:

The Applicant instituted TAT Application No. 137 of 2020 which was dismissed by the Tribunal on 11th May 2021 on account of failure to pay 30% of the tax in dispute. The Applicant appealed to the High Court which appeal was allowed. At the time of hearing the appeal at the High Court, the Applicant had paid 30% of the tax in dispute.

The Applicant wrote a letter to the Tribunal requesting that TAT Application No. 137 of 2020 be reinstated. It later filed an application seeking reinstatement, which it withdrew. Subsequently, the Applicant filed this Application seeking extension of time within which to file an Application for review.

Issues for determination:

- Whether the Applicant may be granted extension of time within which to appeal against the decision of the Respondent?
- What remedies are available?

Ruling of the Tax Appeals Tribunal:

a) The Tribunal noted that the date of the taxation decision was 19th February 2020. The date of the Application to extend time was 22nd November 2023, 3 years and nine months since the taxation decision.

b) It is well established by the Court of Appeal that timelines set by statutes are matters of substantive law and not mere technicalities and must be strictly complied with.

c) Whereas it is trite law that mistake or misunderstanding of counsel ought not to be visited upon his or her client, equity requires that a person who has been wronged must act swiftly to preserve its rights.

d) The Tribunal found that the Applicant failed to prove sufficient reasons to warrant extension of time.

e) From the time the High Court ordered reinstatement to the date when this Application was filed, a long time had passed. The Applicant was not diligent.

The Application was dismissed with costs to the Respondent.

30

Nived Enterprises Limited Versus Uganda Revenue Authority, TAT Miscellaneous Application No. 47 Of 2023

Brief Facts:

On 27th March 2023, the Applicant filed TAT Application No. 47 of 2023 wherein it challenged a WHT assessment amounting to UGX 576,831,330 which was issued to it in respect of 5000 tonnes of rice imports. The Applicant also challenged the revocation of its Withholding Tax Exemption Certificate and prayed inter alia for orders that the same be quashed and that the Respondent be compelled to reinstate/reissue the Withholding Tax Exemption.

Subsequently, on 22nd June 2023, the same Applicant filed an Application for Judicial Review in the High Court *vide* High Court Misc. Cause No. 0111 of 2023. On 10th July 2023, the Applicant filed this Application seeking to stay the proceedings in TAT Application No. 47 of 2023 pending disposal of HCMC No. 0111 of 2023. The Applicant contended that the decision of the High Court would guide the Tribunal.

Issues for determination:

a) Whether the Application discloses sufficient grounds for grant of an order for stay of proceedings in TAT Application No. 47 of 2023?

b) What remedies are available for the parties?

Ruling of the Tax Appeals Tribunal:

a) The dispute in TAT Application No. 47 of 2023 involved a taxation decision in as far as the Applicant challenged a Withholding Tax Assessment and contested the revocation of its Withholding Tax Exemption Certificate.

b) This was tax dispute over which the Tribunal may exercise original jurisdiction.

c) HCMC No. 0111 of 2023 was filed as a constitutional matter wherein the Applicant challenges the alleged infringement of its constitutional rights by the Respondent.

d) Therefore, there was no reason for staying the TAT proceedings, if the dispute in High Court was different from the one in the Tribunal.

e) It would defeat the essence of bestowing original jurisdiction in tax disputes in the Tribunal if the Tribunal had to stay its proceedings in a purely tax dispute to await guidance from High Court in a matter that is constitutional and different from the one in the Tribunal.

f) The Applicant had not shown how it would be prejudiced if the Tax Appeals Tribunal proceeded to listen to the Tax Dispute while the constitutional one is pending.

g) In any case the Respondent may be prejudiced if the tax dispute is not disposed of expeditiously as it may involve collection of tax.

h) The Tribunal was set up to offer speedier, cheaper and more accessible justice in respect of resolving tax disputes.

The Application was dismissed with costs to the Respondent.

Brief facts:

The Applicant carried out an audit into the affairs of the 1st Respondent and issued an Income Tax Assessment of UGX 435,398,396 for the period 1st January 2016 to 31st December 2016 on the bases of variances between income tax sales and third-party withholding amounts. The 1st Respondent objected contending that the assessment had been issued against a wrong party instead of the 2nd Respondent. The Applicant disallowed the objection and the 1st Respondent filed an Application for review before the Tax Appeals Tribunal. Before commencement of the hearing, the Applicant filed this Application seeking to have the 2nd Respondent joined as a party to the proceedings.

Ruling of the Tax Appeals Tribunal:

a) Section 22 (3) of the Tax Appeals Tribunal Act states that the proceedings of a Tribunal shall be conducted in accordance with such rules of practice and procedure as the Tribunal may specify, and the Tribunal may direct the application of the rules of practice and procedure of any court subject to such modifications as the Tribunal may direct.

b) Rule 30 of the Tax Appeals Tribunal (Procedure) Rules states that in any matter relating to the proceedings of a Tribunal for which these Rules do not provide, the rules of practice and procedure of the High Court shall apply, subject to such modification as the Tribunal may direct.

c) Neither the Tax Appeals Tribunal Act nor the Tax Appeals Tribunal (Procedure) Rules provide for the adding of parties to an application.

d) Order 1 Rules 10 (2) of the Civil Procedure Rules provide for addition and removal of parties.

e) The Tribunal found that it is necessary for the 2nd Respondent to be joined to the proceedings so as to enable the Tribunal to effectually and completely adjudicate upon and settle all questions involved in the Application.

The Application to add the 2nd Respondent as a party was allowed.

32

Uganda Revenue Authority Versus Mohammed Tumusiime, Court of Appeal Civil Application No. 212 of 2023

Brief Facts:

The Respondent was an employee of the Applicant who was arrested and prosecuted in 2007. The Respondent was acquitted and filed HCCS NO. 480 of 2016 for malicious prosecution and unlawful termination of employment. The High Court delivered judgment in his favour. The Applicant filed this Application seeking an order of stay of execution in respect of the judgment in HCCS No. 480 of 2016 until the appeal of the same is disposed.

Ruling of the Court of Appeal:

a) The jurisdiction of the Court of Appeal to grant a stay of execution is set out in Rule 6 (2) (b) of the Court of Appeal Rules.

b) Rules 6(2)(b) and 2(2) give the Court of Appeal the discretion, in civil proceedings, where a notice of appeal has been lodged, to order stay of execution in appropriate cases and on terms that it deems fit.

> *It is in the interest of justice that whenever it is necessary to preserve the status quo, Court should grant the stay such that the appeal is not rendered nugatory just in case the appeal succeeds.*
>
> **Christopher Gashirabake, JCA**

c) This must be done judiciously. It is in the interest of justice that whenever it is necessary to preserve the status quo, Court should grant the stay such that the appeal is not rendered nugatory just in case the appeal succeeds.

d) When the court looks for triable issues, they are not considering the merits of the case but whether the appeal raises issues that are not frivolous and vexatious.

e) To establish whether there is a question to be tried by the Court of Appeal, Court looked at the court documents filed but more so, the Memorandum of Appeal which clearly stated the grounds of Appeal.

f) A look at the grounds of appeal confirmed that the appeal raises triable issues that are not frivolous and vexatious. Court found that this ground had been satisfied.

g) To exercise its discretion in favour of a party seeking orders for stay pending appeal, court must be satisfied that loss will result on the Applicant if the order is not granted. The assessment of irreparable loss varies from case to case.

h) Court found that the Applicant had demonstrated that it will suffer irreparable damage of the Application is not granted.

i) The Respondent's claim is colossal yet the Respondent said in the lower court that having lost his job, he had lost all his sources of income.

j) Considering the financial status of the Respondent, the Applicant would suffer substantial loss if the application is not granted, whereas if the appeal does not succeed the Applicant has the financial ability to pay the Respondent.

k) Court also found that the Applicant lodged the Application within reasonable time, being one month after its Application for stay was dismissed by the High Court.

l) It has been held that an Applicant for stay of execution should always be ready to pay security for due performance of the decree. This is intended to protect the Respondent from intentional delay by the Applicant to deny the Respondent from enjoying the fruits of his judgment.

m) The Applicant demonstrated the willingness to deposit security for due performance. Court ordered the Applicant to deposit security for due performance of UGX 50,000,000.

> *When the court looks for triable issues, they are not considering the merits of the case but whether the appeal raises issues that are not frivolous and vexatious.*
>
> **Christopher Gashirabake, JCA**

The Application was allowed with costs to abide the outcome of the Appeal.

Brief Facts:

The Applicant was denied a tax clearance certificate on the ground that it had an Income Tax ledger balance of UGX 236,262,268 as at 22nd December 2022, hence this Application.

At the hearing, the Respondent raised a preliminary objection stating that the Applicant has never objected to the Respondent's refusal to issue it with a tax clearance certificate and as such, the Applicant was prematurely before the Tribunal.

Issues for determination:

- Whether the Applicant was prematurely before the Tribunal.
- What remedies are available to the parties.

Ruling of the Tax Appeals Tribunal:

a) A party is entitled at any point to raise any preliminary point of law, and any point of law so raised shall be disposed of at any time before the hearing.

b) The Tribunal held that where there is no objection decision or taxation decision, the Tribunal cannot have jurisdiction to entertain any dispute in relation thereto.

c) When the Applicant was denied a tax clearance certificate, it ought to have objected and obtained the reasons as to why the issuance of the certificate was denied.

d) The objection decision would have entailed the reasons for the denial of the tax clearance certificate and also given the Applicant ground to file this Application for review before the Tribunal.

e) The Applicant should have written a letter to the Respondent objecting to the way that the ledger was done.

f) The Tribunal cannot proceed to hear a matter where the right steps have not been followed to hear the Appeal. When the procedure is not followed, the Tribunal does not have jurisdiction.

The preliminary objection was sustained and the Application dismissed with costs to the Respondent.

CRIMINAL CASE

34

Uganda Versus Aijuka William, High Court Criminal Appeal No. 28 of 2022.

Brief Facts

This was a judgement on appeal arising from the judgement and orders of a Magistrate Grade One Court at Anti- Corruption.

The Respondent was charged with 2 Counts with Making a false document C/s.203(b) of the East African Community Customs Management Act (EACCMA) 2004 and on the Alternative Count of Causing to be made a document which is false Contrary to the same S.203(b) of the EACCMA, 2004.

It was alleged that the Respondent, on or about 12th June 2019, in Kampala made or wrote a letter purporting to have been authored by the Assistant Commissioner Audit of Uganda Revenue Authority addressed to Samona Products Limited, whereas not.

The Magistrate's Court heard the case and acquitted the Accused hence this appeal,

Grounds of Appeal:

a. The learned trial magistrate erred in law and fact in evaluating the evidence thereby arriving at a wrong decision of acquitting the Respondent

b. The learned trial magistrate erred in law and fact when he arrived at a conclusion that the Respondent did not author or cause the making of the false documents.

Judgment of the High Court:

a) The duty as a first appellate court which is to review the evidence, reconsider the materials which were before the trial court, make up its mind, not disregarding the judgement appealed from, but carefully weighing it, bearing in mind that it did not see the witnesses testify.

b) While court agrees with the Appellant that PW2 and PW5's testimonies link the Respondent to the impugned letters, and that the letters were false insofar as they bore a wrong address, it does not agree with the submission that this alone suffices to ground a finding of guilt on the charges laid.

c) It is of note that the crux of the charges is that the Respondent wrote or made the 12th June 2019 letter purporting it to have been authored by the Assistant Commissioner Audit, and the 5th July 2019 letter purporting it to have been authored by the Commissioner Customs of Uganda Revenue Authority whereas not.

d) Instead of proving the alleged false authorship of the letters, the prosecution proved that the letters bore a wrong address instead of the correct one, and that Exhibit P3 did not originate from URA.

e) Proof that the impugned letter bears a wrong address and that another document which the Respondent uttered purporting it to originate from URA did not in fact originate from there cannot properly ground a finding that the letters were not signed by the officials whose signatures are reflected in them.

f) Either the purported authors or someone well versed with their signatures, or handwriting expert should have given evidence disowning the signatures or excluding the purported authors from the authorship of the letters.

g) The evidence proving that the letters bore a wrong address, and PW1's evidence that exhibit P3 did not originate from URA was at best only of mere corroborative value but could not on its own ground an adverse finding against the Respondent as far as authorship of the documents is concerned.

h) The learned magistrate's finding, based on the wrong information in the letters, that they were false did not contradict his subsequent finding that the charges as laid were not proved.

i) There is no evidence to support the charges in so far as the falsehood of the impugned letters' authorship is concerned. This finding renders it unnecessary to address the challenges raised by counsel for the Respondent against the charges.

The Appeal was dismissed.

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