# CASE DIGEST

## VOLUME VIII

Uganda Revenue Authority

DEVELOPING UGANDA TOGETHER

January – March 2024

# FOREWORD

I am truly honoured and humbled for the opportunity to serve my country as the Commissioner Legal Services & Board Affairs of the Uganda Revenue Authority. Together with the Management and Staff of the Uganda Revenue Authority, I am delighted to lay a brick in the journey of delivering Uganda from economic dependence. On behalf of the Management of the Uganda Revenue Authority, I extend sincere appreciation to every person for your efforts in the revenue mobilization and revenue collection of Uganda.

We are delighted to present you with Volume 8 of the Uganda Revenue Authority Case Digest. This volume contains decisions delivered by the Courts of Law during the 3rd Quarter of Financial Year 2023/24.

Disputes are inevitable. This is especially so in respect of our tax laws which are amended annually and which are always evolving. With this in mind, I wish to re-emphasise URA's commitment to amicable resolution of disputes through the Alternative Dispute Mechanisms both in criminal and civil cases. We encourage taxpayers to embrace the Alternative Dispute Mechanism option under the Tax Procedures Code Act, the Tribunal and Court-annexed Mediations, as well as the plea bargain initiative.

As the Great French Philosopher Joseph Joubert said, *"Never cut what you can untie"*. The unassailable truth remains that litigation should be the last option after all efforts at amicable settlement have been made. In so doing, we guard against having government revenue or taxpayers' income, as the case may be, being held up for an indeterminable period. This also aids the efficiency of the business of the Tribunal and Courts of Law by reducing on the case backlog.

Where amicable settlement is genuinely not possible, the Tax Appeals Tribunal and the Courts of Law remain instrumental in resolving tax disputes by way of interpreting the law and applying it to the unique circumstances of each case. I wish to appreciate their work in this respect.

The Uganda Revenue Authority remains committed to taxpayer education and sensitization through the various modes including the publications of the URA Case Digest which can be accessed on the URA Website under Legal & Policy.

In the spirit of conversation and collaboration, I am optimistic about working with you all in your respective capacities, as we stride towards

**"Developing Uganda Together".**

**Catherine Donovan Kyokunda (Mrs.)**
**COMMISSIONER LEGAL SERVICES AND BOARD AFFAIRS DEPARTMENT**
**April, 2024**

## EDITORIAL NOTE

Dear Reader,

We appreciate you for taking time to read the URA Case Digest and for the commendations and feedback that we receive from you. The Uganda Revenue Authority remains immensely conscious of the need for constant taxpayer education, sensitization and knowledge sharing. We shall continue to deliver on this mandate.

This Volume 8 of URA Case Digest contains 12 decisions delivered by Courts of Law in the period January to March 2024. One of the key decisions relates to the informer/ whistle-blower reward scheme and the applicability of the amendments to the laws in that respect.

The Volume also contains 6 decisions in matters relating to domestic taxes on a wide range of subjects including zero-rated and exempt supplies under the VAT Act, Withholding tax on payment of interest on loans, revenue expenditures vis-a-viz capital expenditures, treatment of payments by a company to its directors, and the aspect of VAT registration. Also included is one decision in relation to Customs, one in Employment and Labour law, one from an Interlocutory Application and three from Criminal matters.

Apart from litigation, URA has also concluded a good number of cases through Alternative Dispute Resolution. Specifically, for Criminal Prosecution, during the period of January to March 2024, we have secured convictions in 16 cases with a total number of 22 persons convicted under the Plea Bargains Initiative. These convictions are in respect of several offences under the East African Community Customs Management Act and the Tax Procedures Code Act, among others.

We hope that the content of this Digest is useful to you as you manage your tax affairs. Have a good read!

**Diana Prida Praff**
**Ag. ASSISTANT COMMISSIONER LITIGATION**

> **Volume 8 of URA Case Digest contains 12 decisions delivered by Courts of Law in the period January to March 2024**

# EDITORIAL TEAM

**Barbra Ajambo Nahone Kasibante**

Manager Income Tax Litigation

**Rytter Muzira**

Ag. Manager Public and Corporate Affairs

**Charlotte Katuutu**

Ag. Supervisor Litigation

**Andrew Odoch Umahtete**

Officer Corporate Brand Management, PCA

# THE URA CASE DIGEST VOLUME 8

# INFORMER REWARD CASE

01

## UGANDA REVENUE AUTHORITY VERSUS WHISTLE BLOWER (REF. TID1708319150)

High Court Civil Appeal No. 0030 of 2021

**Brief Facts:**

During or around December, 2017, the Respondent provided information to the Appellant that led to the recovery of UGX 2,200,000,000 out of the established tax obligation of UGX 4,408,865,821 from M/s Royal Van Zanten Uganda Limited. Consequently, the Respondent was on 4th August 2020 paid UGX. 118,624,679 being 5% of the recovered amount in tax. The Respondent received the amount but protested contending that it should have been 10% which was the rate applicable at the time he provided the information. The Appellant contended that the applicable rate is that which is in force at the time of payment rather than at the time of provision of the information. The Respondent was dissatisfied and filed an Application before the Tax Appeals Tribunal, which was decided in favour of the Respondent, hence this Appeal.

### Grounds of Appeal:

- The Honourable members of the Tax Appeals Tribunal erred in law in holding that an informer's right to a reward under the repealed Section 8 of The Finance Act is created immediately upon provision of information and not at the time the tax is recovered, pursuant to the information provided, whereas not.

- The Honourable members of the Tax Appeals Tribunal erred in law in holding that Section 74A of The Tax Procedure Code (Amendment) Act, 2019 does not apply to information given by an informer before the Act became effective, whereas not.

- The Honourable members of the Tax Appeals Tribunal erred in law in holding that the Respondent is entitled to a reward of 10% of the taxes recovered pursuant to the information provided to the Appellant.

- The Honourable members of the Tax Appeals Tribunal erred in law in awarding the Respondent interest of 24% which was excessive in the circumstances, and without basis.

## Judgment of the High Court:

a) The Appeal raises issues of the retrospective application of statute to events that commenced before the amendment but were concluded after.

b) Every statute, it has been said, which takes away or impairs vested rights acquired under existing law, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect.

> *The fact that a person furnishes information to the Appellant and is subsequently denied a reward is no basis for an enforceable claim; the basis of an enforceable claim only arises once there is proof that as a result of the information so provided, a specified amount of "principal tax or duty [was] recovered.*
>
> **-Hon. Justice Stephen Mubiru-**

c) The above common law position is also reflected in Section 13 (2) (c) of The Interpretation Act, which provides that where any Act repeals any other enactment, then unless the contrary intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

d) Retrospective operation should not be given to an amending statute so as to effect, alter or destroy existing rights. The law does not operate retrospectively as to affect "rights and obligations which arose pre-enactment".

e) A right accrues when all events have occurred necessary to fix the liabilities of the parties concerned therewith and to determine the amount of such liabilities, that is, when it becomes capable of being enforced.

f) The general rule is that when the Legislature alters the rights of parties by taking away or conferring any right of action, its enactments, unless in express terms they apply to pending actions, do not affect them.

g) Thus, "vested right" is an absolute, complete and unconditional to the exercise of which no obstacle exists and which is immediate and perfect in itself and not dependent on any contingency. It is a full, unalterable, irrevocable and completed right without any reservation or qualification.

h) For a right to be considered vested, all events must have occurred necessary to fix the liabilities of the parties. However, the beneficiary of the right must have done something to avail himself or herself of it before the law is changed.

i) Where a right of action results from a statutory provision, and has once become fixed and vested, it should be considered inviolable on account of non-retrospectivity, in the absence of a clear provision in the amending statute, to the contrary.

j) There is a difference between "vested interests" and "vested rights." The former are claims and expectations based on private contractual relationships and upon a property owner's understanding of the privileges, immunities, and responsibilities associated by law with the property in question.

k) Interests become "rights" when they become enforceable by Courts. Such contractual relationships and understandings concerning property remain interests if they are to take effect only if a specified uncertain event takes place or the specified uncertain event does not take place. Until vesting occurs, an interest is a mere expectancy. Retroactive legislation could destroy expectancies but not vested rights.

l) The whistle-blower bounty scheme that pays individuals a cash "bounty" for surfacing information about illegal conduct in tax matters is regulated by statute.

m) Section 74A of The Tax Procedures Code (Amendment) Act, 2019 which came into force on 1st July, 2019 provides as follows: *"The Commissioner General shall pay to a person who provides information leading to the recovery of a tax or duty, the equivalent of five percent of the principal tax or duty recovered".*

> *At the time of enactment of section 74A of The Tax Procedures Code (Amendment) Act, 2019 the Respondent had not acquired any vested right that was unlawfully taken away by that amendment.*
>
> **-Hon. Justice Stephen Mubiru-**

n) It is contingent in nature in that it pegs the percentage payable to *"the principal tax or duty recovered",* meaning that the whistle-blower is not entitled to any payment if the information supplied does not lead to any recovery of tax or duty.

o) The whistle-blower regime under section 74A of The Tax Procedures Code (Amendment) Act, 2019 is a unilateral contract, the terms of which are stated therein, and anyone who fulfils those terms can claim the stated reward.

p) The fact that a person furnishes information to the Appellant and is subsequently denied a reward is no basis for an enforceable claim; the basis of an enforceable claim only arises once there is proof that as a result of the information so provided, a specified amount of "principal tax or duty [was] recovered."

q) Hence, performance of the unilateral contract created under Section 74A of The Tax 10 Procedures Code (Amendment) Act, 2019 is not achieved until some specified amount of principal tax or duty is recovered by the Appellant, on the basis of the information provided by the claimant whistle-blower.

r) The Respondent suggested that, the whistle-blower's performance of the unilateral contract should relate back to the date when such information was provided. Court noted that this argument runs counter to the concept of vested rights.

s) Just like a cause of action which crystallises only when every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court, a "vested interest" converts into a "vested right" only when it becomes fixed and established, and is no longer open to doubt or controversy. That doubt cannot be cleared retrospectively.

t) At the time of enactment of Section 74A of the Tax Procedures Code (Amendment) Act, 2019, the Respondent had not acquired any vested right that was unlawfully taken away by that amendment.

u) Although the Tribunal correctly observed that the whistle-blower's claim is contingent upon recovery of tax, it misdirected itself when it related back the Respondent's right to claim for a reward to the date the tax recovered fell due, arguing that there can be no recovery unless there is tax due.

v) The Tribunal clearly failed to distinguish between a vested interest and a vested right. Had the Tribunal properly directed itself, it would have found that the Respondent in the instant case had no enforceable claim by the time The Tax Procedures Code (Amendment) Act, 2019 was enacted and therefore had no vested right taken away by the amendment.

w) The Appellant was under an obligation to apply the law in force at the time the Respondent's claim became enforceable, which was Section 74A of The Tax Procedures Code (Amendment) Act, 2019 and not Section 8 of The Finance Act, 2014 which had been repealed.

***The Appeal succeeded on all grounds and was allowed, the decision of the Tribunal was set aside, and costs were awarded to the Appellant.***

# DOMESTIC TAXES

02

## AMATHEON AGRI UGANDA LIMITED VERSUS UGANDA REVENUE AUTHORITY,

High Court Civil Appeal No. 17 of 2020

**Brief Facts:**

The Appellant grows cereals like rice and maize in Nwoya District which it supplies to local millers in Uganda. The Appellant applied to the Respondent for a VAT refund amounting to UGX 30,012,946 in its VAT return for the month of July, 2017. The Respondent rejected the application on grounds that the company wrongly classified its supplies as zero-rated which was inconsistent with the law given the fact that the supplies relate to unprocessed agricultural products, and that the supplies are classified as exempt and not zero-rated.

Following reversal of the VAT credit, the Respondent raised assessments totalling to UGX 154,144,995 to which the Appellant objected and the Respondent maintained. The Appellant's contention was that since it grows cereals in Uganda that are milled in Uganda, it is entitled to an input tax credit. The Respondent contended that it should be the same taxpayer growing and milling cereals. The Appellant was dissatisfied and filed a Review Application before the Tax Appeals Tribunal which ruled in favour of the Respondent, hence this Appeal.

**Grounds of Appeal:**

- The Tribunal erred in law when it interpreted the ambiguity of paragraph 1(L) of the Third Schedule of the VAT Act, against the Appellant thereby making on erroneous finding, and occasioning a miscarriage of justice.
- The Tribunal erred in law when it misdirected itself in applying the purposive approach to interpreting paragraph 1(L) of the Third Schedule of the VAT Act, thereby reaching an erroneous finding as to the purpose and objective of the legislature.
- The Tribunal erred in law and reached on erroneous finding that the Appellant's supply of rice and maize is exempt, and the Appellant is not entitled to the input VAT credit.

**Judgment of the High Court:**

a) Section 24 (4) of the VAT Act provides that: *"The rate of tax imposed on taxable supplies specified in the Third Schedule is zero".*

b) Paragraph 1(l) of the Third Schedule to the Act provides for Zero-rated supplies specified for the purposes of Section 24(4)- including, *"the supply of cereals, where the cereals ore grown and milled in Uganda".*

c) From the reading of the provision of Section 24(4), and the impugned provision of paragraph 1(L) of the Third Schedule as above, this Court finds that there is ambiguity in the latter provision.

d) The Learned Judge stated that her understanding of the literal meaning of the wording of the provision under paragraph 1(L) of the Third Schedule, is that the supply of cereals where the cereals are grown and milled in Uganda, implies that the supply of cereals by the taxpayer is due to the two activities of growing and milling, which are carried out together by the taxpayer on the one hand.

e) The other meaning could be that one of the two activities of growing and milling is carried out by the taxpayer, and the other activity not carried out by the taxpayer, is carried out by another person(s) but for the benefit of the taxpayer, in order for the cereals to be supplied by the taxpayer with value added.

f) The finding by the Tribunal, put in different words, was that the purpose of the legislature in enacting paragraph 1(L) of the Third Schedule to the Act, was to encourage cereal formers to grow, and also mill the cereals before sell so as to add value to it before sale. The benefit of this was two-fold: gain market value from export, and input VAT credit. Court held that it cannot fault the Tribunal for applying the purposive rule of statutory interpretation.

g) However, Court held that it was not proper for the Tribunal to ignore its earlier finding that Section 1(L) of the Third schedule was ambiguous.

h) The basis of paragraph 1(a) of the Second Schedule in regard to exempt supplies, is the level of percentage of the value added to the total value of the supply; where the percentage of the value added does not exceed 5 percent of the total value of the supply, it qualifies the supply by the taxpayer on foodstuffs, agricultural products and livestock as unprocessed.

i) The evidence adduced by the Appellant on the supply of cereals, in which the Appellant applied to the Respondent to assess the supply as zero-rated for purposes of input VAT credit was sufficient, to qualify the supply of cereals by the Appellant under the impugned provision of Paragraph 1(L) of the Third Schedule to the Act, which provided for Zero-rated supplies specified for the purposes of Section 24(4) of the Act.

***The Appeal was allowed with costs to the Appellant.***

03

## KASESE COBALT COMPANY LIMITED VERSUS UGANDA REVENUE AUTHORITY HCCA NO. 4 OF 2020

HIGH COURT CIVIL APPEAL NO. 4 OF 2020

**Brief Facts:**

The Appellant was established as a Project Company pursuant to the Kasese Project Development Agreement dated 24th June, 1992. Under clause 20.2(c) of the Agreement, the Government of Uganda undertook that the Non-Ugandan employees, consultants, contractors or sub-contractors of the Appellant, would receive fees, salaries, bonuses or other emoluments without liability to Ugandan tax, and that over the years, the Appellant made several payments to Non-Ugandan employees, consultants, and contractors without withholding Pay As You Earn (PAYE) on payments to Non-Ugandans.

The Respondent initiated an audit in 2017 on the Appellant wherein, it was established that the Appellant had not been withholding PAYE from the expatriate staff, as required by the Income Tax Act for the period January, 2009 to December, 2015. The Appellant had relied on the Project Development Agreement, and two letters dated 18th March, 1997 and 26th 10 June, 2002 from the Minister of Finance "exempting" the Appellant from paying taxes. URA maintained that the Appellant was required to withhold PAYE from the expatriate staff, owing to the fact that the "exemption", which was granted under the 1992 Agreement was inapplicable with the coming into force of the Income Tax Act of 1997.

Consequently, tax of UGX 8,159,350,625 inclusive of interest was assessed on the Appellant for its expatriate staff in respect of whom, no PAYE had been withheld from their emoluments. The Appellant being dissatisfied with the objection decision of the Respondent filed an appeal to the Tax Appeals Tribunal, which was decided in favour of the Respondent, hence this appeal.

**Grounds of Appeal:**

- The Honourable members of the Tribunal erred in law, and misdirected themselves when they misinterpreted the application of Section 166(26) (b) of the Income Tax Act, 1997 thereby arriving at a wrong conclusion that the tax exemption granted to the Appellant under the Income Tax Decree 1974, and the agreements no longer had effect from 31st December, 1997.
- The Honourable members of the Tribunal erred in law, when they held that the exemptions were invalid because the Minister had not laid the same before Parliament, when the issue was neither a basis of the objection decision nor raised at the Tribunal, and in respect of which neither party was heard.
- The Honourable members of the Tribunal erred in law, when they failed to properly evaluate the evidence adduced, and ignored the submissions of both parties thus coming to a wrong conclusion that no evidence was provided to prove that the administrative additional assessments were time barred.

- The Honourable members of the Tax Appeals Tribunal erred in law, when they shifted the legal burden of proof from the Respondent to the Applicant thereby coming to a wrong conclusion that the additional assessments issued by the Respondent on 12th February, 2018 was based on the discovery of new information.

- The Honourable members of the Tribunal erred in law, when they held that the additional assessments issued under the repealed law were valid assessments.

- The Honourable members of the Tribunal erred in law, when they held that the objection to the additional assessments for the period 2009 to 2010 were not pleaded, and failed to determine their illegality for lack of basis.

- The Honourable members of the Tribunal erred in law, when they failed to properly evaluate the evidence, and found that the Applicant was liable to pay the tax assessed.

**Judgment of the High Court:**

a) The Income Tax Decree 1974, that was the existing law, was to be applied with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it in conformity with the Constitution, which is the supreme law.

b) Section 166(26)(b), is a transition provision under the Income Tax Act, 1997 whose purpose is to save existing provisions of the repealed legislation, so as to give effect to the continuous applicability of those provisions, which are time bound in the new legislation.

c) Article 20.2 (c) of the Project Development Agreement on exemption is subject to the provision of Section 166(26) (b) of the Income Tax Act.

d) The additional assessment for the period 2009-2015, which was the period after the commencement of the Income Tax Act on 1st July,1997, would only qualify for tax exemption, where the Minister had confirmed in writing by 31st December, 1997 with the exemption provided for in the notice or provision.

e) The period 2009 – 2015, was confirmed by the Minister, in the letter dated 26th March, 2002, which culminated from a series of correspondences inclusive of the letter dated 18th March, 1997.

f) Accordingly, the finding of the Tribunal that the Appellant was liable to pay PAYE tax from the period 2009-2015 is misdirected since the Appellant was exempted from paying taxes in that period. As a result, the Appellant was exempt from PAYE for the years 2009 – 2015.

g) The Commissioner may make an additional assessment amending a tax assessment made for a tax period, to ensure that the tax payer is liable for the correct amount of tax payable in respect of the said tax period, within three years from the date of service of the notice of the additional assessment.

h) The Commissioner has to limit the additional assessment to amending the alterations, and additions made in the additional assessment, and where an additional assessment has been made, a notice in writing shall be served upon the tax payer.

i) This implies that the notice of assessment in respect of the period January, 2011 to December, 2016, which was not stated by the Appellant in their tax objection

to the Respondent, could not have been an issue for consideration by the Tribunal, which deals with only issues for review on tax decisions.

j) The grounds for the Commissioner to make additional assessments is provided for under subsection 2(a) of Section 23 of the TPCA namely; fraud, any gross or wilful neglect by the tax payer, or discovery of new information in relation to the tax payable by the tax payer for the tax period.

k) Accordingly, the finding of the Tribunal that the Appellant was liable to additional assessment of UGX 8,159,350,625 for the period 2009-2015, based on discovery of new information, was not backed by any evidence.

l) As a result, the additional PAYE assessments for the period 2009 – 2015 are time barred.

***The Appeal was allowed and costs for the Appeal were awarded to the Appellant.***

04

## M-KOPA UGANDA LIMITED VERSUS UGANDA REVENUE AUTHORITY,

HIGH COURT CIVIL APPEAL NO. 007 OF 2021

**Brief Facts:**

The Appellant is a limited liability company engaged in the business of supplying solar lighting devices in Uganda. The Appellant started its operations in Uganda sometime in 2013 after borrowing start-up capital from M-KOPA LLC and M-KOPA Funding Ltd which were both non-resident tax payers. Between 2013 and 2015, the two companies did not charge interest on the loans. However, in 2016, the two companies merged and started charging interest on the loan balance at the time at the rate of 13% per annum from 2016 until full repayment.

Sometime in 2018, the Respondent conducted a comprehensive review of the Appellant's tax compliance for the period January 2013 to December 2017, whereupon it established that the Appellant is controlled by M-KOPA LLC incorporated in the United Stated of America which owns 99.9% of the Appellant's shares. The Respondent also discovered that although interest was charged on the loan balance from 2016 onwards, the Appellant neither declared nor paid any withholding tax on that interest. The Respondent issued two assessments on the Appellant in respect of withholding tax arrears and interest thereon. The Appellant objected contending that the accrued interest on the loan balance had not been paid, yet withholding tax on interest to a non-resident only becomes payable at the time when the interest is actually paid. The Respondent disallowed the objection and the Applicant filed a Review Application before the Tax Appeals Tribunal which was decided in favour of the Respondent, hence this Appeal.

**Grounds of Appeal:**

- The Honourable Members of the Tax Tribunal erred in law when it held that interest was paid to MKOPA LLC and the Applicant ought to have withheld tax on payment of the said interest.
- The Honourable Members of the Tax Tribunal erred in law when they relied on the contra proferentem rule to interpret the statement of cash flow statement against the Applicant.
- The Honourable Members of the Tax Tribunal erred in law when they failed to evaluate the evidence thereby reaching a wrong conclusion that the Applicant was liable to the tax assessed.

**Judgment of the High Court:**

a) The central question in this appeal is whether the Appellant actually paid interest on the loan to M-KOPA LLC for the period 1/1/2016 -31st 12/12/2017 and, consequently whether the Appellant ought to have withheld tax on that interest.

> *To this day, the Appellant remains a beneficiary of the 2016 and 2017 tax returns in which it expensed the impugned interest thereby reducing its tax liability. It is inconceivable that the same Appellant, who is yet to amend those said tax returns and pay the would-be right amount of tax, now wants this court to believe that the interest has never been paid.*
>
> **-Hon. Justice Patricia Mutesi-**

b) Section 25 (1) of the Income Tax Act provides that: *"Subject to this Act, a person is allowed a deduction for interest incurred during the year of income in respect of a debt obligation to the extent that the debt obligation has been incurred by that person in the production of income included in gross income".*

c) The purpose of Section 25 of the Income Tax Act is to allow persons to deduct the interest they incur on business loans taken to produce gross income. The provision insulates businesses from such interest by classifying it as an allowable deduction in the tabulation of chargeable income for tax purposes.

d) In the instant case, it is not disputed that interest for the loan balance was expensed in both the Appellant's financial statements and its Income Tax returns for 2016 and 2017. This had the effect of reducing the chargeable income, enabling the Appellant to lessen its Income Tax liability for the two years.

e) It is inconceivable that a business would lawfully expense a sum of money which is yet to be incurred or paid. It is also inconceivable that a taxpayer who has been requested to submit his or her financial records to the Respondent for tax review, would knowingly submit records which he or she is aware are false or incorrect.

f) The Tribunal considered all this evidence and correctly weighed it against the Appellant's financials in which the Appellant unequivocally stated that the interest had already been paid and expensed for tax purposes.

g) The admission in the Appellant's financials and tax returns for 2016 and 2017 that the impugned interest had already been expensed constitutes a major contradiction in the Appellant's evidence. Apart from fraud, there is no other logical or plausible explanation as to why a taxpayer would tell the Respondent that he or she has incurred an allowable expense during a year of income, thereby reducing that taxpayer's tax burden, yet he or she has not actually incurred that expense.

h) Courts will readily ignore minor contradictions which do not go to the root of a party's case and which have been satisfactorily explained away. However, major contradictions which go to the root of a party's case and which have not been satisfactorily explained away often indicate untruthfulness and, almost invariably, lead to the rejection of that evidence.

> *The Appellant seems to suggest that a resident taxpayer can get a business loan from a non-resident taxpayer and deliberately omit or refuse to pay the interest accruing thereon in perpetuity, even when his or her financials are strong enough to support that interest payment, thereby avoiding the associated withholding tax altogether. It is highly unlikely that this was the legislative intention. It is highly unlikely that this was the legislative intention.* **-Hon. Justice Patricia Mutesi-**

i) On one hand, the Appellant submitted Income Tax returns for 2016 and 2017 telling the Respondent that it had incurred and paid interest on the loan balance amounting to UGX 1,720,474,000 and UGX 2,8133,931,000 in 2016 and 2017, respectively. The Appellant benefitted from this information since it was able to reduce its chargeable income during the 2 years.

j) On the other hand, when the Respondent discovered in 2018 that the Appellant had neither declared nor paid withholding tax on the said interest, the Appellant then turned around and claimed that it had not actually incurred and paid that interest. This is the textbook definition of tax evasion and it is unacceptable.

k) To this day, the Appellant remains a beneficiary of the 2016 and 2017 tax returns in which it expensed the impugned interest thereby reducing its tax liability. It is inconceivable that the same Appellant, who is yet to amend those said tax returns and pay the would-be right amount of tax, now wants this court to believe that the interest has never been paid.

l) A great deal of debate was presented regarding the weight of the Appellant's adjusted financials which were aimed at correcting what the Appellant called accounting mistakes in the financials initially submitted to the Respondent. Such adjustments in the said financials remain unhelpful and inconsequential if they were never followed up with amended tax returns and additional tax payment after deletion of the interest earlier captured as an allowable deduction.

m) The only evidence which would have compelled the Tribunal and Court to find that the Appellant indeed never paid interest, would have been amended tax returns and proof of payment of the respective additional tax. The omissions to file the amended returns and pay the additional tax significantly prejudice and undercut the genuineness and accuracy of the adjusted financials.

n) Accepting the Appellant's arguments in this case could open the door to taxpayers to take unfair advantage of the privileges afforded by Sections 25 (1) and 47(2) of the Income Tax Act.

o) The Appellant seems to suggest that a resident taxpayer can get a business loan from a non-resident taxpayer and deliberately omit or refuse to pay the interest accruing thereon in perpetuity, even when his or her financials are strong enough to support that interest payment, thereby avoiding the associated withholding tax altogether.

p) It is highly unlikely that this was the legislative intention behind Sections 25(1), 47(2) and 83(1) of the Income Tax Act. The insistence of the legislature on withholding tax becoming payable only when interest is paid was intended to protect taxpayers who are financially struggling and who cannot pay the interest in time.

q) The Tribunal acknowledged that the *contra proferentum rule* is primarily a rule of contractual interpretation usually applied to standard form contracts. Court agreed with the Tribunal's position that strictly speaking, there is no bar to the application of the *contra proferentum rule* in the interpretation of ambiguities is non-contractual documents.

r) Plainly speaking, the rule is rooted in the need to hold authors of documents accountable for ambiguities therein. In the instant case, the Appellant was

best suited to avoid the ambiguities in its financial statements, and logically any ambiguities therein ought to be interpreted against it. In any case, the Appellant did not point out any particular prejudice that arose from the Tribunal's reference to the Rule.

s) Nevertheless, even if Court was to entertain the Appellant's strict view that the *contra proferentum rule* is inapplicable to financial statements, Court would be hesitant to find that the reference to the rule had any significant influence on the Tribunal's decision so as to irreparably taint it.

t) Even if there had been no reference to the said rule, the doctrine of estoppel would still have naturally justified the Tribunal's finding on the cash flow statement.

u) The true ratio decidendi of the Tribunal's decision was that a taxpayer who has been asked by the tax collector to submit his or her financial statements and tax returns for review and who has submitted those records, cannot turn around later and claim that what he submitted should not be relied upon.

v) Since the Appellant's financial statements and tax returns showed that the interest had already been paid, the Appellant ought to have withheld tax on that interest. The Tribunal was right to uphold the assessments.

***The Appeal was dismissed and the Appellant was ordered to pay the Withholding tax plus interest thereon as assessed by the Respondent. Costs were awarded to the Respondent.***

05

## UGANDA REVENUE AUTHORITY VERSUS MUKWANO ENTERPRISES LIMITED,

HIGH COURT CIVIL APPEAL NO. 55 OF 2019

**Brief Facts:**

Mukwano Enterprises Limited is in the business of property and real estate development. It buys leases on land from various individuals and entities with or without buildings thereon, constructs or renovates commercial or residential buildings on the leased properties and rents them out for profit.

In July 2017, URA carried out an audit into the affairs of the Respondent for the period 2010 to 2014. The Appellant noticed that the Respondent had treated premium and rent payments for 20 of its leases as revenue expenditures. The Appellant believed that these expenditures were capital in nature and as such non-deductible expenses in the tabulation of chargeable income.

As a result, the Appellant disallowed the expenses for the amortization of the lease premiums and rejected the treatment of the lease rental payments as revenue expenditures hence adding back UGX 2,344,351,788 that the Respondent had deducted from its gross income in respect of the impugned premium and rent payments for the entire period while tabulating its corporate tax.

URA subsequently issued an assessment of UGX 3,259,011,968 in Corporate Tax which was objected to by the Appellant and consequently disallowed by the Respondent, hence the Application in the Tax Appeals Tribunal.

The Tax Appeals Tribunal held that the rent and premium paid by the Respondent is entitled to have been deducted as allowable expenses. URA, being aggrieved by the Ruling of the Tax Appeals Tribunal, filed the instant Appeal.

**Grounds of Appeal:**

- The Honourable Tribunal erred in law when they held that the rent and premium paid by the Respondent was revenue expenditure and that the Respondent is entitled to have them deducted as allowable expenses.
- The Honourable Tribunal erred in law when it remitted the matter to the Appellant for reconsideration of the expenses incurred by the Respondent as deductible allowances.

**Judgment of the High Court:**

a) Section 22(1) of the Income Tax Act allows a taxpayer to deduct all expenditures and losses incurred during a year of income to the extent to which those expenditures or losses were incurred in the production of his or her income.

> *The leases cannot amount to mere stock in trade or circulating capital. They are fixed assets of the Respondent's business and the money paid to acquire them constitutes capital expenditure.* **-Hon. Justice Patricia Mutesi-**

b) However, Section 22(2) of the Income Tax Act provides for exceptions to subsection 1 and specifically, paragraph (b) forbids any deduction to be made to the gross income if it is in respect of an expense or loss of a capital nature.

c) Capital expenditure refers to an outlay of funds used to acquire or improve a fixed asset. It provides for a long-term benefit to the business as opposed to revenue expenditure which is recurrent and only provides short term benefit to the business. The facts of each case are instructive in the determination of whether an expense is a one-off expense which provides for a long-term benefit or a recurrent expense which provides a short-term benefit.

d) Expenditure for the acquisition of land is typically treated as capital expenditure since land is a fixed asset. However, this is not always the case in a situation where the taxpayer deals in real estate.

e) Interests in land are the circulating capital for a taxpayer dealing in real estate since, once acquired, these interests are resold for profit. Therefore, all the money used to acquire such interests is revenue expenditure.

f) The Tribunal simply reasoned that since the Respondent deals in real estate, all its interest in land are circulating capital and the premiums and rents it paid for those interests are revenue expenditure. The Tribunal seems to have missed a critical aspect of the nature of the Respondent's business which necessitated a different conclusion.

g) The Respondent is not merely a dealer in land or a trader of interests in land. At the scheduling conference, it was agreed that the Respondent carries on the business of *"property development and real estate".* The Respondent does not simply buy and sell leases. It buys, leases and puts land to use for the remainder of the durations.

h) The contested leases were acquired from government authorities. The Respondent developed the respective lands with office or residential holdings and then rented them out to the public for a profit.

> *Amortization applies only to fixed/non-current assets and as such, the amortization of an expenses automatically infers that such expenses was a one-time capital expense which has to be spread out over the useful life of the fixed asset and written off gradually.*
>
> **-Hon. Justice Patricia Mutesi-**

i) It is anticipated that the Respondent will remain the registered proprietor of the leased land for the remaining durations and will continue to derive rent from them until the lease lapses.

j) The leases cannot amount to mere stock in trade or circulating capital. They are fixed assets of the Respondent's business and the money paid to acquire them constitutes capital expenditure.

k) The Respondent's statements of financial position for the entire period of 2010 to 2014 indicated that the Respondent declared the *"prepaid operating lease rentals"* as *"non-current assets"*.

l) The Court's opinion is that the categorization of the prepaid operating lease rentals as non-current assets irresistibly infers that from the onset, the Respondent understood the leases and the buildings thereon to be fixed assets, and knew that any money it used to acquire those fixed assets constitutes capital expenditure.

m) Therefore, premium paid by the Respondent for the 20 leases was a capital expenditure.

n) The fact that the Respondent amortized premium payments, is an indication that the leases were fixed assets.

o) Amortization refers to gradually extinguish a debt often by means of a sinking fund. For tax purposes, it implies the process of gradually writing off the initial cost of a non-current asset.

p) Amortization applies only to fixed/non-current assets and as such, the amortization of an expenses automatically infers that such expenses was a one-time capital expense which has to be spread out over the useful life of the fixed asset and written off gradually.

q) The conduct of the Respondent in amortizing what it calls revenue expenditure is self-defeating. Revenue expenditure cannot be amortized and allocated or spread to more than one accounting period. It can only be claimed as a deductible expense within the year it is incurred.

r) Additionally, all the agreements for the 20 leases recognize premium as a one-off payment separate from rent which recurs on a regular basis. This confirmed that premium for the leases was understood to be capital expenditure while rent for the leases was taken as revenue expenditure.

s) In the circumstances, the classified premium payments for the 20 leases was a capital expenditure. However, the rent payments for the 20 leases were allowed as deductions from the Respondent's gross income for the audit period.

***The Appeal was allowed and the matter was remitted back to the Appellant for reconsideration with directions that the rent payments be deducted from the Respondent's gross income and all premium for the 20 leases be treated as capital expenditure.***

06

## UGANDA REVENUE AUTHORITY VERSUS SKENYA MOTORS (U) LIMITED,

HIGH COURT CIVIL APPEAL NO. 3 OF 2014

**Brief Facts:**

The Respondent made payments to its directors, Mr. Nyanzi Nathoo and Mr. Bashir Nurali in the sums of UGX 390,000,000 and UGX 712,500,000 for the years 2008 and 2009 respectively. The said directors are also shareholders of the Respondent Company. The Appellant queried the tax treatment of the directors' bonuses and re-characterized the payments as a return on the shareholders' investment and taxed it as a dividend.

The Respondent objected to the tax treatment of the bonus payments received by its directors. The Appellant made an objection decision maintaining its decision to re-characterize the bonus payments as dividends, vacated the penalties imposed under Section 151 but maintained those under Section 154 of the Income Tax Act. The Applicant then filed TAT Application No. 7 of 2012 challenging the same.

The Tribunal delivered a majority Ruling in favour of the Respondent to the effect that the nature of the payments to the directors was a bonus; that the Respondent had no justification to re-characterise the payments under Section 91 of the Income Tax Act and that the issue of penalty under Section 154 was redundant.

However, in a minority ruling, the Chairman of the Tribunal held that the Respondent failed to prove that the directors were paid a bonus; that the shareholders received a percentage of the profits of the company; the Commissioner was justified to re-characterise the payments under Section 91 of the Income Tax Act; and that the Respondent is liable to pay penalty under Section 154 of the Income Tax Act. The Appellant was aggrieved and filed an Appeal to the High Court.

**Grounds of Appeal:**

- The Honourable members of the Tribunal erred in law when they failed to properly evaluate the evidence on record and ruled that the nature of the payments made to the Directors was a bonus.

> *For bonuses to be paid, first the specific monies have to be declared and ascertained then allocated and paid to the respective recipients in future. What happened in the instant case was the opposite.*
>
> **-Hon. Justice Duncan Gaswaga-**

- The Honourable members of the Tribunal erred in law when they ruled that there was no tax avoidance scheme to justify the Appellant to re-characterise the payments under Section 91(1) (a) of the Income Tax Act.

- The Honourable members of the Tribunal erred in law when they failed to properly evaluate the evidence on record and ruled that the payments made to the directors were not disguised payments, the form not reflecting the substance, to qualify for re-characterisation under Section 91(1) (c) of the Income Tax Act.
- The Honourable members of the Tribunal erred in law when they ruled that the issue of the penalty imposed there under was redundant.
- The Honourable members of the Tribunal erred in law when they found that it is not the Appellant's business to ensure that its taxpayer companies comply with the Companies Act.

**Judgment of the High Court:**

a) A bonus is a financial compensation that is above and beyond the normal payment expectations of its recipient.

b) The facts herein do not categorically state what the normal payment expectations of the Respondent directors were, since they confirmed not receiving any salaries.

c) Court dealt with the aspect of the board resolution dated 20/03/2010 that was questioned by the Appellant and the TAT minority decision.

d) A board resolution is a written document created by the board of directors of a company detailing a binding corporate action.

e) Whether the impugned payments to the directors were bonuses or dividends or otherwise, it is imperative that a decision by the board is made on the modalities regarding the whole transaction, that is, how much should be paid, from which funds (profits), to who, for what purpose (reason), for what period, etc.

f) A perusal of the entire record once again revealed that the two directors in issue received a sum of UGX 390,000,000 dubbed as a bonus for the year 2008. There is no evidence at all on the record authorizing such payment.

> *By making such unauthorized payments in 2008 and 2009 and later in 2010 attempting to make good the position, was an afterthought intended to fix the anomaly and justify the said payments as bonuses. It was a well calculated move or scheme to avoid payment of taxes.*
>
> **-Hon. Justice Duncan Gaswaga-**

g) In 2009, the same directors received another sum of UGX 712,500,000 also as bonuses. For the second payment, however, a board resolution dated 20/03/2010 was tendered purporting to authorize the payment.

h) As seen in the minority decision, the Tribunal was very critical on the aspect of non-registration of the board resolution with the Registrar of Companies.

i) Be that as it may, acting on such a resolution may not be that fatal as a late registration and payment of the prescribed penalty can cure the defect. What is fatal and incurable however is the act of effecting payments without authority, that is, a board resolution and or relevant board minutes.

j) The provisions of Article 27 would make it possible for a valid board resolution to be acted on without accompanying board minutes.

k) It is apparent that the Respondent company made profits during the period under scrutiny from which all the salaried employees were paid a bonus depending on their levels in the company.

l) The two shareholders, also doubling as directors are employees of the company.

m) From the evidence, court found that it was inclined to agree with the dissenting opinion that the two directors received a payment but not a result of their special contribution/services.

n) One is left to wonder, first of all, how the decision to pay only the two directors that sum of money in 2008 from the profits made by the company was arrived at and by who. This very critical evidence is lacking, and here it is immaterial whether the money is paid as a bonus or dividends.

o) The payments effected in 2009 seem to derive legitimacy and or authority from a resolution dated 20/03/2010 and tendered in court. Going by this evidence, it becomes clear that at the time of making the said payments, there was no requisite authorization.

> *The majority holding that the Appellant is not charged with the duty of ensuring that the Respondent complies with all the laws in place, most especially the Companies Act, is not only flawed but also self-defeating and should be rejected.*
>
> **-Hon. Justice Duncan Gaswaga-**

p) Moreover, the purported resolution did not have retrospective effect to ameliorate the anomaly.

q) As matters stand, all these payments can only be treated as advance payments and cannot be transformed into bonuses.

r) For bonuses to be paid, first the specific monies have to be declared and ascertained then allocated and paid to the respective recipients in future. What happened in the instant case was the opposite.

s) Court agreed with the dissenting member of the Tribunal that the impugned payments were not bonuses.

t) By making such unauthorized payments in 2008 and 2009 and later in 2010 attempting to make good the position, was an afterthought intended to fix the anomaly and justify the said payments as bonuses. It was a well calculated move or scheme to avoid payment of taxes.

u) Court found that the Appellant rightfully re-characterized the Respondent's transactions for reasons that this was a disguised transaction.

v) It is clear that the Respondent agreed to the fact that there was a penalty to be paid arising from taxes that were due. This explains why the Respondent went ahead and sought waiver from Parliament though the same was denied.

w) The Respondent's argument that the penalty imposed was a result of the recharacterization which caused the estimated provisional income to be less than 90% of the final chargeable income, is flawed.

x) The Respondent ought to comply with all existing laws. Much as the Companies

Act does not create a tax obligation, the documents to be relied on by the taxing masters to ascertain the legality of such payments were required not only to have been registered but also to conform to the prescribed procedures as outlined in the relevant laws.

y) The majority holding that the Appellant is not charged with the duty of ensuring that the Respondent complies with all the laws in place, most especially the Companies Act, is not only flawed but also self-defeating and should be rejected.

z) A company is a creature of the law. How does one expect the Respondent company to operate and run its affairs without following and observing the procedures as prescribed in the legal regime?

***The Appeal succeeded on all grounds. The decision of the Tribunal was set aside and costs were awarded to the Appellant.***

07

## UGANDA REVENUE AUTHORITY VERSUS TAMALE AND CO. ADVOCATES,

HIGH COURT CIVIL APPEAL NO. 11 OF 2020

**Brief Facts:**

The Respondent is a partnership carrying on the business of a law firm. The Respondent was registered as a law firm on 6th August 2013. On 14th August 2013, the Respondent applied for Value Added Tax (VAT) registration. On 24th October 2013, the Appellant issued a VAT certificate to the Respondent with an effective date of 1st October 2013.

In a subsequent tax audit, the Appellant discovered that the Respondent had been conducting business in July 2013, August 2013 and September 2013. Consequently, the Appellant issued an administrative additional VAT assessment of UGX 9,236,970 in respect of the Respondent's taxable supplies in August and September 2013.

While objecting to the assessment, the Respondent denied making the alleged taxable supplies and maintained that the assessment was illegal since it related to a period prior to its effective VAT registration date. The Appellant disallowed the objection and the Respondent proceeded to the Tribunal. After hearing evidence from both parties, the Tribunal decided the matter in favour of the Respondent, hence this Appeal.

**Grounds of Appeal:**

- The Chairman and the Honourable members of the Tax Appeals Tribunal erred in law when they held that the Respondent was not liable to pay VAT when it made supplies.
- The Chairman and the Honourable members of the Tax Appeals Tribunal erred in law when they held that the Respondent was estopped from charging the Applicant VAT when it made taxable supplies.
- The Chairman and the Honourable members of the Tax Appeals Tribunal erred in law when they set aside the VAT assessment of UGX 9,236,970 against the Applicant who made taxable supplies.

## Judgment of the High Court:

a) The Court noted that while analyzing the relevant law, the Tribunal did not consider Section 6 of the VAT Act in its entirety.

b) Specifically, the Tribunal ignored subsection 2 of Section 6 of the VAT Act which provides that, *"A person who is not registered, but who is required to apply to be registered, is a taxable person from the beginning of the tax period immediately following the period in which the duty to apply for registration arose".*

> *The appointment of an effective date of VAT registration only creates a rebuttable presumption that that is the date upon which a taxpayer's VAT liability commences and that no earlier transactions could be considered.*
>
> **-Hon. Justice Patricia Mutesi-**

c) Section 6(2) of the VAT Act settles the central controversy in the appeal. It confirms that VAT liability can predate VAT registration.

d) By doing so, the provision averts tax evasion by those who should register for VAT but who deliberately refuse to do so. Thus, non-registration for VAT cannot be used as an excuse not to pay VAT.

e) Since the Respondent did not appeal the Tribunal's finding that it had carried on business and made VAT-able supplies between July and September 2013 before its effective date of VAT registration, Court found that the Respondent was liable to pay VAT for all the VAT-able supplies it made before VAT registration. Ground 1 of the Appeal succeeded.

f) Court noted that it is not in doubt that the Appellant has the unfettered discretion under the VAT Act to appoint the date on which VAT registration takes effect.

g) The appointment of an effective date of VAT registration only creates a rebuttable presumption that that is the date upon which a taxpayer's VAT liability commences and that no earlier transactions could be considered.

h) This is only a rebuttable presumption because, more often than not, the Appellant does not have all the facts relating to a taxpayer's affairs and activities before it appoints the effective date.

i) For this reason, the law allows the Appellant wide discretionary powers to audit all taxpayers even after the end of a tax period. Following such audits, the Appellant is further empowered to issue any and all necessary additional assessments on each taxpayer who is discovered to have made taxable supplies in respect of which no VAT or other tax was declared and paid pursuant to Section 23(2)(a) of the Tax Procedure Code Act, 2004.

j) Counsel for the Respondent challenged the applicability of Section 23(2)(a) of the Tax Procedure Code Act, 2004 to the instant case contending that there was no earlier assessment in respect of the period between July and September 2013 yet the said provision relates to the issuance of 'additional assessments'.

k) Court did not agree with this interpretation of that provision. It was noted that the Respondent lodged VAT returns from October 2013 to June 2014 representing its VAT liability for the Financial Year 2013/2014.

> *The Appellant has the discretion to go beyond the effective date of VAT registration in order to discover if there were any VAT-able transactions made prior to that effective date, which had not been brought to its attention at the time of VAT registration.*
>
> **-Hon. Justice Patricia Mutesi-**

l) However, the Appellant discovered that the Respondent had not declared and paid VAT for the first 3 months of the said financial year. This was a unique situation, as anticipated under Section 6(2) of the VAT Act.

m) The impugned assessment was additional to the self-assessments and returns already filed by the Respondent for the months in that financial year. Therefore, Court found that Section 23(2)(a) is relevant and applicable to the instant case.

n) Court disagreed with the Tribunal's reasoning that the Appellant is estopped from stating that the Respondent's VAT liability started before its effective date of VAT registration.

o) The Appellant has the discretion to go beyond the effective date of VAT registration in order to discover if there were any VAT-able transactions made prior to that effective date, which had not been brought to its attention at the time of VAT registration.

p) Court held that as a general rule, equity follows the law, and estoppel, which is a doctrine of equity, cannot stand in the face of clear statutory words.

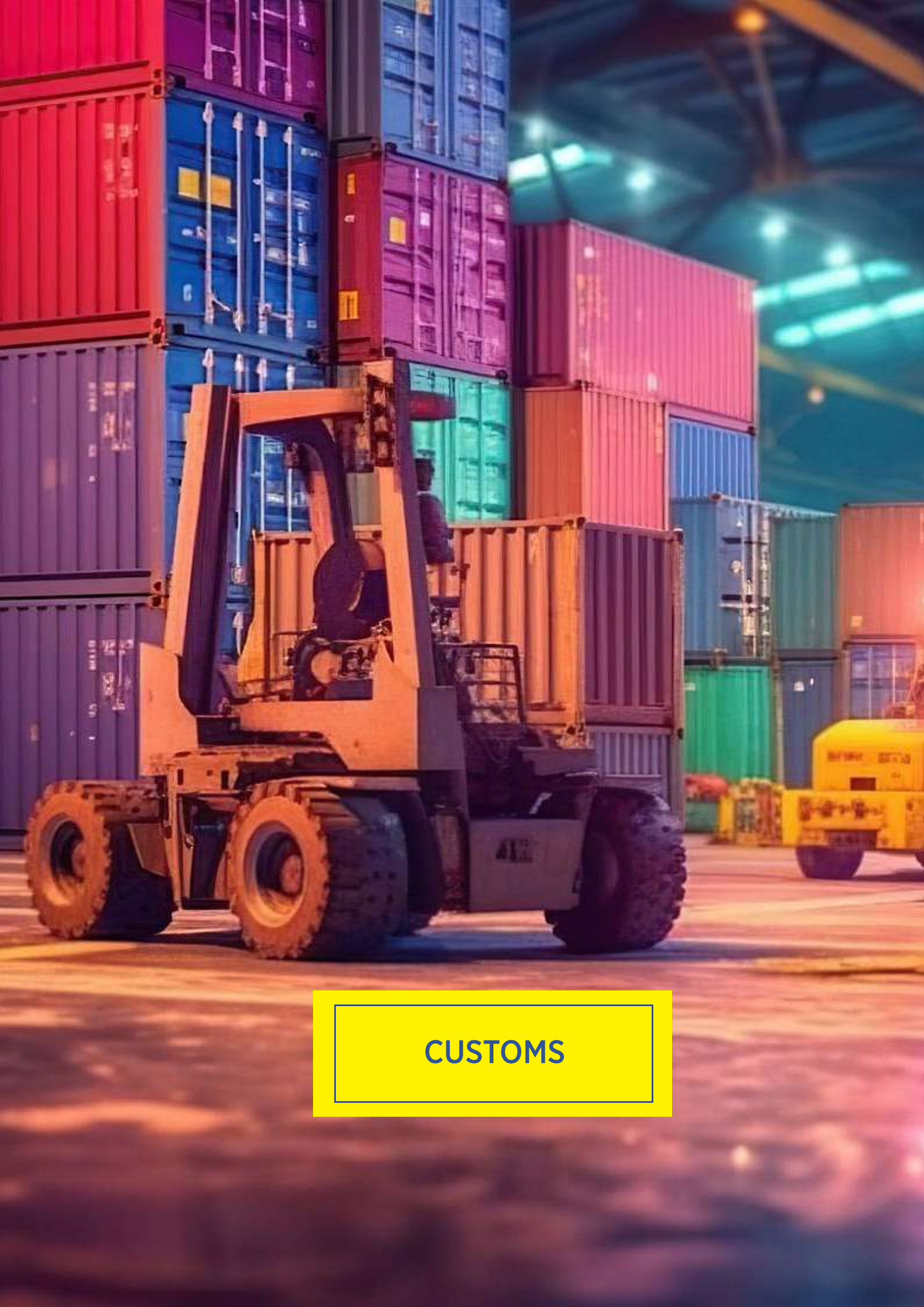
q) If Court were to hold that estoppel precludes the Appellant from auditing a taxpayers' pre-VAT registration affairs, this would render Section 6(2) of the VAT Act and Section 23(2)(a) of the Tax Procedure Code Act, 2004, redundant and of no effect.

r) In tax matters, one has to look only at what is clearly said in the taxing statute. There is no room for any intendment, equity or presumption as to tax. *(See Cape Brandy Syndicate V The Commissioners of Inland Revenue [1921]1 KB 64 at 71*).

s) As such, the clear wording of the above-mentioned statutes overrides any claim of equity or estoppel that would have arisen on the part of the taxpayer, from an effective date of VAT registration appointed by the Appellant. Ground 2 of the Appeal also succeeded.

t) Court held that having found that the Respondent's VAT liability predated its VAT registration and related back to the period between July and September 2013, the Appellant's assessments were correctly issued and the Tribunal erred in law when it set them aside. Ground 3 succeeded.

***The Appeal was allowed and the Respondent was ordered to pay the VAT of UGX 9,236,970 as assessed by the Respondent. Costs were awarded to the Appellant.***



# CUSTOMS

08

## UGANDA REVENUE AUTHORITY VERSUS AGABA HENRY,

HIGH COURT CIVIL APPEAL NO. 32 OF 2021

**Brief Facts:**

Sometime around August 2021, the Respondent bought and imported into Uganda a 2010 Mercedes Benz E-class model at USD 6,637 being the Cost, Insurance and Freight. The Respondent declared USD 6,508 as the purchase price of the vehicle and self-assessed taxes of UGX 25,966,962 which he duly paid. The Appellant rejected the declaration and uplifted the vehicle's customs value to USD 9,205.44. This meant that the Respondent owed an extra UGX 6,762,667 in taxes. The Respondent objected to the uplifted value on the ground that the Appellant was bound to apply his transaction value in computing the taxes. The Appellant disallowed the objection reasoning that the East African Community (EAC) Administrative Ruling of Valuation of Used Goods of 13th December 2013 prescribed the fallback method, which it had used in uplifting the value, as the applicable customs valuation method for all used cars imported into the EAC.

The Respondent paid the disputed UGX 6,762,667 and got the vehicle out of the warehouse but he still proceeded to the Tribunal challenging the objection decision. In its ruling, the Tribunal agreed with the Respondent, finding that the Appellant was not justified in uplifting the vehicle's customs value. The Tribunal ordered the Appellant to refund the Respondent's UGX 6,762,667 plus interest thereon at court rate from the date of the ruling until payment in full. The Tribunal also ordered the Appellant to pay the Respondent's costs of the Application.

**Grounds of Appeal:**

- The Honourable Members of the Tax Appeals Tribunal erred in law in disregarding Section 122(6) of the East African Community Customs Management Act, thereby arriving at a wrong decision.
- The Honourable Members of the Tax Appeals Tribunal erred in law in not taking into account the Administrative Ruling of Valuation of Used Goods of 2013 in regard to the Respondent's used motor vehicle.
- The Honourable Members of the Tax Appeals Tribunal erred in law in holding that the Respondent's vehicle qualified for the transaction value method of valuation whereas not.

**Judgement of the High Court:**

a) Section 122(5) of the EACCMA empowers the EAC Customs Cooperation Council ("the Council") to publish administrative rulings of general application giving effect to the Fourth Schedule of the Act.

b) Section 122(6) of the EACCMA provides that in applying or interpreting Section 122 and the 4th Schedule, due regard shall be taken of the decisions, rulings,

opinions, guidelines and interpretations of the Directorate, the World Trade Organisation ("WTO") or the Council.

c) The Tribunal concluded that the correct construction to be given to Section 122(5) and (6) of the EACCMA and the Administrative Ruling is that for a customs authority to apply the fallback method, there must be actual complexities, as opposed to perceived complexities, in applying the initial five methods.

d) It is clear that Section 122 and the 4th Schedule of the EACCMA relegate the fallback method to be the residuary method of customs valuation. The fallback method is a method of last resort only applicable when all others have failed. An ideal case in which the fallback method could apply is one in which the importer lacks any purchase documents for the imported good.

e) By prescribing the transaction value method as the primary method of customs valuation, and requiring that the remaining 5 methods are to be considered sequentially once it is impossible to apply that primary method, the legislature intended that priority must be given to the actual price of a good in customs valuation.

f) The Tribunal fully considered and understood the true import of subsections (5) and (6) of Section 122 of the EACCMA. The 2 provisions are meant to provide additional material for consideration in customs valuation when the actual price paid or payable for a good cannot be ascertained.

g) It would defeat logic for a customs officer to start looking for administrative rulings, opinions and guidelines of general application to determine the price of a good when there is genuine and uncontested paperwork before him or her which confirms the actual price paid or payable for that good.

h) The Administrative Ruling, whose implications were the source of great contention in this appeal, was made by the Directorate on 13th December 2013 on the backdrop of the ever-increasing challenges which customs authorities all over the EAC face in determining the transaction values of used goods, especially clothes, motor vehicles, machinery and capital goods and other worn articles.

i) Administrative rulings are made under delegated legislative power pursuant to Section 122(5) of the EACCMA which expressly anticipates that administrative rulings of general application may be made and published to give effect to the Fourth Schedule.

j) It is trite law that delegated legislation cannot exceed the purview of the parent Act. When delegated legislative power is exercised beyond the scope prescribed or anticipated by the parent Act, the resultant subsidiary legislation is null and void to the extent of its inconsistency with that parent Act.

k) Therefore, it is not possible that an administrative ruling can amend the EACCMA by reorganising the hierarchy of customs valuation methods prescribed by Section 122(1) and the 4th Schedule thereof. Given the clear wording of Section 122(5) of the EACCMA, an administrative ruling cannot alter that hierarchy.

l) In the absence of express wording in the Act to that effect, that argument appears unfounded. If the EACCMA had intended that the Directorate has such powers, it would and should have said so expressly.

m) Pursuant to Sections 3 and 4(1)(b) of the EACCMA, the role of the Directorate is to initiate policies on Customs and related matters and to coordinate and

monitor the enforcement of the customs laws of the EAC. The Directorate has no power to rethink and rewrite the EACCMA or to direct EAC partner states to ignore some parts of the Act. The Directorate can only interpret and implement the EACCMA.

n) The Administrative Ruling did not instruct customs authorities to completely ignore and disregard the initial 5 methods when valuing used cars. It simply advised EAC partner states that, more often than not, there will be complexities in applying the initial 5 methods of customs valuation prescribed in the EACCMA due to the ever-increasing cases of falsification of documents, forgery and fraudulent misrepresentation by importers, among other factors

o) The true effect of the Administrative Ruling was to recognise the bottlenecks in applying the initial 5 methods and to enrich the range of possible considerations while applying the fallback method so that they can navigate those bottlenecks more conveniently.

p) The Appellant has a duty to ascertain the genuineness of import documents on a case by case basis, which it cannot abdicate by simply relying on the general claim that importers are fraudulent.

q) Innocent and genuine used car importers should not be bundled together with those who are fraudulent and collectively punished. Every importer should be given fair and just consideration before a customs valuation decision is made in respect of his or her goods.

r) The Appellant did not even consider whether or not the Respondent's import documents were genuine and accurate. The Appellant simply stated that the vehicle did not meet the criteria for the transaction value method.

s) According to Paragraph 2 of the 4th Schedule of the EACCMA, the only criterion for the transaction value method to apply is the presentation of genuine proof of the actual price paid or payable for the good.

t) Court held that it was satisfied that the vehicle met the criterion for the transaction value method and the Appellant was not justified to uplift its customs value.

***The Appeal was dismissed with costs to the Respondent.***

# EMPLOYMENT & LABOUR LAW

09

## BARBRA AWIDI MICHELE VERSUS UGANDA REVENUE AUTHORITY,

HIGH COURT MISC. CAUSE NO. 322 OF 2021

**Brief Facts:**

On 16th July 2019, the Respondent advertised various job vacancies which included the job of officer customs. The Applicant successfully applied for the job and on 11th March, 2020, was offered an appointment as Customs Officer (grade one) in the Customs Department effective 23rd March, 2020. The Applicant accepted the offer vide an acceptance letter dated 14th March, 2020. The Respondent subsequently conducted a vetting of the Applicant's academic qualifications and discovered that she presented a forged customer care and computer introduction certificate in support of her application for the job.

On 18th May 2020, the Respondent conducted inquiries into the forged certificate through its Internal Audit and Compliance Department. The Applicant appeared before the Compliance team and made a statement. On 13th July, 2020, the Respondent dismissed the Applicant from her employment. The dismissal took effect on the 14th July, 2020.

On 30th July, 2020, the Applicant appealed against her dismissal to the Chairperson Staff Appeals Committee on grounds that the dismissal was not backed by the investigation findings and she was not accorded a fair hearing. On 10th September, 2020, the Respondent informed the Applicant that the Staff Appeals Committee had considered her appeal vide a meeting held on 9th September, 2020 and upheld the dismissal.

On 21st October, 2020, the Applicant wrote to the Respondent requesting for a second review of her dismissal and subsequent Appeal decision. On 10th December, 2020 the Respondent issued a hearing notice to the Applicant inviting her to appear before the Staff Appeals Committee scheduled for 18th December, 2020. The Applicant acknowledged receipt of the hearing notice on 14th December, 2020.

On 18th December, 2020 the Applicant appeared before the Staff Appeals Committee where her appeal case was reviewed. On 17th September, 2021, the Applicant wrote to the Respondent seeking for the decision of the review hearing. On 28th September, 2021 the Respondent issued its Appeal decision upholding the earlier dismissal, hence this Judicial Review Application.

**Issues for Determination:**

- Whether the decision of the Respondent was illegal, irrational and/or procedurally improper?
- Whether the Applicant is entitled to the remedies prayed for?

**Ruling of the High Court:**

a) Judicial review is concerned not with the merits of the decision but with the decision-making process. The duty of the court therefore 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.

b) As regards the ground of illegality, it was held that no allegation was made out against the Respondent.

c) On the ground of procedural Impropriety, the Applicant was challenging three decisions by the Respondent, namely: one summarily dismissing her without a hearing; the second by the Staff Appeals Committee as a committee of first instance; and the third by the Staff Appeals Committee reviewing the decision on first appeal.

d) Regarding the first decision, it was held that in terms of Section 2 of the Employment Act 2006, a probationary contract is a separate agreement, strictly for probation for a period of six months, renewable up to not more than another six months. However, including a term as to probation in a full term or fixed contract does not make a contract a probationary one. The probationary period only becomes part of the contract.

e) The contract in issue did not specifically state that it is a probationary contract. This contract was found to be vague on the aspect as to whether it is a probationary contract. Simply providing a term as to probation does not make a contract a probationary one.

f) The claim that the Applicant was not entitled to notice or a hearing on the basis that this right was excluded under Section 67 of the Employment Act on account that the decision was ending a probationary contract, was not made out by the Respondent.

g) Even if the Respondent had established that the Applicant was serving under a probationary contract, the provision under Section 67 of the Employment Act would be subservient to the constitutional provisions on fair hearing.

h) The conduct on the part of the Respondent of summarily dismissing the Applicant without affording her an opportunity to be heard was in breach of her rights to a fair hearing and of being treated justly and fairly.

i) As regards the second decision, it was established that no hearing was conducted by the Management Disciplinary Committee against the Applicant. Therefore, there was no hearing upon which any appeal by the Applicant to the Staff Appeals Committee was premised.

j) As such, the Staff Appeals Committee assumed a function not bestowed to it and acted improperly. Its decision upholding the summary dismissal by the Respondent's management was null and void on account of procedural impropriety and unfairness.

k) As regards the third decision, it was held that the subject matter of the new allegation was not relevant to the impugned dismissal and therefore the conduct by the Staff Appeals Committee was, grossly irregular and constitutes an instance of procedural impropriety in that regard.

I) On the ground of Irrationality or Unreasonableness, it was held that the Respondent's decision does not fall within the range of possible, acceptable outcomes that could be defensible given the law and the set of facts before the Court. The decision by the Respondent was, therefore, irrational in that regard and the application succeeded on this ground.

***The Application was allowed and the Applicant was awarded general damages of UGX 80,000,000 and costs of the suit.***


INTERLOCUTORY MATTERS

10

## BULLION REFINERY LTD & 2 OTHERS VERSUS THE ATTORNEY GENERAL & UGANDA REVENUE AUTHORITY,

HIGH COURT MISC. APPLICATION NO. 0132 OF 2023

**Brief Facts:**

The Applicants filed an Application for temporary injunction seeking an order to stop URA from enforcing Regulation 3 of the Mining and Minerals (Export Levy on Refined Gold) Regulations, 2023, that is, (assessing and collecting Gold export levies) on all gold imported into Uganda intended for processing and subsequent exportation. The Respondents opposed the Application.

**Ruling of the High Court:**

a) For a temporary injunction to be issued the Applicant must show: a prima facie case with a probability of success; that it will suffer irreparable damage that cannot be atoned/compensated by an award of damages; and if the court is in doubt, it would decide the application on a balance of convenience.

b) Court found that there was enough evidence to show that indeed there are triable issues in the main suit, hence a prima facie case had been established.

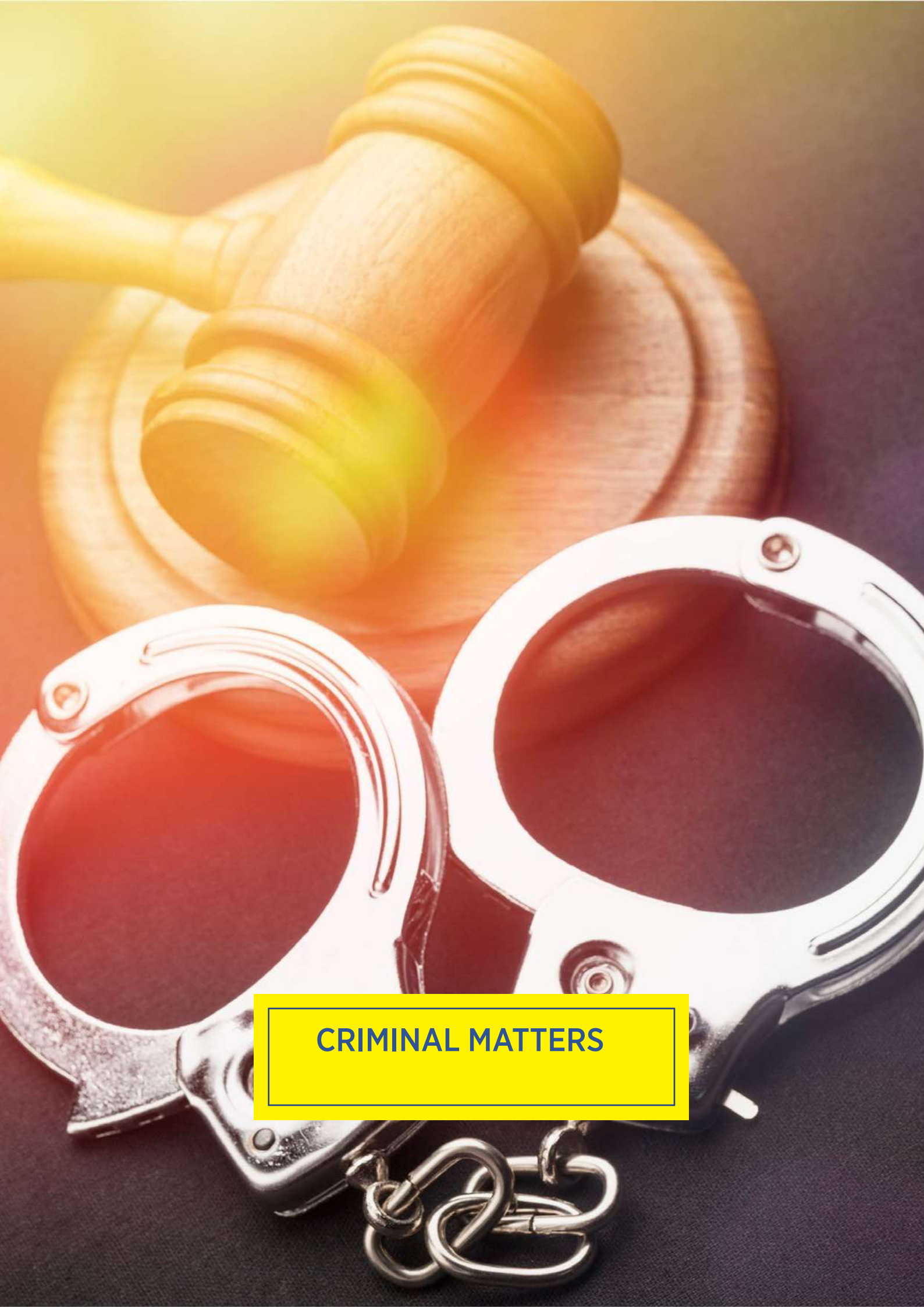
c) Court further noted that the Respondents had demonstrated that the injury being complained of in the application is monetary in nature.

d) The 2nd Respondent (URA) is a government agency mandated with revenue collection.

e) Taxes are creatures of statute and there are procedures for refund of any taxes overpaid or wrongly paid which the Applicants can explore in the event Court decides the main suit in their favour or if the 2nd Respondent collects revenue and Court finds that such revenue should not have been collected, the 2nd Respondent has capacity to refund any revenue erroneously collected.

f) On the other hand, other gold refiners are paying the tax and granting this Application would cause a grave inconvenience to the Respondents.

***The Application for a temporary injunction was dismissed and Court ordered that costs be in the cause.***



# CRIMINAL MATTERS

11

## GERALD SSEKAJUGO VERSUS UGANDA (URA), MUKASA TOM & 2 OTHERS,

HIGH COURT CRIMINAL REVISION APPLICATION NO. 3 OF 2023

**Brief Facts:**

On 15th December 2022, the 2nd Respondents (Kiggundu Eric, Mukasa Tom, Silla Aitaufoo Onael) were charged as follows: Under count one, A1 was charged with Possession of uncustomed goods contrary to Section 200(d) (iii) of the East African Community Customs Management Act, 2004; Under count two, A1 was charged with conveying uncustomed goods contrary to Section 199(b)(iii) of the East African Community Customs Management Act, 2004.; Under count three, A2 was charged with acquiring uncustomed goods contrary to Section 200(d)(iii) East African Community Customs Management Act, 2004; and Under Count four, A3 was charged with acquiring uncustomed goods contrary to Section 200(d)(iii) East African Community Customs Management Act, 2004.

On the same day when the accused persons (2nd Respondents) were presented to court for plea taking, they pleaded guilty, were convicted, sentenced and in addition to payment of prescribed fines against each convict, the court inter-alia issued a consequential order for forfeiture of Motor vehicle UBG 277U.

The Applicant, Gerald Ssekajugo (the legal owner of Motor vehicle UBG 277U) then filed this Application seeking inter alia an order nullifying and setting aside the Learned Trial Magistrate's order to forfeit Motor vehicle; and an order that the Applicant's Motor vehicle be released unconditionally.

The Applicant asserted that he is the registered owner of the vehicle in issue. Further that on the 1st October 2022, in an oral agreement, he rented the vehicle to one Kizito Muzafar for use in routine transport business under public operator's license (PSV). On 5th November 2022 he was informed that the vehicle had been impounded and parked at Masaka URA offices. He later learnt that the vehicle had been forfeited for having been used by Mukasa Tom in commission of offences under the EACCMA, 2004.

The Applicant maintained that he neither hired the vehicle to Mukasa Tom nor was he aware that Kizito Muzafar and his agents were using it for illegal purposes. He pleaded that he is a presumptive innocent person who should not lose his vehicle without being heard. Further that he should have been afforded an opportunity to defend his right to the vehicle and that failure by the respondent to notify him of the forfeiture occasioned prejudice to him.

**Issues for determination:**

- Whether the order issued by the Learned Trial Magistrate, forfeiting Motor Vehicle Registration No. UBG 277U to the state, was illegal.

> *The EACCMA does not require that an offending vehicle should be proved to belong to the offender before a forfeiture order is to be made. A convicting Court is therefore not required to interrogate the ownership of the offending vehicle.*
>
> **-Hon. Justice Margaret Tibulya-**

- What remedies are available to the parties?

**Ruling of the High Court:**

a) Section 217(1) of the East African Community Customs management Act (EACCMA) provides that, "*Where any thing has been seized under this Act, as being liable to forfeiture, then the condemnation of the thing shall in no way be affected by the fact that any owner of the thing was in no way concerned with the act which rendered the thing liable to forfeiture".*

b) The argument that the Applicant (vehicle owner) was not involved in the commission of the offence (and by implication) his vehicle should not have been forfeited, is nullified by Section 217(1) of the EACCMA.

c) The persons who were convicted of the customs offences in issue admitted having used the motor vehicle to convey uncustomed goods.

d) Their admission and conviction effectively brought the vehicle in the ambit of Section 211(1) and 215 of the EACCMA which stipulates that, *"... any vehicle .... or other thing, made use of in the importation, landing, removal, conveyance, exportation, or carriage coastwise, of any goods liable to forfeiture under this Act shall itself be liable to forfeiture".*

e) The EACCMA does not require that an offending vehicle should be proved to belong to the offender before a forfeiture order is to be made. A convicting Court is therefore not required to interrogate the ownership of the offending vehicle.

f) Under the EACCMA, the Applicant was not entitled to be afforded an opportunity to be heard before the impugned order was issued.

g) The order of forfeiture of the vehicle was properly issued.

***The Application was found to be without merit and was dismissed.***

12

## RICHARD RUMENA & 2 OTHERS VERSUS UGANDA (URA),

HIGH COURT CRIMINAL MISCELLANEOUS APPLICATION NO. 0011/2024

**Brief Facts:**

The Applicants were employees of URA who were jointly charged with four counts of corruption related offences in Criminal Case No. 115/ 2023 in the Magistrate's Court of Buganda Road attached to the Anti-Corruption Division. During the subsistence of the criminal matter, the Applicants were summoned to appear before the URA Management Disciplinary Committee

The Applicants filed this Application seeking for an order prohibiting URA from conducting disciplinary proceedings against them until hearing and determination of the criminal case. The Applicants' arguments were that the disciplinary proceedings offended the *sub judice* rule and the rule against double jeopardy.

**Ruling of the Magistrate:**

a) Court noted that there is a wealth of authorities to support the view that criminal proceedings and the disciplinary proceedings are distinct, and can legally proceed concurrently.

b) Court cited decisions in ***Ajuna Mark v Attorney General and the IGP Misc 238/2021, Julius Rugumayo v URA Labour Dispute 27of 2024 arising from HCCS 313/2012*** and ***Asiimwe Moses v URA Misc. 140/2011***.

c) The Learned Magistrate noted that even though both proceedings were initiated based on the same set of facts, while the Accused were charged with various corruption offences, before the Respondent's disciplinary committee, according to the offence notification form, A1 was charged with misconduct and gross misconduct, A2 with misconduct and gross misconduct, while A3 was charged with gross misconduct.

d) Court further relied on the decision of Justice Musa Sekaana in ***Geoffrey Kisembo v Standard Chartered Bank Uganda Ltd HCMA No. 344 of 2014*** where he stated that, *"In disciplinary proceedings, the question is whether the concerned public servant is guilty of such conduct as would merit his or her removal from service or a lesser punishment, as the case may be. on the other hand, in the criminal proceedings, the question is whether the offences registered against him or her are established and proved beyond reasonable doubt and if so, what sentence should be imposed on him or her. The standard of proof, the mode of inquiry and the rules governing the inquiry and trial in both cases are entirely distinct and different".*

***The Application was dismissed with no order as to costs.***

13

## UGANDA VS. ODEKE THOMAS,

CRIMINAL CASE NO. HCT-00-AC-0040-2024

**Brief Facts:**

The Accused Odeke Thomas, was arraigned before the Anti-Corruption Court on 28th March 2024.

It was the prosecution case that between December 2023 to March 2024, the Accused had held out as the Commissioner General, Commissioner Tax Investigations and Supervisor Customs and purported to carry out tax compliance checks on supermarkets and wholesale shops in Busia District.

The Accused threatened to close the businesses visited if they did not pay a fine for non-compliance with EFRIS, who then paid UGX. 1,350,000 to avert closure of their businesses.

He was charged with: Two counts of impersonating a Tax Officer contrary to Section 63(6) of the Tax Procedures Code Act (TPCA), one count of assuming the character of an Officer contrary to Section 198(c) of the East African Community Customs Management Act (EACCMA) and three Counts of Obtaining money by false pretences contrary to Section 305 of the Penal Code Act.

**Conviction and Sentence of the High Court:**

The accused pleaded guilty to the charges and was accordingly convicted and sentenced as follows:

Count 1: Imprisonment for one year and six months

Count 2: Imprisonment for one year

Count 3: Imprisonment for eight months

Count 4: Imprisonment for four months

Count 5: Imprisonment for seven months

Count 6: Imprisonment for three months

The sentences are to run concurrently.

Court took cognizance of the reputational damage occasioned to the Uganda Revenue Authority and the Tax Officers who were impersonated. It was also emphasized by the Prosecution that such acts need to be deterred as they strain relations between tax payers and the Uganda Revenue Authority and negatively impact tax compliance.


All URA offices do not accept cash payments of any kind.

**THINK • SPEAK • EXECUTE**

**Contact us: 0800117000 or 0800217000 | WhatsApp: 0772140000**
**Service Inquiry: services@ura.go.ug | Report Corruption: ignite@ura.go.ug**

Uganda Revenue Authority
DEVELOPING UGANDA TOGETHER

# Because of you

## Children have a chance to beat killer diseases with the Government vaccination programme.

*THANK YOU FOR PAYING YOUR TAXES*

GET YOUR FREE TIN INSTANTLY ON WWW.URA.GO.UG

Call: 0800117000, 0800217000 (Toll free)
Email: services@ura.go.ug | www.ura.go.ug

Connect with us 0772140000