CASE DIGEST

VOLUME IX

Uganda Revenue Authority
DEVELOPING UGANDA TOGETHER

Compiled by **Legal Services & Board Affairs** Department

APRIL TO DECEMBER 2024

FOREWORD

Happy New Year, Readers! We thank God who made it possible for us to complete the year 2024. I am most delighted to note that it has been a tremendous journey so far serving and working with you all. I sincerely appreciate all the support and collaboration.

On behalf of Management, we are thankful because URA has also registered growth in terms of departments, with the newly created Strategy and Risk Management Department and the Tax Academy Department, which we believe will enable us serve you better.

In the same vein, I am happy to report that the Legal Services and Board Affairs Department is now comprised of 4 Divisions, namely, the Litigation Division, the Policy, Advisory and Contracts Division, the Alternative Dispute Resolution Division, and the Tax Arrears Management Division. The mandate of these divisions has been designed to ensure that we are serving all your interests.

Our commitment to tax education and sensitization still remains. In September 2024, the URA Case Digest marked 2 years since the inaugural publication. The URA Case Digest Volume IX contains 74 decisions delivered between April to December 2024, inclusive of some landmark decisions. I encourage you to take keen interest as you read this publication.

We are revising the frequency of publication of the URA Case Digest from quarterly to bi-annually, with the first publication covering the first half of the Financial year (July – December), and the second publication covering the last half of the Financial Year (January – June).

Special thanks to our taxpayers for paying their taxes; the Courts of law and the Tax Appeals Tribunal for adjudicating the tax disputes which arise; and all our stakeholders for their crucial support. I also wish to appreciate the incredible editorial team that has worked to ensure publication of this Case Digest.

Finally, allow me to implore you all, in your respective capacities, to purpose to do your part towards revenue mobilization. I associate myself with the wise words of the great Henry Ford - Founder of the Ford Motor Company, who said that,
"If everyone is moving forward together, then success takes care of itself."
Indeed, together, we can achieve great things.

"Developing Uganda Together"

Catherine Donovan Kyokunda (Mrs.)
COMMISSIONER LEGAL SERVICES
& BOARD AFFAIRS

EDITORIAL NOTE

> **The Seventy-Five (75) decisions herein include some ground-breaking cases**

Dear Esteemed Reader,

Our aim for publication of the URA Case Digest remains to provide you with concise and authoritative summaries of the judgments and rulings in tax matters and other related fields involving the Uganda Revenue Authority, for your ease of reference.

In summary, this edition contains summaries of decisions of the Courts of Judicature and the Tax Appeals Tribunal delivered between April to December 2024, which decisions impact taxpayers, tax practitioners and tax administrators. For added convenience, a Topic-Specific Index is included in the final section of this Case Digest to further ease navigation and allow our readers quickly locate cases by subject matter.

The Seventy-Five (75) decisions herein include some ground-breaking cases in areas such as the interplay between insolvency and tax administration, tax avoidance schemes and recharacterization of transactions, priority/order of payments under the Tax Procedures Code Act, among others. In addition, the cases cover areas of domestic taxes, customs administration, criminal prosecution, labour and employment law, as well as other preliminary and interlocutory matters. We hope that this is a valuable addition to your wealth of knowledge.

The Litigation Division and the Editorial Team of the URA Case Digest is committed to maintaining high standards and to continually work towards improving our content and services. We look forward to continuing to push boundaries in a bid to serve you better.

On behalf of the Editorial Team, we take this opportunity to express our heartfelt gratitude to you for the support you have rendered to us in the past years. We are honoured that you are part of our dedicated community and commit to keeping you informed. Your loyalty and feedback remain the fuel behind our efforts to deliver high-quality content.

We wish you a fulfilling, productive and successful New Year!

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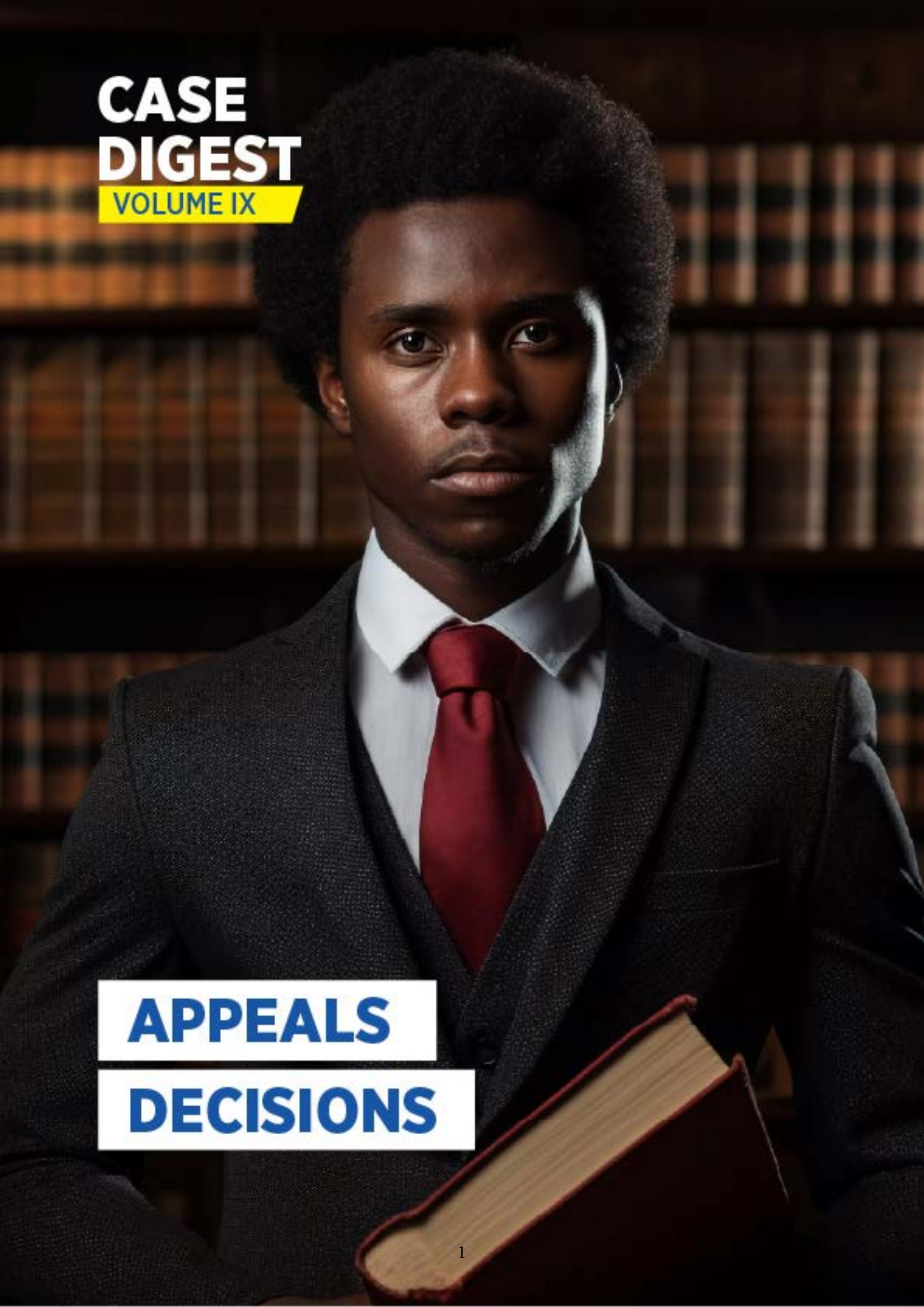
THE URA CASE DIGEST VOLUME IX


CASE
DIGEST
VOLUME IX
APPEALS
DECISIONS

01

AFRICA BROADCASTING (U) LIMITED VERSUS UGANDA REVENUE AUTHORITY

High Court Civil Appeal No. 0052 of 2020
(Arising from TAT No. 044 of 2018)

CASE DIGEST VOLUME IX

Head **Notes:**

Taxable Supply – Incidental Supplies – Non-Taxable Person – Imported Services

Brief Facts:

The Appellant, a company dealing in broadcasting, entered into a contract with local suppliers to procure content such as programs, songs, and movies, and a contract with foreign suppliers to procure programs, which are sent on hard disks as the Appellant's preferred mode of delivery for the programs in Uganda and wwhich were declared at customs as goods. The Respondent conducted an audit on the Appellant's tax affairs for the period 2013 to 2017, and reviewed the Appellant's VAT declarations and ASCYUDA data on imports, which revealed, among other things, that the Appellant's agents would declare and pay tax on the value of the carrier medium (hard disks) only. Neither declarations nor payments were made at customs in relation to the License Agreements entered into between the Appellant and the foreign film producers.

The Respondent then informed the Appellant that pursuant to the said License Agreements, the Appellant procured exclusive rights and/or licenses to broadcast imported programs in Uganda, which constituted an imported service, and thus the Appellant was liable to pay VAT on the imported services. The Appellant objected to the VAT assessment on the ground that the programs were part and parcel of the carrier medium on which customs duties including VAT were paid. The Respondent maintained that the transactions amount to the provision of services from foreign suppliers to the Appellant and are thus subject to VAT as per Section 4(c) of the Value Added Tax Act, and Regulation 13 thereof.

The Appellant filed an Application before the Tax Appeals Tribunal, which delivered its Ruling and agreed with the decision of the Respondent. The Appellant appealed to the High Court.

Grounds of Appeal:

1. The Honourable Members of the Tribunal erred in law by misinterpreting the TATA case and thus coming to a wrong conclusion.
2. The Honourable Members of the Tribunal erred in law when they failed to evaluate the evidence based on the Copyright laws of Uganda.
3. The Honourable Members of the Tribunal erred in law when they failed to evaluate the evidence on record and thus coming to the wrong conclusion that programs are subject to VAT on imported services.
4. The Honourable Members of the Tribunal erred in law when they failed to evaluate the evidence on record and thus mixed up transactions.
5. The Honourable Members of the Tribunal erred in law by ignoring the rules of interpretation to Section 16(2) (e).

Judgment of High Court:
(Hon. Lady Justice Susan Abinyo)

Grounds 1, 3 & 4:

a) A supply is made as part of a person's business activities if the supply is made by the person as part of, or incidental to, any independent economic activity the person conducts, whatever the purposes or results of that activity, as provided under Section 18(2) of the VAT Act.

b) In the instant appeal, the supply of DVDs was the preferred medium in which the Appellant was to broadcast the films on the terms stipulated in the License Agreement. It is not in contention that the Licensor gave the Licensee a right to exhibit the contents in media; it was the right to use the DVDs to broadcast the films therefore, the DVDs which are movable property constituted goods within the meaning of the term "good".

c) The right to use copyright in the context of the dispute between the parties herein constitutes intangible property, which is different from the right to purchase the copyright (movable and or intangible property).

d) The finding of the Tribunal that the License Agreement gave the Applicant a bundle of rights was proper, however, the interpretation of those rights vis-a-viz the taxable supply of the Appellant as a taxable person was erroneous in the given circumstances.

e) From reading Sections 23 and 12(3) of the VAT Act together, Court found that the right to exhibit in the media, as stated by the Tribunal, required broadcasting, which means to send out programs on television and radio. Indeed, what the consumers received was not the DVDs(goods) but a service that is entertainment.

f) The term incidental under Section 12(3) means connected with or related to, and the term service means an intangible commodity in the form of human effort, such as labor, skill, or advice. Court found that the supply of a service(entertainment), which was incidental to the import of DVDs(goods) is part of the DVDs(goods), and as provided under Section 12(1) of the VAT Act, inversely, the supply of services incidental to the supply of goods is part of the supply of goods.

g) Court found that the right to exhibit in the media, which was incidental to the supply of the DVDs is a supply of goods and not a service.

h) In addition, Court found that customs valuation as the mandate of the Respondent is guided by the legal framework. It was not disputed that the Appellant duly sought classification advice from the Customs Department on how to treat hard disks with content (programs) wherein, the Respondent replied that it is provided for under HS code 8471.60 CPC.

i) In the instant case, the said DVDs were classified under Chapter 84 on Machinery, Equipment, Electrical and Electronic Appliances, and coded in the heading; 84.71 which provides for automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included.

j) Court found that the said DVDs qualify as goods within the Harmonised System of international trade in goods.

Grounds 1, 3 & 4 succeeded.

Ground 2:

k) The dispute between the parties herein is not about copyright but the right to use the copyright of the DVDs (intangible property) supplied by a foreign producer to the Appellant, who carries on the business of broadcasting in Uganda, in which the said DVDs according to the Appellant amounts to goods, from which they paid VAT, however, the Respondent contends that broadcasting the films from the DVDs amounts to a service and not a good and that the Appellant is liable to additional VAT on the service as per the VAT Act.

l) VAT is a tax payable by the consumer of the good or service. In circumstances, where there is a supply of both a good or service, such as in the instant dispute, the law under Section 23 of the VAT Act should be construed, which is the specific law on VAT and not the Copyright and Neighbouring Rights Act, 2006.

m) It is trite law that it is not permissible to interpret a word in accordance with its definition in another statute and more so when the same is not dealing with the cognate subject.

n) Court agreed with the submission of Counsel for the Respondent that the Tribunal rightly relied on the definitions as provided in the VAT Act, which is the taxing Act except on the interpretation of those provisions by the Tribunal as on grounds 1, 3, and 4 of this appeal.

Ground 2 failed.

Ground 5:

o) The term 'non-taxable person' implies a person who is not registered under Section 7 of the VAT Act but has been given a right to use a copyright, patent, trademark, or similar right in Uganda by a transfer, assignment, or grant and therefore, may apply to the Commissioner General to be considered for registration as a taxable person and or the Commissioner General may register a person if there are reasonable grounds for believing that the person is required to apply for registration but has failed to do so.

p) This is to ensure that a person who is eligible to register does so, and those who fail to do so, and the Commissioner General is satisfied that they are eligible for registration, are then registered to reduce tax evasion.

q) Court held that the finding of the Tribunal was erroneous for reasons that the rules governing statutory interpretation allow the interpretation of sections in a statute in its entirety, and for the Court to determine whether a transaction is a supply of goods or services, regard must be had to all the circumstances in which the transaction took place to identify its characteristic features.

Ground 5 succeeded.

The Appeal was allowed with costs to the Appellant.

Head Notes:

VAT Input Tax – VAT Output Tax – Burden of Proof – Powers to Remit a Matter to URA for Reconsideration – Purpose of Additional Assessments – Proof of Payment in Input Tax Claims

Brief Facts:

On 1st February 2014, the Appellant acquired Warid Telecom Limited, a company dealing in telecommunication services. The Respondent carried out an audit for the period 2007 to June 2014 on Warid Telecom Limited. In June 2018, the Respondent communicated the audit findings to the Appellant disallowing VAT input credit of UGX 1,288,219,863 claimed by the Appellant on grounds that the corresponding output VAT was not declared by the suppliers. The Respondent also found that the Appellant was liable to VAT of UGX 633,114,709 in respect of undeclared output tax arising from invoices issued by the Appellant to MTN Uganda Limited. The Appellant filed an Application before the Tribunal which found in favour of the Respondent in respect of the disallowed VAT input credit and the undeclared output tax, hence this Appeal.

Grounds of Appeal:

1. The Tribunal erred in law by holding that the Tax Procedures Code Act 2016 was not applicable in regards to deciding on time limits.
2. The Tribunal erred in law by holding that the objection decision was for WHT UGX. 208,817,971 and UGX. 643,114,709 regarding time limits, leaving out the issue on VAT on input tax.
3. The Tribunal erred in law by holding that the tax return cannot be varied and thus the matter cannot be remitted back.
4. The Tribunal erred in law by not considering the right invoices for input VAT and thus holding that the Applicant is not entitled to input credit per S.28 of the VAT Act.
5. The Tribunal erred in law in holding that the Applicant is not entitled to input credit.
6. The Tribunal erred in law by not considering time limits in regards to record keeping per the Tax Procedures Code Act.

Judgment of the High Court:

(Hon. Lady Justice Patricia Kahigi Asiimwe)

Grounds 1 & 2:

a) The Appellant contended that the additional assessments by the Commissioner for the disallowed input tax, output tax and WHT were out of time and therefore the taxes are not payable.

b) Counsel for the Respondent submitted that the law applicable was Section 32 (1) of the VAT Act, 2014, which gave the Commissioner General powers to make an assessment of the amount of tax payable where the Commissioner is not satisfied with the self-assessment. Under Section 32(2)(b) of the VAT Act, the assessment was to be made within 5 years from the date of the self assessment.

c) Section 32 (1) of the VAT Act 2014 was repealed by the Tax Procedures Code Act, Cap. 343, which came in force on 1st July 2016. Therefore, at the time of communication of the findings of the assessment (in June 2018), the law in force was the Tax Procedures Code Act.

d) Under Section 13(2)(e) of the Interpretation Act, Cap. 2, where there is a repeal of an Act and any investigation had commenced under that Act, the repeal of that Act does not affect an investigation. In addition, the said investigation may be continued and a penalty imposed in spite of the enactment of a new piece of legislation repealing the law under which the investigation commenced.

e) Court found that the assessment envisaged under Section 32(1) of the VAT Act is an investigation. At the time of coming into force of the Tax Procedures Code Act, the reassessment by the Commissioner General had already commenced.

f) The investigation commenced in February 2011 with a meeting of both parties. Under Section 13 of the Interpretation Act, the assessment/investigation/audit by the Commissioner General was not affected by the repeal of Section 32 of the VAT Act.

g) Court found that the Tax Procedures Code Act was not applicable to this case.

Grounds 1 and 2 failed.

Ground 3:

h) One of the findings of the audit carried out by the Respondent was that the Appellant was liable to pay UGX 633,114,709 as undeclared output tax in respect to interconnect services supplied to MTN Uganda Ltd. At the Tribunal, Counsel for the Appellant submitted that there was an error in the invoices submitted by the Appellant to MTN Uganda Ltd and those submitted in the returns. The Tribunal noted that counsel's submissions were from the bar and were not backed by evidence. The Appellant prayed that the matter be remitted back to the Respondent for reconsideration so that the Appellant corrects the error.

i) The Tribunal held that the matter could not be remitted because, under the Tax Procedures Code Act, the time within which to correct the error had expired.

j) It is trite that decisions of court are based on evidence. Under Section 101 of the Evidence Act, he who asserts must prove that those facts exist. Under Section 103 of the Evidence Act, the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence.

k) In this case, the Appellant did not provide any evidence to the Tribunal to prove that indeed an error was made by the clerk. It would have been useful to call the clerk who allegedly made the error, to testify.

l) It is not in dispute that the three years within which to correct the error expired. The Appellant argued that because there was an ongoing investigation, the error could not be corrected. However, having found that there was no proof that there was

an error made by the clerk with respect to the dates and the number of invoices, Court agreed with the Tribunal that the matter could not be remitted back to the Respondent for reconsideration.

Ground 3 failed.

Grounds 4 & 5:

m) The Appellant submitted that the Tribunal considered the wrong invoices and came to the wrong conclusion. The Respondent submitted that the Appellant was not entitled to the input tax credit because the transactions could not be authenticated by the suppliers and there was no proof of payment by the transactions.

n) The Tribunal indeed listed the wrong invoices in its decision. However, the issue of failure to authenticate the suppliers also applied to the correct invoices.

o) Under Section 28(11) of the VAT Act, a taxpayer is only required to submit invoices. Section 23(3) of the Tax Procedures Code Act gives the Commissioner powers to make additional assessments. These assessments are made in cases where there may be doubt as to the authenticity of the information submitted by a taxpayer.

p) Therefore, the purpose of the additional assessments is to verify the assessments made by the taxpayers to ensure that the tax payable is the correct amount. Court agreed with the Tribunal's position on this matter that the taxpayer has to show proof of payment in such circumstances.

q) In any case, where there is an audit, the onus is on the auditee to prove that the information being queried is correct per Section 26 of the Tax Procedures Code Act. In this case, where there is doubt that the taxpayer is entitled to input credit, the onus is on the taxpayer to prove that they are entitled to the credit.

r) The Appellant did not submit any evidence to support their claim such as receipts or agreements signed with the said suppliers.

Grounds 4 and 5 failed.

Ground 6:

s) It is true that the Tribunal was silent on the issue of time limits which the Appellant argued in its submissions in rejoinder.

t) Under Section 15 (1) (c) of the Tax Procedures Act, a taxpayer is required to keep records for 5 years.

u) The invoices in issue are dated between 2010 and 2012. The record shows that the Respondent commenced the audit in February 2011 with a meeting that was attended by officials from the Respondent and Warid Telecom. This was followed by several meetings and correspondences over the years between the parties.

v) It is not true that the audit commenced in 2017. Therefore, at the time of the commencement of the audit, the Appellant was still under obligation to keep the records in issue.

Ground 6 failed.

All the grounds of appeal failed and the Appeal was dismissed with costs to the Respondent.

Head Notes:

Place of Consumption of Services – Statutory Interpretation - Application of the OECD Guidelines – Destination Principle

Brief Facts:

The Appellant, on the 2nd day of July 2016 entered into a Service Agreement with The Coca-Cola Export Corporation ('TCCEC'), to provide brand marketing, market research and other related services for TCCEC, which is incorporated and located in the United States of America. The brand marketing services were conducted in Uganda i.e. played through adverts on Ugandan radio stations such as 91.3 Capital FM among others. The Respondent issued out a Value Added Tax (VAT) assessment of UGX 17,400,459,133 on the Appellant for the period 2016 to 2020 on the basis that the services rendered by the Appellant to TCCEC are consumed locally and thus attract VAT of 18%. The Appellant objected to the assessment and later applied to the Tax Appeals Tribunal which dismissed their application, hence this Appeal.

Grounds of the Appeal:

1. The Learned members of the Tribunal erred in law when they found that the services rendered by the Appellant to The Coca Cola Export Company (TCCEC) were exported services, contrary to the provisions of the VAT Act and Regulations.
2. The Tribunal erred in law when they found that for a service to qualify for an export, it must not have been physically performed in Uganda.
3. The Tribunal erred in law by finding that based on the contract, the place of use and consumption could not be determined.
4. The Learned members of the Tribunal erred in law by finding that the Contract between the Appellant and TCCEC did not meet the requirements of Regulation 12 of the VAT Regulations.
5. The Learned members of the Tribunal erred in law when they held that the OECD Guidelines are not applicable in Uganda.
6. The learned members of the Tribunal erred in law by finding that the destination principle provided for under the OECD Guidelines does not apply to Uganda.
7. The Learned members of the Tribunal erred in law in awarding the Applicant the costs of the Application.

Judgment of the High Court:

(Hon. Lady Justice Harriet Grace Magala)

Grounds 1 & 2:

a) The services being contested by the parties, according to Paragraph 1 of the Service Agreement between the Appellant and TCCEC was for the Appellant to among others provide services of marketing and promotion of the Brands to TCCEC. These services were later discovered to include media advertisement of the brands of TCCEC on Ugandan media houses especially Capital FM, as per the invoices attached on the record of the Tribunal.

b) It is not contested that the Appellant supplied services to TCCEC, but the contest is whether the services were used and consumed outside Uganda.

c) The Tribunal considered the place of performance of the services under Section 16(2) of the VAT Act in isolation of the other provisions of the Act, that is, Section 24(2) and the Third Schedule and Regulation 12 of the VAT Regulations.

d) It is a cardinal principle of statutory interpretation that statutes are to be read as a whole, in context and where possible the court should give effect to every word of the statute. Where there are two or more conflicting provisions of a statute or where there are two or more conflicting statutes, they should be interpreted in harmony to meet their intended purpose.

e) The Third Schedule refers to zero tax rated supplies as a supply of services exported from Uganda as part of the supply. Regulation 12 explains that for a supply of services to be termed as an exported service, there has to be evidence that the services were consumed or used outside Uganda. The evidence is deduced from the contract involving the contested supplies and this contract shall specify the place of consumption or use.

f) Whereas the VAT Act establishes that where the services are performed in Uganda, they are to be taxed at VAT rate of 18%, the same Act, when read wholly explains instances where there exists zero rated supply of services. These instances include where the services are consumed or used outside Uganda.

Grounds 3 & 4

g) Court disagreed with the learned members of the Tax Appeals Tribunal and stated that the determining factor is the location where the services supplied are finally consumed or used not where they are performed from.

h) According to the Service Agreement between the Appellant and TCCEC, the services supplied to TCCEC by the Appellant were brand marketing services through the territories for purposes of implementing marketing strategy of the brand owners with respect to such brands owned by or licensed to the Coca Cola Company, Schweppes Holdings Ltd and Atlanta Industries. These services were to impact on the perception of the brands. The Territory(ies) is/are described by the Service Agreement as the continent of Africa.

i) From the Record, the services were supplied to TCCEC which is located in the United States of America. This is expressly stated in the Service Agreement between the Appellant and TCCEC. The Appellant's witness explained that the services supplied by the Appellant are used by the TCCEC to determine the perception on the brands of The Coca Cola Company to enhance the sale of concentrates by its Concentrate manufacturers. At this point, the services of the Appellant are consumed and used by the TCCEC i.e. put to a particular purpose, which is the determination of the proprietary concentrate for each brand sold to the bottlers.

j) The services, which include research, marketing and promotional services were provided by the Appellant to TCCEC, which has an obligation to the Coca Cola Company to engage in brand marketing throughout the territory for purposes of implementing the marketing strategy of the brand owners in respect of the brands owned by or licensed by the Coca Cola Company. Therefore, the questioned services are used and consumed by the TCCEC to assist in the determination of the brand concentrate to be used by the manufacturers of The Coca Cola Company.

k) The fact that the services are performed in Uganda by the Appellant, as per the invoices on record is immaterial. Ugandans or people in Uganda who listen or watch the adverts do not qualify as the consumers or users of the Appellant's services provided to TCCEC.

l) The consumption of the services occurs in the USA where TCCEC is located and when TCCEC receives the research from the Appellant and puts it to the purpose of implementing the brand marketing strategy of the brands owned by the Coca Cola Company, at this point consumption and use occurs. This is the tax point.

m) According to Regulation 12 of the VAT Regulations, evidence of services being exported is to be deduced from the contract and the contract shall clearly specify the place of use or consumption as outside Uganda. The VAT Regulations use the word 'shall,' which is a mandatory requirement. The use of the word 'shall' in statutes is mandatory than discretionary but in some cases it can construed to be discretionary.

n) Tax statutes are strictly interpreted and the purposive and holistic approaches of statutory interpretation require courts to give effect to the purpose and intention of the legislation by perusing the entire provisions of the Statute.

o) Regulation 12 of the VAT Regulations states that the place of consumption or use shall be clearly specified to be outside Uganda. To 'specify' is 'to name or state explicitly or in detail.' According to the Service Agreement between the Appellant and TCCEC, the location of TCCEC is stated as Atlanta, USA.

p) To give purpose to Regulation 12 of the VAT Regulations, Court opined that if the place of use or consumption of the services that are contested can be ascertained from the contract between the parties by the court, it need not be strictly construed that for example, the contract must not per se state that 'the services herein shall be consumed and used in Europe or America.''

Grounds 3 & 4 succeeded.

<u>Grounds 5 & 6:</u>

q) Both these grounds are on the application of the OECD Guidelines and their principles in the determination of tax disputes in Uganda.

r) The OECD International VAT/GST Guidelines ('Guidelines') are a matter of soft law i.e. not legally binding that were developed by the Organization for Economic Cooperation and Development (OECD). The Guidelines aim at reducing the uncertainty and risks of double taxation and unintended non-taxation that results from inconsistencies in the application of VAT in a cross-boarder context. It is worth noting that Uganda is neither a member of the OECD nor has it adhered to the OECD Guidelines.

s) The OECD Guidelines have developed the 'destination principle' which emphasizes that goods and services are taxed in the jurisdiction where they are consumed.

t) The Tribunal and courts have previously relied on the application of the OECD Guidelines and the destination. The Tribunal therefore erred when it disregarded the destination principle. The Guidelines are not in conflict with any of the laws of the Country but rather give an elaborate approach to their interpretation and application to achieve a greater goal.

Grounds 5 & 6 succeeded.

Ground 7:

u) The Tribunal ruled in favour of the Respondent and hence granted it costs. Court stated that it could not fault the Tribunal since the successful party was the Respondent.

v) Ground 7 failed.

Grounds 1 to 6 of the Appeal succeeded and the Appellant was awarded costs of the Appeal.

Head Notes:

Application of Civil Procedure Rules to the Tax Appeals Tribunal – A Withdrawn Suit cannot be Reinstated

Brief Facts:

On 25th January 2022, the Appellant came into Uganda and purchased goods (cosmetics) from different suppliers in Kampala City and others from the manufacturers worth UX 287,623,000. He hired a Motor Vehicle Reg. No. UAU 839E to transport the goods to the Republic of Sudan. The Respondent impounded the vehicle that had been hired and took it for verification at the Respondent's Nakawa offices. Upon completion of the inspection of the verification exercise, a seizure notice was issued under Sections 199 and 200 of the East African Community Customs Management Act (EACCMA) for reasons that the goods were prohibited and some were uncustomed.

The Appellant filed an Application against the Respondent vide TAT No. 68 of 2022. The Appellant's contention was that during the pendency of the Application, the Respondent agreed to release the Appellant's goods on condition that the Appellant withdraws the TAT Application. The Appellant withdrew the Application by letter dated 29th April 2022.

The Applicant stated that the Respondent thereafter released only two boxes of the impounded goods worth UGX 70,000,00 and refused to release the rest of the goods. The Appellant returned to the Tax Appeals Tribunal seeking the reinstatement of the withdrawn TAT Application and that it be determined on its merits. The Tribunal delivered its Ruling rejecting the Application for reinstatement, hence this Appeal.

Grounds of Appeal:

1. The Learned Chairman and Honourable Members of the Tax Appeals Tribunal erred in law when they held that once a matter is withdrawn, the only remedy available is filing a fresh suit, as court is barred and without discretion to reinstate a withdrawn case.

2. The Learned Chairman and Honourable Members of the Tax Appeals Tribunal erred in law when they held that there should have been a written consent signed by both parties before the matter is withdrawn pre-hearing.

Judgment of the High Court:
(Hon. Justice Patricia Kahigi Asiimwe)

a) Under Section 22(4) of the Tax Appeals Tribunal Act, the Civil Procedure Rules apply to matter before the Tax Appeals Tribunal.

b) The applicable provision for withdrawal of suits is Order 25 of the Civil Procedure Rules. Under this provision, a party has the liberty to withdraw a matter before the defendant files a defence, or after the receipt of that defence before taking any other proceedings in the suit. Under Order 25(1), withdrawal of a suit shall not be a defence to any subsequent action. Under Order 25(6) any fresh suit instituted shall be subject to limitation.

c) The Order does not provide for reinstatement of a suit that has been withdrawn. The drafters of the law did not envisage that a suit which has been withdrawn can be reinstated.

d) The provisions under Order 25 which refer to subsequent actions and a fresh suit imply that the only remedy available to one who withdraws a suit if they wish to proceed with the matter, is to file a fresh suit.

e) A suit that has been withdrawn cannot be reinstated. Firstly, because once it has been withdrawn, it ceases to exist and the plaintiff is no longer a plaintiff and therefore has no locus to make an application for reinstatement. In addition, the Plaintiff has no power to revoke the withdrawal.

f) Secondly, the Courts of law have no powers under the Civil Procedure Rules to reinstate such a matter that has been withdrawn. The only remedy available to a party that wishes to proceed with the claim, is to file a fresh suit.

The Appeal was dismissed with costs to the Respondent.

Head Notes:

Customs Valuation - Powers of the High Court to remit a Case to the Tribunal for Reconsideration

Brief Facts:

The Appellant is a private company incorporated in Kenya and registered in Uganda as a branch. The Appellant's head office is in Kenya and its business in Uganda involves the importation and sale of Bitumen road construction materials.

The Respondent conducted a customs post clearance audit on the Appellant in Uganda for the period 2015-2019 and found that most of the consignments to which origin criteria was accorded had duly signed certificates of origin and were physically verified in Kenya except Bitumen 80/100Kgs and Bitumen 60/70 183 Kg which were accorded Kenyan Origin criteria yet they originated from the United Arab Emirates. The misuse of origin criteria resulted in unpaid taxes of UGX 27,295,901. Secondly, a comparison of the unit values of similar items supplied by Colas East Africa Limited-Kenya to other importers in Uganda showed higher commercial invoice values compared to those of the Appellant's branch in Uganda. The Respondent conducted a comparison of unit values of similar or identical items to non-related parties which were found to be higher. The audit team uplifted the values of Colas East Africa Limited- Uganda branch resulting into unpaid taxes of UGX 706,958,865.

The Applicant highlighted some computational errors in the disputed tax liability of UGX 706,958,865 and the Respondent adjusted the some to UGX 694,037,728. The Applicant disputed the tax liability before the Tax Appeals Tribunal which upheld the assessments while observing that the dispute had some complexities. The Appellant was dissatisfied, hence this Appeal.

Grounds of Appeal:

1. 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.

2. The Tax Appeals Tribunal erred in law in rendering a decision that 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.

3. 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.

4. The Tax Appeals Tribunal erred in law when it erroneously applied Section 18 of the Tax Appeals Tribunal Act on burden of proof of the Applicant in total disregard of the rules of evidence and principles of burden of proof as set out in the Evidence Act.

Judgment of the High Court:
(Hon. Lady Justice Patricia Kahigi Asiimwe)

a) Under the Application to the Tribunal, the key reason for the Application advanced by the Applicant was that the Respondent's application of the transaction value of identical goods was flawed.

b) The Tribunal seems to have addressed the wrong issue, being whether or not the Respondent was justified in applying Method 2 as opposed to Method 1 in assessing the tax payable.

c) The real issue was whether Method 2 was correctly applied by the Respondent in the assessment of tax.

d) The Tribunal therefore determined that the Respondent was justified in using Method 2 but did not go a step further to determine whether the Respondent applied Method 2 in accordance with Paragraph 3 of the Fourth Schedule of the EACCMA on transaction value of identical goods.

e) Having found that the Tribunal fell short in addressing the issue before it for resolution, Court found that the appropriate remedy is to refer the matter back to the Tribunal for reconsideration in the interest of ensuring that justice is done.

The matter was remitted back to the Tribunal for reconsideration.

Head Notes:

Mandate of a Single Justice of the Court of Appeal – Appeals as of Right – Considerations for Likelihood of Success of Intended Appeal – Stay of Execution

Brief Facts:

On 28th February 2024, URA lodged HCMC No. 0026 of 2024 seeking to lift the corporate veils of Crane Autos Ltd and its associated companies, *to wit,* Kampala Properties Ltd, Punjani Motors Ltd, East African Motor Supplies Ltd and Auto Tune and Engineering Ltd and pooling their assets to satisfy the former's outstanding tax liability.

On the same day, URA also filed HCMA No. 372 of 2024 seeking to defer Crane Autos Ltd's impeding date of dissolution until final determination of HCMC No. 0026 of 2024 or such other time as court may direct. URA also filed HCMA No. 373 of 2024 seeking to defer the dissolution of Crane Autos Ltd until HCMA No. 372 of 2024 was heard and disposed of.

On 16th July 2024, the High Court allowed the Application for deferring the date of dissolution of Crane Autos Ltd *(HCMA No. 372 of 2024)*. Court revoked the Dissolution

Certificate issued to Crane Autos Ltd on 7th March 2024 and deferred the dissolution of the Company for six months from the date of the ruling i.e. until 16th January 2025 or such other time as the Court may from time to time direct.

On 29th July 2024, the High Court also granted the Application to lift the corporate veils of Crane Autos Ltd and its associated companies. The Judge ultimately ordered that all the companies along with their directors and shareholders be jointly and severally liable to pay Crane Autos Ltd's debts amounting to UGX 20,129,287,806.

Stay of Execution Applications:

Crane Autos Ltd, Kampala Properties Ltd, Punjani Motors Ltd, East African Motor Supplies Ltd and Auto Tune and Engineering Ltd filed Applications in the Court of Appeal seeking to stay execution of the High Court's above orders *vide* Court of Appeal Civil Applications No. 433 and 436 of 2024.

URA filed affidavits in reply objecting to both applications. The Applications were consolidated and handled concurrently.

Ruling of the Court of Appeal:

(Hon. Justice Muzamiru Mutangula Kibeedi, JA)

a) The mandate of a single Justice of the Court of Appeal to handle these consolidated applications is derived from Section 12 of the Judicature Act which confers a single justice with jurisdiction to hear and determine all interlocutory applications filed in the Court of Appeal, with a dissatisfied party having a right to make a reference to a full panel of the Court from that decision.

b) The unanimous decision of the Court of Appeal in ***Jomayi Property Consultants Ltd Vs. Andrew Maviiri, Civil Reference No. 174 of 2015 (Arising from Civil Application No. 200 of 2015)*** is to the effect that Section 12 of the Judicature Act, being an Act of Parliament, overirides the provisions of Rule 53 of the Court of Appeal Rules and must now be taken to be the primary legislation providing for jurisdiction of a single Justice of the Court of Appeal.

c) The Supreme Court in the case of ***Hwan Sung Ltd v M and D Timber Merchants and Transporters Ltd Supreme Court Civil Appeal No. 02 2018 (unreported)*** held that an Order of the High Court which conclusively determines the rights of the parties to the dispute, would in substance, qualify to be a decree in terms of Section 2 of the Civil Procedure Act, Cap. 71 (now Cap. 282). Accordingly, it is appealable as of right to the Court of Appeal.

d) Whereas it is true that the right to institute an appeal is a creature of statute, it (the right of appeal) does not have to be created by the same law which gives rise to the specific action or relief. Secondly, where an order is made by the High Court on a matter brought to it pursuant to some statutory provisions other than the Civil Procedure Act or Rules, it is appealable as of right unless the right of appeal is specifically excluded by some special legislation. The above statements of the law are still good law and applicable to the instant matter.

e) The Trial Court's Order deferring the date of dissolution of the 1st Applicant as a company in liquidation was pursuant to the Insolvency Act of 2011 (renamed the Insolvency Act, Cap. 108 of the Revised Edition of the Laws of Uganda, 2023). Even Miscellaneous Cause No. 26 of 2024 was made under Section 108(a) of the Insolvency Act, 2011 which provides for lifting the veil of a company under liquidation and pooling assets of associated companies. The resultant orders were final because they conclusively determined the rights of the parties with regard to all matters that

were in controversy. The orders therefore amount to decrees within the meaning of Section 2 of the Civil Procedure Act. They are appealable as of right having arisen from statutory provisions other than the Civil Procedure Act or Rules.

f) There is no doubt that the High Court and the Court of Appeal have concurrent jurisdiction when it comes to applications for stay of execution. In such circumstances, the sequencing of the applications is governed by Rule 42 of the Court of Appeal Rules.

g) The "exceptional circumstances" raised by the Applicants to justify applying directly to the Court of Appeal are that the impugned Rulings of the Trial Court were delivered via email, and as such it was impossible to informally apply for stay. Secondly, that the Learned Trial Judge is on leave and, as such, it was not feasible to obtain a stay of execution without delay.

h) Court stated that it was not satisfied that the said reasons do constitute special or exceptional circumstances to warrant the applications to be resolved by this court without first being entertained by the High Court. The High Court operates on the basis on an approved work plan which indicates well in advance, the period when a particular Judge will take his/her Annual leave. The High Court has a full-fledged administrative system to address deserving matters which are filed in the absence of the Trial Judge from his/her duty station during his/her annual leave. Even if the impugned Rulings were delivered during Court Vacation, there were duty Judges on standby to handle any urgent matters arising during that period.

i) There was also no evidence on the court record to show that the Applicants ever sought administrative intervention to address the concerns raised by them to justify their failure to file the applications in the High Court before filing them before the Court of Appeal. The Court of Appeal should never be used by litigants to sort out administrative issues of the High Court which fall squarely within the administrative docket of the Heads of the different Divisions of the High Court or the Principal Judge.

j) The aforesaid notwithstanding, considering that the sums involved in the dispute between the parties herein are colossal, the points of law which are intended to be tested at the appellate level are novel, and the impugned orders have a limited life span of only six months which expire in January 2025, the Learned Justice stated that he was satisfied that the interest of justice in the circumstances of this case can only be achieved if he resolves the applications without referring them back to the High Court for consideration.

k) There is no doubt that the major purpose of an application of this nature is to safeguard the Applicants' right of appeal and ensure that the appeal is not rendered nugatory.

l) The crux of the contention of the parties revolves around whether there is a likelihood of success of the intended appeal and the consequences of a refusal to grant the stay.

m) It is now settled that in its bid to establish the likelihood of success of the intended appeal, the court's mandate does not extend to analysing the merits of the intended appeal. All that is expected of the Court is to be satisfied that the appeal raises issues that prima facie merit consideration by the full panel of the Court.

n) From the submissions of the Applicants, the intended appeal raises novel points of law in the areas of tax evasion through transfer pricing, and deference of the

dissolution of companies under the Insolvency laws and practice in Uganda. It is, as such, important to have a pronouncement of the appellate court on those areas of the law upon hearing the Applicants' intended appeal on its merits.

o) The Respondent's concerns appear to be supported by the track record of the Applicants as established by the Trial Court to the effect that during the period they were given some breathing space by the Respondent to file their own tax returns and come up with a plausible tax settlement proposal for consideration by the Respondent, they instead used that period to divest themselves of their interests in the Applicants and put the 1st Applicant under liquidation as a way of frustrating the tax recovery measures.

p) To further heighten the Respondent's concerns, the Applicants, with the exception of the 2nd Applicant, have no known assets in Uganda and their shareholders and directors who were declared by the Trial Court to be liable to contribute towards the settlement of the 1st Applicant's tax liability are either foreigners and/or non-resident persons.

q) In order to address the fears and concerns of the Respondent while, at the same time safeguarding the Applicants' right to pursue their appeal, Court found this case being one where provision for security for the due performance of the decree by the Applicants is appropriate.

r) The Applicants offered the property known as Plot 32A Jinja Road, Kampala - LRV 483 Folio 24 registered in the name of Kampala Properties Limited, being a 99 years' lease expiring on 1st June 2058. It has no registered encumbrance, save the Respondent's caveat which was registered on the 30th day of May 2023. According to the Survey and Valuation Report, in the opinion of the Valuation Surveyor, the fair market value of the property is in the region of UGX 16,700,000,000, while its forced sale value is in the region of UGX 13,336,000,000/=

s) The Respondent, and the country as a whole, benefit more from businesses continuing to operate while meeting their tax obligations; and tax recovery measures which are the equivalent of meting out a death sentence to any business operations should be a remedy of last resort.

The Applications for stay of execution were granted subject to the following conditions:

i. The Liquidator of Crane Autos Limited (in Liquidation) returns the Certificate of Dissolution to the Official Receiver within 5 (Five) days from 21st August 2024 and submit proof thereof to the Respondent and Court.

ii. The Respondent allows Kampala Properties Ltd, Punjani Motors Ltd, East African Motor Supplies Ltd and Auto Tune and Engineering Ltd) to conduct business at the premises at Plot 24 De Winton Road which were under distress.

iii. URA stations an officer at the premises to ensure that no properties are removed except in the ordinary course of business.

iv. Crane Autos Limited (in Liquidation), Kampala Properties Ltd, Punjani Motors Ltd, East African Motor Supplies Ltd and Auto Tune and Engineering Ltd shall not transfer or encumber their real properties until the disposal of the Appeals.

v. Crane Autos Limited (in Liquidation), Kampala Properties Ltd, Punjani Motors Ltd, East African Motor Supplies Ltd and Auto Tune and Engineering Ltd shall deposit the Certificate of Title for the land comprised in LRV 483 Folio 24 Plot 32A Jinja Road with the Respondent as security for the due performance of the High Court's decree in the event their Appeals fail.

vi. The Certificate of Title to be deposited with the Respondent within 5 (Five) days from 21st August 2024 or before the Applicants regain access to their premises, whichever is earlier.

vii. Upon fulfilment of the conditions for the grant of the stay of execution, the stay shall remain in force until 16th January 2025.

viii. Each party shall bear its own costs of this Application.

ix. The Learned Justice also issued directions on timelines for filing the appeal and written submissions as an additional condition for the grant of the stay of execution in a bid to ensure that the stay is not granted in vein to parties with no real interest in appealing.

The Application was granted with conditions with each party to bear its own costs.

Head Notes:

Chargeable Income - Disbursement vis-a-viz Reimbursement – Meaning of a Payment for Income Tax Purposes – Income of a Non-Resident Person – Income Sourced from Uganda – Royalties – VAT on imported Services

Brief Facts:

The Respondent conducted a compliance review of the Appellant for the period January 2017 to December 2019 and issued additional assessments amounting to UGX 650,508,770. The Appellant objected to the above assessments on 2nd June 2021 and on 23rd August 2021, the Respondent disallowed the objections on the grounds that the Appellant had not produced any evidence. The Appellant filed an application for review of the objection decision before the Tax Appeals Tribunal which upheld the objection decisions, hence the Appeal.

Grounds of Appeal:

1. The Honourable Members of the Tax Appeals Tribunal erred in law in holding that Goal Ireland derived income in form of management fees from sources in Uganda.

2. The Honourable Members of the Tax Appeals Tribunal erred in law when they held that the Appellant made a payment of management fees/commissions of UGX 1,554,123,178 to Goal Ireland on which it ought to have withheld tax of UGX 285,825,249 (inclusive of interest).

3. The Honourable Members of the Tax Appeals Tribunal erred in law in holding that Goal Ireland derived income from sources in Uganda when it paid for software licenses.

4. The Honourable Members of the Tax Appeals Tribunal erred in law when they held that the Appellant made a payment for software licenses on which it ought to have withheld tax of UGX 10,090,415.

5. The Honourable Members of the Tax Appeals Tribunal erred in law when they held that the 10% 'program delivery fee' deducted by Goal Ireland was consideration for the provisions of imported services on which VAT of UGX 379,488,769 (inclusive of interest is payable).

6. The Honourable Members of the Tax Appeals Tribunal erred in law in holding that the Appellant was liable to pay VAT on imported services for the use of the software purchased by Goal Ireland.

Judgment of the High Court:

(Hon. Justice Ocaya Thomas O.R)

Grounds 1 & 2 of the Appeal

a) "Management charge" means any payment made to any person, other than a payment of employment income, as consideration for any managerial services, however calculated.

b) Black's Law Dictionary, 9th Edition, defines management to mean *"the people in an organization who are vested with a certain amount of discretion and independent judgement in managing its affairs."*

c) For the sums assessed to fall within Section 78(b), it must be demonstrated that they are fees for the provision of services which can correctly be called managerial services under the Income Tax Act.

d) In ***Ibm India (P) Ltd v Commissioner of Central Tax, Bangaluru ST/429, 548,549/2009***, the court defined a management to mean the functions of planning, organizing, staffing, directing, controlling and coordinating. In ***Re LMSCL Lower Mainland Society for Community Living 2020 BCEST 118***, the court found that a manager has power of independent action, autonomy and discretion, he or she has the authority to make final decisions, not simply recommendations, relating to supervising and directing employees or to the conduct of the business.

e) Court found that the actions of Goal Ireland fell within the scope of management because in fundraising for the Appellant and providing project delivery support and considering the unique position of Goal Ireland as the headquarters in respect of which Goal Uganda would report, constitute actions of planning, organizing, directing, controlling and coordinating in respect of the Appellant.

f) In respect to the question whether these services are provided for a consideration being the impugned payments. In ***Prime Solutions Limited v URA TAT 116/2024***, the Tax Appeals Tribunal distinguished between a reimbursement and a disbursement. The Tribunal found that expenses incurred as part of the delivery of a service which are reimbursed by the procurer of a service form part of the consideration and are chargeable with VAT. However, expenses incurred on behalf of the procurer (called disbursements) are not taxable.

g) Whereas the above decision dealt with whether the above sums were chargeable with VAT, the dicta of the Tribunal is also relevant from an Income Tax perspective. The implication of the same is that disbursements can never constitute part of the chargeable income of the person who incurs those expenses on behalf of another. Those expenses are the expenses of the other party (who for ease of reference Court referred to as the principal) which, subject to the Income Tax Act, are deductible from the chargeable income of that person as allowable deductions.

h) As to the question as to source, on whether per Sections 83(1) and 79(q) of the Income Tax Act, WHT on international payments (such as management fees) is applicable to

persons who derive income from sources in Uganda, Section 2(xx) of the Income Tax Act Cap. 338 defines "payment" to include any amount paid or payable in cash or kind, and any other means of conferring value or benefit on a person.

i) In ***ATC Uganda Limited v URA Civil Appeal No. 32 of 2020***, Court considered whether withholding tax on interest payments was due when interest payments were capitalized and rolled over with the loan facility and held that by converting interest and adding it back to the principal loan, the Appellant had a duty to withhold tax at the time of capitalizing the interest. The decision in ATC Uganda Limited is important because it essentially means that WHT is chargeable where a taxable gain is conferred on another, notwithstanding that actual cash has not moved from one hand to another.

j) In ***Kenya Commercial Bank v Kenya Revenue Authority Civil Appeal No. 14 of 2007***, it was held that the fact that payments were deducted at source by the payee did not discharge the payer from accounting from WHT since they constituted a payment not withstanding that the same had been deducted by the payee and not transferred by the payer. It is the duty of the payee to devise efficient mechanisms for accounting for and remitting WHT.

k) It matters not that rather than making payment the ordinary way, the payee has instead deducted sums due to him and remitted the rest of the income to the payer. At the end of the day there is payment that is there is movement of value from one party to another. The mode of moving the value does not matter as the reality that this value has been exchanged. At the end of the day, the grant income was the property of the Appellant in respect of which Goal Ireland practically had no interest in.

l) A deduction of 10% which was given to Goal Ireland is a payment notwithstanding that Goal Ireland deducted it from sums due to the Appellant by itself, rather than the Appellant remitting it to Goal Ireland

Grounds 1 & 2 failed.

<u>Grounds 3, 4 & 6:</u>

m) Section 83(1) and (2) of the Income Tax Act, Cap. 338 is a charging section and provides for the charge of tax on specific categories of payments. On the other hand, Section 120(1) of the Income Tax Act provides for the mode of collection which in the context of payments to a non-resident for tax purposes, is purely by withholding tax.

n) The mode of collection/remission of tax is important because such provisions are a command on their own. This means that the charging section commands a payment of tax, and the collection/remission provision commands the mode of paying/accounting for the tax.

o) As noted in ***Luwaluwa Investments v URA HCCA 43/2022***, "*a taxpayer must comply with both the charging section/charging command and the section/command on the mode of remission/payment of tax.*" It is not enough to say that the tax which ought to have been remitted one way was nevertheless collected by another way.

p) Sources of income of a non-resident person are determined in accordance with the source rules provided for under Section 79 of the Income Tax Act. (Heritage Oil & Gas Limited v URA TAT Application No. 26/2010)

q) Section 79 (j) of the Income Tax Act establishes a general rule that income is considered derived from sources in Uganda if it is a royalty that meets the

conditions provided for in Section 79 (j). For a payment to be considered a royalty, it must meet either of the three condition bands provided for in section 79(j).

r) Section 79(j) of the Income Tax Act ensures that Uganda only taxes royalty payments connected to its economy, whether that connection is through the residency of the payer, the location of business operations or the uses of intellectual property within its borders.

s) A non-resident entity making a payment for licenses to be used for its Ugandan Branch fall within the scope of the charging provision as the income from the payment of the licenses is considered to be derived from Uganda.

t) The concept of income sourced from Uganda does not necessarily refer to where the money used from the transaction originated but instead focuses on the nexus between the income generating activity and Uganda.

u) Court found that the impugned payments by Goal Ireland were royalties within the meaning of the Income Tax Act.

v) The Appellant submitted that Goal Ireland did not derive any income from sources in Uganda because the Appellant did not make payments to Goal Ireland for the software and neither did it pay Microsoft directly for the same.

w) Section 2 (mmm) of the Income Tax Act Cap. 338 defines a royalty as a payment for the use or right to use of, interalia, software. A reading of section 2 on what amounts to royalty demonstrates that two things must happen:

i. There must be payment for the software

ii. A non-resident must earn income

x) The Appellant paid for the software and Microsoft earned income. It did not matter that payment was routed through a different channel or that there were interceding transactions with Goal Ireland that did not principally change the nature of the transaction.

y) Payments for the imported licenses constituted international payments and more specifically royalties, in respect of which Withholding Tax was applicable and was correctly assessed.

z) Grounds 3, 4 & 6 failed.

<u>Ground 5:</u>

aa) Services are essentially anything capable of being transacted in that is not a good. A service is provided where there is conferred a benefit, facility, advantage, license, permission or some other thing of value or benefit which is intangible and cannot be classified as a good and typically provided for consideration.

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

ac) Goal Ireland fundraised for the Appellant abroad and managed to secure funding for the Appellant. The enjoyment of the said service by the Appellant was in the utilization of the grant funds to achieve the Appellant's objectives and undertake its operations therefore a service was imported by the Appellant.

ad) The Court found that against the background, there was a provision of fundraising services by Goal Ireland to the Appellant. It followed therefore that VAT on the same was correctly assessed by the Respondent.

Ground 5 failed.

The High Court dismissed the Appeal with costs to the Respondent.

Head Notes:

Income Sourced from Uganda – Meaning of Interest in Immovable Property – Application of the Residual Provision of the Source Rules – Cost Base Computation – Capital Gains Tax – Double Taxation Agreements -

Brief Facts:

The Appellant and Energy Africa (U) Ltd entered into Production Sharing Agreements with the Government of Uganda in relation to Exploration Areas 1 & 3A and were accordingly granted licenses for petroleum exploration, development and production. Energy Africa (U) Ltd later sold its interests to Tullow (U) Ltd, pursuant to which, the Appellant and Tullow (U) Ltd held equal participating interests in the two Exploration Areas.

The Appellant entered into a Sale and Purchase Agreement with Tullow in respect of the Exploration Areas, for a toto consideration of 1,450,000,000 United States Dollars, being base purchase price of USD 1,350,000,000 and a contingency amount of USD 100,000,000.

On 06th July 2010 and 19th August 2010, the Respondent issued tax assessments to the Appellant in the amounts of USD 404,925,000 and USD 30,000,000, being taxes payable in relation to the base purchase price and the contingency amount, respectively. The Appellant objected to the assessed tax contending that the said transfer does not give raise to any tax liability and the Respondent issued objection decisions maintaining the assessments for reasons that the transaction was subject to tax under the laws of Uganda. Subsequently, the Appellant filed Applications in the Tax Appeals Tribunal, vide TAT Application No. 26 of 2010 and TAT Application No. 28 of 2010, challenging the taxation decisions in respect of its tax liability.

On 23rd November 2011 and 7th December 2011, the Tax Appeal Tribunal delivered rulings in TAT Application No. 26 of 2010 and TAT Application 28 of 2010, respectively, holding that the Appellant had made a capital gain which was rightfully taxed. The Tribunal held that the assessments were proper and lawful and accordingly dismissed the applications with costs. the Appellant was dissatisfied with the decisions of the Tax Appeals Tribunal and appealed to the High Court, which appeals were later consolidated.

Grounds of Appeal:

1. The Tax Appeals Tribunal erred in law in its decision relating to TAT Application No. 26 of 2010 that Section 79(g) of the Income Tax Act applied.

2. The Tax Appeals Tribunal erred in law when it held that section 79(s) of the Income Tax Act applied.

3. The Tax Appeals Tribunal erred in law when it disallowed the addition of the admitted and agreed exploration costs of US$ 150, 000,000 to the cost base in calculating the capital gain.

4. The Tax Appeals Tribunal erred in law in failing to hold that there could be no tax liability by virtue of the "Convention between the Government of the Republic of Mauritius, and the Government of the Republic of Uganda for the avoidance of Double Taxation and the Prevention of Fiscal evasion with respect to Taxes on Income" and Section 88 of the Income Tax Act, even if (which is denied) there would otherwise have been a tax liability.

5. The Tax Appeals Tribunal erred in law when it failed to properly evaluate the evidence before it and thereby came to the wrong conclusion that tax was due.

6. The Tax Appeals Tribunal erred in law when it held that the assessments dated 6th July 2010 and 19th August 2010, were validly issued.

Judgment of the High Court:

(Hon. Lady Justice Susan Abinyo)

Ground 1:

a) Section 79 (g) of the Income Tax Act (ITA) provides as follows: *"Income is derived from sources in Uganda to the extent to which it is: 35 (g) derived from the disposal of an interest in immovable property located in Uganda or from the disposal of a share in a company the property of which consists directly or indirectly principally of an interest or interests in such immovable property, where the interest or share is a business asset."*

b) Following the rule of statutory interpretation that words in a statute must be given a plain meaning unless the words and or language used are unclear and ambiguous, Court found that the phrase *"interest in immovable property"* as provided under Section 79(g) of the ITA is a technical term in the context of petroleum activities, and the ordinary meaning may be misleading in the context of petroleum operations.

c) The question that ensues is whether the Appellant derived income sourced from Uganda in the Sale and Purchase Agreement (SPA) within the meaning of Section 79(g) of the ITA, and if so, whether Section 79(s) was properly applied?

d) Court noted that it had established that a bundle of rights was sold by the Appellant to Tullow under the SPA, Joint Operating Agreement (JOA), and Production Sharing Agreement (PSA); some of these rights were contingent on the satisfaction of certain conditions for example, the right to petroleum production in the respective PSAs was contingent on the approval by the Minister, and issuance of the production licence if the application met the requirements of Section 22 of the Act.

e) The decision of the Tribunal that the Appellant sold a bundle of rights and the Appellant earned income is proper. Suffice to add that the said rights are divisible, and cumulative in nature.

f) The contention by the Appellant that they sold their assigned rights in the exploration licence to Tullow is tenable. The question, therefore, is whether the said assigned rights in the exploration licence amount to interest in immovable property within the meaning of Section 79(g) of the ITA?

g) The phrase *"interest in immovable property"* is neither defined in the Income Tax Act, Cap. 340 (now the Income Tax Act, Cap. 338 Revised Laws of Uganda, 2023 Edition) nor the Petroleum (Exploration and Production) Act, Cap 150 (now the Petroleum (Exploration, Development, and Production) Act, Cap. 161 (Revised Laws of Uganda, 2023 Edition).

h) Court adopted the ordinary and natural meaning of the term licence as follows: "It's permission, usually revocable, to commit some act that would otherwise be unlawful." (See: Black's Law Dictionary, 9th Edition pg. 1004).

i) Court found that the SPA, PSA and JOA granted the Appellant exclusive rights to explore petroleum in the exploration areas, however, these rights were not absolute since each activity required the approval of the Government and the renewal of licences from time to time.

j) In addition, Section 88 of the ITA provides for the application of an International Agreement between the Government of Uganda and the Government of a foreign country or foreign countries to have effect as if it was contained in the Act.

k) In the given circumstances of this case, court stated that it does not fault the Tribunal in the applicability of the Double Taxation Agreement, which was signed between the Government of the Republic of Mauritius and the Government of the Republic of Uganda as required under Section 88 of the ITA.

l) The assigned rights created by the exploration licences are not to be governed by either general land law or common law but a specific law on the subject and interpreted in accordance with the literal rule of statutory interpretation, which is the cardinal principle in rules of statutory interpretation.

m) The reference by the Tribunal to exploration areas (Blocks 1 and 3A) of the Albertine Graben as "pieces of land" after the Tribunal had cautioned itself on the rules of statutory interpretation as above but decided to adopt the meaning of the phrase "interest in immovable property" with regard to the DTA, which is not the specific law on the subject; the Tribunal ought to have known that in petroleum activities, blocks are not delineated pieces of land but are created under the petroleum law for regulatory and administrative purposes.

n) The phrase "interest in immovable property" as provided under Section 79(g) of the ITA, and its interpretation by the Tribunal in regard to Article 6.2 of the DTA, was misconstrued by the Tribunal.

Ground 1 of the Appeal succeeded.

Ground 2:

o) Section 79 provides that, *"Income is derived from sources in Uganda to the extent to which it is: (h) derived from the disposal of movable property, other than goods, under an agreement made in Uganda for the sale of the property, wherever the property is to be delivered."*

p) The term "make" is defined in Black's Law Dictionary, 9th edition pg. 1041, to mean legally perform, as by executing, signing or delivering a document. The term

"movable property" is defined in Black's Law Dictionary, 9th Edition pg.1110, to mean a tangible or intangible thing in which an interest constitutes personal property; anything that is not so attached to land as to be regarded as part of it as determined by local law.

q) In the circumstances of this appeal, Court found that the Appellant disposed of its assigned rights in the exploration licences, albeit contractual, which constitutes intangible movable property within the meaning of Section 79(h) above, from which the SPA was signed outside Uganda.

r) The submission of Counsel for the Appellant that Section 79(s) of the ITA is a residual provision, which only applies where the particular type of income is not contemplated by the prior paragraphs in 79(a) - (r) of the ITA, is tenable.

s) For the foregoing reason, Court found that where Section 79(h) of the ITA would apply, which is not the case here, the application of S.79(s) by the Tribunal, which is a residual provision would therefore be proper.

t) In addition, Court having allowed ground 1 of the appeal as above, and further taken into account the argument by Counsel for the Appellant that the source rule under Section 79(h) of the ITA, regarded the gain as foreign-sourced because the SPA was signed outside Uganda, found that the application of Section 79(s) as a residual provision was proper by the Tribunal.

u) Consequently, Court found that the exploration licences that were primarily concerned with exploration operations, which involved surveying, testing and drilling in the exploration areas, constitute activities carried out by the Appellant within the meaning of Section 79(s) of the ITA, from which the Appellant gained income, which was taxable under the ITA.

Ground 2 of the Appeal failed.

Ground 3:

v) Section 1 (j) of the Petroleum (Exploration and Production) Act, Cap 150, defined the term "exploration" to mean exploration for the purpose of discovering petroleum, and includes geological, geophysical, and geochemical surveys, exploration drilling and appraisal drilling in land in Uganda.

w) Section 89A (1) of the ITA, which was introduced by the Income Tax (Amendment) (No. 2) Act, 2008 defined "exploration expenditure" as expenditure incurred, prior to approval of a development plan, in undertaking exploration operations, including in the acquisition of a depreciable asset used in those operations and an expenditure treated as exploration expenditure under a petroleum agreement, but does not include expenditure that is not allowed under section 22(2) or 23 of the ITA.

x) It is noteworthy that expenditure is classified and quantified for the purpose of determining the deductions to be taken by a taxpayer from the gross income, to arrive at chargeable income.

y) The well-established principle in Section 4(1) of the Income Tax Act, Cap. 338 (Revised Laws of Uganda, 2023 Edition) is that income tax is imposed not on gross income but on chargeable income.

z) Section 22 of the Income Tax Act, Cap. 338, prescribes the expenditures allowed to be deducted, and those that are not allowed to be deducted. Under Section 22(3) (c) of the Income Tax Act, Cap. 338, where an expenditure is recoverable by the

taxpayer under any insurance, contract, or indemnity, a taxpayer is not allowed to deduct such expenditure from gross income. The rationale is that a taxpayer who has recovered the expenditure under a contract has been restored to the same position as if the taxpayer did not incur that expenditure.

aa) In the context of oil and gas, the impact of Section 22(3)(c) is that a licensee who has recovered expenditure through the relevant contractual provision such as under a Petroleum Agreement, is not allowed to again deduct such expenditure against the licensee's share of profit oil.

ab) On the other hand, a licensee who has sold an exploration licence has done so before producing oil; as such, the licensee has not recovered (and will not recover) any exploration expenditure through cost oil. The exploration expenditure incurred by such a licensee is included in the cost base of the exploration licence under Sections 50(2) and 50(6) of the Income Tax Act, Cap. 338, as expenditure incurred to acquire and improve the licence.

ac) Section 48 of the Income Tax Act, Cap 338 provides that capital gain is the amount by which the consideration received from the sale of an asset exceeds the cost base of an asset at the time of disposal. Capital gains tax is therefore imposed not on consideration, but on gain. (i.e. the difference between consideration and the cost base, being the costs incurred to acquire and improve the asset)

ad) Section 50(2) of the Income Tax Act, Cap. 338, defines a cost base of an asset purchased, produced, or constructed by the taxpayer, as the amount paid or incurred by the taxpayer in respect of the asset, including incidental expenditures of a capital nature incurred in acquiring the asset, and includes the market value at the date of acquisition of any consideration in kind given for the asset.

ae) The activities undertaken by a licensee in an exploration licence granted under Section 58 of the Petroleum (Exploration, Development and Production) Act, Cap. 161 (Revised Laws of Uganda, 2023 Edition), which are renewed from time to time, constitute exploration activities and the costs associated with those exploration activities, which subsequently improve the value of the licence, as is the case here, constitute exploration expenditure.

af) Given the above background, Court found that allowable deductions under Section 22 of the Income Tax Act, Cap. 338, apply to a person, who is granted or purchases an exploration licence and goes on to generate income from producing oil while Section 50(2) and 50(6) of the Income Tax Act, Cap. 338, applies to a licensee who has sold an exploration licence. The latter provision allows a seller of an exploration licence to recognise the exploration expenditure incurred as forming part of the cost base for purposes of capital gains tax.

ag) In the circumstances of this appeal, it is notable that whereas a purchaser of an exploration license may inherit the cost recovery provisions of an applicable Petroleum Agreement for capital gains tax purposes, under the provisions of Section 50(2) and 50(6) of the Income Tax Act, Cap. 338, it still allows the seller (Appellant herein) of the exploration licence to deduct the unrecovered exploration expenditure from the consideration received when computing the capital gains tax.

ah) For the foregoing reasons, the exploration costs of USD 150,000,000, ought to have been added to the cost base in the computation of capital gains tax owing from the Appellant to the Respondent. This means that the capital gains tax

must be based on an amount that excludes the impugned US$ 150000000 since this sum was part of the cost base incurred by the Appellants; and therefore not taxable.

Ground 3 of the Appeal succeeded.

Ground 4:

ai) Having found as above that Section 79(g) was not applicable, and that Section 79(s) applied, the question that ensues is whether the Uganda - Mauritius DTA, provided relief to the Appellant against Ugandan tax liability under Section 79(s) of the ITA.

aj) Notably, the Uganda- Mauritius DTA is based on the Model Tax Convention of the Organisation for Economic Co-operation and Development (OECD). The OECD Commentary on the Model Tax Convention makes it clear that the DTA operates only to exclude a tax liability that would have otherwise arisen under domestic law of the contracting state, but does not impose a tax liability where none is imposed under domestic law. (See Article 26 of the Vienna Convention on the Law of Treaties, which provides that; *"Pacta sunt servanda"* that is, *"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."*)

ak) According to Section 88 (1) of the ITA, the Uganda - Mauritius DTA shall have effect as if the agreement was contained in the ITA, and under Section 88(2), the DTA takes precedence over any other law of Uganda to which Uganda is a party, to the extent of the inconsistent terms of an international agreement with the provisions of the ITA.

al) In accordance with the OECD Commentary on the Model Tax Convention, the DTA operates only to exclude a tax liability that would have otherwise arisen under domestic law of the contracting state but does not impose a tax liability where none is imposed under domestic law.

am) In the given circumstances of this appeal, Court did not fault the Tribunal in the applicability of the Double Taxation Agreement, which was signed between the Government of the Republic of Mauritius and the Government of the Republic of Uganda as required under Section 88 of the ITA, however, Court held that the phrase *"permanent establishment"* in the DTA was misconstrued by the Tribunal by failing to take into account the purpose of the DTA, which was for the avoidance of double taxation, and the prevention of fiscal evasion in regard to taxes on income.

an) Court stated that it took into consideration the definition of the phrase permanent establishment and specifically under Article 5(g) of the Uganda - Mauritius DTA, to conclude that the oil wells discovered in Kingfisher 1, 2, and 3, located in Albertine Graben, formed part of the exploration activities in the exploration areas, in particular Block 3A, where barrels of oil was discovered that added value to the exploration licences, in which the Appellant disposed its assigned rights in the SPA together with the contractual obligations in the PSA and JOA.

ao) The said alienated rights constitute movable property attributable to the Appellant's permanent establishment in the said Blocks within the meaning of Article 14 (2) of the Uganda - Mauritius DTA.

ap) From the reading of Article 14 of the DTA cited above, under Article 14(2) of the Uganda - Mauritius DTA,(the equivalent of Article 13 of the Model Tax Convention of OECD), the Appellant had a permanent establishment in Uganda within the meaning of Article 5(2)(g) of the DTA therefore, the Uganda - Mauritius DTA would

not provide relief against Uganda tax liability in respect of capital gains derived from the alienation of such movable property, which forms part of the business property of the Appellant's permanent establishment in Uganda.

aq) Accordingly, as the Tribunal rightly stated in its Ruling above, that the government did not grant a tax relief and therefore the payment of the contingent amount was solely attributable to the permanent establishment in Uganda. Court upheld that decision.

Ground 4 of the Appeal failed.

Ground 5:

ar) Counsel for the Respondent submitted that the preference by Counsel for the Appellant to argue ground 5 generally because it cuts across, was neither supported in its written arguments nor its oral highlights either generally or even as part of the other issues. Counsel further contended that ground 5 of the appeal is inconcise and amounts to a fishing expedition.

as) Following the settled position of the law decided in a plethora of cases on what amounts to the phrase "an error of law" and that the grounds of appeal must be stated with precision and clarity to illustrate the error, Court found that ground 5 of the appeal was stated in general terms, which does not either point out or illustrate the error with precision.

at) Consequently, the preliminary objection raised by Counsel for the Respondent was upheld.

Ground 5 of the appeal was struck out.

Ground 6:

au) Notably, one of the essential requirements of an effective tax collection system is certainty and consistency; this resonates with the proposition that tax is a creature of statute.

av) The phrase "subject to" as provided under Section 95(1) of the ITA, implies that the section referred to, which is Section 96 takes precedence over this provision, therefore, Court found no fault with the decision of the Tribunal. The Commissioner exercised her discretionary powers in the assessment of the tax payable by the Appellant based on the information that the Appellant was going to sell its only asset in Uganda and was about to leave the country.

aw) The phrase "best judgment" as provided under Section 95(4) of the ITA, implies that the Commissioner has the discretion to make a decision based on the available information, and considering his or her experience, knowledge, and analysis of all the factors, that conclusion was the most appropriate in a given situation.

ax) Consequently, Court found that the Commissioner exercised her discretion based on the information that the Appellant was going to sell its only asset in Uganda and was about to leave the country, and yet the Appellant had not filed any returns, therefore, the said assessment based on the best judgment by the Commissioner cannot amount to gross unreasonableness.

ay) It's trite law that an instrument or document that purports to be in such form shall not be void by reason of any deviation from that form, which does not affect the substance of the instrument.

az) In addition, Court found the submission by Counsel for the Appellant that the Appellant paid US$ 121,477,500 eleven (11) months in advance of the due date for the payment of capital gains tax, is untenable for the reason that the Commissioner did not otherwise consider it appropriate to require the taxpayer to furnish a return of income for a period of less than 12 months, when the Commissioner had already applied the best judgment approach under s.95(4) of the ITA.

Ground 6 of the Appeal failed.

The Appeal succeeded in part. Grounds 1 and 3 succeeded; Ground 5 was struck out; and Grounds 2, 4, and 6 failed. and Court directed the Appellant to recompute the Capital Gains Tax and refund the excess sum with interest at a rate of 2% from the date of payment until refund in full. The Appellant was awarded a quarter of the costs of the appeal and in the Tax Appeals Tribunal.

WHAT IS TAXABLE UNDER SECTION 79(G) OF INCOME TAX ACT?

URA APPEALS COURT RULING AWARDING HERITAGE OIL SH700B

By Umaru Kashaka

The Uganda Revenue Authority (URA) has filed a notice of appeal against the recent High Court ruling awarding sh700b to Heritage Oil and Gas Ltd, which ceased local operations 14 years ago.

On December 23, last year, the High Court Commercial Division Judge, Susan Abinyo, ordered URA to refund Heritage Oil's $435m (about sh1650b) it had wrongly imposed as capital gains tax (CGT) along with $148.5m (sh545b) in interest.

In her ruling, Abinyo said URA was wrong to assess CGT on the $150m cost price Heritage Oil invested in the exploration of Uganda's oil.

This was after Heritage Oil, a UK firm, sold its exploration licences in the Albertine Rift to Tullow Oil on July 26, 2010.

Heritage Oil and Tullow owned a 50% stake in two lucrative exploration blocks: 1 (in Nwoya district and 3A (in Kikuube district). With the sale, Tullow became the sole company licensed to operate in those areas and Heritage withdrew from Uganda.

URA's commissioner for legal services and board affairs, Catherine Kyokunda, confirmed the development on Monday, saying they filed a notice of appeal before the Court of Appeal on January 21.

"We are optimistic about overturning the two grounds lost out of the six grounds of appeal," she said, declining to comment further.

$435m

The amount Heritage Oil sought to recover in the suit.

However, URA's acting assistant commissioner for public relations, Robert Kalumba, said: "We are challenging the judge's decision on two grounds awarded to Heritage Oil allowing them exploration costs of $150m, and the consideration of what amounts to an interest in immovable properties."

He said URA remains committed to executing its revenue collection and tax administration mandate fairly and transparently for the development of Uganda.

Heritage Oil was awarded only a quarter of the costs, reflecting the limitations of the win in a matter where they had sought to recover $435m.

Robert Kalumba

The issue that was overturned in Abinyo's brief judgment related to what is taxable under section 79(g) of the Income Tax Act and whether in the petroleum sector, one can simply compare the blocks of land to which a licence applies with land in its usual sense.

The judge concluded that the term "interest in immovable property" is a technical term.

However, some legal experts told *New Vision* that incidentally, Justice Abinyo completely missed the double dipping argument, which is critical to the oil sector.

"Applying this judgment would mean the Government has to pay out expenses to the seller every time there is a disposal of a petroleum licence. For an emerging economy like Uganda, this would mean that by the time the oil is produced for the market, there will have been numerous payouts, effectively diminishing any potential gains to the economy to the huge benefit of multinational corporations whose identity and origin cannot be traced," one expert explained.

New Vision also heard that it is for this reason that part IX (A) of the Income Tax Act was introduced; to deal with this tax when companies transfer interest in petroleum agreements or licences.

"Taxation at cost oil ensures that the tax law does not allow double dipping in the petroleum sector, as the consideration paid for the licence. In this case, the sum of $1.450b gives the buyer the right to recover cost oil," the expert who sought anonymity said.

The expert also said another interesting issue raised is the $150m figure in the judgment as forming part of the cost base.

The tax expert said many factors must be considered for an expense to qualify as part of the cost base.

He said firstly, the taxpayer must have filed tax returns, confirming the recoverable expenses under the Production Sharing Agreement regime governing the oil sector. Secondly, the expenditure must be on capital asset improvement for capital gains purposes, which automatically excludes expenses like signature bonuses, operational costs or legal charges.

Thirdly, it must be subject to audit by the Auditor General's office to avoid inflated recovery costs.

"So, the question is whether it is enough for the taxpayer or URA to state a figure at scheduling not backed by evidence as the judgement indicates, without subjecting it to the recoverable test and the relevant approvals governing the transaction under the Production Sharing Agreement and tax law," the expert said.

SH14B NOT PAID TO GOVT

Heritage Oil has yet to pay the Ugandan government $4m (about sh14b) in legal costs after losing an oil tax case in London in 2013.

In April 2013, Uganda won a landmark $434m oil tax case against Heritage Oil after a three-member arbitration team ruled against the three core tax claims by Heritage Oil. The international oil firm was contesting the decision by URA to tax its $1.45b transaction with Tullow Oil.

"As far as I know, Heritage has never paid that money. This was one of our grounds of objection as URA, seeking payment of the award first because we had been searching for them in vain," the URA commissioner general, John Musinguzi, told journalists recently.

"It's not fair that someone invests here, earns profits and then refuses to pay taxes," the URA boss added.

Yesterday, Kalumba said the demand notice had not been paid because all efforts to locate the Heritage Oil's assets by reputable investigators proved futile.

New Vision contacted Heritage Oil for comment but the company had not yet responded by press time

COURT ORDERED URA TO REFUND $45M (SH165B) PLUS INTEREST

URA INVOLVES ATTORNEY GENERAL IN HERITAGE OIL APPEAL

By John Ricks Kayizzi

The Uganda Revenue Authority (URA) is consulting with the Attorney General as it prepares to appeal against a court ruling in favour of Heritage Oil and Gas in a tax dispute.

Court had ordered URA to refund $45m (sh165b) plus interest to Heritage Oil, after ruling that the tax body erroneously computed the capital gains tax (CGT) by adding exploration costs of $150m to the cost base, in the sale of its assets to Tullow Oil in 2010.

The Commercial Division of the High Court, presided over by Justice Susan Abinyo on December 23, last year, ordered URA to refund the excess money it had collected in CGT to Heritage Oil.

Court ruled that URA pays sh709b to Heritage Oil and Gas for erroneously slapping a CGT of sh164.4b and sh542.5b in interest on the oil company after it sold its exploration stake in Uganda to Tullow Oil. While briefing journalists on the revenue performance for the period of July–December 31, 2024, at URA headquarters in Nakawa, Kampala, last week, the authority's commissioner general, John Rujoki Musinguzi, said although press reports about the award were alarming, there is no cause for alarm.

Musinguzi said: "We have kicked off the appeal process since we were not satisfied with the court decision. So, we have written briefs to the Attorney General and are awaiting guidance."


AG Kiryowa Kiwanuka


Musinguzi

PREVIOUS URA VICTORIES V HERITAGE

According to Musinguzi, URA has been favoured thrice in this case and, therefore, cannot leave the ruling unchallenged.

"First we won in the Tax Appeals Tribunal, then in the first attempt in the High Court, as well as in the arbitration in London," Musinguzi said, adding that it was the same old case where Heritage's claim not to pay CGT was dismissed with costs.

He added: "Their [Heritage's] appeal to the High Court was also dismissed, and they went for arbitration in London."

Musinguzi revealed that arbitration agreed with URA on all the grounds and the Government was awarded $4m (sh14b).

"As far as I know, Heritage has never paid that money. One of our major grounds of objection is that they [Heritage] should pay this award first because we have been looking for them in vain," he said.

He also noted that this case is appealable, emphasising that it's the same case URA has successfully won under various legal frameworks.

"It's not fair that somebody comes here, makes an investment, and when they earn, they refuse to pay tax," he added.

BACKGROUND

In July 2010, Uganda's energy minister consented to the sale of Heritage Oil and Gas' assets to Tullow on condition that whatever taxes accruing from the transaction were paid.

URA later asked Heritage to pay $404.925m on July 6, 2010, and $30m on August 19, 2010, in taxes in respect to the base purchase price, and the contingency amount respectively.

However, Heritage objected to the first assessment on August 18, 2010, and to the additional assessment on August 19, 2010. URA followed this by issuing objection decisions on November 12, 2010, and on December 1, 2010, in respect of the first assessment and the additional assessment respectively.

Consequently, Heritage filed two applications in the Tax Appeals Tribunal challenging URA's objection decisions in respect of its tax liability. But the tribunal dismissed both applications and upheld URA's assessments.

Dissatisfied with the decision, Heritage sought redress from the High Court, which last December ruled in its favour.

09

INFECTIOUS DISEASES INSTITUTE VERSUS UGANDA REVENUE AUTHORITY

High Court Civil Appeal No. 006 of 2022 (Arising from TAT No. 15 of 2019)

CASE DIGEST VOLUME IX

Head Notes:

Employees vis-a-viz Consultants – Fixed or Ascertainable Remuneration - Harmonious Rule of Legislative Interpretation

Brief Facts:

The Appellant is a company limited by guarantee whose objective is researching infectious diseases and providing medical assistance to patients suffering from contagious diseases in Uganda. The Appellant stated that it partners with numerous institutions and individuals to provide research expertise and funding to execute its mandate.

The Appellant further stated that it co-opts specialists to provide specialized support on the research projects it undertakes and such specialists are hired on more than one project at a time. The said consultants are retained as independent consultants on projects to support specific projects as disclosed in their consultancy agreements and continue to serve on those projects unless donors suspend funding or the subject of the project is complete.

URA conducted a tax compliance audit on the Appellant resulting in an assessment of UGX 1,927,442,716 which comprised of WHT of UGX 150,464,359 and PAYE of UGX 1,776,978,357. The Appellant objected to these assessments and the Respondent reviewed and responded to the Appellant's objection reducing the assessment to UGX 322,013,900. The Appellant filed an Application for review before the Tribunal which decided in favour of the Respondent, hence this Appeal.

Grounds of Appeal:

1. The Tax Appeals Tribunal misapplied the principles in Section 2(z) of the Income Tax Act to the consultants engaged by the Appellant thereby erring in law and reaching the wrong conclusions.

2. The Tax Appeals Tribunal misapplied the principle/tests for determining the existence of the employment relationship, thereby erring in law and reaching the wrong conclusions.

3. The Tax Appeals Tribunal erred in law when it failed to evaluate all the evidence before it in the application thereby reaching the wrong conclusions.

Judgment of the High Court:
(Hon. Justice Ocaya Thomas O. R)

a) Section 4, 17(1)(b) and 19 impose a tax on income earned by an employee from any employment. Section 2 defines employment to mean (a) the position of an individual in the employment of another person, (b) a directorship in a company, (c) a position entitling the holder to a fixed or ascertainable remuneration and (d) the holding or acting in any public office.

b) The Tax Appeals Tribunal found that any person who is entitled to a fixed or ascertainable remuneration is, for tax purposes, an employee in spite of the fact that other laws, such as the Employment Act may treat such person as an independent contractor for instance.

c) The harmonious rule of legislative interpretation is adopted when there is a conflict between two or more statutes or between two provisions of the same statute. The rule requires that a legislative instrument must be construed on the prima facie basis that its provisions are intended to give effect to harmonious goals.

d) The provisions of one statute should be interpreted in harmony with the tenor of other statutory provisions or the overall statutory purpose. Where conflict appears to arise from the language of particular provisions, the conflict must be alleviated, so far as possible, by adjusting the meaning of the competing provisions to achieve that result which will best give effect to the purpose and language of those provisions while maintaining the unity of all the statutory provisions. However, if this is not possible then it is settled law that where there is a conflict between two sections, and one cannot reconcile the two, one has to determine which the leading provision is and which the subordinate provision is, and which one must give way to the other.

e) Court agreed that with the submissions of Counsel for the Respondent that a tax law may re-prescribe one legal relationship as another for tax purposes, as long as it does not create obligations beyond the tax relationship itself since, if it does, the proper position of the law in respect of the parties for these additional obligations is a question to be settled by law on conflict of laws.

f) The tax treatment of a specific legal relationship is a question for a taxing law only. Other laws are only relevant where the taxing law has not pronounced itself clearly on the matter in dispute, such that recourse to the relevant law/laws is to be heard for purposes of resolving a tax dispute arising from the same relationship.

g) The import of the Section 2(z)(iii) of the Income Tax Act is that one must have a "position" of some permanency. A consultant cannot be considered a position within the meaning and context of the above provision since a consultant is not

a permanent part of the staff team of an organisation. It is indeed true that many organisations describe consultant's roles as "positions" but this is an administrative reference, and is used in a wholly different context as in the present case.

h) Consultancy contracts are by their nature typically deliverables based, such that non-performance by the consultant does not entitle them to payment. Employment relationships are different since it is the duty of the employer to provide work and bad performance by a staff does not, by itself alone, entitle the employer to withhold salary except where there is a contractual or statutory basis for the same. In that context, employees occupy "positions" within the structure of the employer and have an "entitlement" to pay which is typically fixed or capable of being ascertained.

i) The determination as to whether one is a consultant or a staff is a question of fact and not a matter for speculation, conjecture, assumption or loose theories.

j) Court noted that it could not find a legal or jurisprudential basis for the assertion that any person who receives a fixed or ascertainable remuneration for a period in excess of two months is to be considered an employee. A professional services provider such as a chef, advocate, medical doctor etc. may have their retainer paid in regular monthly instalments. That by itself does not make them employees.

Ground 1 succeeded.

Grounds 2 & 3:

k) What is considered employment for purposes of taxation is a question of the taxing statute, in this case the Income Tax Act. It is where the Act is silent that recourse may be had to other legislation. The basis for this is the long-standing principle of tax legislation that where a taxing act has defined a word to mean something, that thing means that it is defined to mean, and one cannot have recourse to extrinsic materials in such circumstances.

l) The jurisprudence has developed three tests to determine existence of the employment relationship namely: (1) The control test (2) Business integration test and (3) the Mixed methods test

m) In determining whether one is an employee or otherwise, recourse is made to the following principles; (a) Agreement to provide labour in exchange for a wage (b) Agreement that the employee will be subject to a sufficient degree of control (c) The other terms/incidents of the relationship are consistent with employment.

n) In determining the existence or absence of an employment relationship, courts assess all the relevant facts in totality, considering the terms of an agreement between the parties as well as the nature and character of the parties' relationship practically.

o) The Respondent is conferred on broad powers to reclassify transactions to reflect their true character and levy assessments where such reclassification reveals a tax to be paid.

p) What is clear is that the team members have consultancy contracts, they are covered under the insurance policy and are liable for the costs of any injury met, the consultants don't provide any further services except as itemised in their contracts; they do not necessarily work at the premises of the Appellant and are utilised on projects where they are needed; some are paid for the days worked while others

get one off payments one they met deliverables; they are not subject to the rules of the Appellant such as the HR Manual; the Appellant withholds 6% WHT and the contracts provide that the consultants have an obligation to account on their own for tax on the rest of their income.

q) A review of the contracts submitted by the Appellant before TAT showed that there are essentially two payment models that the Appellant uses in regards to these members of its team. Some team members are paid fixed fees on the basis of deliverables while others are paid for days worked. In the premises, there is not a direct relationship between provision of services and placement of income. The relationship here is varied in the sense that staff are either paid when they work, or when they hit a deliverable.

r) Whereas it is possible, in employment, for the parties to agree that the employee is paid only if they work for instance, in the specific circumstances of this case, the consultants did not agree to provide labour for a wage, but instead entered a contract where either (a) they would be paid when utilised or (b) when they deliver unlike in employment where utilisation/performance is a recurrent running obligation and payment of a wage is typically certain.

s) The question of control depends entirely on the circumstances of the case. There are controls which, though exercised cannot be expected to impute an employment relationship and there are controls which "matter".

t) In the present case, the consultants are not considered part of the employer's staff team and their employment relationship is clearly different. The only "control" that the Appellant exercises, from the materials on the record of appeal, is contractual; that is, ensuring that the consultants deliver what has been contractually agreed to be delivered rather than overarching control in the employment sense. The Appellant does not exercise control over the consultants in the employment sense.

u) The rest of the relationship between the Appellant and its consultants is not consistent with employment. There isn't a "certainty" to payment since the consultant must either deliver or work to be paid, unlike say an employee who may earn money while sick or on leave. There is no entitlement to leave, bereavement pay or sick days. There is no cover (contractual or otherwise) for injury in the course of work or proof that such payment may have ever been previously paid.

v) The Appellant has no power to assign the consultants more work on projects than is provided for in their contracts. The consultants are not constrained to work with the Appellant solely or seek the Appellant's permission to work with other entities. The consultants are not entitled to leave, sick pay or such other benefits. The consultant's contracts do not have probationary periods and neither are the consultants entitled not to work on public holidays. The consultants do not have streamlined roles 35 embedded in the Appellant's structure with clear reporting lines.

w) The above incidents in the relationship between the Appellant and its consultants is consistent with a consultancy relationship and not an employment relationship. It follows that the Tax Appeals Tribunal did not conduct an exhaustive evaluation of the evidence.

Grounds 2 & 3 succeeded.

The Appeal succeeded and the assessment was vacated with costs to the Appellant.

High Court directs URA on collecting PAYE tax

The court set aside the prior decision by the Tax Appeals Tribunal, which had supported URA's classification of consultants as employees.

BY ANTHONY WESAKA

The Commercial Division of the High Court has ruled that the practice of the Uganda Revenue Authority (URA) classifying anyone who receives a fixed fee for more than a period of two months as an employee, is wrong.

Justice Thomas Ocaya of the Commercial Division clarified that consultants hired by a company should not pay Pay As You Earn (PAYE) tax.

The landmark decision of the court arose out of a protracted legal battle between the Infectious Diseases Institute (IDI) and URA.

Core to the legal contention was whether consultants who are hired by the IDI qualify to be called employees.

"I agree with the submissions of counsel for the appellant (IDI) that the respondent (URA) essentially classified these contracts even in light of the glaring evidence to the contrary for purposes of perhaps enhancing their tax collection efforts which this court should not allow, as there is no tax due and the court will not allow an improper collection of tax against a taxpayer," ruled Justice Ocaya on October 25.

He added: "Accordingly, and with the greatest respect of the learned members of the Tax Appeals Tribunal, I cannot find a legal or jurisprudential basis for the assertion that any person who receives a fixed or ascertainable remuneration for a period over two months is to be considered an employee. A professional service provider such as a chef, advocate, medical doctor etc may have their retainer paid in regular monthly instalments, which by itself does not make them employees."

The judge highlighted key distinctions between consultancy contracts and employment contracts, noting that, unlike employees, contractors are not entitled to benefits such as annual leave, fixed working hours, sick leave. Contractors are paid based on work delivered, unlike employees who earn while on leave or holidays.

IDI, in its appeal, claimed it co-opts specialists to provide specialised support on research projects and such specialists are hired on more than one project at a time.

It further stated that the said consultants are retained as independent consultants on projects to support specific projects as disclosed in their consultancy agreements and continue to serve on those projects unless donors suspend funding or the subject of the project is complete.

URA had classified the said consultants as employees of the IDI before assessing their Pay as You Earn (PAYE) from their payments, a scenario that the Tax Appeals Tribunal had earlier upheld in the initial legal battle.

"The decision of the Tax Appeals Tribunal to the contrary is set aside and substituted with the present decision of this court. The appellant is awarded costs in the Tax Appeals Tribunal and in this court," held Justice Ocaya.

IDI argued that the tax body was wrong in considering the element of fixed and ascertainable income only and disregarded the other customary tests such as control and the terms of the contract.

In his analysis, the judge agreed with the arguments made by the lawyers of the IDI that not every control amounts to employment.

"It appears to me that the only control that the appellant exercises, from the materials on record of appeal, is contractual; that is ensuring that the consultants deliver what has been contractually agreed to be delivered rather than overarching control in the employment sense," he observed.

"It is, therefore, clear to me that the appellant (IDI) does not exercise control over the consultants in the employment sense," he added.

The IDI had in its case before the court contented that in 2012, URA conducted a tax compliance audit resulting in an assessment of more than Shs1.9b which comprised withholding tax of more than Shs150m and PAYE of Shs1.7b.

It further contended that the assessments were based on URA's regard for consultants, trainers, volunteers, and directors as employees.

But going forward, the judge held that the IDI is not obliged to pay more than Shs185m and any penalties and interest as assessed by the tax body as there is no basis for the same.

Mr Bruce Musinguzi, a commercial lawyer with Kampala Associated Advocates (KAA), described the court decision as a relief for companies and taxpayers.

"It's a welcome ruling, especially for companies and taxpayers since URA had always insisted on them paying PAYE, a move that had made it very expensive to hire contractors," Mr Musinguzi said last evening in a telephone interview.

He continued: "URA has been consi ering them as employees, and remem ber many of those guys are not unde their control but the court is now sa ing that person (the consultant), is a independent person, hence no need t account for Pay As You Earn. On the sid of the contractor, he/she will be payir taxes as an independent person lik the corporation tax, and not pay PAY which had hit their bottom line."

The final ruling determined that consultants hired by the Infectious Disease Institute (IDI) are independent contractors, not employees. Therefore, IDI is not required to pay Pay As You Earn (PAYE) tax on their fees. PHOTO/SHUTTERSTOCK

Relief.
It's a welcome ruling, especially for companies and taxpayers since URA had always insisted on them paying PAYE, a move that had made it very expensive to hire contractors.
- Mr Bruce Musinguzi, a commercial lawyer with Kampala Associated Advocates

ABOUT PAYE

Pay As You Earn (PAYE) is a tax deducted from employees' monthly salaries or wages by employers, who then remit it to the Uganda Revenue Authority (URA). This tax is levied on income earned by individuals from employment, including wages, salaries, bonuses, and allowances.
The PAYE system ensures that income tax is collected progressively, based on income levels. Higher earners pay a higher percentage of tax.

10 KUKU FOODS UGANDA LIMITED VERSUS UGANDA REVENUE AUTHORITY

High Court Civil Appeal No. 0036 of 2021
(Arising from TAT No. 94 of 2019)

Head Notes:

Preferential Treatment – Certificates of Origin – Major and Minor Anomalies in Certificates of Origin - Requirement for Exporter to sign the Certificate of Origin – Verification Queries by a Customs Authority

Brief Facts:

The Appellant is a franchise of the fast-food chain, KFC. The Appellant imports French fries for use in its business in Uganda. In the past, the Respondent has accorded the Appellant preferential tariff treatment in respect of those imports under the COMESA Treaty.

Sometime in May 2018, the Respondent conducted a post –audit review of the Appellant's imports. This revealed that contrary to the COMESA Rules of Origin, 7 certificates of origin in respect of which the Appellant had been accorded preferential tariff treatment, had not been duly signed by the exporter. Thereafter, the Respondent issued an assessment on the Appellant for import duty of **UGX 191,038,404** due to the failure by the exporter to sign the said certificates, claiming that anomaly rendered them invalid.

The Appellant objected to the assessment but the same was maintained by the Respondent in its objection decision. The Appellant 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:

1. The Learned members of the Tribunal erred in law when they held that the Appellant was liable to pay taxes as a result of the exporter's failure to sign the certificate of Origin.
2. The Learned members of the Tribunal erred in law when they found that the exporter's failure to sign the certificate of Origin was not a minor omission as it went to the root of the validity of the Certificate of Origin.
3. The Learned members of the Tribunal erred in law when they found that the Appellant is liable to pay the tax assessed.

Judgment of the High Court:

(Hon. Justice Patricia Mutesi)

a) The central question to be decided in this appeal is whether or not the omission by an exporter to sign a certificate of origin invariably invalidates that certificate and automatically disentitles all the goods to which that certificate relates to preferential tariff treatment under the COMESA Rules of Origin.

b) Rule 10(1) of the COMESA Rules of Origin highlights the supreme importance of a certificate of origin in the COMESA preferential trade tariffs regime.

c) The implication of this provision is that the only acceptable evidence of entitlement to the COMESA preferential treatment is documentary evidence, to wit, a certificate of origin. Entitlement to that preferential treatment cannot be proved through conjecture or argument.

d) Court stated that it agreed with the Tribunal that the authentication of the certificates of origin by the Egyptian authorities does not displace the need for the certificate to bear original signatures of the exporter.

e) Under Article 3.11.2 of the implementation procedures, the requirements for an original signature and stamp of the exporter and for authentication by the designated authority in the exporting member state are cumulative. They are not stated in the alternative and neither is any of them optional.

> *There's no sympathy in tax law. If there are clear rules that define the contents of a certificate of origin, importers must follow them without exception. An importer who fails to follow those rules cannot compensate for that shortcoming by asking the Respondent to look the other way or to do its own independent research into the mater.*
>
> **- Hon Justice Patricia Mutesi -**

f) Authentication by the designated authority cannot cure the absence of the exporter's signature as both requirements have to be satisfied for the certificate of origin to be valid.

g) In any case, Article 3.6.2 of the implementation Procedure prescribes the formula to be followed by a designated authority in an exporting COMESA member state before authenticating a certificate of origin. That provision demands that such a designated authority should first ensure that the certificate has been completely and correctly filled out by the exporter and that everything is in order before similarly endorsing the certificate by stamp and signature.

h) In the present case, it was obvious that this formula was not meticulously followed, if at all, by the designated authority before endorsing the certificates. Unfortunately, the Implementation Procedures do not prescribe what the repercussions for not following that formula are. However, since authentication is logically supposed to be preceded by the designated authority crosschecking the certificate to ensure that it is fully and correctly filled out, a purported authentication by the designated authority in the exporting member state when some of the other boxes of the certificate are incomplete or empty, would be no authentication, at all, in law.

i) Counsel for the Appellant argued that the Appellant has severally imported the same goods from the same importer in Egypt before and that the Respondent accorded it preferential tariff treatment on all occasions. While that is true, it does not create a presumption that all the Appellant's French fries' imports would come from Egypt thereafter.

j) It is the Appellant's duty to provide valid certificates of origin for each of its consignments so that the Respondent can conclusively determine whether those consignments were entitled to COMESA preferential treatment or not.

k) The Appellant may have all the certainty and confidence in the world that it imported its French fries from Egypt during the time in question, but even that is not enough in law for the Respondent to confirm the country of origin of the said goods. It was

always the Appellant's duty to provide valid certificates of origin for each of its French fries' consignments so that the Respondent can conclusively determine whether those consignments were entitled to COMESA preferential tariff treatment or not.

l) There's no sympathy in tax law. If there are clear rules that define the contents of a certificate of origin, importers must follow them without exception. An importer who fails to follow those rules cannot compensate for that shortcoming by asking the Respondent to look the other way or to do its own independent research into the mater.

m) It follows that an importer to be accorded preferential tariff treatment in Uganda for goods imported from COMESA member state, those goods must always be accompanied by a valid certificate of origin that is filled out and authenticated in the prescribed form. That prescribed form bears 12 boxes which all ought filled out.

n) That prescribed form bears 12 boxes which all ought to be filled out, Box 1 should contain the name of the exporter, Box 2 should contain the consignee's name, Box 3 the country of origin, Box 4 the transportation mode details for the consignment, Box 5 remarks, if any, from the designated authority about the consignment, Box 6 a brief of the goods in the consignment, Box 7 the consignment's customs Tariff Number, Box 8 the criterion used to determine the country, Box 9 the gross weight of the consignment, while Box 10 should contain the consignment's invoice number.

o) Box 11 should contain the declaration by the exporter by way of stamp and an original signature, that the details in the first 10 boxes are true and correct and that the goods in the consignment originate from the named country of origin. Box 12 should then contain an authentication by the designated authority in the country of origin that the goods in the consignment are actually of that country's origin.

> *The primary duty of the Respondent is to receive, read and analyse import documents, including certificates of origin. The duty of presenting proper certificates of origin is not shared or transferable and even when the Respondent ventures into a formal verification process, such action does not override the importer's duty to avail proper documentation.*
>
> **-Hon. Justice Patricia Mutesi**

p) As regards the contents of the prescribed form of a certificate of origin, Court agreed with the conclusion of the Tribunal that, from the onset, the omission by an exporter to sign a certificate of origin cannot be taken lightly. It is a major anomaly in the certificate. This is because Box 11 of the certificate is intricately linked to all the other boxes as it is the one in which the exporter unequivocally confirms the truthfulness of all the contents of the certificate.

q) An error on the weight of, or number of goods in the consignment is forgivable since it is peripheral to the question of origin of the goods. However, an error on the statement of the country of origin, the name of the exporter or the declaration of correctness of the certificate, goes to the very heart of the certificate and incurably undermines its essence since it negates origin, which is the normative basis of preferential tariff treatment in law.

r) Rule 3.11.2(v) of the Implementation Procedures demands that a certificate of origin should not contain any errors. If an error is to be made in that certificate,

it cannot be made in the boxes that require the name of the exporter, name of importer, the country of origin, the declaration of correctness by the exporter and the authentication of correctness by the designated authority.

s) Specifically, without a proper declaration in Box 11 of the certificate, there is no logical way for customs authorities in COMESA member states to be sure and certain, from a review of the certificate itself, that it bears true and correct information.

t) In relation to the facts of the instant appeal, it was an agreed fact that the impugned certificates of origin were not duly signed by the exporter. It was also noteworthy that, contrary to the Appellant's submission, not all the impugned certificates were stamped by the exporter.

u) Court agreed with the Tribunal's finding that the omission by the exporter to sign Box 11 of all the 7 certificates of origin is fatal and inevitably invalidated them. The exporter's omission to stamp them further aggravated their mortal imperfection.

v) What remained to be determined is whether the Respondent was obliged, as matter of law, to conduct remedial verification of the contents of the 7 certificates to conclusively establish the country of origin for the imported goods before issuing a tax assessment on the Appellant.

w) Entitlement to preferential treatment is proved by the presentation of a valid certificate of origin to the customs authority of the importing member state. The COMESA Rules of Origin do not anticipate any other evidence to be presented in place of that certificate. Nevertheless, the COMESA Rules of Origin leave open a narrow path by which a customs authority of an importing member state can get confirmatory proof of the contents of a certificate of origin that has been presented for preferential treatment.

x) Article 3.12(i) of the Implementation Procedures permits all customs authorities of COMESA member states, like the Respondent, to refuse claim for COMESA tariff treatment if there is reason to doubt the correctness of the particulars declared to them and where there is serious doubt about correctness of the certificate of origin presented declared to them. That provision adds that minor inaccuracies or omissions of a clerical or similar nature detected on a certificate of origin may be corrected by the importer.

y) Article 3.12(ii) and 3.12(iii)(b) further provide that where serious doubts arise about the correctness of the certificate of origin presented, the customs authorities of the importing member state may request the submission of further supporting evidence or make a formal inquiry directly to the designated authority of the exporting state.

z) The Implementation Procedures which anticipate inquiries by the customs authority of an importing member state are not couched in mandatory terms. Such a customs authority has the discretion to make a verification query about the contents certificate of origin or not. It is, thius, certain that customs authority is not bound to make any such inquiry whenever it encounters doubt as to the contents of a certificate of origin. It could simply reject the certificate at once so that the importer pays the due tax or proceeds to obtain a proper certificate of origin.

aa) The primary duty of the Respondent is to receive, read and analyse import documents, including certificates of origin. The duty of presenting proper certificates of origin is not shared or transferable and even when the Respondent ventures into a formal verification process, such action does not override the importer's duty to avail proper documentation.

ab) The Respondent's discretion on whether to verify or not to verify contents of a certificate of origin has to, of course, be exercised judiciously and lawfully. Verification is only necessary only when an impugned certificate is valid, that is to say, all its boxes have been duly filled out. In the same vein, once critical elements of the certificate are missing, that certificate is dead on arrival and cannot be resuscitated through a verification inquiry.

ac) On the facts of this appeal, it appears that the Appellant attempted to transfer its duty of availing proper proof of origin of its imports to the Respondent. The Respondent rightly rejected those requests because, without an original signature of the exporter, the impugned certificates were already invalid, which status dispelled any possible viability of the same.

ad) It would be very expensive in terms of time, money and other resources, if the Respondent is to legally obligated to make a formal verification query for each and every defective certificate of origin under the COMESA trade regime. Instead of dedicating its resources to its main objective of collecting revenue and widening Uganda's tax base, the Respondent would have to strain those resources engaging customs authorities all across the COMESA membership looking for clarifications on defective certificates of origin. This is unsustainable and unacceptable.

ae) On top of other likely complications, it would simply be impracticable for the Respondent to assist importers in perfecting defective certificates of origin.

af) This dispute could have been averted. While it is the exporter who erroneously omitted to sign and stamp the 7 certificates, the Appellant owned that mistake when it used the same certificates to claim for preferential tariff treatment for its imports. The Appellant could have, firstly, have taken the trouble to critically read, internalize and evaluate all the certificates of origin before submitting them to the Respondent.

ag) Secondly, when the defect in certificates was established, the Appellant could have immediately reached out to the exporter to either send proper certificates of origin or to write to the Respondent through the Egyptian designated authority clarifying on the original missing signature.

ah) Since the Appellant failed to adduce proper certificates of origin for the impugned consignments of French fries, the Respondent was unable to conclusively determine whether or not those goods had originated from a COMESA member state.

ai) Such a determination can only be based on a valid certificate of origin pursuant to Rule 2(1) (a) together with Rule 10 of the COMESA Rules of origin.

aj) The Respondent was therefore right to assess the Appellant as liable to pay tax for those imports and to uphold that assessment in its objection decision, the Tribunal was also right to uphold the same assessment and the objection decision in its Ruling and orders.

The Appeal was dismissed on all grounds; the Appellant was held liable to pay the tax assessed; and costs were awarded to the Respondent.

11 MINGDONG GLOBAL INVESTMENT LTD VERSUS UGANDA REVENUE AUTHORITY

High Court Civil Appeal No. 0012 of 2023
(Arising from TAT No. 104 of 2021)

CASE DIGEST VOLUME IX

Head Notes:

Recharacterization of Transactions – Withholding Tax on Purchase of a Business Asset – Effect of Non-Payment of Stamp Duty on an Instrument

Brief Facts:

The Appellant deals in warehousing and storage of goods. On 1st November 2020, the Appellant purchased a lease of 10 acres comprised in LRV 4657 Folio 22 Plot 3352 situate at Namanve Industrial Park from Double Q Limited. The Appellant maintains it paid USD 200,000 (UGX 729,200,000) for the land in various installments which were completed on 21st July 2021. The Appellant paid Withholding Tax of UGX 43,752,000 to the Respondent for the purchase.

The Respondent conducted a return examination on the Appellant and discovered that the Appellant had bought the land as a business asset and that the land was worth USD 800,000 (UGX 2,960,000,000). In the absence of the sale agreement and payment receipts, the Respondent decided to take the assessed value of the land as the gross payment for its purchase. The Respondent faulted the Appellant for not withholding and remitting 6% of that value (UGX 177,600,000). On 24th March 2021, the Respondent raised an Income Tax Assessment of UGX 177,600,000 on the Appellant on grounds of failure to withhold and remit the true amount of tax for the transaction.

The Tribunal upheld the Assessment of UGX 177,600,000 and ordered that, since the Appellant had already paid UGX 43,752,000, the Appellant had to pay the balance of UGX 133,848,000.

Grounds of Appeal:

The Appellant was aggrieved and filed its appeal to the High Court on three grounds, namely:

1. The Tax Appeals Tribunal improperly evaluated the Appellant's evidence of gross payment by excluding the Appellant's payment receipts in its ruling and the Appellant's witness testimony in respect of purchase of LRV 4657 Folio 3352, Namanve Industrial Park and arrived at a wrong conclusion that the Appellant is liable to pay withholding tax of UGX 177.6 million to the Respondent.

2. The Tax Appeals Tribunal erred in law when it failed to properly determine what constitutes gross payment under the Income Tax Act for purposes of withholding tax and erroneously relied on the Chief Government Valuer's assessment of LRV 4657 Folio 22 Plot 3352, Namanve Industrial Park as forming the basis for charging withholding tax on the Appellant of UGX 177.6 million.

3. The Tax Appeals Tribunal erred in law when it misconceived the issues before the Tribunal as relating to payment of stamp duty yet the dispute related to the basis for payment of withholding tax by the Appellant.

Judgment of the High Court:
(Hon. Justice Patricia Mutesi)

a) The central controversy in this appeal is whether or not the Appellant paid the correct amount of WHT for the purchase of the land.

b) The basis for assessment of WHT on purchase of a business asset is aptly set out in Section 118B (2) of the Income Tax Act (ITA).

c) Black's Law Dictionary, 9th Edition at page 1243 defines "payment" to mean *"money or other valuable thing so delivered in satisfaction of an obligation"*. Additionally, the Oxford Advanced Learner's Dictionary, 6th edition, defines "gross" to mean *"the total amount of something before anything is taken away"*.

d) Considering these two definitions, the correct meaning to be ascribed to the phrase "gross payment" as applied in Section 118B(2) of the ITA is *"the total amount of money paid or payable for the purchase of a business or a business asset"*.

e) There were five critical pieces of evidence adduced before the Tribunal in order to prove the gross payment for the land. The first critical piece of evidence was the stamp duty payment certificate. It proved that the Chief Government Valuer had assessed the value of the land to be UGX 2,960,000,000 at the time of the purchase.

f) The 2nd critical piece of evidence was the sale agreement for the land which showed that the agreed consideration for the land was USD 200,000. The Tribunal refused to rely on the sale agreement, and rightly so because Section 32(1)(a) of the Stamp Duty Act renders any instrument chargeable with duty inadmissible in evidence if that duty is not duly paid.

g) Section 3 and Item 5 of the 2nd Schedule of the Stamp Duty Act charges a stamp duty of UGX 15,000 on an agreement or memorandum of an agreement.

h) The record of the Tribunal does not show that the Appellant attempted to remedy this anomaly in any way by asking the Tribunal for leave to first pay the duty on the sale agreement and relied on it notwithstanding the defect. In a similar fashion, on appeal the Appellant adamantly sought to rely on the same sale agreement in utter disregard of Section 32(1)(a) of the Stamp Duty Act.

i) The 3rd critical piece of evidence are the payment receipts from Double Q Co. Ltd. The receipts show that the Appellant paid a total of USD 194,000 for the land. On the other hand, the Appellant's alleged sale agreement stated that the purchase price was USD 200,000. The disparity between the two was not satisfactorily explained.

j) It was an undisputed fact in the Tribunal that the said payment receipts only surfaced at the time of the Application in the Tribunal. If the payment receipts had truly been genuine, they would have been available at the time of objection was made and considered. The receipts would have been given to the Respondent at that time. The delayed presentation of the receipts makes it more probable than not that the receipts were a disingenuous afterthought crafted to deceive the Respondent.

k) The 4th piece of evidence were the oral testimonies of AW1 and AW2. It was neither claimed nor proved that there was an addendum to the agreement, or any other modification thereof, for Double Q Co. Ltd to accept a lesser price for the land than the one agreed to in the sale agreement. As such AW's attempted clarification on the two sums remained unconvincing and unreliable.

l) AW1 and AW2 contradicted each other in a real and significant way. AW1 testified that the Appellant paid USD 200,000 for the land but AW2 testified that the Appellant paid USD 194,000 for the land, Logically, the Appellant could not have paid two different prices for the same land in the same transaction.

m) Although AW1 and AW2 claimed that Double Q Co. Ltd is exempt from WHT, no exemption certificate was adduced in evidence to that effect.

n) The 5th critical piece of evidence was the oral testimony of RW1. She testified that the Appellant failed to provide any conclusive evidence of the purchases price for the land and that this left the Respondent with no option but to use the assessed value of the land as the gross payment for the land.

o) Court held that the Tribunal properly assessed the evidence adduced before it and came to the correct decision.

p) The payment receipts are not corroborated by an evidence of bank withdrawals. Although the Appellant claimed that it made payments for the land in cash, there was no evidence of withdrawals of the respective instalments from its bank account before they were delivered to the vendor. Even if the Appellant had argued that the respective instalments were not sourced from its bank account but from some other source, the Appellant did not plead and prove that other source.

q) It was the Appellant's duty to prove on a balance of probabilities what it paid for the land. If a taxpayer contests an assessment, it is upon him/her to prove the fault in the assessment. When the Appellant dismally failed in that duty, the Respondent had no option but to take the assessed value of the land in the stamp duty certificate as the gross payment for its purchase.

r) In legal terms, the Respondent rightly preferred that assessed value of the land to be what was payable for one to acquire the land (the gross payment for its purchase).

s) The Tribunal did not misunderstand what the phrase "gross payment" meant. The Tribunal truly understood what the phrase means and proceeded to hold that, in the absence of conclusive evidence of the purchase price for the land, it is its assessed value that was payable for one to acquire it.

All the grounds of appeal failed and the Appeal was dismissed with costs to the Respondent.

Headnotes:

Taxation of Terminal Benefits – Compensation for termination of employment – Application of majority decision of the Supreme Court

Brief Facts:

The Appellants were all former employees of the defunct Uganda Electricity Board, whose employment was terminated between 1998 and 2001, pursuant to a government restructuring programme. Upon termination, each appellant received a certain payment which was taxed separately but the Appellants alleged that the total amount of money collected from all the Appellants was UGX 979,083,019. The Respondent disputed this amount.

The original suit was filed in the High Court which held that the Respondent could not lawfully charge PAYE on the retirement packages. Court reasoned that the payments made did not amount to compensation for loss of employment of the nature envisaged under Section 19 (1) (d) of the Income Tax Act, but were "Gratitious post-employment payment" either not liable to tax or exempt from taxation by virtue of Article 254(2) of the 1995 Constitution.

The Respondent was dissatisfied and appealed to the Court of Appeal, which, in a majority decision, reversed the High Court decision and found that the retrenchment packages were taxable under Section 19(1)(d) of the Income Tax Act.

The Appellants were dissatisfied with the decision of the majority Justices of the Court of Appeal and filed this appeal in the Supreme Court:

Ground of Appeal:

The Learned majority Justices of the Court of Appeal erred in law and fact when they held that the package paid to the Appellants was liable to income tax thus the Respondent lawfully taxed the payments.

> *"The terminal benefits amounted to compensation for termination of their jobs. It is immaterial, for purposes of Section 19(1)(d) that the Appellants' jobs were lost as a result of restructuring; the wording of the provision is broad enough to apply to the Appellant's circumstances.*
>
> **-Elizabeth Musoke, JSC-**

Judgment of the Supreme Court:

(Hon. Lady Justice Percy Night Tuhaise, JSC; Hon. Lady Justice Elizabeth Musoke, JSC; Hon. Mr. Justice Stephen Musota, JSC; Hon. Mr. Justice Christopher Madrama Izama, JSC; Hon. Lady Justice Catherine Bamugemereire, JSC)

a) Court allowed Civil Application No. 07 of 2024 and validated the appeal that had been filed out of time

Preliminary Objections in SCCA No. 27 of 2022:

b) The Respondent had raised a preliminary Objection that the appeal as incompetent because the Appellant, in whose name it was instituted is now deceased and no letters of administration had been considered. The court overruled the preliminary objection on grounds that the appeal could proceed in names of other representatives other than Patrick.

Decision on the merits:

c) The Court unanimously dismissed the appeal with no order as to costs, reasoning as follows;

d) The Learned Justices of Appeal rightly held that the Appellant's retrenchment benefits qualified as employment income within the meaning of either the Section 19(1) (a) or Section 19(1) (d) of the Income Tax Act.

e) Court of Appeal rightly held that the retrenchment packages/terminal benefits paid to the Appellants qualified as compensation for termination of an employment contract and were taxable income.

f) It is immaterial for the Appellants that they had lost their jobs as a result of restructuring since the words of Section 19(1) (d) are broad enough to apply to their circumstances.

g) The case of ***Samuel Lubega and 2 others VS Stanbic Bank Ltd, Civil Appeal No. 24 of 2010***, concerned the effect of employees signing a document by which they accepted payment of certain amounts of terminal benefits that were less than what they were entitled to under their respective contracts of employment. The court held that the document signed by the employees constituted a waiver of their rights under their contracts of employment. The Samuel decision neither discussed the meaning of Section 19 (1) (d), nor established a distinction between compensation and amelioration for purposes of that provision. However, Katureebe JSC (as he was then) who wrote the lead judgment justified his order not to award costs by stating among others that the purpose of the retrenchment package was to ameliorate their loss of a job.

h) The case of ***Uganda Revenue Authority Vs. Siraje Hassan Kajura, SCCA No. 09 of 2015*** was not wrongly decided as alleged by the Appellant. (1) It is not true that the Siraje Hassan Kajura was arrived at in disregard of the earlier binding Samuel Lubega decision since the two cases were different. The statement by Katureebe JSC in the Samuel Lubega case o purpose of the retrenchment package to ameliorate loss of a job was obiter and not binding as it was made while giving reasons for not awarding costs. (2) The case of Siraje Hassan Kajura was not ambiguous. The majority of the

justices stated that packages were taxable under Section 19(1)(d) of the Income Tax Act and it was only Opion-Aweri who thought they were taxable under both Section 19(1)(a) and 19(1)(d) of the Income Tax Act while Mwondha JSC dissented. Where court decision is not unanimous, views of the majority constitute its decision. (3) The case of Siraje Hassan Kajura did not disregard the Cape Brandy case principle of not reading into the statute as Section 19(1)(d) of the Income Tax Act is broad enough to tax the income in issue

i) Court agreed with the Respondents that the case of Siraje Hassan Kajura decided the issue of taxation of retrenchment packages and there is no need to depart from it.

The sole Ground of Appeal failed and the Appeal was dismissed with orders that, on grounds of public interest, each party bears its own costs.

Head Notes:

Appeals from TAT Decisions should be on Questions of Law – Bad Debts as Allowable Deductions – Burden of Proof on the Applicant/Appellant – Contradictory and Inconsistent Evidence

Brief Facts:

The Appellant is engaged in the business of money lending. The Respondent conducted an audit on the Applicant's tax affairs for the period 2014-2015 and raised an assessment of UGX 4,457,744,406. The Appellant objected and the Respondent partially allowed the objection and revised the assessment to UGX 1,708,059,626. The objection was partially rejected on grounds that the Appellant had not taken reasonable steps to recover bad debts before writing them off and no evidence had been laid to prove foreign exchange loss. The Appellant was dissatisfied and file an Application before the Tribunal which was dismissed, hence this Appeal.

Grounds of Appeal:

1. The Honourable Members of the Tribunal erred in law when having found that the Applicant having taken reasonable steps to recover the bad debts, proceeded to dismiss the application with costs.

2. The Honourable Members of the Tribunal misdirected themselves when they held that there was no proof of loan borrowings by the Applicant.

3. The Honourable Members of the Tribunal misdirected themselves when they held that there were no borrowings by the Applicant from Platcorp Management Limited.

4. The Honourable Members of the Tribunal misdirected themselves when they held that the Applicant's witness was not a competent witness.

5. The Honourable Members of the Tribunal misdirected themselves when they held that the evidence presented by the Applicant was contradictory.

6. The Honourable Members of the Tribunal erred when they failed to properly evaluate the evidence thus coming to an erroneous conclusion.

Judgment of the High Court:

(Hon. Justice Cornelia Kakooza Sabiiti)

Grounds 2, 3, 4, 5 & 6:

a) Counsel for the Respondent raised a preliminary objection that grounds 2, 3, 4 and 5 raised no point of law and are contrary to Section 27(2) of the Tax Appeals Tribunal Act.

b) It is a cardinal principle that an appeal of this nature should only be based on points of law, which question of law should be clearly indicated in the Notice of Appeal. The law restricts the High Court to only questions of law, not questions of facts or even questions of mixed law and facts.

c) Court further noted that ground 6 was merely a compilation of the preceding four grounds.

d) Grounds 2, 3, 4, 5 and 6 were found not to be based on points of law but rather on an evaluation of evidential facts and outside the scope of the jurisdiction granted to the High Court under Section 27 of the Tax Appeals Tribunal Act.

Ground 1:

e) Section 15 Income Tax Act provides that, *"the chargeable income of a person for a year of income is the gross income of the person for the year less total deductions allowed under this Act for the year ".*

f) Section 22(1)(a) of the Income Tax Act states that, *"For the purposes of ascertaining the chargeable income of a person for a year of income, there shall be allowed as a deduction(a) all expenditures and losses incurred by the person during the year of income to the extent to which the expenditures or losses were incurred in the production of income included in gross income. "*

g) Section 24 of the Income Tax Act, on bad debts, provides;

"Subject to subsection (2), a person is allowed a deduction for the amount of a bad debt written off in the person's accounts during the year of income.

(2) A deduction for a bad debt is only allowed (a) if the amount of the debt claim was included in the person's income in any year of income; or

(b) if the amount of the debt claim was in respect of money lent in the ordinary course of a business carried on by a financial institution in the production of income included in gross income.

(3) In this section (a) "bad debt" means- (i) a debt claim in respect of which the person has taken all reasonable steps to pursue payment and which the person reasonably believes will not be satisfied"

h) To sum up the above provisions, tax shall be charged on chargeable income of the year less the total deductions. The total deductions include all expenditure or losses incurred in production. Other allowed deductions are the bad debts which are deductible if they were included in the persons income in any year of income and that the person has taken all reasonable steps to pursue that payment.

i) Section 24 presents two key considerations for bad debts to be deductible: (i) The person has taken all reasonable steps to pursue the payment. (ii) The said bad debts were included in the person's income during the year of income.

j) The Appellant contended that since the Tribunal established that the Appellant had taken reasonable steps, any claims of contradictions in the accounts were immaterial, the same would be ratified through reconciliation of accounts.

k) Court disagreed with this submission and noted that the law require two conditions to be fulfilled for the bad debts to be deductible; not only is the Appellant required to have taken reasonable steps, but also, the bad debts must be included in the Applicant's income for the year of income.

l) The burden entirely lies on the Appellant. If they present contradicting evidence, it is not up to the Tribunal to rescue the situation by ordering a reconciliation of accounts.

m) The law on contradictions and inconsistencies is well stated. Major contradictions and inconsistencies will usually result in the evidence of the witness being rejected.

n) Having contradictory financial statements and returns ideally approved by the directors as opposed to the board resolutions also by the same directors as to what was written off in bad debts is a material contradiction, most especially, since the bad debts ought to be drawn from that information.

o) The burden of producing credible evidence lies with the Applicant/Appellant. It is not the Tribunal's mandate to aid parties that present contradicting accounts or evidence.

p) When the Appellant failed to fulfill the condition of having the amount of debt claim included in their gross income for the period in dispute for the Tribunal to determine the bad debts that were written off, it failed to meet one of the conditions set out in Section 24 of the Income Tax Act. The ground of appeal failed.

Court held that the Appeal was void of any merits and dismissed it with costs to the Respondent.

COURT UPHOLDS SH1.7B TAX ASSESSMENT AGAINST PLATINUM

By Michael Odeng

The Commercial Court has upheld a sh1.7b tax assessment by Uganda Revenue Authority (URA) against Platinum Credit Limited, a moneylending company.

Platinum became entangled in a tax dispute following a URA audit of the moneylending firm's 2014/2015 financial activities. Initially, the audit resulted in a sh4.4b tax assessment, which was later revised to sh1.7b after Platinum raised objections.

Dissatisfied with the revised assessment, Platinum Credit filed an application with the Tax Appeals Tribunal seeking a review of URA's decision, arguing that it had taken reasonable steps to recover bad debts before writing them off.

But the tribunal dismissed Platinum's application. This prompted the moneylending company to appeal against the tribunal's decision at the Commercial Division of the High Court, arguing that it had fulfilled all legal requirements to write off bad debts, as stipulated under the Income Tax Act.

Platinum alleged that the tribunal erred by failing to properly evaluate the evidence presented and wrongly dismissed one of its witnesses as incompetent. However, in a ruling dated November 11, 2024, Justice Cornelia Kakooza Sabiiti rejected Platinum's appeal on grounds that its arguments pertained to evidentiary issues rather than legal questions.

The judge said Platinum did not include the debt claim amount in its gross income for the disputed period 2014/2015


Justice Sabiiti

NO EVIDENCE OF WRITTEN-OFF DEBTS

In regard to writing off bad debts, the court ruled that Platinum failed to demonstrate that the bad debts were initially included in its gross income for the financial year 2014/2015.

"Although the company showed it had tried to recover the debts, it failed to meet a crucial condition set out in Section 24 of the Income Tax Act, hence weakening its case," Sabiiti noted.

The judge said Platinum did not include the debt claim amount in its gross income for the disputed period (2014/2015), preventing the tribunal from determining the written-off bad debts.

Furthermore, Sabiiti highlighted a contradiction between Platinum's financial statements and returns approved by the directors and the board resolutions, also signed by the same directors, regarding the bad debts written off. According to the judge, the bad debts should have been derived from the financial statements.

"The burden of producing credible evidence lies with the applicant/appellant. It is not the tribunal's mandate to aid parties that present contradicting accounts or evidence," she noted.

Sabiiti disagreed with Platinum's submission that the tribunal's finding of "reasonable steps" taken by the moneylending company, rendered account contradictions immaterial and resolvable through reconciliation.

The judge emphasised: "Not only must the applicant have taken reasonable steps, but the bad debts must also be included in the applicant's income for the year."

The judge explained that taxes are determined by what is stated in the audited financial accounts and signed by directors as a true and fair position of the company's state of affairs.

"In the absence of any other amended financial statements and returns, Platinum ought to go by what is stated in the financial statement and returns. The board minutes and other documents that contradict the financial statements and returns should be ignored," Sabiiti ruled.

Although Platinum contended that it declared a bad debt of sh135,000 in its 2014 online returns and audited accounts, the court heard that it failed to declare any bad debts in 2015.

The judge noted that the figures declared in the online returns and audited accounts differ from those stated in the board minutes, without any explanation. According to URA, the case highlights the importance of compliance with tax regulations.

14 ROCHE TRANSPORT AND LOGISTICS (U) LIMITED VERSUS UGANDA REVENUE AUTHORITY

High Court Taxation Application No. 0103 of 2024 (Arising from HCCA NO. 20 of 2021)

Head Notes:

What Amounts to Instruction Fees?

Brief Facts:

The Applicant is a judgment creditor by virtue of a decree entered in its favour. When the matter came up for taxation, counsel for the Respondent informed Court that the parties held a pre-taxation meeting and they agreed to all items save for 5 items which are 1, 7, 9, 38 and 45.

Issue for determination:

1. To what extent should the amount claimed as costs by the Applicant/ Appellant be allowed?

Ruling of the High Court:

(Her Worship Mulondo Mastula)

a) On the requirement of the pre-taxation meeting, it is manned by Regulation 13A of the Advocates (Remuneration and Taxation of Costs) Amendment Regulations, 2018.

b) In regard to the issue of the subject matter, court relied on the case of ***Simbamanyo Estates Ltd and Anor vs Equity Bank Uganda Limited and 2 Ors High court civil appeal No. 016 and 0024/2021*** on the various principles and considerations in taxation applications.

c) Court had the benefit to study the Record in the Appeal and the pleadings in Application No. 94 of 2020 before the Tax Appeals Tribunal, specifically the Statement of Facts and Reasons in support of the Application.

d) In the case of ***Simbamanyo Estates, supra,*** Justice Mubiru stated that the subject matter should be determined from the pleadings before court. He held that *"... the value of the subject matter of the suit is not necessarily the value of the property in respect of which the suit is filed. When the suit is founded on some claim to or question respect property, it is the value of the claim or question and not the value of the property which is the determining factor..."*.

e) In relation to the instant facts, yes, the dispute sprung from the assessment totaling to UGX 4,643,671,219. However, the questions and or issues tabled for determination were inclined to interpretation of the various sections of the Income Tax Act that had been relied upon by the respondent in arriving at the assessment total above.

f) Accordingly, the value of the subject matter is not necessarily the total value of assessment, the value should instead be based on the questions before the court or tribunal as determining factor for assessing the instruction fees. As such, Court stated that it was inclined to agree with Counsel for the Respondent.

g) Accordingly, Court found that an award of UGX 20,000,000/= is sufficient for instruction fees under Item 1 putting into consideration that the matter has been ongoing since 2020.

h) Items 7 and 9 were disallowed by this Court for reasons that, even after close studying of the Court Record and the proceedings, the above claims could not be traced. Court could not proceed to assume, as such the same were accordingly taxed off.

i) Items 38 and 45 were allowed by this Court as claimed in the Appellant's Bill of Costs.

The Appellant's Bill of Costs was taxed and allowed at UGX. 29,580,000

Head Notes:

Exported Services – Place of Consumption of Services – Consideration for VAT Purposes – Reimbursements – Burden of Proof in Tax Matters

Brief Facts:

The Appellant deals in the provision of consultancy services in East Africa for its ultimate parent company called ELMA Group of Foundations based in the Cayman Islands. The Appellant conducts due diligence on charities, Non-Governmental organizations, and potential partner organizations in Uganda, Kenya, Ethiopia, Rwanda, Burundi, and Tanzania to explore their eligibility for funding and support from the ELMA Group of Foundations.

The Respondent raised a VAT assessment in the amount of UGX 843,548,766, being UGX 405,980,639 for the period of January 2016 to December 2016 and UGX 437,568,127 for the period of January 2017 to December 2017 due to variances between Income Tax and VAT sales for the period.

The Appellant objected to the assessments on the grounds that the variances noted related to reimbursements from the ELMA foundation and not consideration and that the services they rendered are exports since the final consumer is outside Uganda thus the services are zero-rated. On the other hand, the Respondent stated that the reimbursements are part of the consideration according to section 1(d) of the VAT Act and the work done by the Applicant, the evaluation of NGOs was done in Uganda for the benefit of NGOs within Uganda and the final place of consumption was Uganda, therefore there was no export of services. The objection was disallowed and the Appellant filed an Application before the Tribunal which was decided in favour of the Respondent, hence this Appeal.

Grounds of Appeal:

1. The Honourable members of the Tribunal having recognized that Regulation 12 of the VAT Regulations provides that services qualify for zero-rating if they are used or consumed outside Uganda erred when they relied on Section 14 of the VAT Act and the case of URA Vs Total Uganda Limited and held that the services were consumed in Uganda.

2. The Honourable Members of the Tribunal erred in law when they held that the reimbursement of expenses received by the Applicant was consideration.

3. The Honourable Members of the Tribunal erred in law when they relied on Section 16 of the VAT Act as the guiding law in respect to export of services.

4. The Honourable Members of the Tribunal erred in law when they found that they required resolutions and minutes of board meetings to determine that the services were consumed outside Uganda.

5. The Honourable Members of the Tribunal erred in law when they held that some services were provided to Mildmay Uganda & Infectious Diseases Institute which is based in Uganda and therefore there was no export of services.

6. The Honourable Members of the 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:
(Hon. Justice Cornelia Kakooza Sabiiti)

a) Counsel for the Respondent raised a preliminary objection that grounds 1, 4, 5 and 6 are not points of law but rather matters of fact and they should therefore be struck out.

b) Court noted that some grounds were factual while others were mixed law and facts. Ground 5 was struck off for being purely factual, while grounds 4 and 6 being more factual than law, were maintained but court stated that in resolving them, it would restrict itself to only questions of law.

Ground 1:

c) The Appellant is engaged in consultancy business in East Africa for the ELMA Group of Foundations based in Cayman Island. The Appellant among other things makes recommendations to the Foundation on Organizations that are eligible for funding and support in East Africa. The Appellant prepares reports to the ELMA Philanthropies Services U.S Inc. describing the proposed grantee, the amount of the proposed grant, the period over which such funds are to be disbursed, the purpose of the grants, the conditions of the grant and reasons why the grant is recommended. Based on the recommendations received, the board of directors of the ELMA Group of Foundations may approve the recommendations and grant funding or reject it.

d) During the period of January 2026 to December 2017, the Respondent issued a VAT assessment of UGX 843,03 1,393 on grounds of variances between Income Tax and VAT. The Appellant objected to the assessment and one of the grounds was that the services it renders were consumed outside Uganda and therefore were exports and zero-rated.

e) As per the Service Agreement executed on 9th September 2014, the Appellant was engaged by the "Foundations" (The ELMA Foundation, The ELMA Relief Foundation, The ELMA Vaccines and Immunization Foundation, and The ELMA Growth Foundation, all formed under the laws of Cayman Islands Limited).

f) Court noted that it was pertinent for it to determine the place and time of supply of the services. While the Tribunal was considering the tax point, and the time the service was delivered or availed, it concluded that the performance of making recommendations was completed as soon as the reports were made ready and availed. Court deviated from this view.

g) Regulation 12 presents a roadmap on how a service can qualify for a zero-rated supply as being only if the Appellant: (i) Shows evidence that the services are used or consumed outside Uganda; (ii) Evidence in form of a contract with the foreign purchaser; (iii) And, shall specify the place of use or consumption of services to be outside Uganda or that the service is provided for a building or premises outside Uganda.

h) Following the literal interpretation of the above provisions, the Court should be interested in the contract of services with the foreign purchaser and the purpose of which that service is provided to be outside Uganda, for it to qualify to be an export of service.

i) Regulations 12 indicates that the legislature extended to the application of those services rendered *"shall specify the place of use or consumption of services to be outside Uganda or that the service is provided for a building or premises outside Uganda."* This provision gives a clear analogy that if the services are for a building, it is pertinent where that building is located; it has to be outside Uganda to qualify to be an export.

j) In a bid to prove that the services were used or consumed outside Uganda, the Appellant presented the Services Agreements between itself and the Foundations based in the Caymans. This is sufficient evidence in form of a contract with a foreign purchaser. Therefore, that requirement was met by the Appellant as per the first requirement under Regulation 12.

k) The Appellant was however expected to adduce evidence informing that the place of use or consumption of the said services was outside Uganda. Simply put, the purpose of usage of those services rendered by the Appellant must be outside Uganda. The usage of the service in this case does not end at availing the reports and a reading of the same by the Foundations as the Tribunal suggested but it is concluded at the place of usage other services.

l) The Appellant was contracted and paid for among other things making recommendations of eligible NGOs for funding by the Foundations, notify the recipients if the grants are approved, assisting in the coordination of the execution of related grant agreements, monitoring performance, preparing and submitting relevant information to the foundations and any other assigned services. The Appellant's services are not limited to making the reports and recommendations. As observed by the Tribunal, they extend to further engagements as seen in the Service Agreements.

m) The purpose of these services among others are the grants by the Foundations which in this case, following the Appellant's services, grants were extended to Mildmay Uganda and Infectious Disease Institute which are Ugandan NGOs not in

New York or Caymans. Further coordination and monitoring services are still done in Uganda. Therefore, the place of use of these services is within and not outside Uganda.

n) Whereas the Appellant was able to prove a contract existed with a foreign purchaser, it failed to prove that the place of use/purpose of those services was outside Uganda. All evidence adduced pointed to the fact that the place of use of those services was in Uganda, and therefore the services do not qualify to be exports.

Ground 1 failed.

Ground 2:

o) Tax is charged based on consideration. According to Section l(d) of the VAT Act, Consideration is defined to be; *"in relation to a supply of goods or services, means the total amount in money or kind paid or payable for the supply by any person, directly, or indirectly including any duties, levies, fees, and charges paid or payable on, or by reason of, the supply other than tax, reduced by any discounts or rebates allowed and accounted for at the time of the supply."*

p) A perusal of the Services Agreement dated 9th September 2014, clause two indicates the consideration for the Appellant's service:

"Fee for Services

a) ELMA East Africa shall receive a fee for rendering services under this Agreement at the rate of USD 60,000 per annum, payable in four equal quarterly instalments of USD 15,000 each, in advance, due the first day of each calendar quarter, subject to adjustment as set forth in Section j (a) below (the Fee). The Fee is exclusive of any applicable value-added tax which shall be separately shown on all invoices submitted to the Foundations by ELMA East Africa.

b) If the Fee is not paid in full within thirty (30) days of the due date for payment, ELMA East Africa may terminate this Agreement without prejudice to any other right or remedy it may have."

q) Later, on the 25th January 2018, the parties amended the Services Agreement, clause two of the same on consideration for the Appellant's services:

"Fee for Services

a) ELMA East Africa shall receive a fee for rendering services (the Fee). The fee shall be equalto all costs, as hereinafter defined, plus 50% of all costs other than:

i) Fees paid to lawyers, accountants and other professional advisers

ii) All directors' fees and expenses reimbursed to or paid on behalf of directors and

iii) All expenses reimbursed or paid on behalf of consultants.

Subsection g) as used in this section 2, the term costs shall mean all operating expenses incurred by ELMA East Africa in performing its obligations hereunder with respect to the Foundation."

r) It should be noted that while the substance seems to indicate that the above were costs, this fee is what the Appellant agreed upon as its consideration for the services it renders, so the same taxation principle should apply.

s) Notwithstanding, the crucial factor to note is that the tax assessment period in issue was 1st January 2016 to 31st December 2017 before the amended Services Agreement dated 1st January 2018 that added further descriptions to the consideration and it being a percentage of the costs. This argument of tax being on reimbursement of expenses was therefore found to be untenable.

Ground 2 was answered in the negative.

Ground 3:

t) It is pertinent to note that the applicability of exported services has been addressed differently by courts across various jurisdictions. it is contingent upon different factual circumstances in each case.

u) A reading of Section 16 of the VAT Act provides that; a supply of services takes place where the services are rendered. This provision should be read together with Regulation 12 which expounds on the evidence needed for the place of service.

v) Regulation 12 indicates that the Appellant had to fulfil the two conditions. If the goods are consumed outside Uganda with evidence of a contract, the place of that consumption must be outside Uganda. While there is evidence of a contract with a foreign company, the place of use of those services was in Uganda, and therefore the Appellant's services do not qualify to be zero-rated services.

Ground 3 failed.

Grounds 4 & 6:

w) Regarding the argument of burden of proof and the required standard of proof in taxation matters, Court looked at Section 18 of the Tax Appeals Act.

x) The onus of proof in tax disputes rests solely on the Applicant challenging the tax assessment. As already expounded under ground one, and three, the Appellant adduced evidence of a contract with a foreign company, which is sufficient to establish that the consumer was outside Uganda. A requirement of board meeting minutes by the Tribunal was way beyond the boundaries of the required standard of proof on a balance of probability.

y) Notwithstanding, the Appellant's place of use of the services falls short of the service being rendered outside Uganda. The use and purpose of the services was for NGOs in Uganda recommended by the Appellant for funding (Mildmay and Infectious Disease Institute based in Uganda). Therefore, the Appellant failed to discharge the burden to prove that their services were exports.

z) Despite divergent interpretations and applications of the laws by the Court from that of the Tribunal, the Learned Judge noted that she arrived at the same conclusion that the Appellant's services rendered to the foundations are not exports and therefore not zero-rated.

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

16 UGANDA REVENUE AUTHORITY VERSUS BALONDEMU DAVID

High Court Civil Appeal No. 0002 of 2023
(Arising from TAT No. 18 of 2022)

CASE DIGEST VOLUME IX

Head Notes:

Time for service of the Notice of Appeal – Recharacterization of Transactions – Taxation of Partnerships – Execution of Documents on behalf of a Company

Brief Facts:

The Respondent operated a law firm known as Balondemu & Co. Advocates. Sometime in 2020, the Appellant requested for information from the Respondent's firm in respect of certain clients. The Respondent provided the information which the Appellant found insufficient and as a result issued an Income Tax Assessment of UGX 665,738,205 and a Penal Tax Assessment of UGX 20,000,000 against the Respondent. The Respondent objected to this assessment and the objection was disallowed. Consequently, the Respondent filed an Application in the Tax Appeals Tribunal and the Tribunal ruled in the Respondent's favour, hence this Appeal.

Grounds of Appeal:

1. The Honourable Members of the Tax Appeals Tribunal erred in law when they failed to evaluate the evidence on record and held that the Appellant was not liable to pay Penal Tax of UGX 20,000,000.

2. The Honourable Members of the Tax Appeals Tribunal erred in law when they held that certainty of the penal tax objection was not clear having also held that the Respondent did not adduce the online objection thereby reaching an erroneous conclusion that the Respondent was not liable to pay Penal Tax of UGX 20,000,000.

3. The Honourable Members of the Tax Appeals Tribunal erred in law when they held that there was a possibility that the Respondent did not object but went ahead to set aside the Penal Tax Assessment of UGX 20,000,000.

4. The Honourable Members of the Tax Appeals Tribunal erred in law when they failed to properly evaluate the evidence on record as a whole thereby reaching an erroneous decision that the Respondent was not liable to pay the Income Tax Assessment of UGX 665,738,205

5. The Honourable Members of the Tribunal erred in law when they ignored transactions of the Respondent with other parties other than Trimceke Group Ltd thereby reaching an erroneous decision that the Respondent was not to pay the entire Income Tax Assessment of 665,738,205

6. The Honourable Members of the Tribunal erred in law when they placed the burden of proof on the Appellant to prove the correctness of its decisions in respect to the Penal Tax Assessmensts of UGX 20,000,000 and the Income Tax Assessment of UGX 665,738,205 contrary to law.

7. The Honourable Members of the Tribunal erred in law when they held that there was no report from the issuing authority stating that the identity cards presented

by Fred Semakula and James Ssali of Trimceke Group Ltd were fake yet the same was on record thereby reaching an erroneous decision that the Respondent was not liable to pay the Income Tax Assessment of UGX 665,738,205.

8. The Honourable Members of the Tribunal erred in law when they held that there was no rule that requires a director to sign all contracts/deeds of acknowledgment on behalf of a company thereby reaching an erroneous decision that the Respondent was not liable to pay the Income Tax Assessment of UGX 665,738,205

Judgment of the High Court:
(Hon. Justice Ocaya Thomas O.R)

Preliminary Objections:

a) The Respondent raised a preliminary objection that the Notice of Appeal was served out of time because the decision of the Tribunal was rendered on 14th December 2022 but the Respondent was served with a Notice of Appeal on 14th January 2024, the same Notice of Appeal having been filed on 5th January 2023.

> *There can be no basis in law for asserting that the Income Tax Act only charges income tax on proceeds from lawful enterprises or activities. The Income Tax Act charges income tax on all income stated to be taxable under the Act, notwithstanding the source.*
>
> **-Hon. Justice Ocaya Thomas O.R-**

b) Section 27(1) of the Tax Appeals Tribunal Act provides thus, *"A party to a proceeding before a tribunal may, within thirty days after being notified of the decision or within such further time as the High Court may allow, lodge a Notice of Appeal with the registrar of the High Court, and the party so appealing shall serve a copy of the Notice of Appeal on the other party to the proceeding before the tribunal."*

c) An interpretation of the above provision renders that the obligation on the Appellant is to file the Notice of Appeal within thirty days. Whereas the provision places an obligation on the Appellant to serve the notice of appeal, it does not provide a timeframe within which to do so. It is trite law that the role of court is not re-write the law or infer fanciful or extraneous interpretations into plain provisions of the law, but rather to interprete and apply the meaning reasonable deductible from the provisions.

d) There not being a timeframe within which to serve the Notice of Appeal, it follows that such Notice of Appeal ought to be served within a reasonable time. Where the law does not impose clear timelines for undertaking an act, the same ought to be undertaken within a reasonable time, and what constitutes a reasonable time is a question of fact and subject to the circumstances of each case. The preliminary objection was dismissed.

e) The Respondent raised a preliminary objection that the Appellant was in contempt of court for having demanded for tax after the TAT ruling. However, this contempt prayer was withdrawn after the Appellant provided proof that the issue had been cleared.

<u>Grounds 1, 2 & 3- The Penal Tax Assessment:</u>

f) Section 14(4) of the Tax Appeals Tribunal Act (TAT Act) requires for there to have been an objection to an assessment before an application for review of the objection decision can be preferred before the Tax Appeals Tribunal. This is because the above provision confines the taxpayer to preferring the application for review on the same grounds as were the basis for the objection.

g) If the taxpayer did not object to the assessment, then they cannot object to the same by way of an application for review under Section 14 of the TAT Act. It must be remembered that an application under Section 14 seeks a review of a taxation decision made by the Appellant.

h) In the present circumstances, the application was one for review of an objection decision. It follows that if there is no objection, then there can be no objection decision warranting an application for review.

i) Neither the objection nor the objection decision regarding the Penal Tax Assessment were presented. An Applicant for review before the Tax Appeals Tribunal ought to demonstrate that there is a taxation decision (in this case an objection decision) which ought to be reviewed.

j) The Tribunal having returned a finding of fact that neither the objection nor the objection decision was on record, it out to have found that the assessment was not objected to and the same was correctly raised.

Grounds 1, 2 & 3 of the Appeal were allowed.

Grounds 4 & 7:

k) Court first reframed Ground 4 as follows, 'The Honourable Members of the Tax Appeals Tribunal erred in law when they held that where the activities of a taxpayer give rise to taxable income where a person is not an agent or employee of the principal offender, there would be need for a conviction or conclusive proof implicating the agent in the commission of the crime'.

l) Whether or not a specific quantum of income obtained from legitimate or illegitimate means is taxable, is a question of applying the relevant provisions of the Income Tax Act to the specific facts of the case.

m) Court will not render a broadly applying rule here, as income generating activities are by their nature varied, complex and nuanced and need to be dealt with on a case by case basis. However, what is clear is that there is no basis for asserting that incomes earned from illegal activities are by that fact alone, not taxable.

n) The relevant forums retain their mandate to investigate whether any income whatever the source is taxable, if so, in whose hands, at what rate, with what deductions (if any) and who bears the burden to report the tax. This process requires an investigation of the relevant facts and affairs of the taxpayer and an examination of facts demonstrated by evidence as against the applicable law.

> *The Commissioner can reject taxpayer accounting or representations where the same are part of a tax avoidance scheme or which have no substantial economic effect, or which do not reflect the true substance of the transaction.*
>
> **-Hon. Justice Thomas Ocaya-**

o) However, there can be no basis in law for asserting that the Income Tax Act only charges income tax on proceeds from lawful enterprises or activities. The Income Tax Act charges income tax on all income stated to be taxable under the Act, notwithstanding the source, in accordance with the relevant provisions of the Income Tax Act.

p) Court stated that it had not seen a legal provision requiring advocates to verify the authenticity of documents provided to them by clients applicable to the instant proceedings.

q) Advocates, except if so required by law or the specific circumstances of the case, do not often inquire into the validity and/or completeness of documents provided by clients. Instead, advocates will typically execute their instructions on the basis of the understanding that the documents or information provided by the client is genuine and/or complete.

r) Therefore, the mere fact that a lawyer was engaged in a transaction where some documents turned out to be forged doesn't not necessarily mean the advocate is culpable, or that he forged them or that he was aware of the same.

s) However, in the present case, Court found evidence of circular payments to clients in a clearly fraudulent manner.

t) Accordingly, from the evidence on record, it is clear that the documents on record were clearly used by the Respondent to mask the correct character of the assessed incomes as belonging to Trimceke Group Limited which was under the direct control of the Respondent, or at least the Respondent and others.

u) The evidence on the record leaves no doubt that the forgery of the above identity card is to the effect that the persons presented as being the principal officials of the Trimceke were not indeed the persons so named whose identity cards and names have been revealed but indeed the Respondent alone or together with others.

v) It therefore follows that the income supposedly presented as being the property of Trimceke and therefore subject to the beneficial interest of the above-mentioned person actually belonged to the Respondent.

w) As correctly submitted by the Appellant, the above constituted indirect payments which were correctly recharacterized by the Appellant.

x) Accordingly, Court found that these two grounds of Appeal succeed and that the Appellant correctly levied an Income Tax Assessment on USD 426,730 being the funds rightly attributed to the Respondent.

Grounds 4 & 7 were allowed.

Ground 5:

y) The Court stated that this ground required it to examine three questions sequentially; (a) Can an appellate court entertaining an Appeal on a point of law consider a ground relating to ignoring/failing to consider evidence? (b) If so, can the court make findings in substitution of the finding of fact of the lower court, if it were to find that this was necessary? (c) If both questions above are answered in the affirmative, did the Tax Appeals Tribunal ignore the impugned transactions and if so, what effect does this have on its decision?

z) Section 91(1) of the ITA empowers the Commissioner to disregard the *"look of things"* in preference for *"what things actually are"*. This means that the commissioner can reject taxpayer's accounting or representations where the same are part of a tax avoidance scheme or which have no substantial economic effect, or which do not reflect the true substance of the transaction.

aa) The provision aims at having accurate representation of taxpayer affairs and avoiding of creative accounting or non-factual structuring or documentation of transactions.

ab) In exercise of that power, the Commissioner or their delegate will reject the transaction as stated and reclassify the same, assigning tax losses or gains or

liability to the party who ought to bear it if at all, from the evidence. In the instant case, the Respondent received the money and masked its use by presenting it as paid to Mr. Wickham. It, having been demonstrated that the payment to Mr. Wickham was, on the balance of probabilities fictious, it means the Respondent retained the proceeds as income.

ac) The court considered the transactions involving BHF Technologies, Weei TA Engineering and Trimceke which were not considered by the Tribunal and made the following findings:

(i) The agreements involving Trimceke were signed by Mr. Kagawa Yamato who is the same person that received money from Balondemu & Co. Advocates on behalf of Trimceke.

(ii) The use of a different acknowledgment stamp did not make Trimceke a non-existent entity.

(iii) There was no proof that the identity cards and passports of the promoters of Trimceke were fake.

(iv) Whereas there is no rule requiring directors of a company to sign all contracts or deeds of acknowledgement on behalf of a company, Mr. Yamato and Mr. James Ssali were not directors, this makes them personally liable.

(v) There is no evidence that the Applicant (now Respondent) is an accomplice.

(vi) Documents in the Respondent's Trial Bundle provide conflicting reasons for non-delivery of goods. Owing to the above, there is no evidence that this was a criminal activity rather than, for instance, a breach of contract.

ad) Payments of the sale of generators was not the income of the Applicant (now Respondent) as they were money paid to his clients and there is no evidence to show that he used his legal business to propagate a legal scam to benefit himself.

ae) Court agreed with Counsel for the Appellant that the Tribunal only considered transactions involving Trimceke. The Tribunal did not assess the veracity of the rest of the above allegations and render a decision on them. In doing so, there was an error of law and it falls on the High Court on appeal to correct that error by assessing the evidence on the record and returning a decision.

af) Any income which was received by the partnership is taxed in the hands of the partners who will have received a portion of the same as spelt out in the partnership deed and/or any other agreements, policies or practices regulating such matters.

ag) However, in the instant case, the evidence led by the Appellant which is on the record is that the Respondent specifically handled all the impugned transactions, used the business of the firm to undertake and mask the transactions and derived the benefit of them. Court stated that it had considered the testimony of the Respondent in which he asserted that on a number of transactions, he was only a signatory to the account and was drawing money that was disbursed or handled by other parties. Court found this testimony uncompelling because:

(i) There is no plausible explanation why the Respondent remained associated with the firm after he purportedly left and started a new firm. Whereas the Respondent testified that it was for "business development purposes" it is strange that the Respondent would continue doing business development for a firm which was essentially competing with his new firm.

(ii) The Respondent did not present a shred of correspondence indicating these requests for payments to be made in which he was only a signatory to the disbursement of funds and was not involved in the transactions. Not even the Respondent's former partners testified to the same.

(iii) The payments especially Weei Ta Engineering and Construction and BHF Technologies Limited SDN BHD were to Trimceke Group which was, prior to the admission of new partners, represented by the Respondent and there is no evidence that on the admission of the new partners, this client was served by a different partner or advocate.

(iv) The Respondent as an advocate should have been able to require explanations for the disbursement of these funds and reject participation if the above inconsistencies already pointed out were not resolved and his not taking is only consistent with the hypothesis that he was the actual participating partner undertaking the above transactions.

ah) Court found that the above transactions having been operated and/or run by the Respondent for his benefit, it follows that it is he, and not he together with his partners, that is assessable for tax. Owing to the findings above.

Ground 5 of the Appeal succeeded.

Ground 6:

ai) Court agreed with the proposition of law that in applications for review of a taxation decision, the burden of proof is on the Applicant, in this case the Respondent.

aj) Court stated that this must however be distinguished from the evidential burden of proof, which shifts when a case to the requisite standard is made out by a party. The Appellant is not a static or silent participant in tax proceedings, once a party makes out an assertion to the requisite standard, the evidential burden of proof shifts to the Appellant to disprove that assertion, even though the legal burden of proof does not shift. If this wasn't so, a party applying for review would be grossly prejudiced as allegations which have then made their way into a basis for the taxation decision and objection decision need to be only dealt with by one party rather than both.

ak) Further, with regard to the Income Tax Assessment, the Respondent led evidence to the satisfaction of the Tribunal that the impugned transactions dealt with money which he only held as a trustee for his clients, and accordingly, that the said monies were not his income. Again, this shifted the evidential burden on the Respondent to demonstrate otherwise. The Tribunal noted, with regard to the Trimceke transactions considered, that the Respondent's investigation and evidence did not demonstrate to the requisite standard that the beneficiary of these transactions was the Respondent who is entitled to account for tax on the same.

al) Court held that this was not the Tribunal changing the legal burden, but assessing the quality and cogency of the evidence adduced by the Appellant when the evidential burden shifted.

This ground of appeal was resolved in favour of the Respondent.

Ground 8:

am) A company is an artificial person. It does not have a body of its own. Accordingly, officials and/or employees of the company lend their body to a company and become the conduit through which the company takes actions and exercises its rights.

an) Section 59 is an example of a law that regulates how documents requiring authentication by a company (which is an exercise of the personality of the company and its attendant rights) is undertaken. Essentially, any officer of the company so authorized may sign documents for and on behalf of a company.

ao) Accordingly, it follows that any person nominated by the company, or impliedly nominated, can sign documents on behalf of the company.

ap) In the present case, a person not being a director could lawfully sign the acknowledgments of receipt of money. The question of who is empowered to take what action on behalf of a company can do is a question for the company itself and the law.

aq) Therefore, the fact that a person other than a director signed acknowledgments on behalf of a company did not by that fact alone, make those acknowledgments illegal or irregular. Without a clear legal provision demanding so, a taxpayer does not owe URA perfect documents. What however the taxpayer owes is to comply to the law and account for all tax payable.

ar) Where there are imperfections with the documents (lack of signatures, dates, stamps and so on), those documents can still be relied on as long as it is shown that such documents set out the transaction/matter with some clarity and are authentic.

as) Accordingly, a wrong stamp cannot, for that reason alone, be the basis for asserting that a document is forged and therefore attaching tax liability to a person. One must show that these irregularities are indeed evidence of fraudulent scheme or non-compliance rather than the imperfections alone being both the cause and proof of such fraud or non-compliance. Court held that from the above, there is no error in the decision of the tribunal on this ground and found for the Respondent.

The Appeal succeeded on grounds 1, 5 and 7 and failed on grounds 6 and 8. The decision of the Tribunal was vacated and Two Thirds (2/3) of the taxed costs of these proceedings and the proceedings before the Tax Appeals Tribunal were awarded to the Appellant.

Head Notes:

Court's Power to Review its Decision – Error Apparent on the Face of the Record

Brief Facts:

The Respondent filed Civil Appeal No. 0042 of 2022 seeking orders to set aside the Tax Appeals Tribunal Ruling under which their Application for review of the tax liability was dismissed. On 5th October, 2023 the High Court delivered its Judgment and ordered that costs of the application be awarded to the "Applicant" instead of "Appellant". The Applicant filed this Application seeking a review of the Judgment.

Ruling by the High Court:

(Hon. Lady Justice Patricia Kahigi Asiimwe)

a) Section 99 of the Civil Procedure Act Cap 282 provides that clerical or mathematical mistakes in judgements, decrees or orders, or errors arising in them from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties.

b) Black's Law Dictionary 11th Edition, Page 683 defines a clerical error as *"an error resulting from a minor mistake or inadvertence, especially in writing or copying something on the record, and not from judicial reasoning or determination."*

c) The use of the words "Application" and Applicant instead of "Appeal" and "Appellant" respectively was a clerical error and there is no contention about it.

d) This is an application that could have been brought under the slip rule.

e) Court in its wisdom determined that having set aside the decision of the Tribunal, the Appellant was a successful party.

Court exercised its power under section 98 of the Civil Procedure Act and corrected paragraph 31 of the Judgment.

Head Notes:

Taxable Person – Taxable Supply as Part of a Person's Business Activities – Entitlement to Input Tax Credit

Brief Facts:

The Respondent is a company incorporated in Uganda, whose primary business is waste management and disposal. The Respondent was registered for Value Added Tax (VAT) and issued with a Certificate of Registration effective 1st October, 2013. From October 2013 to June 2014, taxable supplies were made from which the Respondent applied for a VAT refund of UGX 2,553,724,387. The Appellant carried out a VAT refund audit where it disallowed a VAT refund claim of UGX 123,930,226 arising out of the VAT imposed on the variance between the sales in the audited financial statements and submitted VAT returns for the Year ended 30th June 2016.

The Respondent further challenged the input VAT credit of UGX 285,972,969 for the Period October 2013 to June 2014 and UGX 90,286,003 arising from input VAT charged by its suppliers between January 2015 and June 2016, on grounds that the invoices were not verified. The Respondent then filed TAT Application No. 024 of 2017 where the parties entered into and filed a partial consent dated 2nd August 2018. Consequently, the amount in dispute between the parties was reduced to UGX 500,188,925 and the Appellant being dissatisfied with the Ruling of the Tribunal, filed this Appeal.

Grounds of Appeal:

1. The Tax Appeals Tribunal erred in law in holding that the Respondent satisfied the conditions for entitlement and was entitled to input VAT credit from the Respondent under Section 28(1) of the VAT ACT, whereas not.

2. The Tax Appeals Tribunal erred in law in not applying Section 25(1) and Paragraph 1(b) of the Fourth Schedule to the VAT Act to the dispute, thereby coming to an erroneous finding that the Respondent was entitled to input VAT credit, whereas not.

3. The Tax Appeals Tribunal erred in law in holding that the Respondent is entitled to input VAT credit of UGX 123,930,226 contrary to the issue framed by the Tribunal.

4. The Tax Appeals Tribunal erred in law in holding that the Respondent is entitled to input VAT credit of UGX 123,930,226 contrary to its finding that the Respondent had not accounted for output VAT giving raise to the input VAT credit.

5. The Tribunal erred in law in failing to properly evaluate the evidence on record, thereby coming to erroneous holdings and conclusions relating to entitlement to input VAT that:

    a) Some of the invoices were properly declared by the Respondent to the Appellant, whereas not.

    b) The Respondent presented evidence of payment of input VAT whereas, not.

Judgement of the High Court:

(Hon. Lady Justice Susan Abinyo)

Preliminary Objection:

a) Counsel for the Respondent raised a preliminary objection that the grounds of appeal offend provisions of Section 27(2) of the Tax Appeals Tribunal Act.

b) Section 27(2) of the Tax Appeals Tribunal Act provides as follows: "*An appeal to the High Court may be made on questions of law only and the notice of Appeal shall state the question or questions of law that will be raised on the appeal*".

c) The legislature intended to leave questions of fact such as assessment to the professionals and reserve to Courts only points of law for determination. The phrase "an error of law" refers to instances where there is no evidence to support a finding or where the evidence contradicted the finding or where the only reasonable conclusion contradicted the finding.

d) Grounds 1, 3, 4 and 5 were dismissed.

Ground 2:

e) "Input tax" means the tax paid or payable in respect of a taxable supply to or an import of goods or services by a taxable person under section 1(1) of the VAT Act.

f) A taxable person is defined under Section 6 of the Act to mean a person registered under Section 7 and takes effect from the time of registration and or a person who is not registered, but who is required to be registered or to pay tax under the Act,

from the beginning of the tax period immediately following the period in which the duty to apply for registration or to pay tax arose.

g) Court took into consideration the fact that the Respondent was registered for Value Added Tax on 1st October 2013 and issued a certificate of registration as required under Section 8(2) and (4) of the VAT Act.

h) Section 18 of the Act defines taxable supply to include a supply of goods or services, other than an exempt supply made in Uganda by a taxable person for consideration as part of his or her business activities.

i) A supply is made as part of a person's business activities if the supply is made by him or her as part of, or incidental to, any independent economic activity he or she conducts, whatever the purposes or results of that activity.

j) The Tribunal correctly found that criteria for a person to be entitled to input tax credit in accordance with Section 28 of that Act is that the Applicant was a taxable person, taxable supplies were made to the Applicant (now Respondent) during the tax period and that there is no contention that the supplies to the Applicant were not for use in its business.

k) The provision of Section 7(1) (c) of the Act, on the period of more than three calendar months applies only where there are reasonable grounds to expect that the total value exclusive of any tax of taxable supplies to be made by the person will exceed the annual threshold set out in subsection (2) thereof, which is one hundred and fifty million shillings.

l) The above should be construed to apply to the period of three calendar months subsequent to the beginning of a tax period and remains open for a normal year (annual) and not indefinitely in this case twelve (12) calendar months.

m) Tax legislation is strictly applied and interpreted according to the language with no implied meaning or presumptions.

n) The Tribunal found that the Respondent proved that it incurred Input VAT of UGX 285,972,696 for the period October 2013 to June 2014 and they were satisfied that they were for use in the Applicant's business.

o) Therefore, under Section 28(1), the Applicant would be entitled to input VAT for all the taxable supplies made during a tax period.

p) Court agreed with the Respondent that Section 28(8) applies to a taxable person who deals in supplies that are either zero rated and standard rated or standard rated, zero rated, and exempt and therefore not applicable to the Applicant.

q) The conclusion that the Respondent did not properly account for VAT of US$ 46,690 for the year ending 30th June 2015 was a failure by the Tribunal to properly evaluate the evidence and does not amount to an error of law.

r) To determine when the VAT liability of the Applicant arose in respect of the tax period between June 2015 to July 2015, depends on the circumstances of the case on account of Section 34A (1) (c) and 14(1)(3) of the Act.

s) In addition, the formula specified in Section 1(b) of the Fourth Schedule as provided above under Section 25 is relevant to the calculation of the tax payable by a taxable person for the tax period.

t) What amounts to a tax period in accordance with the Act is calculated every month from the time of registration, when the person is registered under Section 7 and

where a person is not registered but is required to be registered or to pay tax under this Act, from the beginning of the tax period immediately following the period in which the duty to apply for registration or to pay tax arose.

u) The duty to apply for registration or to pay tax arises when a taxable value in relation to a taxable supply or an import of goods or services has been determined under Part VI of the Act.

v) The question of double taxation and delay in payment would not arise, since some of the transactions in the returns for June 2015 were filed in the subsequent month of July 2015 when they were complete.

w) The directive by the Tribunal to the Respondent to have the input VAT severed from the previous months of June 2015 and July 2015 was proper in the given circumstances, taking into further consideration the provision of Section 7(1) (c) of the Act as explicated above and the formula specified in Section 1(b) of the Fourth Schedule as provided above under Section 25 of the Act.

x) The Respondent had decided to file their returns in July 2015, which partially arose in June 2015, it would neither amount to double taxation nor delay since the said returns could be severed from the two months of June and July, 2015 as directed by the Tribunal.

The Appeal was dismissed, the decision of the Tribunal upheld and costs were awarded to the Respondent.

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UGANDA REVENUE AUTHORITY VERSUS JOLLY BUSINGYE & 2 OTHERS, LABOUR DISPUTE MISC.

Application No. 69 of 2022 (Arising from Labour Dispute Claim No. 008 of 2018)

CASE DIGEST VOLUME IX

Head Notes:

Considerations for an Application for Stay of Execution of a Court Order

Brief Facts:

The Respondents, the Applicant's erstwhile employees, were accused of fraudulent validation of consignment and tampering with the Asycuda++ System. On 24th February 2022, the Industrial Court declared their termination as wrongful and unlawful and awarded a sum of over 807,739,530. Dissatisfied, the Applicant filed a Notice of Appeal. On 19th April 2022, the Respondents' counsel sought execution by way of attachment and garnishment for a total of UGX 825,579,408. On 27th April 2022, the Learned Registrar of the Industrial Court issued a notice to show cause why execution should not issue against the Applicant.

The Applicant filed this Application seeking an order of stay of execution of the decree or orders in the Labour Dispute pending the hearing and determination of the intended appeal.

Ruling of the Industrial Court:

(Hon. Justice Anthony Wabwire Musana; Panelists: Hon. Adrine Namara, Hon. Susan Nabirye, Hon. Michael Matovu)

a) The corpus of authorities laying out the principles governing a grant of stay of execution is both extensive and expansive. They can be summarized to the effect that the Applicant seeking an order of stay of execution must establish that:

(i) Their appeal is not frivolous or has a likelihood of success;
(ii) They will suffer substantial loss/irreparable damage;
(iii) The Appeal will be rendered nugatory if a stay is not granted;
(iv) The Application was instituted without undue delay;
(v) There is a serious or imminent threat of execution of the decree; and
(vi) The refusal to grant the stay would inflict more hardship than it would avoid.

b) Counsel agreed that the present application was instituted without undue delay and Court decided that it was satisfied of the same.

c) There is judicial consensus that filing a notice of appeal demonstrates the intention to pursue the appeal. However, is there likelihood of success of the appeal?

d) In the present case, a draft memorandum of appeal indicates possible grounds for appeal on the salary award until the end of the contract. This matter would require further juristic attention on the strength of several authorities of both the Industrial Court and Appellate Courts. The intended appeal is not frivolous.

e) Regarding substantial loss, court rejected the Respondents' argument that the Applicant's fear of recovery of the decretal sums should execution issue and the appeal is decided in its favour, is without foundation. It is a grounded fear and Court found that the Applicant's fear plausible in the present application.

f) Regarding imminent threat, the Respondents applied for execution by attachment and garnishment. Court held that it was satisfied that the application for execution and the Notice to show cause constitute an imminent threat of execution.

g) As to whether the refusal to grant the stay would inflict more hardship than it would avoid, the shift of the burden to show that a refund of UGX 800,000,000 will be possible should the appeal go against the Respondents, was not met. In these circumstances, court was inclined to view that the Applicant satisfies this test.

h) On security for the decree's due performance, the Industrial Court's practice is for conditional grants of stay of execution.

The Application was allowed and the Applicant was directed to deposit security for due performance in the sum of UGX 247,500,000 within 45 business days of the Order.

20 UGANDA REVENUE AUTHORITY VERSUS K FILES LTD

High Court Civil Appeal No. 0028 of 2022
(Arising from TAT No. 069 of 2021)

CASE DIGEST VOLUME IX

Head Notes:

Application of Sections 38 & 40C of the Tax Procedures Code Act – Section 65A of the Value Added Tax Act – Priority of Payments – Waiver of Interest and Penalties

Brief Facts:

The Respondent is engaged in the business of records management and offsite storage. The Appellant conducted a review of the Respondent's tax status and established unpaid Value Added Tax (VAT) of UGX 103,684,531 as principal tax due and payable. On 8th July 2021, the Appellant issued a reminder notice demanding VAT of UGX 103,684,531. On 13th July 2021, the Respondent objected to the reminder notice. On 15th July 2021, the Appellant made an objection decision disallowing the objection on the ground that the demand notice had considered all provisions of the law including Section 65A (1) and (2) of the VAT Act, Sections 38 & 40C of the Tax Procedures Code Act, 2014. The Respondent applied for a review of the matter to the Tax Appeals Tribunal, which delivered its Ruling allowing the application, hence this Appeal.

Grounds of Appeal:

1. The Honourable Chairman and members of the Tax Appeals Tribunal erred in law when they misinterpreted Section 38(1) & (2) of the Tax Procedure Code Act, thus reaching a wrong conclusion that the Appellant/URA had misapplied the Respondent/taxpayer's payments towards penal tax and interest instead of the principal tax, whereas not.

2. The Honourable Chairman and members of the Tax Appeals Tribunal erred in law when they misinterpreted Section 65A (1) of the VAT Act, thus reaching a wrong conclusion that any outstanding interest and penalty as at 30th June 2017 was waived whereas Section 65A (1) of the VAT Act only waived interest that exceeds the aggregate of principal and penalty.

3. The Honourable Chairman and members of the Tax Appeals Tribunal erred in law when they failed to properly evaluate the evidence on record, thereby erroneously finding as follows:

   (a) That Section 38(2) of the Tax Procedures Code Act states that if a taxpayer has more than one tax liability at a time, it implies that Section 38(1) thereof is referring to a total amount of a specific tax, whereas not.

   (b) That it was the Respondent/taxpayer's construction that Section 38 (1) of the Tax Procedures Code Act means that in cases where an amount paid by a taxpayer is not sufficient to cover the entire amount of principal tax first, then the amount remaining should be applied to the penal tax and the balance towards the payment of interest, whereas the said construction was of the Appellant/URA and not that of the Applicant, thereby wrongly allowing the Application.

(c) That a perusal of the Respondent/taxpayer's VAT ledger shows that the payments made by the taxpayer were applied towards the payment of penal tax and interest instead of principal tax, thereby reaching a decision contrary to Section 38(1) & (2) of the Tax Procedures Code Act and Section 65A (1) VAT Act that has an effect of the taxpayer only paying principal tax and not paying any interest and penalty.

(d) That the Appellant should have notified the Respondent/taxpayer on any interest liability, whereas not.

(e) That what the Respondent/taxpayer calls interest and penalty outstanding is what the Appellant calls principal tax outstanding, whereas not.

4. Whether the Honourable Chairman and members of the Tax Appeals Tribunal erred in law in setting aside the outstanding VAT of UGX 103,684,531, without legal basis.

Judgment of the High Court:

(Hon. Lady Justice Susan Abinyo)

Preliminary Objections:

a) The Respondent raised preliminary objections on points of law to the effect that the Appellant's appeal was lodged out of time; and that grounds 3 and 4 of the Notice of Appeal are defective and ought to be struck out.

> *The Tribunal erred when it gave Section 40C of the TPCA a retrospective application in total disregard of Section 38(1) and (2) of the TPCA that existed prior to 30th June 2020 when section 40C was enacted.*
>
> **-Hon. Justice Susan Abinyo-**

b) The Court found that the Notice of Appeal filed through ECCMIS on 30th June 2022, after the lapse of 28 days from the date of 2nd June 2022, when the Ruling was delivered by the Tribunal, was within the prescribed period of 30 days. Accordingly, the preliminary objection was dismissed.

c) Grounds 3 & 4 of the Appeal were struck out.

Ground 1

d) Section 38 of the Tax Procedures Code Act (TPCA) before the amendment in 2017 provided as follows:

38. Order of payment

(1) 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—

(a) in payment of the principal tax;

(b) in payment of penal tax; and

(c) the balance remaining is applied against the interest due."

(2) If a taxpayer has more than one tax liability at the time a payment is made, subsection (1) applies to the earliest liability first.

e) Section 40C of the TPCA, which was introduced by the Tax Procedures Code (Amendment) Act, 2020 provides that, *"Any interest and penalty outstanding as at 30th June 2020, is waived".*

f) The period of review for the Respondent's tax liability from 2010 to 2021. The TPCA was enacted in 2014 and its commencement was gazetted on 1st July 2016, which implies that Section 38(1) of the TPCA became effective on 1st July 2016; the practice before the period of 1st July 2016 was indicated by the Appellant, which was not in contention.

g) The application of Section 38 of the TPCA by the Tribunal before the amendment in 2017 dealt with the allocation of payment on tax liability, where the said taxpayer makes payment that is less than the total amount of tax, penal tax and interest due, and Section 40C, which was introduced in the amendment of 2020, waived interest and penal tax that was outstanding as at 30th June 2020, which partly covered the period under review of the Respondent's tax liability except the period of 1st July 2020 to 30th June 2021.

h) Court agreed with the submission of Counsel for the Appellant that the Tribunal erred when it gave section 40C of the TPCA a retrospective application in total disregard of Section 38(1) and (2) of the TPCA that existed prior to 30th June 2020 when Section 40C was enacted.

i) It's trite law that tax legislation is strictly applied and interpreted according to the language with no implied meaning or presumptions.

j) The Courts, therefore, rely on the plain meaning of the words used however, where the words are unclear and ambiguous, the purpose of the law is considered (Purposive approach), as can be discerned from the Parliamentary deliberations in the Hansard.

k) Court found that the Tribunal considered the question of what was the purpose of the amendment although, the purpose could not be established from the Hansard, and arrived at the conclusion that once there is ambiguity in the words used in a statute, such ambiguity should be resolved in favour of the taxpayer and found in favour of the Respondent.

l) Consequently, Court found that Section 40C of the TPCA only applied as at 30th June 2020 and not to the entire period under review. Court partly faulted the Tribunal in their finding on the retrospective application of Section 40C of the TPCA to the entire period under review yet the period of 1st July 2020 to 30th June 2021 was not covered by the 2020 amendment to the TPCA as above.

Ground 1 of the Appeal partly succeeded.

<u>Ground 2:</u>

m) Section 65A of the Value Added Tax (hereinafter referred to as "VAT" Act) which was introduced by the VAT(Amendment) Act, 2017 provides that:

"1) The interest due and payable on unpaid tax shall not exceed the aggregate of the principal and penal tax.

2)For avoidance of doubt, where the interest due and payable as at 30th June 2017 exceeds the aggregate referred to in subsection (1), the interest in excess of 40 the aggregate shall be waived."

n) From reading the above provision, Court found that the 2017 amendment to the VAT Act waived interest that was outstanding where it exceeded the aggregate of principal and penal tax as provided under Section 65A thereof.

o) From the chronological analysis of the facts by the Tribunal in its Ruling, and the reasons for the objection by the Respondent above, Court stated that it was certain that the Tribunal meant Section 65A of the VAT Act, and not Section 65 of the VAT Act.

p) It is settled law that where an application omits to cite any law at all or cites the wrong law but the jurisdiction to grant the order exists, the irregularity or omission can be ignored and the correct law inserted.

q) The applicability of Section 65A of the VAT Act was based on the fact that the Respondent herein was assessed VAT of UGX 15 103,684,531 by the Appellant. The Appellant argued that the said outstanding tax was the Respondent's VAT liability as at July 2021. The Respondent contended that it made payments on the PRN generated from the self-assessments, and adduced evidence to prove that it did not have any outstanding tax liability as claimed by the Appellant.

r) Court considered the provision of Section 28(3) of the TAT Act, in which the High Court derives its powers to hear and determine the appeal, which arises from the decision of the Tax Appeals Tribunal, and to make orders as it thinks appropriate by reason of its decision, including an order affirming or setting aside the decision of the Tribunal or an order remitting the case to the Tribunal for reconsideration.

The Appeal succeeded and Court made orders partly setting aside the decision of the Tribunal on grounds 1 and 2 to the extent of the period 1st July 2020 to 30th June 2021. The dispute was referred back to the Tribunal to exercise its discretion to refer the matter back to the Commissioner General for re-assessment of the Applicant's tax liability. The Appellant was awarded one third of the costs of the Appeal.

Head Notes:

Approbation and Reprobation – Preferential Treatment under the COMESA Protocol - Verification of Certificates of Origin

Brief Facts:

This matter arose from an assessment by the Appellant wherein they stated that the Respondent's conduct was a violation of the preferential tariff treatment principles and thereby made an assessment of taxes due from the Respondent amounting to UGX 4,623,958,639/= The Respondent objected to assessment and a decision was made by the Appellant disallowing the objection. Aggrieved by this objection, the Respondent applied to the Tax Appeals Tribunal, and on 6th April 2023, the Tribunal found that the Respondent is entitled to preferential treatment for the suit goods imported from Egypt and set aside the Appellant's assessment, hence this Appeal.

Grounds of Appeal:

1. The Honourable Members of the Tribunal erred in law when they failed to properly evaluate the evidence on record in respect to approbation & reprobation and departure from pleadings, thereby reaching an erroneous decision.

2. The Honourable members of the Tribunal erred in law by relying on the ruling of TATA versus URA, TAT No.62 OF 2019 which are distinguishable from the present matter.

3. The Honourable Members of the Tribunal erred in law when they held that the Appellant did not have any reasonable ground to doubt the certificates of origin issued to the Respondent.

4. The Honourable Members of the Tribunal erred in law in allowing the Application to set aside an import duty assessment of UGX 4,623,958,639 without legal basis.

Judgment of the High Court:
(Hon. Justice Richard Wejuli Wabwire)

Ground 1:

a) Counsel for the Appellant submitted that the Respondent departed from their pleadings when from the onset, they argued that the COMESA certificates of origin ought to have "V" as the origin criteria, yet at submission stage, they argued that in the alternative, even if the Certificate of Origin was supposed to be "X", this would still entitle the Respondent to preferential treatment.

b) Approbation and reprobation is a legal principle which stipulates that, a party cannot accept and reject the same set of facts or benefits simultaneously to their advantage. A plaintiff with two conflicting claims must choose one and cannot later switch to the other. This rule does not apply if the claims are not inconsistent or if there is no clear intent to abandon one of them.

c) Paragraph 14.1 of the Respondent's Application to the Tribunal states that, *"The categories of X (change in tariff heading) or V (Value Added) with respect to imports from Egypt are both entitled to preferential tax treatment (Rule 2(1) (b) (ii) and Rule 2 (1) (b) (iii) of the protocol on the Rules of Origin".*

d) The principle of approbation and reprobation could come into play if the Applicant had been seen as trying to benefit from two inconsistent positions. However, in context the Applicant is not necessarily rejecting one benefit in favour of another but rather presenting a conditional argument.

e) The implication of this is regardless of whether the specific certificate "X" was submitted, the underlying entitlement to preferential treatment remains valid. As a result, no taxes should have been assessed against the Applicant.

Ground 1 failed.

Ground 2:

f) In the cases of TATA and BAT Vs. URA, it is true that they involve disputes where an admission of error was made. However, this is not the only issue discussed.

g) The TATA V URA (supra) deals with the proper classification of goods under COMESA certificates of origin for goods imported from Egypt in 2017. The use of the wrong letter resulted in denial of preferential treatment under COMESA and the subsequent tax assessments.

h) Similarly, the dispute in BAT V URA also centres on the classification of goods on certificates of origin under the EACCMA and the related tax assessments.

i) The taxes assessed in these cases resulted from alleged misclassification of goods and highlight key principles of preferential treatment under the COMESA protocol on Rules of Origin and East African Community Customs Union (Rules of Origin) 2015, similar to the current case.

j) BAT V URA and TATA V URA are therefore not distinguishable from the present matter, and the Tribunal was correct in following it.

Ground 2 failed.

Ground 3:

k) Counsel for the Appellant submitted that the Respondent failed to provide information to verify that they were entitled to preferential treatment under the guise that the information from the taxpayer was regarded as a trade secret, whereas not. Further, that the Respondent failed to demonstrate that the value added from the process of production amounted to at least 35% of the ex-factory cost of the finished product so as to qualify for value addition of the origin criteria.

l) The Appellant being a tax body was in a better position to raise a formal query with the designated authority of the exporting member state for verification of the evidence of the origin. However, no such query was raised but the Appellant went ahead to recall preference without sufficient evidence to prove the Respondent's allegations otherwise, despite having no doubt that the goods in question originated from Egypt.

m) Court agreed with the Tribunal's finding that the decision of the Appellant to deny the Respondent preferential treatment was arbitrary and irrational in nature considering the right to a fair hearing.

Ground 3 failed

Ground 4:

n) Once the Appellant began to have doubts about the certificates of origin provided by the Respondent, they should have adhered to the proper procedure outlined by the COMESA Rules of Origin to verify these certificates, however, the Appellant did not conduct any such verification.

o) Court further agreed with the Tribunal's conclusion that the Appellant had no grounds to question the Respondent's certificates of origin without verifying the actual imported goods.

p) Given that the Respondent submitted the correct certificate, they were entitled to the stipulated benefits, including tax exemptions.

q) Court found that the Tribunal was justified in setting aside the tax assessment of UGX 4,623,958,639.

The Appeal failed and the orders of the Tax Appeals Tribunal were upheld with costs to the Respondent.

22 UGANDA REVENUE AUTHORITY & ANOTHER VERSUS OOLA SAMUEL

High Court Civil Appeal No. 0058 of 2019
(Arising from Nakawa Grade One Magistrate's Court Civil Suit No. 0665 of 2017)

CASE DIGEST VOLUME IX

Head Notes:

Jurisdiction to Entertain Tax Disputes

Brief Facts:

During or around March 2017, the Respondent imported a 1991 model, Honda Motorcycle 600cc, Chassis No. 460000323 from the United Kingdom. He insisted that it be transferred into his names before he could clear import duties. On 12th January, 2017, the Respondent secured a Court Order directing the 1st Appellant (URA) to register the motorcycle in the Respondent's name, whereafter, he received an assessment of UGX. 1,693,972 which he paid on 22nd September, 2017 plus demurrage charges of UGX 1,500,000. He made attempts to secure the release of the motorcycle but was informed that it had been sold at a public auction conducted by the 2nd Appellant on 18th October,2017 at the 1st Appellant's instance. He filed a suit at the Grade One Magistrate's Court of Nakawa against the Appellants and the proprietor of the customs bonded warehouse seeking recovery of USD 720 being the value of the motorcycle, UGX 1,693,972/= being taxes and stamp duty paid, special damages of UGX 4,300,000, general damages and costs.

When the suit came up for hearing, the Appellants raised preliminary objections contending that this being a tax dispute, the Grade One Magistrate's Court lacked subject matter jurisdiction to entertain the suit. Counsel for the Appellants argued further that the 2nd Respondent enjoyed immunity from being sued for actions undertaken in the course of discharge of his duties as an employee of the 1st Appellant, and therefore had been wrongly joined as a Defendant to the suit.

The Learned Grade One Magistrate overruled both objections. She held that the suit before the court was not a tax dispute but rather a suit for the recovery of the value of a motorcycle that had been sold wrongfully after taxes had been paid, and the related special damages inclusive of the taxes that had ben paid for its clearance. The 2nd Appellant was sued personally on basis of allegations that she had acted in bad faith, fraudulently and illegally in the course of discharge of her duties as an employee of the 1st Appellant. The 2nd Appellant had therefore been correctly joined as a party to the suit. The Appellants were dissatisfied, hence this Appeal.

Grounds of Appeal:

1. The Learned Trial Magistrate erred in law and fact when she held that the Grade One Magistrate's Court has jurisdiction to entertain a tax dispute.

2. The Learned Trial Magistrate erred in law and fact when she held that the second Defendant/ Appellant was properly sued jointly and severally with the 1st defendant/ appellant.

Judgment of the High Court:

(Hon. Justice Stephen Mubiru)

a) As a first appellate Court dealing with an appeal from a decision on a preliminary point of law, because the decision appealed does not require to give weight to any evidence, the High Court has only to consider the law that was supposed to be applied and decide whether or not the trial court made a mistake.

b) Generally speaking, Courts are creatures of the Constitution or Statute and it is the statute that creates a particular Court that will also confer on it, its jurisdiction.

c) The jurisdiction of Courts so created to try suits of civil nature is assumed unless it is taken away either expressly (by enactment) or by necessary implication (based on general principles of law and equity or on ground of public policy).

d) Exclusion of jurisdiction means prevention or prohibition of the Court from entertaining or trying a matter though the dispute is civil in nature, in essence, limiting its ability to discharge its Constitutional mandate.

e) Because of the provisions of Section 208 of the Magistrates Courts Act, a general jurisdiction is conferred on Magistrates' Courts over "all suits of a civil nature" cognizable by those Courts, of which exclusive jurisdiction is not given to some other Court or tribunal.

f) Article 152(3) of the Constitution of the Republic of Uganda, 1995, requires Parliament to make laws to establish tax tribunals, as an administrative appellate body, for the purpose of settling tax disputes.

g) Similarly, Section 231 of the East African Community Customs Management Act, 2004, requires each Partner State, subject to the law in force within the Partner State, to establish a Tax Appeals Tribunal for the purpose of hearing appeals against the Commissioner made under Section 229 of the Act.

h) It is by virtue of the above that Section 2(1) of the Tax Appeals Tribunal Act established the Tax Appeals Tribunal, empowering any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority, to apply to the tribunal for a review of the decision.

i) The jurisdictional facts therefore are; (i) a decision; (ii) made under a taxing Act; (iii) by the Uganda Revenue Authority.

j) Section 3 of the Tax Procedures Code Act, 2014, defines a "tax decision" as; (a) a tax assessment; or (b) a decision on any matter left to the discretion, judgment, direction, opinion, approval, satisfaction, or determination of the Commissioner, other than a decision made in relation to a tax assessment.

k) Section 1(k) of the Tax Appeals Tribunal Act states a taxation decision as any assessment, determination, decision, or notice.

l) Thus, a decision made under a taxing Act by the Uganda Revenue Authority includes any decision, notice, action or omission on a matter that is left to the discretion, judgment, direction, opinion, approval, consent, satisfaction or determination of the Commissioner of Uganda Revenue Authority under any legislation which levies or imposes a tax, that directly affects a person.

m) The decision to auction the motorcycle was taken under Section 42 (1) of the East African Community Customs Management Act, 2004.

n) While Article 139 (1) of the Constitution of the Republic of Uganda,1995, gives the High Court original unlimited jurisdiction, it must be read together with other provisions such as Article 152 (3).

o) It would be inappropriate thus to give the High Court dual jurisdiction as a Court with original and appellate jurisdiction in tax matters while the Tax Appeals Tribunal is just an administrative merits appeal body.

p) The Respondent ought to have invoked Section 14(1) of the Tax Appeals Tribunal Act, by way of application for review of the decision to the Tax Appeals Tribunal and thereby appeal to the High Court, on questions of law only, if dissatisfied with the decision as provided under Section 27 (1) of the Tax Appeals Tribunal Act.

q) The Learned Trial Magistrate therefore misdirected herself when she overruled this ground of objection thereby asserting jurisdiction over the dispute, which jurisdiction is not vested in that Court.

The Appeal was allowed, the findings and orders of the Trial Magistrate were set aside. The Trial Magistrate Court was ordered to transfer the suit to the Tax Appeals Tribunal for final determination of the dispute. Each party to bear its costs.

Head Notes:

Stay of Execution of the Orders of High Court – Res Judicata – Error on the Face of the Record

Brief Facts:

The Respondent challenged the Applicant's tax assessments in the Tax Appeals Tribunal which delivered its Ruling in favour of the Applicant. The Respondent appealed to the High Court which delivered its judgments in favour of the Respondent. The Applicant applied to High Court seeking stay of execution, which application was granted on condition that the Applicant deposits 70% of the sum collected with the Respondent as security for performance within 30 days from the date of the Ruling. The Applicant filed this application in the Court of Appeal seeking a stay of execution on grounds that the High Court Ruling bore an error apparent on the face of the record because it ordered the Applicant to pay the Respondent 70% of the collected amount, which would amount to execution of the orders sought to be stayed.

Ruling of the Court of Appeal:

(Hon. Justice Christopher Gashirabake, JA)

a) According to Rule 42(1) of the Court of Appeal Rules, an application for stay of execution pending appeal to the Court of Appeal must first be filed in the High Court. However, where there is a need to preserve the status quo, the Court of Appeal will consider exceptional circumstances demonstrated by the Applicant. The exceptions were articulated in Lawrence Musiitwa and are that the High Court

is in doubt of its jurisdiction or has some error of law or fact apparent in the face of the record which is wrong or has been unable to deal with the application in good time to the prejudice of the parties or the suit property.

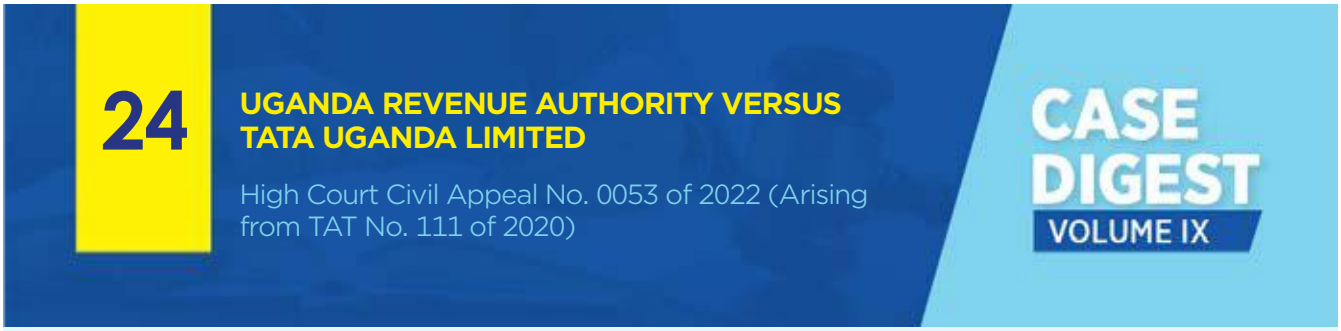
b) An error must be an apparent manifest and self-evident error that does not require an elaborate discussion of evidence or argument to establish.

c) The claim by the Applicant that the order by the High Court was an error and would amount to execution of the judgment is unfounded.

d) The Applicant filed its Application for stay of execution in the High Court as they ought to have done. The Application was conditionally granted. The Applicant did not prove that there was an error on the face of the record as alleged.

e) Court held that this Application is at odds with the doctrine of res judicata.

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



Head Notes:

Certificates of Origin – Preferential Treatment under the COMESA Protocol- Powers of the High Court to Refer a Matter back to the Tribunal for Reconsideration

Brief Facts:

The Respondent in 2017 imported Short Alkayd Resin from El Obour Paints and Chemical Industries based in Egypt for manufacture of oil paint. It declared the origin criterion of the imported products as 'P' and therefore not taxable under COMESA Protocol on Rules of Origin. In or about 2020, the Appellant carried out a customs post review on the Respondent's imports and established that several certificates of origin for the period of 2016 to 2018 from Egypt were defective and were wrongly conferring COMESA preferential tariff treatment to the imported goods i.e. classified origin criterion as 'P' instead of 'X'. The Appellant assessed the goods and found the Respondent liable to pay import duty to the tune of UGX 200,115,987, which the Respondent contested. The Respondent filed an Application before the Tax Appeals Tribunal, which was decided in favour of the Respondent, hence this Appeal.

Grounds of Appeal:

1. The Honourable members of the Tribunal erred in law when they held that the short alkayd resin imports originated from Egypt and were therefore entitled to preferential treatment under the Common Market for Eastern and Southern (COMESA) Protocol on Rules of Origin.

2. The Honourable members of the Tribunal erred in law when they held that the Appellant was not justified in doubting the Respondent's certificate of origin.

Judgement of The High Court:
(Hon. Lady Justice Harrier Grace Magala)

a) This Appeal raises issues of imported goods that are subject to preferential treatment under the Common Market for Eastern and Southern (COMESA) Protocol on Rules of Origin ('The Rules of Origin').

b) The Treaty Establishing the Common Market for Eastern and Southern Africa ('The Treaty'), under Article 4 (1) (a) states that the Member States shall in the field of liberalization and customs co-operation, establish customs union, abolish all non-tariff barrier to trade among themselves, establish external tariff, and co-operate in customs procedures and activities.

c) Under Article 4 (1) (e) of the Treaty, it is stated that the Member States shall establish rules of origin with respect to products originating in the Member States.

d) Article 48 (1) of the Treaty states that goods shall be accepted as eligible for Common Market tariff treatment if they originate from the member states.

e) Rule 2 of the Rules states that goods shall be accepted as originating from a Member State if they are consigned directly from a Member State to a consignee in another Member State.

f) Goods qualify for preferential treatment if they fall under the two categories that:

   i. The goods have been wholly produced as under Rule 3 of the Protocol.

   ii. The goods have been produced in Member states wholly or partially from materials imported from outside the Member states or of undetermined origin by a process of production, which affects a substantial transformation of the materials.

g) It must be shown through evidence that there was substantial transformation of imported materials; that the CIF value of those materials does not exceed 60 percent of the total cost of the materials used in the production of the goods; or that the value added resulting from the process of production accounts for at least 35 percent of the ex-factory cost of the goods; or the goods are classified or become classifiable under a tariff heading other than the tariff heading under which they were imported.

h) Court took note of the facts that the Tribunal noted that there was no evidence on record to indicate that the goods used by the applicant even where they may fall under different tariff heading, did not originate from Egypt.

i) A Certificate of Origin is an official record of proof of origin issued by a competent authority. This competent authority is the authority of the country where the goods in question originate from. The certificate of origin therefore provides the information on the goods being imported to the taxing authority for tax assessment purposes. The information provided by the Certificate of Origin includes the particulars of the goods, their origin criterion and their weight, amongst others.

j) The current contested goods bore the origin criterion classification as 'P.' 'P' classification under which the Rules of Origin refers to goods satisfying the wholly produced criterion under Rule 2 of The Rules of Origin.

k) The taxing authority is guided by the tariff heading of the goods under Rule 2, among others, in the award of preferential treatment or denial, as under the Treaty trade practices. The Code is the description of the goods under the Certificate of Origin.

l) The Appellant further sought to rely on classification of goods from another importer of the 'same goods' under RE05, during trial. However, the origin criterion tariff heading in RE05 is different from the one on the certificate of origin herein. It was corrected from 'P' to 'X" as seen from an email communication dated 18th October 2022 from the authorities in Egypt.

m) Court held that had the Appellant doubted the certificates of origin of the Respondent in respect to the goods, the Appellant ought to have sought verification under Rule 10 (3) of the Rules of Origin. But there was no evidence during the trial at the Tribunal that the Appellant/Applicant had sought for the verification.

n) The Rules of Origin do not confer any authority upon a taxing authority to rely on or refer to a certificate of origin of another product to assess the preferential treatment of another.

o) Court allowed the Applicant to adduce additional evidence vide Miscellaneous Application No. 2084 of 2023. The evidence adduced is confirmation from the Egypt Tax Authority that the correct origin criteria of the goods in question is 'X' and not 'P'; and the classification on the original certificate of origin was a mistake.

p) Court noted that the Tribunal, at the time, did not have evidence that the goods were not subject to preferential treatment and as such the Tribunal cannot be faulted for the decision that it reached.

q) Court found that it was not necessary for it to determine ground 2 of the appeal.

r) The Tribunal lacked the material information to make a determination on the competence of the tax assessment. This evidence is now available and it has been allowed under Miscellaneous Application No. 2084 of 2023. Court was found it appropriate to refer the matter back to the Tribunal for reconsideration.

s) Each party shall bear its own costs of the Appeal and the Applicant shall pay the Respondent the costs of Misc. Application No. 2084 of 2023.

The matter was referred back to the Tax Appeals Tribunal for reconsideration.

25 UGANDA REVENUE AUTHORITY VERSUS TATA UGANDA LIMITED

High Court Misc. Application No. 2084 of 2023
(Arising from HCCA No. 0053 of 2022)

CASE DIGEST VOLUME IX

Head Notes:

Application to Adduce Additional Evidence on Appeal

Brief Facts:

In 2017, the Respondent imported short alkyd resin from El Obour Paints and Chemical Industries based in Egypt for manufacture of oil paint. In the Certificate of Origin No. 153252 under item No.8, the criterion origin was classified as "P" thereby making the imports entitled to preferential treatment under the COMESA Protocol on Rules of Origin. In or about 2020, the Applicant carried out post review on the Respondent's imports and established that several certificates of origin for the period of 2016 to 2018 from Egypt were defective and were wrongly conferring COMESA preferential tariff treatment on the imported goods. The Applicant assessed the goods and the import duty liable to be paid was UGX 200,115,987, which the Respondent contested. The Respondent dissatisfied with the assessment filed Tax Application No. 111 of 2020 before the Tax Appeals Tribunal and obtained a Ruling in its favor. The Applicant appealed this Ruling to the High Court vide Civil Appeal No. 0053 of 2022. Court was notified of this application seeking to adduce additional evidence in Appeal No. 0053 of 2022.

This Application sought orders that leave be granted to the Applicant to adduce additional evidence (being a verification of the origin criteria of the goods from the Designated Issuing Authority Egypt) in Civil Appeal No. 0053 of 2022, which was pending before the Court. The grounds for the application were that:

i. The Applicant had discovered new and important matters of evidence which, after the exercise of due diligence, could not have been produced at the time of hearing in the Tax Appeals Tribunal.

ii. The evidence relates to the issues in the Appeal.

iii. The evidence is credible and capable of being believed.

iv. The admission of the new evidence does not in any way prejudice the Respondent.

v. The evidence, if admitted, would have an influence on the result of the appeal.

vi. It is in the interest of justice that the Applicant be permitted to adduce additional evidence.

Issues for determination:

1. Whether leave should be granted to the Applicant to adduce additional evidence in Civil Appeal No. 0053 of 2023 which is pending hearing before this Honourable Court?

2. What remedies are available to the parties?

Ruling of the High Court:

(Hon. Lady Justice Harriet Grace Magala)

a) Section 27(2) of the Tax Appeals Tribunal Act (supra) states that: *"An appeal to the High Court may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal".*

b) In the case of ***Lubanga Jamada Versus Dr. Ddumba Edward CACA No. 10 of 2011,*** *Hon. Remmy Kasule JJA (Rtd) observed that: "An appeal on a point of law arises when the Court, whose decision is being appealed against, made a finding on the case before it, but got the relevant law wrong or applied it wrongly in arriving at that finding. The Court reaches a conclusion on the facts, which is outside the range that the said Court would have arrived at, had that Court properly directed itself as to the applicable law."*

c) Appeals on question(s) of law are about the application of the legal test or the law. They are not based on the contested facts between the parties.

d) The Evidence Act, Cap 8 defines evidence under Section 2, as the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disapproved. A fact includes anything, state of things, or relation of things, capable of being perceived by the senses. Can Court therefore allow adducing of additional evidence on appeal where the contest should only be on questions of only law?

e) Several decisions by the Supreme Court of Uganda including ***Attorney General Versus Paul K. Semwogerere and two others Civil Application No. 02 of 2004; and Attorney General & Inspector General of Government Versus Afric Cooperative Society Ltd Misc. Application No.06 of 2012***, have held that allowing a party to adduce additional evidence on appeal is at the exercise of the discretion of the Court, only in exceptional circumstances which include:

   i. Discovery of new and important matters of evidence which, after the exercise of due diligence, was not within the knowledge of, or could not have been produced at the time of the suit or petition by, the party seeking to adduce the additional evidence;

   ii. It must be evidence relevant to the issues;

   iii. It must be evidence which is credible in the sense that it is capable of belief;

   iv. The evidence must be such that, if given, it would probably have influence on the result of the case, although it need not be decisive;

   v. The affidavit in support of an application to admit additional evidence should have attached to it, proof of the evidence sought to be given; and

   vi. The application to admit additional evidence must be brought without undue delay.

f) What can be deduced from the above decisions is that court has to exercise its discretion to either allow or reject additional evidence on appeal, irrespective of the nature of the appeal in question, as long as the exceptional circumstances have been established.

g) In the given case the evidence which the Applicant seeks to adduce is a question of fact which proves the origin of the goods and thereby determining as to whether taxes as assessed were due to be paid or not.

h) Court held that the Applicant has established the exceptional circumstances as mentioned above.

i) The exceptional circumstance of undue delay was not passed by the Applicant but can be cured by the case of ***Banco Arabe Espanol vs Bank of Uganda SCCA No. 8 of 1998***, where court held that: *"A mistake, negligence, oversight or error on the part of counsel should not be visited on the litigant. Such mistake, or as the case may be, constitutes just cause entitling the trial judge to use his discretion so that the matter is considered on its merits."*

j) In conclusion, Court held that in accordance with Section 98 of the Civil Procedure Act and Section 33 of the Judicature Act, the Applicant was allowed to adduce the additional evidence in respect of the origin of the short alkalyd resin imported by the Respondent from Egypt.

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

Head Notes:

Adjustment of Chargeable Output Tax – Tax Invoice - Taxable Supply - Credit Notes

Brief Facts:

The Appellant conducted a refund audit on the Respondent for the period March 2014 to October 2019 and rejected the Respondent's refund application. The Appellant disallowed input tax credit of UGX 1,514,116,604 on the ground that it could not be verified and accordingly raised a VAT Assessment of UGX 1,557,627,315. The Respondent objected and the Appellant issued its objection decision partially allowing the objection and revising the tax liability to UGX 1,522,905,918. The Respondent challenged the VAT liability before the Tax Appeals Tribunal which delivered its Ruling holding that the credit notes issued to MTN Uganda were valid and that the Respondent was entitled to a VAT refund of USD 471,488.855. The Appellant was dissatisfied and filed this Appeal.

Grounds of Appeal:

1. The Honourable Members of the Tax Appeals Tribunal erred in law when they held that the credit notes issued by the Applicant were bonafide.

2. The Honurable members of the Tax Appeals Tribunal erred in law when they failed to properly evaluate the evidence thereby reaching an erroneous conclusion that there was a valid novation agreement.

3. The Honourable Members of the Tax Appeals Tribunal erred in law when they shifted the burden of proof to the Respondent to prove that the Applicant did not issue invoices to MTN Sea Shared Services Ltd for the supply.

4. The Honourable Members of the Tax Appeals Tribunal erred in law when they failed to properly evaluate the evidence on record and reached an erroneous conclusion that the Applicant is entitled to a VAT amount of USD 471,488.855 and the refund thereof.

Judgment of the High Court:
(Hon. Lady Justice Patricia Kahigi Asiimwe)

Grounds 1 & 4:

a) The Respondent issued invoices to MTN Uganda. MTN Uganda rejected them on the ground that the contract in issue was signed with MTN Sea Shared Services Ltd. The Respondent then issued credit notes to MTN Uganda and applied to the Appellant for a VAT refund, which was rejected.

b) The Tribunal noted that since MTN Uganda was not a party to the contract, there could never be a supply. The Tribunal further held that since the Respondent had issued invoices to a company that was not a party to the contract, then the issuance of a credit note canceling those invoices was bonafide because the nature of the sale had fundamentally changed since parties had changed.

c) The Appellant argued on appeal that the credit notes issued did not meet the conditions set out in Section 30 of Value Added Tax (VAT) Act.

d) Section 22 of the VAT Act provides for situations where adjustments may be made to chargeable output tax. The provision applies where there is a taxable supply by a taxable person. The Respondent is a taxable person.

e) A supply does not become taxable until it has been made. Therefore, Section 22 applies in situations where a supply has already been made by the taxpayer to the recipient of the supply.

f) Under Section 22(1)(e), the taxpayer wishing to make an adjustment has to have issued a tax invoice. The Black's Law Dictionary 8th Edition defines an invoice as an itemized list of goods or services furnished by as seller to a buyer, usually specifying the price and terms of sale; a bill of costs. Therefore, from this definition, a supply has to have been made before an invoice is issued.

g) Under Section 30(1) of the VAT Act, *"Where a tax invoice has been issued in the circumstances specified in Section 22(1)(e) and the amount shown as tax charged in that tax invoice exceeds the tax properly chargeable in respect of the supply, the taxable person making the supply shall provide the recipient of the supply with a credit note containing the particulars specified in Section 3 of the Fourth Schedule".*

h) This provision refers to a recipient of a supply in other words, the supply has to have been made. The above provision which provides for credit notes being issued in situations arising from scenarios listed under Section 22(1) apply in cases where a supply has been made.

i) Sections 22 and 30 of the VAT Act are very clear; they apply in situations where there has been a supply.

j) In the present case, it is not in dispute that the supply had not been made to MTN Uganda. The Respondent therefore issued the credit note in error and thus cannot

claim, a refund based on credit notes that do not meet the requirements of Sections 22 and 30 of the VAT Act.

k) The Tribunal erred in law when it held that the credit notes issued by the Respondent were bonafide and that therefore they were entitled to a refund.

Grounds 1 & 4 succeeded and Court did not deem it necessary to resolve grounds 2 & 3.

The Appeal succeeded with costs to the Appellant.

CASE DIGEST

VOLUME IX

TAX APPEALS TRIBUNAL DECISIONS

27 ABAS KALULE VERSUS UGANDA REVENUE AUTHORITY

TAT Application No. 139 of 2023

CASE DIGEST VOLUME IX

Head Notes:

Legitimate Expectation – Timelines for Filing a Review Application

Brief Facts:

On 20th September 2020, the Respondent conducted a review of the Applicant's tax matters for the period of January 2016 to December 2018. The Respondent stated that the Applicant has undeclared sales and issued Additional VAT and Income Tax assessments in 2021 and the Respondent issued objection decisions in April and May 2021 as well as February 2022 maintaining the Income Tax assessments and partially allowing the VAT objection. Consequently, on 15th April 2022, amended assessments were issued revising the Applicant's tax liabilities downwards, thereby discharging the Applicant's tax liabilities.

On 23rd February 2023, the Respondent revised the Applicant's tax position for the same period by reinstating the earlier assessment as at the objection decisions. The Respondent stated that the revision of the tax position on 15th April 2022 after the objection decisions, was a result of fraudulent revision by a former officer of the Respondent. The Applicant objected to the reinstated assessments and the Respondent disallowed the objections, hence this Application. The Respondent raised a preliminary objection challenging the Application for being time barred.

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mr. Siraj Ali; Mrs. Christine Katwe)

a) The confusion arising from the vacation and reinstatement of the assessments arose from the fraudulent actions of an errant officer of the Respondent who was subsequently dismissed by the Respondent.

b) The Respondent provided a charge sheet indicating the offences which the errant officer was charged with. The charge sheet clearly indicates that the officer adjusted, among other taxpayers, the tax ledgers of the Applicant. It is not mentioned anywhere that the Applicant participated in the fraud.

c) When the Respondent vacated the Applicant's liability, it created a legitimate expectation on the Applicant's part that the tax liabilities were discharged.

d) In 2023, when the Respondent discovered the fraudulent actions of their officer, they reinstated the assessments to revert to their earlier position. This was the correct and reasonable thing to do in the circumstances.

e) Having received the new assessments, the Applicant also did the right thing by objecting to the said assessments. Non-objection would tantamount to admission of the tax liability.

f) It appears both the Applicant and the Respondent were victims of the fraudulent actions of the Respondent's errant officer. The correct approach would be to determine the case on its merits.

The preliminary objection was dismissed with orders that each party bears its own costs.

Head Notes:

Timelines for Filing a Review Application

Brief Facts:

The Applicant deals in ceramics. The Respondent issued an Administrative Additional VAT Assessment amounting to UGX 32,837,818 due to underdeclared sales made to final consumers without Tax Identification Numbers. On 5th December 2022, the Applicant objected and on 2nd March 2023, the Respondent issued its objection decisions disallowing the Applicant's objection the Applicant's objection on grounds that the Applicant could not provide documentation. This Application was filed on 21st June 2023. The Respondent raised a preliminary objection that the Applicant had filed the instant application out of time.

Ruling of the Tax Appeals Tribunal:

(Mr. Siraj Ali; Mrs. Christine Katwe)

a) The Applicant wrote to the Respondent on 1st April seeking to avail itself for the Respondent's Alternative Dispute Resolution scheme. This request was rejected by the Respondent on 5th June 2023.

b) It took the Respondent a period of two months before it responded to the Applicant's ADR request. The Respondent ought to have informed the Applicant within a reasonable time that its application had been rejected.

c) Most importantly however, the Respondent ought to have informed the Applicant that an application for ADR does not have the effect of freeing the time within which an application for review to the Tribunal can be filed.

d) If the Respondent had acted timeously in either rejecting the Applicant's request for ADR or informing the Applicant that an application for ADR did not affect the time within which the taxpayer is required to file its application with the Tribunal, the Applicant would in all likelihood have filed its application for review within the requisite time.

e) The Respondent failed to comply with the requirements of its own Client's Service Charter. It would be unfair for the instant application to be dismissed.

The preliminary objection was overruled and the case was fixed for hearing on its merits.

Head Notes:

Jurisdiction of the Tax Appeals Tribunal - Meaning of Tax decision

Brief Facts:

The Applicant, a company dealing in the stitching of uniforms, made an application for grant of a Tax Clearance Certificate (TCC) which application was rejected by the Respondent on the 17th February 2023 on the basis that the Applicant owed VAT liability of UGX 21,847,809 and Income Tax of UGX 31,847,809. At the hearing, the Respondent raised a preliminary objection that the application was improperly before the Tribunal as there was no objection filed by the Applicant and no subsequent objection decision by the Respondent; and that the Applicant had not paid 30% of the tax in dispute.

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mr. Siraj Ali; Mrs. Christine Katwe)

a) The Tax Appeals Tribunal derives its jurisdiction from the Tax Appeals Tribunal (TAT) Act which stipulated the conditions under which an appeal can be filed. Section 1 of the TAT Act (as amended) defined a taxation decision to mean any assessment, determination, decision or notice.

b) The reason given by the Respondent is that the rejection by the Commissioner of the Applicant's request for grant of a Tax Clearance Certificate (TCC) does not constitute a tax decision.

c) The terms "Taxation decision" and "tax decision" which mean the same thing have been defined in substantially the same terms under both the Tax Appeals Tribunal (TAT) Act and the Tax Procedures Code Act (TPCA).

d) While invoking the literal rule of statutory interpretation, Section 1 of the TAT Act and Section 2 of the TPCA, read together, it is apparent that the Respondent's rejection of the Applicant's application for a TCC constitutes a taxation decision. This is so because whilst not amounting to an assessment, it constitutes a decision within the meaning of Section 1 of the TAT Act. In addition, it is a decision that is left to the discretion, judgment, opinion, approval, satisfaction or determination of the Commissioner, within the meaning of Section 1 of the TPCA.

e) The making of the decision to reject the application involved the exercise of discretion on the part of the Commissioner.

f) The Respondent's rejection of the Applicant's application for a TCC constituted a taxation decision.

g) Regarding non-payment of 30%, from perusal of the pleadings and/or documents before the Tribunal, there is no evidence of an assessment by the Respondent and therefore there is no basis upon which the said liability should be paid.

The preliminary points of law were dismissed with costs to the Applicant.

Head Notes:

Supply of Goods vis-a-viz Supply of Services – VAT on Imported services - Employees vis-a-viz Independent Contractors – Allowable Deductions

Brief Facts:

The Applicant is a company incorporated in Uganda which deals in the business of broadcasting under the business name NTV and Spark TV that airs both local and foreign content. The Applicant executed contracts with different distributors, both local and foreign, for movies and series, which the Applicant broadcasts in Uganda. The programs are brought into Uganda on hard disks and the Applicant declared them as goods and pays import duty. The Applicant also hires TV Presenters who are required to report to the TV station in time for the programs they host. The Applicant treats the TV presenters as independent contractors.

The Applicant procured the services of an entity, Phaz Motion Pictures Limited to direct and produce an African Version of a foreign TV show. The value of the contract was UGX 562,600,000. As Phaz Motion Pictures Limited did not have a Tax Identification Number (TIN) at the time of invoicing, it directed the Applicant to pay another entity, Diaspora Consultancy and Logistics Limited. The Respondent conducted a tax audit on the Applicant for the period 2017 to 2019 and raised several assessments for Income Tax and VAT totaling to UGX 1,826,837,971. The Applicant objected and the Respondent issued objection decision partially allowing the objections and revising the assessments to UGX 1,773,192,304. The Applicant was aggrieved, hence this Application. During mediation, the liability was further reduced to UGX 991,020,892.

Issues for determination:

1. Whether the Applicant is liable to pay VAT on foreign acquired programs?
2. Whether the Applicant is liable to pay WHT on foreign acquired programs?
3. Whether the Applicant is liable to pay PAYE?
4. Whether the Applicant is liable to pay UGX. 168,780,000 in regard to Phaz Motion Pictures?
5. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Proscovia R. Nambi; Mrs. Christine Katwe; Mrs. Stella Nyapendi Chombo)

a) The dispute revolves around three points of contention- the first is whether foreign programs purchased by the Applicant are goods or services for VAT and Withholding Tax purposes. The second is whether individuals hired as TV presenters by the Applicant are employees or independent contractors. The last point is whether the Applicant was entitled to claim a deduction from Income Tax purposes for expenses incurred in respect of services provided by a supplier who did not have a TIN.

VAT on Movies and Series

b) The Respondent claimed that the programs are a service, requiring the Applicant to account for VAT on imported services. In contrast, the Applicant argued that the programs are classified as goods, since they are delivered on hard disks which would incur customs duty upon importation.

c) Under Section 10 of the VAT Act, a supply of goods is defined to mean, *"any arrangement under which the owner of the goods parts or will part with possession of the goods".* Section 11 defines goods to mean *"a supply which is not a supply of goods or money".* The VAT Act in Section 1 defines 'goods' to include all kinds of movable and immovable property, but does not include money and defines services as *'anything that is not goods or money'.*

d) The Applicant argued that the programs are goods because they fall within the definition of property, and property in the essence of the definition of goods. The Applicant quoted the Copyrights and Neighbouring Rights Act.

e) However, the right to use a copyright is distinguishable from the ownership of the copyright itself. The right to use is not a good but a service. When a producer creates a program and transfers both ownership and copyright of the entire program to another party, this constitutes a supply of goods.

f) In cases where a producer creates a program and grants limited rights, such as broadcasting rights for a specific period, to a broadcaster while retaining other rights, the transaction is merely a license to broadcast the programs, not considered a supply of goods for VAT purposes because they only have a right to broadcast.

g) The Tribunal reviewed the Applicant's agreements with its international suppliers and noted that the Applicant is granted limited rights to air the programs within a set period and within a specific geographical territory.

h) The above shows that: (i) The contracts are for a limited license to broadcast programs in Uganda; (ii) The hard drives are merely a medium via which the programs are delivered to the Applicant; and (iii) There was no transfer of ownership of the program in absolute terms from the supplier to the Applicant.

i) Therefore, the substance of the transaction is that certain rights to the content are granted to the Applicant and access to the content is via the hard drives.

j) The Applicant's assertion that it imports hard drives with content and licenses as secondary would mean that the primary focus of the transactions with international suppliers is on the physical medium (the hard drives), which is incorrect. Clearly, the main emphasis is on the rights to broadcast the content included on the hard drive, with the medium being secondary. Therefore, the licenses cannot be said to be incidental to the import of hard drives as envisaged by Section 12 of the VAT Act.

k) The Applicant is liable to pay VAT on the imported services, with the taxable value being the license fees payable to the international suppliers as opposed to the value of the hard drives.

l) The license fees paid by the Applicant to the international suppliers of programs are royalties within the meaning of Section 2 of the Income Tax Act and thereby constituted income sourced in Uganda as provided for by Section 78 of the Income Tax Act.

m) In the circumstances, the Applicant is liable to pay Withholding Tax from the payments that were made to its international suppliers of programs.

PAYE for TV Presenters

n) The independent presenters do not fall within the definition of employees. The presenters are only paid when they work unlike employees who are paid on days when they are sick/ have not worked.

o) Independent contractors do not serve any probationary period and are not entitled to monthly salary, annual leave, sick leave, maternity/paternity leave, severance pay, medical insurance, NSSF contributions and there is no retirement age for them.

p) Unlike the Applicant's employees who have fixed working hours, the independent contractors are only required to come to the TV station in time for the programs they host. They are not allowed to act for and on behalf of the Applicant and are even liable to indemnify the Applicant against claims that arise out of any breach or non-performance of the contracts.

q) The Applicant is not liable to pay the PAYE. The Applicant was right to withhold tax at a rate of 6% from the payments made to the TV presenters.

Deduction in respect of payment to Phaz Motion Pictures Ltd

r) Regarding the payment to Phaz Motion Pictures Ltd, the Applicant submitted that the Respondent should not fault the Applicant as they duly accounted for the expense, withheld and remitted the same to the Respondent; and that as such, the Applicant qualifies for a deduction under Section 22 of the Income Tax Act.

s) The Respondent submitted that it was justified in disallowing the expenses from a supplier, Phaz Motion Pictures Ltd, as the supplier did not have a TIN.

t) Section 22(3) of the Income Tax Act provides that, *"Except as otherwise provided in this Act, no deduction is allowed for (i) any expenditure above five million shillings in one transaction on goods and services from a supplier who does not have a taxpayer identification number".*

u) In the present case, there was a contract between the Applicant and Phaz Motion Pictures for services. Phaz Motion Pictures provided services to the Applicant for consideration of UGX 562,600,000. Upon invoicing, Phaz Motion Pictures instructed the Applicant to pay to Diaspora Consultancy Limited, which has a TIN.

v) The Tribunal agreed with the Respondent that the Applicant was not entitled to a deduction for the expense incurred. The law is unequivocal that a deduction is not allowed for any expenditure above five million shillings in one transaction for goods or services procured from a supplier who does not have a TIN.

w) The nomination of Diaspora Consultancy Limited was an attempt to circumvent the above requirement. This was not done in good faith. The Tribunal will not close its eyes to such maneuvers and allow to be blinded by the form of transaction, when the substance points to something else. In this case, the substance of the transaction is that there was provision of services by Phaz Motion Pictures in consideration for amounts exceeding five million shillings.

x) Further, there was no transaction between the Applicant and Diaspora Consultancy Limited to warrant the payment received by it. Diaspora Consultancy did not provide any services to the Applicant. The expense was not deductible for income tax purposes.

y) It should also be emphasized that the objective of Section 22(3)(I) of the Income Tax Act is to widen the tax base by bringing into the tax net, persons who are earning taxable income and are not registered for tax purposes. It is the duty of the taxpayer to carry out due diligence of its suppliers to ensure

that they are tax compliant. This is particularly important where the contract sums involved are significant. The Applicant, who is a large corporate, ought to have known better.

z) The Respondent was correct to disallow the deduction of the expense.

The Tribunal found that the Applicant is liable to pay the assessed Withholding Tax of UGX 301,003,860; not liable to pay PAYE of UGX 160,0302,399; and liable to pay UGX 168,780,000 arising from disallowance of the expense incurred in respect of Phaz Motion Pictures. 80% of the costs were awarded to the Respondent.

Head Notes:

Seizure of Uncustomed Goods – Meaning of Owner under the EACCMA

Brief Facts:

The Applicant, a company that provides transport and logistics services, was contracted by a one Mulabbi Daniel (the client) to deliver his goods from Liberty Customs Bonded Warehouse to Kisekka Market in Kampala City. The client presented the Applicant with customs documents that showed that he had fully settled his tax liability with the Respondent. The Applicant transported the goods with its motor vehicle Registration No. UAV 254K, together with another truck, Registration No. UBA 161A. While enroute, the Applicant's vehicle was intercepted by the Respondent's enforcement officers and diverted to Nakawa Head Office. The Respondent's officers were presented with a customs clearance as proof of payment of taxes in respect of the goods. The second truck was found to have the same declaration number as the Applicant's truck. Upon verification, it was established that the Applicant's truck was loaded with uncustomed goods and the truck was seized.

The Applicant was issued with a seizure notice and upon payment of the taxes and penalties, the goods were released on 5th May 2023. The Respondent requested the Applicant to settle the offence of conveying uncustomed goods and this has not been done to date. The Applicant contended that he was merely contracted to transport goods belonging to a third party (the client) and he had no involvement in the alleged smuggling or under declaration of the goods.

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Ms. Kabakumba Masiko; Mr. Willy Nangosyah)

a) The Applicant submitted that Section 199 of the East African Community Customs Management Act (EACCMA) only deals with smuggling and does not apply to conveyance of uncustomed goods.

b) The Tribunal agreed with the Respondent's submission that Section 199 is not restricted to smuggling. It creates an offence for persons conveying goods imported into partner states contrary to the Act. Conveying goods that have not paid duty is contrary to the Act.

c) Whilst it is unfortunate that the Applicant did not have knowledge that the goods they were contracted to carry were uncustomed, the offences under Section 199 are of strict liability. This means that they Applicant's liability does not depend on their intentions or whether they had a guilty mind at the time the offence was committed.

d) It is reasonable to conclude that the Applicant's vehicle was rightfully seized.

e) According to the facts, the vehicle was seized by the Respondent on 9th March 2023. On 19th March 2023, the Applicant's director wrote to the Respondent requesting for the release of the vehicle. On 28th April 2023, the Respondent issued the Applicant with a seizure notice.

f) The Respondent submitted that a seizure notice was not warranted in the circumstances as the seizure happened in the presence of the Applicant's driver.

g) The term "owner" is defined by Section 2 of the EACCMA to mean- *in respect of a vehicle, every person acting as an agent for the owner or who is in possession or control of the vehicle.*

h) The Tribunal agreed with the Respondent that a seizure notice was not warranted as the vehicle was seized in the presence of the Applicant's driver, who is considered to be the owner of the vehicle within the meaning of Section 2 of the EACCMA.

i) No proceedings have been instigated by the Respondent. Instead, the Respondent has continued to detain the Applicant's vehicle. This is contrary to Section 214 (3) (a) of the EACCMA which subjects the detention of the vehicle to the determination of the prosecution.

j) It is not clear why the Respondent has to date not prosecuted the Applicant for the offence committed. However, where such proceedings have been initiated Section 214(3)(b) provides that the thing (vehicle) shall be detained until one month after the date of seizure or the date of the seizure notice.

k) In the absence of prosecution, the Respondent should have detained the vehicle up to 27th May 2023, being one month after the date of seizure or the date of the seizure notice.

l) Whilst the initial seizure of the vehicle was lawful, the continued detention of the vehicle was marred with irregularities which negated the initial lawful seizure.

The Application was allowed with orders of compensation, general, special, and aggravated damages. Costs were awarded to the Applicant.

Head Notes:

Products liable to Excise Duty – Interpretation of Ambiguity in a Tax Statute – Powers of the Tribunal to Remit Matters to the Respondent for Reconsideration

Brief Facts:

The Applicant is engaged in the commercial production of fruit and vegetable juices under the name Kirungi Quality Health Products. The Applicant organizes local farmers and purchases fruits and vegetables from them for processing into ready to drink juice. These include Mulondo Extra, Kombucha, Kazi Booster, Kirungi Beetroot, among others.

The Respondent issued the Applicant with Additional Administrative Assessments totaling to UGX 3,371,768,713 for the period 2018 to 2021. The Applicant objected on grounds that most of their products were not excisable by law since the products were made from at least 30% of pulp from fruit and vegetables grown in Uganda as per Paragraph 5(b) of the 2nd Schedule of the Excise Duty Act. With regard to the VAT and Income Tax assessments, the Applicant contended that the Respondent considered production numbers and assumed all production is sold. The Respondent issued its objection decisions disallowing the objections on grounds that all products of the Applicant were excisable, and the Applicant did not furnish sufficient documentation to support claims of stock movement, damages, return samples and stock losses. The Applicant was dissatisfied, hence this Application.

Issues for determination:

1. Whether the Applicant is liable to pay the tax assessed?
2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:
(Ms. Crystal Kabajwara; Mrs. Christine Katwe; Ms. Kabakumba Masiko)

a) The dispute regarding excise duty revolves around the interpretation of Paragraph 5(b) of the Second Schedule of the Excise Duty Act.

b) Section 1 of the Excise Duty Act defines excisable goods as *"Goods manufactured in Uganda and imported into Uganda and specified in schedule 2 to this Act but does not include goods exempt from duty."*

c) Further, Section 3 of the Excise Duty Act provides that, *"(1) Subject to this Act, the excisable goods and excisable services specified in Schedule 2 shall be chargeable with the excise duty specified in the Schedule."* The above provision goes on to state that in the case of a manufactured excisable good, the excise duty is payable by the person manufacturing the goods.

d) Therefore, unless the juice products manufactured by the Applicant are specified as exempt from excise duty, the Applicant is liable to pay excise duty on all goods that they manufactured in Uganda.

e) In the audit period 2018-2021, Paragraph 5 (b) of the Second Schedule of the Excise Duty Act provides as follows: *"(b) Fruit juice and vegetable juice, except juice made from at least 30% pulp from fruit and vegetables locally grown- 13% or Ushs 300 per litre, whichever is higher."*

f) Based on the above provision, fruit and vegetable juices are subject to excise duty, however, certain categories of fruit and vegetable juice are exempt from the excise duty if they are *"...made from at least 30% pulp ... from fruit and vegetables grown in Uganda*". The Applicant's position is that its products meet the above criterion. The Respondent contends that the Applicant's products do not meet the above criterion because the Applicant's final product, namely, the juice beverages, do not constitute 30% pulp.

g) The wording of Paragraph 5(b) can be broken down into the following elements: (i) There should be fruit or vegetable juices (ii) Made from (iii) At least 30% pulp (iv) From fruit and vegetables grown in Uganda. The parties agree on (i) and (iv).

h) The Excise Duty Act does not define the phrase *"made from".* The Online Cambridge Dictionary defines the verb *"made from"* as follows, *"is used to explain how something is manufactured".*

i) Therefore, when the phrase "made from" is juxtaposed to the facts of this case, it would be accurate to state that the Applicant's juice beverages are made from something. Hence, the next step is to establish the "thing" from which the products are made and whether that "thing" meets the requirement of Paragraph 5(b).

j) Both parties agree that the Applicant's products are made from or contain pulp.

k) As per their submissions, the Respondent interprets *"made from 30% pulp"* to mean that the Applicant's final product should constitute at least 30% of pulp fruit and vegetables; and since the final product includes water, the Respondent's position is that water should be included in the list of raw materials used and should form part of the base for computing the pulp percentage. The Applicant did not include water in the calculation of the pulp percentage.

l) The Black's Law Dictionary, 10th Edition, defines the term *"constitute"* to mean *"to make up or form".* Further, the Oxford Advanced Leaner's Dictionary, 9th Edition defines the same term to mean "*to be the parts that together form something".* This points to the composition of a product as opposed to what the product is made or manufactured from.

m) It is worth noting that the wording of Paragraph 5(b) is potentially open to more than one interpretation. It is true that on the face of it, one could interprete the phrase "made from" to mean "constitute" or vice versa.

n) It is a long-established principle of interpretation of tax statutes that where there is any ambiguity in the legislation, the same ought to be interpreted in favour of the taxpayer.

o) Therefore, if the legislature had meant for the end product, namely, the juice beverages, to constitute at least 30% of pulp, it would have stated so clearly and without ambiguity.

p) The Tribunal also took note of the Applicant's submissions on the policy considerations for paragraph 5(b). These are important considerations as taxation does not operate in a vacuum.

q) The Applicant's products qualify for excise duty exemption as required by Paragraph 5(b) of the Second Schedule of the Excise Duty Act.

r) The parties did not lead evidence regarding the tax heads of VAT and Corporate Income Tax. However, in their submissions, the Applicant submitted that they provided information which was not considered by the Respondent. The Respondent submitted that a review of the Applicant's actual daily production quantities, selling prices and daily sales records revealed that the Applicant had grossly understated the sales revenue.

s) For completeness, it is important for the Respondent to objectively review all information provided by the Applicant. The most appropriate course of action is to remit the VAT and Income Tax matters to the Respondent to correctly determine the Applicant's tax liablity.

The Excise Duty Assessments were set aside; the VAT arising from inclusion of excise duty in the base for determining VAT was set aside, VAT and Corporate Income Tax arising from variances between production stock and sales volume was remitted to the Respondent for reconsideration within 60 days of the Ruling.

Head Notes:

Jurisdiction of the Tax Appeals Tribunal – Meaning of a Taxing Act

Brief Facts:

The Applicant, an informant identified as Black Cob, gave information to the Respondent about tax evasion by East African Breweries Limited International (EABLI) and Uganda Breweries Limited (UBL) for the period May 2008 to June 2015. The Respondent assessed taxes of UGX 118,332,401,819 and UGX 9,780,243,983 against UBL and EABLI respectively. Under the provisions of Section 8 of the Finance Act, 2014 and later Section 74A of the Tax Procedures Code Act, the Applicant was entitled to a statutory reward of 10% of the tax collected from both taxpayers. The Respondent received part of the tax assessed against UBL and made part payments to the Applicant. Both UBL and EABL contested their respective assessments before the Tax Appeals Tribunal and their applications were dismissed. The Respondent declined to make any further payment to the Applicant on grounds that the information availed by the Applicant was not directly related to the remainder of the taxes recovered.

At the hearing, the Respondent raised a preliminary objection that the Tribunal does not the jurisdiction over the matter.

Issue for determination:

1. Whether the Tribunal has jurisdiction to entertain the Application?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mr. Siraj Ali; Ms. Kabakumba Masiko)

a) The instant application relates to a claim for an informer's reward, which at the time the claim arose, was provided for under Section 8 of the Finance Act, 2014. Following

the enactment of the Tax Procedures Code (Amendment) Act, 2019, Section 8 of the Finance Act was repealed and re-enacted as Section 74A of the TPCA.

b) The preliminary objection turns on whether the TPCA is a taxing Act. The Tribunal must therefore determine whether the TPCA is an Act which imposes tax.

c) Section 1(1) of the TAT Act defines a "taxing Act" as "any Act wich imposes a tax".

d) Penal Tax is imposed under several provisions of Part XIV of the TPCA- Section 48 Penal Tax for default in furnishing a return; Section 49 Penal Tax for failing to maintain proper records; Section 49A Penal Tax for failure to provide information; Section 50 Penal Tax for making false or misleading statement; Section 51 Penal Tax for understating provisional tax estimates; Section 53 Recovery of penal tax.

e) The above provisions show that the TPCA is a taxing Act as it imposes penal tax. It follows that the Tribunal has jurisdiction to entertain the instant application as the decision by the Commissioner General not to pay the Applicant, amounts to a decision made under a taxing Act within the meaning of Section 14(1) of the TAT Act.

The preliminary objection was dismissed with orders that each bears its own costs.

Head Notes:

Refund of Funds Not Legally Owed – Importance of Circularization for VAT Confirmation

Brief Facts:

The Applicant is a company incorporated in Uganda specializing in real estate. The Applicant primarily purchases large tracts of land, subdivides them into plots, and sells the plots to various customers. In March 2013, the Respondent instructed the Applicant to charge VAT on land sales and amend its returns. The Applicant contended that it was not dealing in improved land, arguing that there was no clear definition of improved land and therefore its supplies are not subject to VAT as per Paragraph 1(e) of the VAT Act, Schedule 3. The Respondent upheld that VAT Assessment of UGX 710,120,283.

On 4th March 2016, the Applicant requested for clarification from the Respondent on the definition of "improved land". Subsequently, the Applicant entered into a payment plan with the Respondent and paid the assessed VAT without collecting it from its customers. On 18th March 2016, the Applicant sought for a private ruling regarding the definitions of serviced, improved, and unimproved land. On 15th May 2017, the Respondent replied confirming that after visiting one of the Applicant's properties, they clarified that the sale of land, which involved only subdivision and the provision of land titles, fell under the category of unimproved land as defined in Paragraph 1(c) of the VAT Act's Second Schedule and was thus VAT exempt.

The Applicant applied for a refund of UGX 1,756,651,736 which the Respondent had collected as VAT from January 2013 to February 2017. The Respondent conducted

a VAT audit, approved a refund of UGX 533,125,273 and denied the request for UGX 1,223,526,463 for the period from October 2013 to February 2017 arguing that this VAT had been paid by the Applicant's customers, and it is they who were entitled to claim a refund and not the Applicant. The Applicant objected and the Respondent issued its objection decision maintaining its earlier position.

Issues for determination:

1. Whether the Applicant is entitled to the refund claimed?

2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Proscovia R. Nambi; Mrs. Christine Katwe; Ms. Grace Safi)

a) The Applicant provided credible evidence including witness testimony and documentation such as Newspaper Extracts of advertising the land for sale, sale agreements, bank statements affirming it did not charge VAT to its customers and instead paid the VAT from its profits in response to a directive from the Respondent.

b) The consistent pricing of the Applicant's products before and after VAT registration further supports the claim that the VAT burden was not passed on to the customers.

c) At the hearing and in its submissions, the Respondent faulted the Applicant for not following the given procedure under Section 34 of the VAT Act.

d) Section 34 of the VAT Act gives the Commissioner General the mandate to make a refund or grant a credit to a taxpayer in three circumstance as follows: (i) Where the input tax credit exceeds the tax liability of the taxpayer; (ii) The taxable supplies in stock or stock in transit are lost due to theft, fires, accident or force majeure, and input tax has been paid on those goods; and (iii) Where any person claims a refund of any output tax paid in excess of the amount due under the VAT Act for a tax period.

e) The Tribunal agreed with the Applicant's interpretation of Section 34 of the VAT Act and that the same is not applicable in this case. The refund claim arises from illegally collected funds on exempt supplies, and it is established that Section 34 specifically addresses overpaid taxes related to taxable supplies, which does not apply to the Applicant dealing exclusively in exempt supplies.

f) Where the Respondent collects taxes that are not legally owed, it is generally expected to refund those amounts to the taxpayer. This is based on principles of fairness and legality, ensuring that only the correct amount of tax, as prescribed by law, is collected.

g) The Tribunal noted that although the Applicant provided the necessary customer information to the Respondent's auditor, the auditor did not undertake the critical step of circularization, which involves reaching out to the customers to confirm payments.

h) From the evidence adduced by the Applicant, the Tribunal was convinced that the Applicant actually paid the VAT in question from its own funds/profit. The Respondent did not present evidence to contradict this.

i) The Respondent submitted that the Applicant's claim was made more than 3 years after the end of the tax period in which it was over paid contrary to Section 34(5) of the VAT Act. The Tribunal already found that Section 34 does not apply to the Applicant's refund.

The Application was allowed and the Respondent was ordered to refund the erroneously collected taxes within 30 days with interest at the prescribed rate from the date of collection until the date of payment. Costs were awarded to the Applicant.

Head Notes:

Requirement to pay 30% of the Tax in Dispute

Brief Facts:

The Applicant deals in the supply of professional and resource management services. In 2009, through a project implementation agreement, the Applicant was subcontracted by a United States based company called Trigyn to provide I.T staff placement services to United Nations Missions across Africa. On 7th March 2024, the Respondent issued the Applicant with assessments demanding Pay As You Earn (PAYE) of UGX 42,331,904,361 for the period 2019 to December 2022.

The Applicant objected and the Respondent disallowed the objections, hence this Application. At scheduling, the Respondent raised a preliminary objection that the Application was improperly before the Tribunal on grounds that the Applicant had not paid 30% of the tax in dispute.

Issue for determination:

1. Whether the Applicant is liable to pay 30% of the tax assessed?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mrs. Stella Nyapendi Chombo; Ms. Grace Safi)

a) The Tribunal noted that in paragraph (g) of the Applicant's Statement of Facts, the Applicant stated that the Respondent issued assessments of UGX 42,331,904,361 for the period 2019 to 2022, following an investigation where the Respondent alleged that there was an employer-employee relationship between UN staff and the Applicant.

b) The Applicant relied on the case of ***Fuelex Ug Ltd V URA, Constitutional Reference No. 03 of 2009*** where the Constitutional Court held the 30 percent deposit as prescribed in Section 15 of the Tax Appeals Tribunal Act does not extend to parties whose disputes are purely legal and or technical and where the issue for determination does notrelate to the amount of tax payable.

c) Section 15 of the Tax Appeals Tribunal (TAT) Act states that a taxpayer who has lodged a notice of objection pending final resolution of the objection must pay 30 percent of the tax assessed or that part not in dispute, whichever is greater.

d) In ***Uganda Projects Implementation and Management Centre (UPIMAC) V Uganda Revenue Authority, Supreme Court Constitutional Appeal 2 of 2009***, Justice C.N.B Kitumba stated that, *"It may be a hardship on the taxpayer but according to Article 17 of the Constitution, a citizen has a duty to pay taxes and to do so promptly, so that government business can go on. This is what was discussed in the Metcash Trading Co. case. The principle of pay now and argue later. The taxpayer has to pay his tax then argue later. I am unable to fault the ruling of the Constitutional Court…".*

e) The parties relied on two precedents. The Respondent relied on the Supreme Court decision of ***UPIMAC V URA***. On the other hand, the Applicant relied on ***Fuelex V URA***.

f) In ***Bullion Refinery Limited V URA TAT Application No. 36 of 2021***, the Tribunal attempted to reconcile the two cases and stated that where a taxpayer objects to an assessment and also a legal interpretation of a decision, the taxpayer is still required to pay 30 percent of the tax assessed in the objection.

g) In the present case, there is an assessment, objection and objection decision in respect to a disputed amount. The Applicant has a duty to pay the tax assessed and prove the tax assessed was made incorrectly and should have been made differently.

h) It should be noted that the dispute in the present case is not purely a legal dispute as envisaged by the Fuelex case. The dispute involved a question of fact, for example, whether the staff in question were employees of the Applicant or not. This is a question of fact and of law.

i) The Applicant ought to have paid 30 percent of the tax assessed.

The Tribunal issued orders that the Applicant deposits with the Respondent 30% of the tax assessed; the Applicant may apply to the Respondent for an instalment plan; the matter shall proceed to be heard subject to the Applicant paying 30% or obtaining a payment plan.

Head Notes:

Income Tax Deductions – Revenue Expenditure – Input Tax – Taxable Supply – Supply of Goods - Supply for Consideration

Brief Facts:

The Applicant deals in the manufacture and sale of non-alcoholic soft drinks under franchise from PepsiCo Inc. On 11th April 2019, the Applicant commenced a promotion known as *'Tukonectinge'* where the lucky winners could win a free soda which could be immediately redeemed from the distributor. The distributor in turn raised an invoice payable by the Applicant and the Applicant made payment by crediting the distributor's ledger through the issuance of a credit memo.

In August 2021, the Respondent issued the Applicant with VAT and Income Tax assessments totalling to UGX 9,305,665 on grounds that the Applicant was not entitled to claim a reduction in sales on account of promotional supplies as these had been made to final consumers on the Applicant's behalf. The Applicant objected to the said assessments claiming that it purchased the sodas from Lira Resort as part of a sales promotion. The Respondent disallowed the objection, hence this Application.

Issues for determination:

1. Whether the Applicant is liable to pay the tax assessed?
2. What remedies are available to the parties?

Ruling of the Tribunal:

(Ms. Crystal Kabajwara, Mr. Siraj Ali, Mrs. Christine Katwe)

a) In this case, the Applicant was claiming for a deduction under Section 22(1) (a) of the Income Tax Act. For the Applicant to be entitled to a deduction under this provision, it must prove the following:
   i) The amount sought to be deducted must either be an expenditure or a loss.
   ii) This amount should have been incurred by the Applicant during the year of income.
   iii) The amount in question ought to have been incurred in the production of income included in gross income.

b) A perusal of both the invoices and the credit memos shows that the Applicant made payment to Lira Resort for the promotional sodas. By making payment to Lira Resort for the said promotional sodas, the Applicant incurred an expense.

c) It is clear that the amount of money paid by the Applicant to Lira Resort for the promotional soda, had the effect of diminishing the total assets of the Applicant in equal proportion to the amount spent in purchasing the said sodas.

d) Not all expenses incurred by a company are incurred in the production of income. Expenses incurred in acquiring capital assets are capital expenditures and are incurred in the production of income.

e) The main objective of the Applicant in paying for the promotional sodas was to boost its sales and earn an income.

f) The Applicant is in the business of manufacturing and selling non-alcoholic beverages including sodas. Therefore, the expenses incurred by the Applicant in purchasing the promotional sodas from Lira Resort is therefore an expenditure of a revenue nature that was incurred in the production of the Applicant's income.

g) The Applicant was under no obligation to adduce evidence to prove that income was generated by it as a result of the expense it incurred. It is sufficient for the purposes of Section 22(1)(a) for the Applicant to show that the expense in question was incurred in the production of income.

h) The Tribunal found that the Applicant is entitled to claim a deduction for the costs incurred by it in purchasing the promotional sodas.

i) The term 'input tax' has been defined under Section 1(1) of the VAT Act to mean the tax paid or payable in respect of a taxable supply to or an import of goods or services by a taxable person.

j) For the Applicant to succeed in its claim for input tax credit, the following must be proved:

   i) The Applicant is a taxable person

   ii) Taxable supplies have been made to the Applicant during the tax period.

   iii) The taxable supplies were for use in the business of the Applicant.

k) Taxable supplies are defined under Section 18(1) of the VAT Act as "supply of goods or services, other than exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities".

l) Section 10 of the VAT Act provides that, "Except as otherwise provided under this Act, a supply of goods means any arrangement under which the owner of the goods parts or will part with possession of the goods, including a lease or an agreement of sale and purchase".

m) Exhibit A3 which is made up of invoices and credit memos issued by Lira Resort and the Applicant in respect of the promotional sodas shows that the supply in question was a supply of sodas, which under Section 1(i) of the VAT Act, qualifies as a good. The invoices also show that the supplies of the sodas were made in Uganda.

n) Section 18(4) of the VAT Act, which provides for supplies made for consideration, states that a supply is made for consideration if the supplier directly or indirectly receives payment for the supply, whether from the person supplied or any other person, including any payment wholly or partly in money or kind. In the present case, Lira Resort received a payment in the form of a credit memo from the Applicant for promotional sodas supplied to the Applicant.

o) It is not disputed that the supply of the promotional sodas was made by Lira Resort as part of their business activities.

p) It is common ground that the principal business activity of the Applicant is the manufacture and sale of soft drinks.

q) Promotions like 'Tukonectinge' constitutes one of the ways through which the Applicant boosts its sales in order to earn income. It is clear therefore that the purchase of the promotional was for use in the Applicant's business as the award of free sodas was the main driver of the 'Tukonectinge' sales promotion.

r) The Applicant is entitled to claim the input tax paid by it on the promotional sodas purchased from Lira Resort.

The Application was allowed with costs to the Applicant.

Head Notes:

Customs Preferential Treatment – Verification of Certificates of Origin – Customs Rules of Origin

Brief Facts:

The Applicant is part of the Ecolab group of companies whose ultimate parent company is Ecolab Inc. which is incorporated in the USA. The principal activity of the company is the buying and selling of cleaning products.

In 2020, the Respondent conducted a customs post clearance audit on the Applicant for the period from January 2015 to December 2019 and established that the Applicant had under declared custom duties for that period on account of preferential treatment granted to goods imported from Ecolab Kenya and Orbit Chemical Limited. The Respondent based their assessment on the grounds that the goods did not qualify for preferential treatment as they were not appropriately labelled as originating from within the East African Community (EAC).

Consequently, the Respondent computed tax of UGX 1,070,689,422 and UGX 1,036,338, 471 on goods classified under headings 3401 and 3402 and supplied by Orbit Chemicals Limited and Ecolab East Africa Kenya Limited respectively.

The Applicant objected to the Respondent's assessment on grounds that the imported goods from Ecolab Kenya and Orbit Chemicals had undergone sufficient working or processing in Kenya to convert the raw material into final products that are classifiable under the relevant headings and these goods were appropriately labelled to qualify for preferential treatment.

The Respondent disallowed the Applicant's objection on grounds that the products in question did not comply with the EAC Rules of Origin, hence this Application.

Issues for determination:

1. Whether the Applicant is liable to pay taxes assessed?
2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mrs. Christine Katwe; Ms. Kabakumba Masiko)

a) The dispute revolves around preferential treatment accorded to certain goods and whether the failure to comply with the labelling requirement invalidated the origin of the goods for purposes of granting preferential treatment.

b) The Applicant imported goods which it declared as originating from Kenya. The Respondent conducted a customs post clearance audit on the Applicant where it purportedly found that most of the cleaning chemicals and detergents imported by the Applicant were not appropriately labelled as having been manufactured in Kenya.

c) The Respondent contended that the goods did not meet the labelling requirements as provided for in Paragraph 2.19 of the Rules of Origin Manual.

d) Rules of origin are the rules that determine where goods have been obtained or manufactured. They set the conditions under which a good may be considered as having originated in a certain country.

e) Paragraph 1(e) of the World Customs Organisation Guidelines define "origin criteria" to mean conditions regarding the production of goods which must be fulfilled for the goods to be considered as originating under the applicable rules of origin.

f) Rule 27 of the Rules of Origin grants the EAC Secretariat delegated authority to develop and review manuals in respect of the Rules of Origin. In September 2015, the Directorate of Customs at the EAC Secretariat issued the Manual on the Application of the EAC Rules of Origin.

g) The Manual therefore provides guidance to competent authorities on the application and implementation of the rules of origin.

h) Whilst the EAC Treaty, the Customs Union Protocol, the Rules of Origin and annexed to the Protocol, and the EACCMA are binding on the Partner States, the guidelines on the other hand are not binding.

i) The Guidelines are supplemental materials that help clarify existing rules and regulations, but they are not legally binding. Gudelines can be departmental documents that are used to interpret legislation and regulations.

j) In the present case, the manual contains guidance issued by the Directorate of Customs at the EAC Secretariat.

k) The Respondent revoked the preferential treatment accorded to the Applicant's goods on ground that the goods produced under licence must be labelled with the manufacturer's label as proof of origin; and that the Certificates of origin were not correctly filled and as such they could not be relied upon to grant preferential treatment.

l) The Respondent contended that as the Applicant's goods were produced under licence, they ought to have borne the name and address of the company producing the products. Since the goods did not bear the name and address, they did not qualify for preferential treatment.

m) Rule 7 of the Rules of Origin categorically states that labelling does not confer origin. We have a situation where there is a specific rule in the Rules of Origin that unequivocally provides that labelling does not confer origin.

n) It should be noted that nowhere in the Rules of Origin or under the EACCMA is labelling a mandatory requirement for proof of origin. However, the Respondent sought to rely on a labelling guideline in the Rules of Origin Manual, which is subsidiary to the Customs Union Protocol to revoke the preferential treatment of the Applicant's goods.

o) Clearly, there is a conflict between the EAC Rules of Origin and Rules of Origin Manual. Whilst the Customs union Protocol and Rules of Origin made thereunder confer powers on the EAC Secretariat to develop manuals for the operationalization of the Rules of Origin, the manual ought not and should not be used to exceed the scope of the Rules of Origin.

p) Since the Rules of Origin provide that labelling does not confer origin, the Respondent cannot use or rely on a labelling guideline in the manual to challenge the origin of the Applicant's goods.

q) It is not necessary to get into the merits or demerits of labelling as the Tribunal has determined that the Rules of Origin are clear that labelling does not confer origin and hat the guidelines in the Manual go beyond the scope of the Rule of Origin. Therefore, whilst labelling is desirable, it is not mandatory for purposes of determining origin, be it for a licensed manufacturer or otherwise.

r) The Respondent submitted that the Applicant's Certificates of Origin contained errors and for this reason, it was improper to grant preferential treatment based on certificates that contained errors.

s) Certificates of Origin are issued by a Competent Authority in Partner State to an exporter. The exporter does not originate or create their own certificates.

t) Where a Competent Authority doubts the origin of the goods or questions the validity of a Certificate of Origin, the Competent Authority is free to verify the certificate presented and require additional information. Specifically, Rule 24 lays down the procedures for verification of proof or origin.

u) The Applicant presented certificates of origin showing that the goods originated from Kenya. Since the certificates were not correctly filled and the Respondent doubted their veracity, the Respondent ought to have verified the same with the issuing Competent Authority, being the Kenya Revenue Authority.

v) The Tribunal found that the Respondent was not justified in revoking the preferential treatment of the Applicant's goods and discounting the certificates of origin without verifying the same with the competent authority of the exporting country.

The Application was allowed, the assessments were set aside and costs were awarded to the Applicant.

38 ESRI EASTERN AFRICA LIMITED VERSUS UGANDA REVENUE AUTHORITY

TAT Application No. 41 of 2023

CASE DIGEST VOLUME IX

Head Notes:

Withholding Tax on Payments to a Non-Resident – Income sourced from Uganda – Ugandan Source Services Contract - Liability of a Withholding Agent

Brief Facts:

The Applicant is a branch of a foreign company incorporated in Kenya and the authorized distributor of ESRI Arc GIS Software owned by the entity called Environmental Systems Research Institute (Esri) Inc based in the United States. The Respondent issued the Applicant with an Administrative Additional Assessment for Withholding Tax amounting to UGX 103,630,170 for the period 01/09/2020 to 30/09/2020 based on undeclared withholding tax on payments made to ESRI Inc, the developer. The Applicant objected and the Respondent maintained the assessments, hence this Application.

Issue for determination:

1. Whether the Applicant is liable to pay the tax assessed?

Ruling of the Tribunal:

(Ms. Crystal Kabajwara; Mr. Siraj Ali; Ms. Safi Grace)

a) The Applicant markets and sells the Esri ArcGIS Software in Uganda to Ugandan customers. The Ugandan consumers pay the Applicant, who remits the payment to Esri Kenya after they have deducted their commission.

b) The Respondent issued a Withholding Tax assessment on the proceeds sent to the Developer by the Applicant. The tax was imposed basing on Section 84 of the Income Tax Act.

c) The Applicant argued that the transaction between them and the developer is outside the scope of Withholding Tax under Section 84 as the Developer did not perform a service under a Uganda source services contract; and that the payment made was a royalty payment within the meaning of Section 2 of the Income Tax Act. The Applicant stated that Section 84(3) exempts royalty payments from withholding tax that would ordinarily be imposed under the said section.

d) The Respondent's position is that the withholding tax was correctly assessed and is payable in accordance with Section 84 of the Income Tax Act.

e) The first question that must be addressed is what is the source of the transaction? There is no doubt that there is a non-resident person, namely Esri Inc, that is earning income from Uganda from the sale or provision of software to end customers in Uganda.

f) The next step is to determine the tax implications of the provision of software. Section 84 of the Income Tax Act imposes withholding tax on every non-resident person deriving income under a Ugandan source services contract.

g) There are two conditions that must be met for a non-resident person to be taxable under Section 84:

   i) The non-resident must be deriving income from Uganda;

   ii) The income should be derived from a Ugandan sources service contract.

h) The first condition is satisfied as Esri Inc is deriving income from Uganda by way of license fees paid to by the Applicant. This is evidenced by remittances made by the Applicant to Esri Kenya for onward transmission to Esri Inc.

i) Regarding the second condition, a Ugandan source services contract is defined by Section 84(4) to mean a contract other than an employment contract whose principal purpose is the performance of services which gives rise to income sourced in Uganda.

j) In the present case, there is a distributorship contract between Esri Inc and the Applicant. The contract authorizes the Applicant to distribute software in Uganda and in exchange, the Applicant earns a commission and pays Esri Inc license fees for each software that is distributed by it.

k) The Applicant attempted to bifurcate the transaction into two parts – the distributorship and the sale of the software to end users. However, the transaction must be looked at as a whole and when evaluated as such, there is performance of services, aided by the Applicant, in Uganda.

l) Section 78 of the Income Tax Act lists various ways in which a non-resident person will be deemed to have sourced income from Uganda. One of these is Section 78 (c) which provides that income is derived from sources in Uganda to the extent to which it is a fee for the provision of services paid by a resident person.

m) In the present case, the license fees are paid by the end customers in Uganda. With regard to the payment, the Applicant acts as a collecting agent whereby they collect the license fees for onward remittance to Esri Inc, the Developer, less their commission.

n) Therefore, Esri Inc sourced income from Uganda on account of the license fees paid by Ugandan customers to it for the provision of software services.

o) Consequently, the transaction in question has met all the conditions that must be satisfied for a non-resident person to be taxable under Section 84 of the Income Tax Act.

p) It was incumbent on the Applicant to withhold the said tax and remit the same to the Respondent. This is as per the provisions of Section 137 of the Income Tax Act which requires any person making payment of the kind referred to in Section 82, 84 or 85 to withhold from the payment the tax levied under the relevant section.

q) Section 142 of the Income Tax Act provides that a withholding agent who fails to withhold tax is personally liable to pay the Commissioner General the amount of tax which has not been withheld, but the withholding agent is entitled to recover this amount from the payee.

r) Whilst withholding tax is a tax on the non-resident person it is the duty of the payer to withhold tax and remit it to the Respondent. Where the taxpayer does not withhold the tax, they are personally liable to pay it to the Respondent.

The Application was dismissed with costs to the Respondent.

39 EXPLORER LIMITED VERSUS UGANDA REVENUE AUTHORITY

TAT Application No. 87 of 2023

CASE DIGEST VOLUME IX

Head Notes:

Recharacterization of Transactions – Requirement for Maintaining Records

Brief Facts:

The Applicant earns rental business income which is generated from a commercial property located on William Street. On 11th January 2020, the Respondent issued an Additional Income Tax Assessment of UGX 154,171,395 on the ground that the Applicant purportedly had an unsupported related party loan of UGX 514,904,648. The Respondent recharacterized the loan as income, thereby leading to the additional assessment. The Applicant objected and the Respondent maintained the assessment, hence this Application.

Issue for determination:

1. Whether the Respondent was justified in recharacterizing the Applicant's related party loan as income?

Ruling of the Tribunal:

(Ms. Crystal Kabajwara; Ms. Kabakumba Masiko; Mr. Willy Nangosyah)

a) The Respondent submitted that it reviewed the Applicant's income tax returns and established that the Applicant has an unsupported loan balance of UGX 513,904,648 as at 2018 purportedly from its shareholders.

b) The Respondent requested the Applicant to provide supporting documentation such as a loan agreement and bank statements to support the loan as claimed in the Applicant's returns and financial statements, which the Applicant did not. Without evidence to support the amounts claimed by the Applicant as a loan, the Respondent recharacterized the transaction and hence the assessments.

c) The Respondent contended that the Applicant was obtaining income from other sources other than rental income. However, the Applicant disputes this as their business only generated rental income and they have no other sources of income.

d) The Applicant obtained the loan in 2004 from its shareholders. The Applicant provides the loan agreement and a letter from the lender which extended the term of the initial loan. The Applicant also provided their financial statements which showed that the loan had been disclosed since 2004.

e) The Respondent considered this insufficient and requested for bank statements and board resolutions dating back to 2004. The information requested by the Respondent is transactional documentation for a loan that was obtained in 2004, almost 20 years ago.

f) In as much as the loan is still subsisting, it would be unreasonable to expect any person to maintain records for such a period. It would be unrealistic to expect the Applicant, 20 years later, to provide a bank statement showing how the funds were received and spent.

g) The Respondent also requested evidence of receipts for purchases made, receipts for wages paid to the workers who carried out the renovations of the property in 2004. This is not only onerous, but also not practical and is not consistent with sound business management principles.

h) Section 15(1) of the Tax Procedures Code Act requires taxpayers to maintain records as may be required to determine the taxpayers' liability under tax law.

i) It should be noted that the loan is not interest bearing and therefore, it had no effect on the Applicant's tax liability. Had it been interest bearing and the Applicant has been claiming a deduction for the interest payments in their tax returns, then the Respondent would be justified to request for information to support the interest deduction. This is because the interest deduction would have had the effect of reducing the Applicant's tax liability.

j) Further Section 15 (c) provides that such records should be retained for a period of five years after the end of the tax period to which it relates.

k) The information such as receipts and bank statement as well as a board resolution pre-dating the borrowing go back almost 20 years. The Respondent's request was therefore unreasonable.

l) The Applicant was able to demonstrate by way of a loan agreement how the loan came into place. The loan has been disclosed in the Applicant's financial statements since 2004. The Applicant also provided a letter from its shareholder lender extending the term of the loan for a further 10 years after the Applicant had failed to pay back the loan. The Applicant's director testified that he and his brother advanced the funds to the Applicant.

m) On a balance of probabilities, it is reasonable to conclude that the Applicant obtained the loan.

n) The Income Tax Act empowers the Commissioner General to recharacterize a transaction.

o) The Applicant argued that the powers to recharacterize should only be exercised where tax avoidance schemes are involved. The Tribunal agreed with the Respondent that recharacterization need not be restricted to tax avoidance schemes but can also extend to transactions where the form does not reflect the substance as provided for in Section 117(c).

p) It is not enough for the Respondent to recharacterize a transaction, there must be some basis from a legal and accounting perspective. Why has the Respondent opted to recharacterize the loan as income/revenue/sales and not as equity since the funds originated from the shareholders?

q) Whilst the Respondent had alleged that the loan was income, they have not provided any scintilla of evidence to demonstrate how the purported income arose. The Respondent alleged that the Applicant has other sources of income but adduces no evidence to this effect.

r) The Tribunal found that the Respondent's recharacterization of the loan as income was not done rationally.

The Application was allowed with costs to the Applicant.

Head Notes:

Timelines for filing a Review Application Before the Tax Appeals Tribunal - Extension of Time within which to File a Review Application

Brief Facts:

The Applicant is in the business of renewable/solar energy. The Respondent issued an Income Tax Assessment of UGX 812,652,014 against the Applicant for the period 1/1/2022 to 31/12/ 2022. The Applicant objected and on 21st May 2024, the Respondent issued its objection decision maintaining the assessment, hence this Application.

Ruling of the Tax Appeals Tribunal:

(Mrs. Stella Nyapendi Chombo, Ms. Rosemary Najjemba, Mr. Willy Nangosyah)

a) Section 16(1)(c) of the Tax Appeals Tribunal Act, Section 16(2) of the Tax Appeals Tribunal Act, Section 16(7) of the Tax Procedures Code Act, and Section 25(1) of the Tax Procedures Code Act grant the Tribunal the discretion to extend time for the making of an application for review of an objection decision and obliges an aggrieved taxpayer to make an application for such an extension within a period of 30 days and not later than six months after the date of the objection decision.

b) The Applicant submitted that because of the back-and-forth communication between the Applicant and the Respondent coupled by the fact that 3 out of the 4 directors of the Applicant work and reside outside Uganda, the Applicant was unable to file an application for review of the Respondent's objection within the time frame prescribed by the law.

c) The Respondent served the Applicant with objection decisions between 19th August 2024. If we were to go by the date the Applicant received the last objection decision, it ought to have lodged its Application before the Tribunal on 18th September 2024 upon lapse of the 30-day statutory period. The Applicant filed the Application on 18th October 2024 which is well within the statutory six months' period prescribed by law.

d) In exercising its discretion as to whether to grant this Application, the Tribunal ought to do judiciously.

The Application was allowed and the Applicant was ordered to pay 30% of the tax in dipute, with each party bearing its own costs.

PICTORIAL

Recognition by Uganda Law Society
The URA Legal Services and Board Affairs Department was recognized for its support to the Uganda Law Society.

Litigation team building
Litigation team took time off their busy schedules to unwind, strategize and renew connections as a team for even greater performance in the new financial year.

URA legal team in Court for Heritage Oil & Gas Limited Vs. Uganda Revenue Autthority

Head Notes:

Departure from Pleadings - Pay As You Earn (PAYE) - Employees vis-a-viz Consultants – The Control Test

Brief Facts:

The Applicant, a research-based organization, entered into short-term field office service agreements with various individuals to collect data on various aspects of the Applicant's business. These individuals included data collectors and enumerators. The Applicant treated these individuals as independent contractors and withheld tax at 6% on all payments made to them.

The Respondent conducted a tax audit on the Applicant and established a tax liability of PAYE amounting to UGX 171,983,080 and Withholding Tax (WHT) of UGX 19,349,080. The Applicant objected to the assessments on grounds that these individuals were independent contractors whose pay had been subjected to 6% Withholding Tax and that the WHT on suppliers had been wrongly computed. The Respondent partially allowed the objection by reducing the Withholding Tax on payments to suppliers from UGX 19,349,082 to UGX 12,282,628. The Respondent rejected the PAYE objection, hence this Application. Prior to the hearing, the Applicant conceded to the WHT assessment.

Issues for determination:

1. Whether the Applicant is liable to pay the PAYE as assessed?
2. Remedies available.

Ruling of the Tax Appeals Tribunal:
(Mr. Siraj Ali; Ms. Kabakumba Masiko; Ms. Safi Grace)

a) PAYE is a form of withholding tax which employers are required to deduct and remit to the Respondent from payments due to employees. This requirement is provided for under Section 126 of the Income Tax Act.

b) The Applicant submitted that the enumerators or data collectors constituted more than 80% of the contractors and that the rest were exhibitors, a consultant, field extension workers and vine inspectors. The Respondent submitted that the exhibitors, consultants, field extension workers and vine inspectors, formed neither part of the objection nor the objection review process.

c) A perusal of the Application makes no mention of exhibitors, consultant, field extension workers or vine inspectors. It is trite that parties ought not to depart from their pleadings. The Tribunal disregarded the distinction made by the Applicant between data collectors/enumerators on the one hand and exhibitors, consultant, field extension workers and vine inspectors, on the other.

d) Employees are deemed to enter a contract of service while independent contractors are deemed to have entered a contract for service.

e) A contract of services exists if the three conditions are fulfilled: (i) The servant agreed that, in consideration for a wage or other remuneration, he will provide his own work and skill in the performance of some service for his own master. (ii) He agreed that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master. (iii) The other provisions of the contract are consistent with its being a contract of service.

f) It is not difficult to discern that the element of control is important in determining whether a person is an employee or an independent contractor.

g) The term *'control'* has been defined in Black's Law Dictionary 8th Edition p. 403 as, *"the direct or indirect power to govern the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise, the power or authority to manage, direct, or oversee"*.

h) The tests and definitions enumerated under the Common law above, have been codified in the Income Tax Act, under the definitions of the terms "employee" and "employment".

i) Section 2 of the Income Tax Act, defines an employee as an individual engaged in employment while employment is defined under the same section as follows: i) the position of an individual in the employment of another person. (ii) A directorship of a company. (iii) A position entitling the holder to a fixed or ascertainable remuneration; or (iv) The holding or acting in any public office.

j) The first definition envisages a situation where it is acknowledged that a person is an employee of another, whether under a formal contract of service or otherwise, However, in the instant case, there is no such acknowledgement from the evidence.

k) The second and fourth definitions do not apply to the instant case, as they are specific to persons holding the office of a director in a company or persons holding or acting in any public office.

l) The third definition is in respect of a position entitling the holder to a fixed or ascertainable remuneration.

m) The Applicant's witness testified that the working period for each contract for the enumerators or data collectors ranged between five (5) and thirty-four (34) days at the very maximum.

n) The Tribunal relied on its earlier decision in ***Infectious Diseases Institute (IDI) V Uganda Revenue Authority, TAT Application No 15/2019*** to hold that owing to the very short period of their engagement, the data collectors cannot be considered as having received a fixed and ascertainable income. The Tribunal thus held that they cannot be considered as employees of the Applicant as such, that the Applicant is not liable to pay the PAYE assessed in respect of the enumerators.

The Application was allowed with costs to the Applicant.

42 KISOZI COMPLEX (U) LIMITED VERSUS UGANDA REVENUE AUTHORITY

TAT Application No. 008 of 2023

CASE DIGEST VOLUME IX

Head Notes:

Input tax credit – Taxable Supplies for Use in Business

Brief Facts:

The Applicant is a company engaged in construction and letting of properties for commercial purposes. In the period July 2020 – April 2020, the Applicant charged and accounted for output VAT on all taxable supplies made to it. In the same period, the Applicant incurred VAT on its purchases in the amount of UGX 209, 122,466.

The Applicant applied for a VAT refund arising from the excess of input VAT over the output for the period July 2020 – April 2020 and the Respondent carried out an audit to verify the input tax credits. The Respondent disallowed input tax credits arising from the purchase of construction material and apartments under construction, leading to Administrative Additional Assessments totaling to UGX 159,899,733. The Applicant objected and the Respondent conducted a site visit and established that the input tax claimed by the Applicant related to the purchase of construction materials for a building still under construction, which had only reached 40% completion, and maintained the assessments, hence this Application.

Issues for determination:

1. Whether the Applicant is liable to pay the tax assessed?
2. What remedies are available?

Ruling of the Tribunal:

(Ms. Crystal Kabajwara; Mr. Siraj Ali; Mrs. Christine Katwe)

a) Section 28 of the VAT Act provides for the circumstances under which a person may claim input tax credits for purposes of calculating the tax payable.

b) In ***Enviroserv (U) Limited V URA, TAT 24 of 2017***, the Tribunal decided that for an Applicant to be entitled to the input tax credit under this section, the Applicant had to prove the following: (i) The Applicant is a taxable person; (ii) Taxable supplies had been made to the Applicant during the tax period; and (iii) The taxable supplies were for use in the business of the Applicant.

c) The Respondent does not dispute that the Applicant is a taxable person and that taxable supplies were made to the Applicant during the tax period. The Respondent argued that the taxable supplies were not for use in the business of the Applicant because the supplies were in respect of the construction of a building for residential purposes, which is exempt for VAT purposes.

d) The task is to determine whether the taxable supplies were for use in the business of the Applicant. The phrase "use in the business' is defined in Section 28(7) of the VAT

Act, which states that *"For purposes of subsection (1), (2) or (3), "business use" or "use in the business" applies only to the related business, generating a taxable supply".*

e) The key question is whether the Applicant's business is a 'related business'.

f) It is not in dispute that the Applicant is engaged in the business of letting properties for commercial purposes. The Applicant has a commercial property and the second property, which is the subject matter of the dispute is under construction. The Applicant stated that they intend to let the property out as serviced apartments depending on the forces of demand and supply at the time when the construction is completed.

g) Whilst the Respondent does not dispute that the Applicant is in business, it seeks to ringfence the input tax claim to the construction project alone and not the entire business of the Applicant. The Respondent argues that the construction project is not a related business, generating a taxable supply.

h) When the definition of 'use in business" is superimposed into Section 28(1) of the VAT Act, which lays down the conditions for a claim for input VAT, it effectively states that a person will be allowed a credit for input tax on all taxable supplies made to that person during the period if the supply is for the related business, generating the taxable supply.

i) There is no dispute that the Applicant is in business. What is in dispute is whether the Applicant's business, i.e. the development and letting of properties is a related business relative to the kind of supplies made to it, the supplies in question being building/construction materials.

j) The VAT Act does not define the term "related" and this leaves it open to interpretation. For example, does it mean that the VAT status of the supplies must match the VAT status of the business? Or, does it mean that the nature of the supplies/input must be relatable to commercial nature of the business i.e., that the inputs purchased by that business must be those that the business is ordinarily expected to consume or use?

k) The Applicant's business is a related business because it is connected with the kind of supplies that it purchased in the form of construction materials.

l) The Applicant is in the business of real estate development and letting of commercial properties. Naturally, its business is connected to the construction materials and likewise, construction materials are connected to real estate development. They are direct inputs in the business of the Applicant.

m) The absence of a connection between the supplies purchased and the nature of the business would render the business non-related.

n) Regarding the test of whether the Applicant's business is generating taxable supplies, the proof is in the monthly VAT returns filed by the Applicant which show that in the taxable period for which the refund was sought, the Applicant made taxable supplies.

o) Whether the building is eventually let as a serviced apartment or not is inconsequential at this point in time as this is merely speculative. At this stage, it is impossible to determine with certainty what the use of the property will be.

p) The Respondent is attempting to restrict the input VAT claim to the activities of as opposed to the business of the taxpayer. This amounts to reading into the Act non-existent language.

q) In the absence of clear and unambiguous wording the VAT Act that restricts claims for input VAT to activities which constitute a business, it was unjustified for the Respondent to deny the Applicant's claim.

The Applicant was allowed with costs to the Applicant.

Head Notes:

Customs Tariff Classification – Residual Subheadings in the Harmonised System - VAT on Imported Services – VAT on Consultancy Fees – Undeclared Imports

Brief Facts:

The Applicant is engaged in mining and quarrying. It imported spare parts and machines for own use. The Respondent carried out a Customs Post Clearance Audit for the period 2019/2020 and issued an assessment of UGX 370,372,648.62 against the Applicant on the grounds of undervaluation, misclassification and non-declaration of imports. The Applicant conceded to and paid taxes of UGX 86,534,465 and filed an objection in respect of the balance of UGX 283,838,183.62, which objection was disallowed. During mediation, the Applicant provided further documentary proof which led to the vacation of UGX 107,275,659, leaving in dispute the sum of UGX 193,111,780.

Issues for determination

1. Whether the Applicant is liable to pay the taxes assessed?
2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:
(Mr. Siraj Ali; Mrs. Christine Katwe)

Misclassification of Pumps:

a) From the Joint Trial Bundle, the following pumps were imported by the Applicant- hydraulic pump, steering pump for wheel loader, water pump, water pump for caterpillar, Gear pump, transmission pump, lift pump for perkins engine and oil pump assembly. All these pumps were declared to customs under HSC 8413.81.00 which stipulates a duty of 0%.

b) It is apparent from the types of pumps imported that they are for use in internal combustion piston engines. Pumps for use in internal combustion piston engines are specifically provided for under HSC 8413.30.00 with a duty rate of 10%.

c) The Tribunal agreed with the Respondent that HSC 8413.81.00 under which the Applicant classified its pumps is a residual subheading under HSC 8413 which covers items not specifically mentioned under any of the sub-headings.

d) The Applicant ought to have classified the imported pumps which from their description, are for use in internal combustion, piston engines, under HSC 8413.30.00 and not HSC 8413.81.00. The Applicant is liable to pay the tax of UGX 11,766,762.

VAT on imported services:

e) The Respondent's position is that the Applicant was the recipient of imported services and should have paid VAT on the said services as the person receiving the supply.

f) As regards UGX 2,679,540 in respect of Epiroc Eastern Africa, the import entry document and the invoice showed that the items imported were parts for boring or sinking machinery. The exporter is indicated in the entry as Epiroc Rock drills of Sweden while the total value of the imported items is USD 1,948.800.

g) As proof of payment of this sum, the Applicant presented a copy of a Funds Transfer Request Form from Barclays Bank. The amount in the entry does not tally with the amount in the Funds Transfer Request Form. The name of the exporter in the entry is different from that stated in the Funds Transfer Request Form. Further, the reason for payment given in the Funds Transfer Request Form is different from that stated in the invoice.

h) The above documents show that the transaction in respect of which the which the Applicant paid Epiroc Eastern Africa Ltd has no relation with the goods imported by the Applicant under the above entry. It is clear from the Funds Transfer Request Form that the sum of USD 2,150 was paid by the Applicant for services performed by a technician.

i) Section 1(j) of the VAT Act defines the term "import" as to bring or cause to be brought into Uganda from a foreign country or place".

j) Regulations 13(1) of the VAT Regulations provides that a person receiving an imported service will account for VAT on the supply.

k) There is no doubt that Epiroc Eastern Africa Limited to whom the payment was made is resident in Kenya. The services by the technician were provided by Epiroc Eastern Africa Ltd to the Applicant in Uganda. This makes the service in question an imported service.

l) As regards UGX 2,683,083 in respect of Mul-T Lock Technologies, from the Applicant's own submission, the payment in question was for door repairs. It is therefore not in dispute that a service was provided in respect of which the above sum was paid.

m) The address of Mul-T Lock Technologies is stated in the Funds Transfer Request Form as 25, Habarzel St. Tel Aviv, Israel. The door repairs were carried out at the Applicant's premises in Kampala.

n) Since the service was provided by Mul-T-Lock Technologies Ltd, a non-resident, to the Applicant who is resident in Uganda, the service in question was an imported service.

o) As regards UGX 7,751,129 in respect of Rock Plant Kenya, the position in the Applicant's invoice is that the payment was for the supply of a Hitachi Wheel Loader. However, the Funds Transfer Request Form provided by the Applicant as proof of payment and the Applicant's own ledge showed the purpose of the funds as *'payment of a technician'*. This shows that the payment in question was made in respect of the supply of a service.

p) The Funds Request Form shows that Rock Plant Kenya Ltd is resident in Kenya while the Applicant is resident in Uganda. Services provided by a technician from the above company to the Applicant qualifies as an imported service.

q) As regards UGX 4,253,030 in respect of Panafrican Equipment Kenya Ltd, the invoice issued to the Applicant stated that the sum of USD 3332.40 was for *"cost of providing our technicians".*

r) The Applicant stated in its submissions that the invoice sum indicated was paid to the technician. It is clear that a service was supplied by Panafrican Equipment Kenya Ltd to the Applicant. The above company's address is Uhuru Highway, Nairobi, Kenya. The service therefore supplied by a non-resident person to the Applicant is an imported service.

Withholding Tax and VAT in Consultancy Fees:

s) The Joint Trial Bundle shows that Ms. Halfon was paid USD 25,000 by the Applicant on 31st May 2016. On 17th November 2020, the Applicant wrote to the Respondent and stated that the payment was a refund of money that Ms. Halfon had lent to the Applicant. On 19th August 2021, the Applicant wrote to the Respondent stating that Ms. Halfon was a Director of the Applicant and had not provided any consultancy services.

t) The Respondent asserted that the Applicant failed to prove that Ms. Halfon was its employee during the period in question.

u) The reason given by the Applicant for this payment was that it was a refund of a loan made by Ms. Halfon to the Applicant. Subsequent letters fail to mention this and instead state that MS. Halfon was a Director. If the money in question was a refund of a loan, then the Applicant ought to have provided proof of this.

v) The annual returns of December 2017 relied upon by the Applicant show that Ms. Halfon had ceased to be a shareholder and director as of 26th April 2013. By failing to explain the purpose of the above payment to Ms. Halfon, the Applicant did not discharge the burden of proof. The sum of UGX 68,334,253 is due and payable by the Applicant.

Undeclared Imports:

w) These assessments relate to imports purportedly made but not declared to the Respondent. The Applicant submitted that it made orders, however, by the time of the audit, the goods had not been delivered.

x) In respect of Global Machinery Ltd and Stenson Industrial Equipment, the money was remitted on 2nd August 2018 and 22nd August 2017. The letter notifying the Applicant about the audit in question was written by the Respondent on 18th November 2019.

y) The period from the time the money was remitted to the suppliers, to the time the Applicant was notified of the audit, is 13 months for Global Machinery Ltd and 25 months for Stenson Industrial Equipment. This is unusually long period for a business to wait for imported goods.

z) Even if it is accepted that the goods in question had not yet been delivered by the time of the audit, surely, they ought to have been delivered by the time the Applicant filed this Application in the year 2021.

aa) The Applicant did not provided evidence by way of correspondence between it and the suppliers to explain the delay or non-delivery of the goods. It is hard to believe that a business can make payment for goods and take no steps against the sellers for delay and non-delivery.

ab) The reasons given by the Applicant are not credible and are accordingly rejected. The Applicant is liable to pay the sum of UGX 3,168,180 in respect of Global Machinery Ltd and UGX 34,355,835 in respect of Stenson Industrial Equipment.

ac) In respect of Rock Plant Kenya and Almog Technicial Services, the entries provided by the Applicant did not tally with the amounts stated in the Applicant's ledger and the invoices provided by the Applicant.

ad) By failing to provide any credible evidence as proof that the goods were declared, the Applicant failed to discharge the burden of proof and is liable to pay the sum of UGX 14,503,524 in respect of Rock Plant Kenya and UGX 43,606,445 in respect of Almog Technical Services Ltd.

The Assessments were found to have been properly issued and the Application was dismissed with costs to the Respondent.

Head Notes:

Jurisdiction of the Tax Appeals Tribunal

Brief Facts:

Between the years of 2016 and 2019, the Respondent issued the Applicant with an Administrative Additional VAT Assessment of UGX 31,599,805 for the period of November 2013, UGX 6,985,470 for the period June 2017 and UGX 10,201,092 for the period of June 2018. The assessments in question were raised as a result of variances between Income Tax and VAT sales for the periods July 2016 to June 2017 and July 2017 to June 2018. The assessment for November 2013 was issued for non-filing of returns.

When the matter came up for scheduling, the Respondent raised a preliminary objection to the effect that the Tribunal has no jurisdiction over the matter as the instant application was not filed consequent to an objection decision.

Issues for determination:

1. Whether this application is properly before the Tribunal?
2. What remedies are available?

Ruling of the Tax Appeals Tribunal:

(Mr. Siraj Ali, Mrs. Christine Katwe, Ms. Kabakumba Masiko)

a) The jurisdiction of the Tribunal to review decisions of the Respondent is provided for under Section 14 of the Tax Appeals Tribunal Act.

b) Section 27(1) Tax Procedures Code Act (TPCA) provides for the review of the objection decision made by the Respondent.

c) The above provisions show that the jurisdiction of the tribunal to review decisions of the Respondent only arise where a taxpayer is aggrieved by a decision made by the Respondent under a taxing Act or objection decision issued by the Respondent.

d) It is not in dispute that out of the three assessments issued against the Applicant by the Respondent, the Applicant only objected to one out of the three assessments. The two assessments of which the Applicant did not object form the basis of the instant application.

e) For the reason that the Applicant did not file any objections against the said assessments, the Respondent did not file any objection decisions. In absence of an objection decision, the Applicant has no locus to appear before the Tribunal nor does the Tribunal have the jurisdiction to entertain any such matter.

f) The reason given by the Applicant for not filing the objections in question is that it was not well versed with the law. It is trite law that ignorance is no defence. The rationale of this doctrine is that if ignorance were an excuse, every person omitting to comply with a law would escape liability by simply pleading ignorance.

g) In the instant case, the Applicant ought to have known that no applications can be filed by it before the Tribunal in the absence of an objection decision.

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

Head Notes:

Earnings Before Interest, Tax, Interest, Depreciation and Amortization (EBITDA) – Limitations of Interest Expense Deductions for Members of a Group of Companies - Common Underlying Ownership

Brief Facts:

The Applicant is a company incorporated in Uganda and engaged in the business of supply of petroleum products. The Respondent issued Administrative Additional Income Tax assessments against the Applicant of UGX 240,831,554, UGX 367,587,532 and UGX 180,823,502 for the period 2019, 2020 and 2021 respectively, on grounds of overstated interest expense. The Respondent alleged that the Applicant belonged to a group of companies with common underlying ownership and as such, it ought to have restricted its interest expense deduction to 30% of Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA). The Applicant objected on grounds that the Respondent assumed that the Applicant formed part of a group of companies whereas not. The assessments were maintained, hence this Application.

Issues for determination:

1. Whether the Applicant is liable to pay the tax assessed?
2. What remedies are available?

Ruling of the Tribunal:

(Ms. Crystal Kabajwara; Mr. Siraj Ali; Mrs. Christine Katwe)

a) The dispute concerns the interpretation of Section 25 of the Income Tax Act, Cap. 338 (ITA) in as far as it limits the deductibility of interest expense by a person who is a member of a group.

b) The Respondent contended that the Applicant is part of a group and consequently was not entitled to claim a full deduction for the interest but rather ought to have restricted their expense claim to 30% of EBITDA as required by Section 25(3) of the Income Tax Act.

c) The Applicant disagreed on the ground that it is a standalone company, whose shareholders are individuals with no common underlying ownership.

d) Section 25 of the ITA provides that,

e) *"(1) 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 the person in the production of income included in the gross income.*

(2).....

(3) The amount of deductible interest in respect of all debts owed by a taxpayer who is a member of a group, other than a financial institution, microfinance deposit taking institution, tier 4 microfinance institution or person carrying on insurance business, shall not exceed thirty percent of the tax earnings before interest, depreciation and amortization."

f) What can be deduced from the above provision is that: (i) Subject to certain conditions, persons are, for income tax purposes, generally allowed a full deduction for the interest in respect of a debt obligation; (ii) However, where such a person is a part of a group and they are not a financial institution nor do they carry on insurance business, the maximum amount of interest deduction that they can claim is 30% of EBTIDA.

g) The Applicant is neither a financial institution, a microfinance deposit taking institution, tier 4 Microfinance institution nor carries on insurance business. The Applicant engages in in the buying and selling of petroleum products.

h) The term "group" is defined in Section 25(3) of the Income Tax Act as persons other than individuals *with* common underlying ownership.

i) In the effect, to be a part of a group of a group for purposes of the above provision, one must: (i) Not be an individual. It is not in dispute that the Applicant is a non-individual. (ii) Have common underlying ownership with other persons.

j) The term underlying ownership is defined in Section 2 of the Income Tax Act as "Underlying ownership", in relation to a person other than an individual, means an interest held in, or over, the person directly or indirectly through interposed companies, partnerships or trusts by an individual or by a person not ultimately owned by individuals."

k) Therefore, underlying ownership arises when: (i) There is a direct interest held in a person; or (ii) There is an indirect interest held in or over a person through interposed companies, partnerships or trusts by an individual or by a person not ultimately owned by individuals.

l) Therefore, common underlying ownership will be found to exist if there is a person (s) who holds a direct or indirect interest in the Applicant and that person(s) also holds direct or indirect interests in other persons. e.g. other companies.

m) In the present case, the Applicant has three shareholders-Shanif Mansoor Jamal (3,300 shares), Jamal Mansoorali Altaf Hirani (3,300 shares) and Alkarim Mansooali Hirani (3,400 shares). This is per the Applicant's annual returns.

n) The Respondent established that the Applicant has the same shareholders with two other Entities- Moil Kenya Ltd and Mansoor Industries Ltd, a company that is incorporated in Tanzania.

o) The Applicant in their submissions, stated, *"Whereas, the Respondent alleges that the Applicant is a member of a group of companies, it does not categorically bring out any other companies with ties to the Applicant apart from the fact that they are owned the same individuals, regardless of the fact that it knows that every company acts on its own rights, distinct and separate from its members".* The Applicant therefore acknowledges the common shareholding of the three entities.

p) Having established that the Applicant and two other companies have common shareholding, it therefore follows that all three are part of the same group as per the definition of the term in Section 25(5) of the Income Tax Act. This is because the underlying ownership of the three individual shareholders who are common to all the entities.

q) The definition in Section 25(5) of the ITA does not state, as the Applicant alleges, that for a company to be part of a group, it must be a subsidiary of another company.

r) Consequently, the Tribunal found that the Applicant belongs to a group.

The Application was dismissed with costs to the Respondent.

46 NDUGU BENSON & ISINGOMA EDGAR VERSUS UGANDA REVENUE AUTHORITY

TAT Application No. 141 of 2023

Head Notes:

Timelines for Filings a Review Application Before the Tax Appeals Tribunal - Meaning of Tax Decision

Brief Facts:

The Applicants are a firm of accountants carrying on the business of audit, tax and advisory services in Uganda. The Respondent conducted a tax audit on the Applicants for the period 2013 to 2016 covering VAT and Income Tax, wherein it disallowed Group Life Accident (GLA) and Group Personal Accident (GPA) premiums

The Respondent disallowed the Applicants' payments on the premise of Section 22(2)(1) of the Income Tax Act that they are payments made in respect of life insurance. The premiums disallowed for GPA were UGX 301,990,344 and GLA of UGX 301,990,344, a total of UGX 603,980,688. The Applicants objected on grounds that the premiums paid by the Applicants on behalf of their employees should be allowed as business expenses. The Respondent, through Alternative Dispute Resolution, reviewed and allowed half of the Applicants' insurance premiums paid for GPA and disallowed UGX 301,990,344 in respect of GLA. The Applicant alleged that the Respondent served the above appeal decision on 21st July 2023.

Issues for determination:

1. Whether the Application is time barred?
2. What remedies are available?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara, Mrs. Christine Katwe, Ms. Kabakumba Masiko)

a) It is not disputed that the Application which was filed on 11th July 2019 was withdrawn with the consent of both parties and went for ADR.

b) On 30th June 2023, the Respondent revised its earlier objection decision and allowed half of the premium for GPA and disallowed UGX 301,990,344 in respect of GLA. This Application was filed on 18th August 2023.

c) The Applicants wrote to the Respondent in a letter dated 16th January 2023 in respect of the Income Tax assessment for one of their former partners, Mr. Ndugu Benson, contending that the decision to disallow the premiums paid to insurance companies was not the correct tax treatment.

d) The Respondent disallowed Group Personal Accident premiums making a total of UGX 603,980,688. In a letter dated 30th June 2023, the Respondent informed the Applicant that half of the premiums expense of UGX 301,990,344 relating to Workman's compensations which fall under general insurance is a statutory

requirement under the employment law had been treated as an allowable deduction and the balance of UGX 301,990,344 had been disallowed since it relates to Group Life Accident premium which is a non-allowable deduction under the Income Tax Act.

e) In paragraph 4 of the letter, the appeal was partially allowed and the assessment was amended accordingly. This being a new amended assessment, it meant that there was now a new assessment which changed from UGX 603,980,688 to UGX 301,990,344.

f) In this case which had been objected to by the Applicants, the Applicants need not object the second time rather than appeal to the Tax Appeals Tribunal.

g) The Respondent contended that according to Regulation 4(3) of the ADR Rules, ADR does not affect the statutory timelines for filing application before the Tribunal.

h) The letter that communicated the amended assessment constituted a determination, decision or notice within the meaning of Section 1 of the TAT Act. There is a tax decision issued by the Respondent dated 30th June 2023.

i) At the time the Applicants applied for ADR on 16th January 2023, the ADR Regulations had not been gazzeted. The Regulations came into force on 24th March 2023. The ADR Regulations cannot be applied retrospectively to the Applicants and as a result, the Applicants could not have been expected to apply the Regulations which were not in place by the date they filed their application for alternative dispute resolution.

The Tribunal found that the Applicants filed the Application within time and overruled the Respondent's preliminary objection.

Head Notes:

Payment of 30% of tax in dispute in Installments

Brief Facts:

The Applicant filed this Application seeking a temporary injunction restraining the Respondent from enforcing collection of the additional assessments of UGX 18,509,052,729 until determination of the main application. The Applicant also prayed for an order to pay 30% of the tax in dispute in installments.

Ruling of the Tax Appeals Tribunal:

(Mr. Siraj Ali, Ms. Rosemary Najjemba, Mrs. Christine Katwe)

a) The conditions under which a temporary injunction will be granted were set out in the High Court decision of ***Kiyimba Kaggwa Vs. Hajji Katende Abdu Nasser, Civil Suit No. 2109 of 1984***.

b) The Applicant wrote to the Respondent requesting to pay 30% of the tax in dispute in four equal installments because the assessed amounts are substantial

and payment of 30% of the amounts assessed in one go would jeopardize the running of the Applicant's business.

c) The evidence shows that the Applicant is willing to pay 30% of the tax in dispute. The Applicant cannot in these circumstances be compared to a litigant who has failed to comply with Section 15 of the Tax Appeals Tribunal Act.

d) Owing to the substantial amounts involved, this is a proper case for the Applicant to be permitted to pay in installments.

e) There is a prima facie case with a probability of success made out by the Applicant.

f) The Applicant has stated that it will suffer irreparable injury if the application is not granted. Irreparable damages does not mean that there must not be physical possibility of repairing the injury, but it means that the injury or damage must be substantial or a material one that is, one that cannot be adequately atoned for in damages.

g) It is common knowledge that a business such as the Applicant's relied on longstanding contractual relationships, with suppliers of raw materials on the one hand and purchasers of finished products like wholesalers and retailers on the other. Any closure of the Applicant's operations as a result of inadequate cash flow will not only affect the Applicant's business but all the other businesses which have contractual relations with the Applicant.

The Application was granted with orders that the Applicant pays 30% of the tax in dispute in four equal monthly installments.

Head Notes:

The Requirement to Pay 30% of the Tax in Dispute

Brief Facts:

The Applicant deals in the manufacture and sale of fabric. The Respondent conducted a returns examination on the Applicant which established that the Applicant filed nil returns for the period April 2021 yet its EFRIS account reflected transactions carried out during this period. On 13th June 2021, the Respondent issued a VAT assessment on the Applicant amounting to UGX 7,253,215 for period 1st April 2021 to 30th April 2021 on the basis of variances between the total e-invoices issued through EFRIS and total sales declared in the VAT return.

The Applicant objected to the assessment on grounds that the said sales totaling to UGX 46,414,801 in the month of April included zero rated sales, standard rated sales, exports, and that the Applicant incurred input tax of UGX 2,884,660 as it imported fabrics from Ghana worth UGX 16,025,890. The Respondent requested the Applicant to avail evidence in support of the objections raised, however the Applicant only provided packing lists and certificates of origin, but did not provide the export declaration documents requested for.

Resultantly, on 22nd September 2021, the Respondent issued its objection decision notice partially allowing the objection and the tax liability was revised from UGX 7,253,216 to UGX 5,470,003 because the Applicant failed to provide export entries to prove that the goods were exported out the country.

The Applicant filed this Application challenging the assessments issued by the Respondent.

Issues for determination:

1. Whether the Applicant was liable to pay the tax assessed?

2. Whether the Application was improperly before the Tribunal for failure to pay 30% of the Tax in dispute by the Applicant?

Ruling of the Tax Appeals Tribunal:

(Ms. Kabakumba Masiko, Ms. Proscovia R. Nambi, Mrs. Christine Katwe)

a) Any party can raise a preliminary objection on a point of law by his or her pleadings at any point. A Preliminary objection consists of a point law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.

b) A tax payer who has lodged a notice of objection to an assessment shall pending final solution of the objection, pay thirty percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater.

c) A revision /reduction of a tax assessment by way of an objection decision by the Respondent does not amount to payment of tax.

d) The Applicant ought to have deposited UGX 1,641,000 as 30% of the tax assessment of UGX 5,047,003 which she failed to do so.

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

49 RICHARD OMONGOLE ANGURIA VERSUS UGANDA REVENUE AUTHORITY

TAT Application No. 83 of 2023

CASE DIGEST VOLUME IX

Head Notes:

Default Assessments vis-a-viz Administrative Assessments – Duty to File Tax Returns - TIN Registrations – Relevance of Email Address on Tax Profile – Requirement to Maintain Records – Agency Notices

Brief Facts:

The Applicant was incorporated as a sole proprietorship trading as Omongole & Co. Advocates and registered for Income Tax effective 1st July 2013. On 9th August 2016, 6th February 2016, 4th July 2017 and 23rd February 2018, the Respondent issued Administrative Default Assessments of UGX 9,227,914 for the period July 2013 to June 2017 after realizing that the Applicant had not filed any returns since his registration for Income Tax in 2013.

The Applicant stated that he only discovered the said assessments in February 2023 and he did not understand how there were arrived at. He sought extension of time to object and the Respondent allowed. The Applicant objected on grounds that he was not eligible to file Income Tax returns as he is an individual earning employment income only. He also stated that at the time of registration, he did not have any income and that he only wanted a TIN for purposes of registering a car in his names, which car was donated to him.

The Respondent requested the Applicant to provide documents to support his grounds of objection and the Applicant wrote back stating that he did not have any supporting documents since the said assessments were over 8 years ago. He argued that the Section 129 (3) of the Income Tax Act allows taxpayers to retain documents required by the Respondent for a maximum of five years which time had already passed. The Respondent partially allowed the objection and issued Administrative Additional Assessments for the same period July 2013 to June 2017 that reflected the exact amounts contained in the earlier Administrative Default Assessments. On 4th May 2023, the Respondent issued numerous third-party agency notices against the Applicant's banks, whose execution was halted by a temporary injunction.

Issues for determination:

1. Whether the Applicant is liable to pay the tax assessed?
2. What remedies are available?

Ruling of the Tribunal:

(Ms. Kabakumba Masiko; Mrs. Christine Katwe; Ms. Grace Safi)

a) The Respondent issued Default Administrative Assessments to the Applicant amounting to UGX 9,227,914 for the periods July 2013 to June 2017 due to failure by the Applicant to file returns. The Applicant confirmed during cross examination that he did not ever file Income Tax returns for the period 2013 to 2017.

b) Default Assessments are issued by the Revenue Authority in cases where the taxpayer does not file returns.

c) By February, 2013, the taxpayer in this matter was already registered for income tax. The Respondent issued default assessments on the basis that there was a registered business going on and no returns were filed for the period.

d) The Tribunal wondered how the Applicant got to discover the default assessments of 2016 in 2023 after 8 years. The Applicant did not tell the Tribunal how he finally got to know about the assessments.

e) When registering a Tax Identification Number (TIN), a taxpayer issued the Revenue Authority with an email that is used for communication between the two. The taxpayer is expected to issue an active email so as to keep up with his tax responsibilities and liabilities.

f) According to the Applicant's tax profile, the Applicant registered for Income Tax in 2013. This meant that the Applicant had a duty to file returns. The Applicant's email address is also listed in the profile.

g) Section 90(2) of the Tax Procedures Code Act (TPCA) provides that a notice is treated to have been served of *"...(d) an electronic data message is transmitted to the person's known or registered electronic account"*.

h) It is the duty of the taxpayer to check their email address especially if they carry out a business. The Applicant cannot claim he did not check his email for over 8 years and that he finally decided to check in 2023 after 8 years.

i) The Tribunal found that the Applicant was using his late discovery of the assessments of 2016 as an excuse not to pay the taxes assessed. The fact that he discovered the assessments of 2016, 2017 and 2018 in 2023 does not negate the fact that the assessments for the period July 2013 to June 2017 were issued on time.

j) The Tribunal found that the Administrative Default Assessments were properly issued on the Applicant.

k) During cross examination, the Respondent's witness clarified that the initial Default Assessments became Additional Assessments after the Applicant submitted an objection and the Respondent made a decision upholding the default assessments.

l) Clearly, in this case, the Administrative Additional Assessments were an extension of the Administrative default assessments.

m) Although the Applicant contended that the Additional Assessments should have been issued within three years, in this case, the Applicant cannot claim he did not know about the assessments that were issued in 2016. This means that there was willful neglect on the part of the taxpayer.

n) On the issue of Additional Assessments, Section 25(2)(a) of the Tax Procedures Code Act states that the assessment may be raised at any time, if fraud or any gross or willful neglect has been committed by, or on behalf of the taxpayer, or new information has been discovered in relation to the tax payable by the taxpayer for a tax period.

o) Having found that the Additional Assessments were an extension to the Default Assessments, the Tribunal also found that the Additional Assessments were issued because the Applicant willfully neglected his duty to file returns and failed to pay his Income Tax contrary to section 25(2)(a) of the Tax Procedures Code Act.

p) Maintenance of records is important for verification of tax liabilities. A taxpayer who fails to maintain records may not be able to challenge an excessive or incorrect assessment which may lead to tax liabilities and penalties.

q) Pursuant to Section 15(1)(c) of the Tax Procedures code Act, it is incumbent upon every taxpayer to retain records for a period of 5 years following the conclusion of the tax period to which those records pertain.

r) The Applicant failed to act on the default assessments that were issued to him. He acknowledges them when he seeks an extension of time to object.

s) It was incumbent upon the Applicant to maintain the documentation that he would use in his defence to prove that he was not liable to pay the assessed tax.

t) It was the Applicant's duty to object to the assessments that arose at the time they were issued in 2016 to 2018, which duty the Applicant failed to discharge in time. The Applicant admitted that he applied for an extension of time to object and it was granted. This meant that the Applicant was cognizant of the fact that he was late. The Applicant was supposed to avail evidence that exonerated him from the tax liability and he failed to do so.

u) Even when the Applicant failed to provide the requested information, the Respondent used the available information to review the Assessments and partially allowed the objection hence requiring the Applicant to pay UGX 8,227,914.

v) The Tribunal found that the agency notices were legal as provided for under Section 31 of the Tax Procedures Code Act. This is because the assessments on which they were based are lawful.

w) The Applicant is liable to pay the tax as assessed.

The Application was dismissed with costs to the Respondent.

Head Notes:

The Requirement to Pay 30% of the Tax in Dispute

Brief Facts:

The Applicant objected to a tax assessment of UGX 316,337,346 issued by the Respondent. On 17th June 2024, the Applicant elected to treat the VAT as waived. The Applicant contended that prior to the election, the Respondent did not issue an objection decision notice but rather issued a demand notice to the Applicant dated 23rd May 2024.

Subsequently, the Applicant filed an application before the Tribunal challenging the tax assessment without paying 30% of the tax in dispute. The Respondent raised a preliminary objection on account of non-payment of 30%.

Issue for determination:

1. Whether the Applicant is liable to pay 30% of the tax assessed, in light of the election made under Section 26(7) of the Tax Procedures Code Act?

Ruling of the Tax Appeals Tribunal:

(Mrs. Stella Nyapendi Chombo, Mr. Siraj Ali, Mr. Willy Nangosyah)

a) Section 15 of the TAT Act provides that a taxpayer lodging a notice of objection to an assessment shall, pending final resolution of the objection, pay thirty percent of the tax in dispute or that part of the tax assessed not in dispute, whichever is greater.

b) The above provision is a prerequisite for invoking the Tribunal's jurisdiction, intended to ensure that taxpayers meet their immediate obligations even as they contest assessments.

c) The legal provision applies after a taxpayer has lodged a notice of objection to an assessment with the Commissioner General. This is the first step in the tax dispute process, where the taxpayer formally disputes the assessment.

d) While awaiting the final resolution of the objection by the Commissioner General, the above legal provision imposes a legal obligation onto the taxpayer to make a partial payment.

e) The thirty percent deposit of the disputed or undisputed amount must be paid during the objection process and before escalating the dispute to the Tax Appeals Tribunal. This payment can be said to be a mandatory pre-condition to filing an application before the Tribunal.

f) One of the issues for determination by the Tribunal in the instant application is whether the Applicant's election is valid and whether the Applicant is liable to pay the VAT.

g) The Tribunal stated that it was alive to the fact that determining the validity of the election under Section 26(7) of the TPCA would necessitate delving into the merits of the substantive application, which goes beyond the scope of the preliminary objection.

h) Furthermore, the VAT is the subject of an election whose validity the Respondent contests in the application.

i) The Applicant is not exempted from the requirement to pay thirty percent of the disputed tax.

The preliminary objection was sustained and the Applicant was ordered to pay 30%.

51 SHARAD KARIA VERSUS UGANDA REVENUE AUTHORITY

TAT Application No. 57 of 2023

CASE DIGEST VOLUME IX

Head Notes:

VAT on Rental Income – VAT on Serviced Apartments – Reasoning behind VAT Exemption of Services of Leasing Immovable Property

Brief Facts:

The Applicant is an individual carrying on a real estate business with property located at Plot 1A Baker Road, Kampala. The Respondent issued the Applicant with an Administrative Assessment of VAT amounting to UGX 230,738,527 on grounds that the Applicant had not declared VAT on Rental Income earned from the above property. The Applicant objected on grounds that the income in question had been derived from letting out the property for residential purposes and was thus VAT exempt. The Respondent issued an objection decision disallowing the objection, hence this Application.

Issues for determination:

1. Whether the Applicant is liable to pay the tax assessed?
2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Mr. Siraj Ali; Mrs. Christine Katwe; Ms. Safi Grace)

a) Paragraph 1(f) Schedule 3 of the VAT Act provides as follows:

"1. The following supplies are specified as exempt supplies for the purposes of Section 19-

(f) A supply by way of sale, leasing or letting of immovable property, other than-

(i) A sale, lease or letting of commercial premises;
(ii) A sale, lease or letting for parking or storing cars or other vehicle;
(iii) A sale, lease or letting of hotel or holiday accommodation;
(iv) A sale, lease or letting for periods not exceeding three months'
(v) A sale, lease or letting of service apartments."

b) The Applicant submitted that his business does not fall among the exceptions set out under paragraph 1(f) (i)-(v) but rather that its business falls within the definition of a supply by way of a lease of immovable property.

> *It is clear from the above that the reasoning behind the exemption granted under paragraph 1(f) of Schedule 3, had as its basis the principle, that the leasing of immovable property, is normally a relatively passive activity not generating any significant added value and therefore providing no justification for the imposition of Value Added Tax. However, this argument does not apply where the leasing of immovable property involves active exploitation of the immovable property as in the case of hotel premises or lettings for industrial or commercial purposes.*
>
> **-Tax Appeals Tribunal-**

c) It is necessary to inquire into the *ratio legis* of paragraph 1(f) of Schedule 3 of the VAT Act. The Latin term *ratio legis* literally means *"reason of the law".* It refers to the reasoning or principle behind a law that guides how it should be interpreted.

d) The Parliamentary Hansard debate leading to the enactment of the VAT Act provides no reason for the exemption accorded under Paragraph (1)(f) to supplies by way of leasing immovable property.

e) Our VAT Act was adopted from the United Kingdom, who as stated above had adopted theirs from the Valued Added Tax law of the European Economic Community.

f) Article 13B(b) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the Harmonisation of the Laws of the Member States relating to turnover taxes – Common Systems of Value Added Tax; Uniform Basis of Assessment (OJ 1977 L 145, p. 1,) also known as 'the Sixth Directive' is in *pari materia* with Paragraph 1(f) Schedule 3 of our VAT Act.

g) In order to find the *ratio legis* behind the enactment of paragraph 1(f) Schedule 3 of the VAT Act, we must therefore look at the ratio legis behind the enactment of Article 13B(b) of the Sixth Directive.

h) The ratio legis behind the exemption granted under **Article 13B of the Sixth Directive** was analysed by the Court of Justice of the European Union in ***Stiching "Goed Wonen" v Staatssecretaris van Financien C-326/99***

"In this regard, the Explanatory Memorandum to the Commission's proposal for the Sixth Directive, presented to the Council on 29 June 1973 (Bull. EC 11-73, Supplement, p.7, particularly p.16), states, with regard to Title X of the Sixth Directive, concerning exemptions, that the list of exemptions has been drawn up having regard to

(i) *The exemption already existing in the various Member States, and*

(ii) *The need to keep the number of exemptions as small as possible...*

In the Member States the letting of immovable property is generally exempted on technical, economic and social ground. But the arguments which justify the exemption of lettings of premises as dwellings... no longer apply in the case of hotel premises or of lettings for industrial or commercial purposes".

i) The Court went ahead to conclude as follows:

"Although the leasing of immovable property is in principle covered by the concept of economic activity within the meaning of Article 4 of the Sixth Directive, it is normally a relatively passive activity not generating any significant added value. Like sales of new buildings following their first supply to a final consumer, which marks the end of the production process, the leasing of immovable property must therefore in principle be exempt from taxation, without prejudice to the right to opt for taxation which the Member States may grant to taxable persons, pursuant to Article 13C of the Sixth directive.

However, it is also consistent with the general aim of the Sixth Directive that if immovable property is made available to a taxable person through leasing or letting, as a means of contributing to the production of goods or services whose cost is passed on in their price, the property stays within, or returns to, the economic circuit and must be capable of giving rise to taxable transactions. The common characteristic of the transactions which Article 13B(b) of the Sixth Directive excluded

from the scope of the exemption is indeed that they involve more active exploitation of immovable property, thus justifying supplementary taxation, in addition to that charged on the initial sale of the property".

j) It is clear from the above that the reasoning behind the exemption granted under paragraph 1(f) of Schedule 3, had as its basis the principle, that the leasing of immovable property, is normally a relatively passive activity not generating any significant added value and therefore providing no justification for the imposition of Value Added Tax. However, this argument does not apply where the leasing of immovable property involves active exploitation of the immovable property as in the case of hotel premises or lettings for industrial or commercial purposes.

k) The terms of the tenancy agreements show that the letting of the premises in question by the Applicant to the various tenants was not a passive activity which generated no significant added value. The amenities provided by the Applicant to its tenants namely, the furnishing, internet, DSTV access package, common security, standby generator lift maintenance, parking, cleaning of common areas, free gym and swimming pool access, onsite duty manager and 24-hours dedicated reception, all point towards an active exploitation of the property in question.

l) The amenities provided generate significant added value. This added value is passed on to the tenants in the monthly rent and in the service charge. Indeed, the tenancy agreement of Naidoo Vinesh Anil showed that the service charge of USD 300 is inclusive of VAT while the tenancy agreement of Regis Uganda Ltd showed that the monthly rent of USD 1,900 was also inclusive of VAT.

m) The addition of value to the property through provision of the above amenities is apparent from the fact that properties providing the above amenities are able to command higher monthly rents, compared to similar properties without the said amenities.

n) A passive exploitation of the property for the purposes of paragraph 1(f) of the Schedule would not entail the provision of the above amenities. The active exploitation of the property places it among the transactions excluded from the exemption under paragraph 1 (f)(i)-(v) of Schedule 3 to the VAT Act.

o) The Tribunal found that the leasing or letting of the property in question by the Applicant did not constitute a supply by way of leasing or letting of immovable property.

p) The absence of a specific definition for the term 'service apartment' does not render paragraph 1(f)(v) Schedule 3 of the VAT Act ambiguous. The said provision is only capable of the meaning that the exemption from VAT accorded to supplies by way of sale, leasing or letting of immovable property does not extend to a sale, lease or letting of serviced apartments.

q) A serviced apartment is temporary accommodation, halfway between a traditional apartment and a hotel. These apartments can be booked for both short-term and long-term stays. They contain fully furnished apartments with separate living, dining and sleeping areas. They also contain kitchen facilities with appliances and cooking utensils, including amenities like fridges, stoves, microwaves and dishwashers. Utilities such as electricity, water, gas, Wi-Fi or other internet access, television with cable or satellite channels are provided. Other amenities include laundry facilities, which may include washing machines and dryers, 14-hour security, concierge and reception services, gym or fitness facilities, swimming pool and other recreational

amenities. In some instances, housekeeping facilities which may include daily or weekly cleaning, linen and towel change and restocking of toiletries and other supplies may be provided for.

r) The Tribunal visited the *locus in quo* and was able to observe for itself and through the testimony of Ms. Julian Kayobyo, that the property in question comprises of 32 apartments; the amenities include a swimming pool, gym, reception, each apartment has a dining table with chairs, a kitchen with an in-built cooker, kitchen cabinets without cutlery, a washing machine, a gas cylinder replenished by the tenant and a fridge.

s) The bedrooms contained a bed and a mattress without linen, a bathroom, an outdoor balcony and coffee chairs and separate Yaka meters and an air conditioner.

t) The Tribunal was informed by the witness that the landlord charges a service charge for each tenant which caters for the cost of security, water and the cleaning of common areas and the tenants pay for their own internet and cable television.

u) The Tribunal found that the Applicant's property at Plot 1A Baker Road, Nakasero, Kampala is a serviced apartment for the purposes of Paragraph 1(f)(v) of Schedule 3 to the VAT Act; and that the letting or leasing of the said property by the Applicant is not VAT exempt.

The Application was dismissed with costs to the Respondent.

VAT MANDATORY FOR SERVICED APARTMENTS – COURT

By Michael Odeng

The Tax Appeals Tribunal has directed that all serviced apartments must pay value-added tax (VAT).

The ruling stems from a case filed by Sharad Karia, a real estate businessman, against Uganda Revenue Authority (URA).

Karia claimed that his property, located at Plot 1A Baker Road, Nakasero I, Kampala Central division, was being rented for residential purposes, which is exempt from VAT.

However, the Tax Appeals Tribunal members led by Crystal Kabajwara, ruled that Karia's property qualified as a serviced apartment under Schedule 3, (1) (f) (v) of the VAT Act.

As a result, they ruled that the rental income derived from the property was not VAT-exempt, and the sh230.7m VAT assessment by URA was upheld.

The tribunal also ordered Karia to pay URA costs of the application.

The ruling has clarified that the letting of serviced apartments is subject to VAT.

The tribunal's decision highlights the importance of distinguishing between standard residential leases and serviced apartments, as the latter may be liable for VAT due to the provision of additional services and amenities.

In a ruling dated November 25, 2024, the members of the


Kabajwara

tribunal clarified that serviced apartments are fully furnished, temporary accommodations that combine the benefits of traditional apartments and hotels.

They say the apartments can be booked for both short-term and long-term stays, providing guests with a home-like experience and various amenities.

"These fully furnished apartments typically feature separate living, dining and sleeping areas, as well as kitchen facilities equipped with appliances and cooking utensils, including fridges, stoves, microwaves and dishwashers," Kabajwara explained.

The tribunal members also observed that some serviced apartments may offer housekeeping services, such as daily or weekly cleaning, linen and towel changes and restocking of toiletries and other supplies.

The tribunal members noted that, in this case, tenants were charged a monthly service fee of $300 (about sh1m),


Furnished residential apartments

with invoices indicating that this fee was inclusive of VAT. Additionally, rent charges were also VAT-inclusive, yet the tax was never remitted to URA.

The tribunal emphasised that to qualify for VAT exemption under Schedule 3, (1) (f) of the VAT Act, a landlord must engage in the passive activity of leasing or letting immovable property.

In contrast, the tribunal observed that Karia was actively involved in providing not only accommodation, but also a comprehensive suite of services and amenities, rendering the rental arrangement more complex than a simple residential lease.

BACKGROUND

On May 29, 2022, URA issued an administrative additional assessment for VAT amounting to sh230.7m to the real estate businessman. This assessment was based on alleged undeclared VAT on rental income earned by Karia from his property.

Karia objected to the assessment, arguing that the rental income derived from letting the property for residential purposes is VAT-exempt under the VAT Act.

However, URA asserted that the property in question was a serviced apartment and, therefore, not VAT-exempt under the VAT Act.

Dissatisfied with URA's decision, Karia filed an appeal with the Tax Appeals Tribunal seeking a review of the assessment, maintaining that the property was being let for residential purposes, which is VAT-exempt according to Schedule 3, (1) (f) of the VAT Act.

In rebuttal, URA contended that the property should be classified as serviced apartments, which fall outside the VAT exemption for residential rentals.

URA based its argument on the fully furnished nature of Karia's property, which included amenities, such as a fully equipped kitchen with modern cooking appliances, washing machines, dining tables and chairs, a living room with sofa sets and television sets, bedrooms furnished with beds, mattresses, beddings and pillows.

URA also said the apartments had amenities, such as a swimming pool, gym, standby generator, 24-hour reception, Internet, DStv and cleaning services.

Head Notes:

Issue Audit via-a-viz Comprehensive Audit – Transfer Pricing Framework – Arm's Length principle – Deductibility Principle in Income Tax Mandatory Requirement for Transfer Pricing Documentation – Risks of Transfer Pricing to the Economy

Brief Facts:

The Applicant is a branch of a foreign company, SMEC International Pty Limited that is resident in Australia and provides engineering consulting services. On 14th May 2018, the Respondent informed the Applicant of its intentions to carry out a comprehensive audit of the Applicant following a returns examination for the period July 2011 to December 2016. The Respondent identified several issues during the returns examination which warranted a comprehensive audit. The Respondent communicated the findings from the comprehensive audit, key among them being the head office and regional support costs that are allocated to the Applicant from its Australian head office and other regional divisions.

The Respondent assessed the Applicant Income Tax of UGX. 2,575,670,684 and penalties of UGX 2,006,884,435 for the period July 2011 to December 2016 on the basis that the Applicant had not furnished proof that the expenses relating to head office cost allocation were incurred in the production of income included in gross income as per Section 22 of the Income Tax Act. The Applicant objected and the Respondent maintained the assessments, hence this Application.

Issue for determination:

1. Whether the Respondent was correct in disallowing the head office costs allocated to the Applicant?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mr. Siraj Ali, Mrs. Christine Katwe)

a) Prior to this dispute, the Respondent had in 2014 carried out a transfer pricing audit of the Applicant covering the period July 2009 – June 2012. The audit established that the Applicant paid management fees to the head office and other related parties. The Respondent sought to collect Withholding Tax in respect of the management fees. The matter was eventually resolved on 21st May 2019 by Consent Judgment before the High Court wherein the Respondent vacated the Withholding Tax assessment.

b) The Applicant also brought to the attention of the Tribunal a Withholding Tax Credit for the period 2011 to 2016 that has not been refunded by the Respondent following verification of the same. The credit, which was initially UGX 8,265,762,900 reduced to UGX 1,361,517,152 following certain offsets. The Applicant sought a refund of the said credit with interest.

c) The Applicant stated that the audit of 2018 for the period 2011 – 2016 was duplicative of the previous audit of 2009 – 2012 and amounted to a re-audit.

d) The Tribunal disagreed with the Applicant's submissions and noted that the Respondent communicated its finding from the transfer pricing audit July 2009 – July 2012 which focused on Withholding Tax on alleged management fee payments to the head office. The Tribunal noted that this appears to have been an issue audit review.

e) In 2018, the Respondent carried out a returns examination and informed the Applicant that they had identified a number of issues which necessitated the initiation of an audit to address all the issues. Consequently, the Respondent carried out a comprehensive audit of the Applicant.

f) Whilst the 2014 audit was an issue audit, the subsequent audit of 2018 was a comprehensive audit which was brought about by anomalies identified in the returns examination. The scope of the 2018 audit is evidence by the extent of the issues that were identified which included undeclared sales, imported services, head office support costs, capital allowances, means while travelling etc. In comparison, the 2014 audit only dealt with withholding tax.

g) Going by the nature of audits carried out, it would not be accurate for the Applicant to state that there was a re-audit. A single issue audit could not have created a legitimate expectation on the part of the Applicant that it had been given a completely clean bill of health. A malaria test does not equate to a full body check.

h) In view of the kind of issues identified from the returns examination, it would have been imprudent for the Respondent to turn a blind eye to the issues identified, high risk issues moreover, involving expenses of significant amounts to non-resident related parties.

i) The period of the audit differs. The 2014 audit covered 2009 – 2012 while the 2018 audit covered 2011 – 2016. While there was an overlap regarding two of the years in the two periods, namely 2011 and 2012, it is not entirely accurate that the audit covered the same period.

j) The Applicant also argued that the assessment of 7th February 2019 was time barred because it was issued outside the 3-year statutory timeline imposed by Section 25(2) (b) of the Tax procedures Code Act (TPCA) for making additional assessments.

k) The Tribunal noted that it was evident that the Respondent did discover new information, which they brought to the attention of the Applicant. Upon analysis of the Applicant's returns, the Respondent discovered certain issues that had a bearing on the tax payable by the Applicant for the period 2011 – 2019.

l) The Tribunal was satisfied that the Respondent was within their rights to raise the Additional Assessments in the basis of this new information.

m) The Applicant contended that they were entitled to the deductions for the head office and regional recharges as the costs were incurred in the generation of income included in gross income. The Respondent alleged that the Applicant did not provide information needed to substantiate the costs incurred and thereby failed to discharge the burden of proof.

n) The costs that are at the heart of the dispute relate to recharges from the head office of the Applicant and regional divisions of the group to which the Applicant belongs.

o) Transactions between a Ugandan taxpayer and a non-resident related party are governed by the transfer pricing legal framework set out in Section 116 of the Income Tax Act read together with the Income tax (Transfer Pricing) Regulations, 2011.

p) The spirit of the legal framework is to ensure that expenses incurred in or income earned from transactions with associates/ related parties, particularly non-resident persons, reflect an arm's length outcome. In other words, the outcome

of the transactions must be the same as that which would have occurred had the same transaction taken place between unrelated and unaffiliated parties acting independently and in their self-interest.

q) This is in accordance with Regulation 9 of the Transfer Pricing Regulations which requires income and expenditures between associates to be determined in a manner that is consistent with the arm's length principle.

r) The Respondent had to satisfy themselves that the cost allocations by the head office and regional offices to the Applicant were fair, justified and result in an arm's length outcome.

s) Where it is established that the costs allocated to a branch were excessive, such costs will not be deductible for tax purposes under Section 22 of the Income Tax Act. This is in accordance with Section 116 of the Income Tax Act which empowers the commissioner to distribute, apportion or allocate income, deductions, or credits between the associates to reflect the chargeable income realized by the taxpayer in an arm's length transaction.

t) The Respondent's disallowance of the expenses incurred by the Applicant in respect of payments to its head office and other regional offices for services rendered is an attempt to allocate or apportion deductions to reflect what ought to have been the Applicant's chargeable income.

u) Section 22(1) of the Income Tax Act deals with deductibility of expenses for income tax purposes. On the face it, it appears that Section 22(1) allows all expenses incurred by a person in the production of income included in gross income. However, Section 22(2) lists certain expenses which though incurred by a person, are not allowable, even where they were incurred in the production of income.

v) Section 116 is another exception to the general deductibility principle in Section 22. This exception is specific to expenses incurred between associated parties that are not found to be at arm's length. The Commissioner may apportion or allocate the deductions to reflect the chargeable income realized by the taxpayer in an arm's length transaction.

w) Two test must be satisfied in demonstrating whether a charge for services between associates is arm's length. Chapter 7 of the OECD Guidelines explains the transfer pricing considerations for intergroup services:

(i) *That a service was in fact rendered- this is a question of fact. A service is rendered if it provides(d) a benefit for the recipient- a service is deemed to provide a benefit if it enhances the commercial position of the recipient. It should be noted that the services that re duplicative in nature or relate to the group's shareholder activities do not benefit the recipient.*

(ii) *(ii) Whether the charge for the service is appropriate.*

x) In order to establish whether a taxpayer meets the tests above, tax authorities require information from taxpayers which often includes transfer pricing documentation and any additional information needed to verify the appropriateness of the income or expense.

y) The documents provided by the Applicant do not establish whether the services were in fact rendered to the Applicant. For example, a list of the Applicant's projects does not indicate the staff who worked on the respective projects. The time sheets merely indicate a person's name and the hours posted. They do not include a narration of the work done and the corresponding project or the location of the project. The work could have been done for a project in Mongolia. It was not possible for the Respondent to establish these facts from the timesheets.

z) The tax invoices for salary costs are generic. They merely state *"general office overheads salary costs".* Whose salary costs are they? What work was done and for whom? The answers to these questions are not on the invoices.

aa) As regards head office costs, the Applicant provided the Uganda Service allocation charge and Cost center printouts for various functions. The above information shows that there are costs that are incurred at the head office which are allocated out to the subsidiaries/ branches of the SMEC group. However, there is no clear indication of what the costs related to, whether the underlying services were rendered to the Ugandan branch and the benefit derived from the services rendered.

ab) As regards the regional costs, a lot of the information provided was generic in nature and was not sufficient to substantiate the extent of services rendered to the Applicant.

ac) There are multiple services supposedly rendered to the Applicant from the head office and the regions. This presents a risk of duplication which made it more pertinent for the Respondent to carry out due diligence to substantiate the nature of the services.

ad) Regulation 8 of the Transfer Pricing Regulations requires a person (the Applicant) to – *"record in writing, sufficient information and analysis to verify that the controlled transactions are consistent with the arm's length principle".*

ae) The Tribunal noted that the Applicant provided the Respondent with transfer pricing documentation for 2019 that was prepared for Surbana Jurong Holdings (Australia) Pty Limited (SJH). The documentation covers activities of SMEC International Pty Ltd, which is a subsidiary of SJH.

af) The period audited by the Respondent was 2011 – 2016. Therefore, 2019 documentation was not relevant to the audit period. Further, the documentation was prepared for the benefit of the SJH Group, which has over 120 offices globally. Nothing in this documentation is specific to the Applicant's operations and neither has it been prepared for purposes of satisfying Uganda's transfer pricing documentation requirements contained in Regulation 8 of the Transfer Pricing Regulations.

ag) Transfer pricing documentation is a mandatory compliance obligation for taxpayers dealing with associates. It must be relevant to the activities and transactions between the Ugandan taxpayer and its associates.

ah) The transfer pricing documentation that was provided to the Respondent was not sufficient to establish whether the costs incurred by the Applicant were incurred in the production of income included in gross income.

ai) The Respondent asked the Applicant to provide certain information which was not provided. It can be deduced from the information requested for that the Respondent sought to establish a nexus / connection between the activities of the head office / regional offices and the Applicant's projects in Uganda.

aj) Transfer pricing is a significant risk to Uganda's economy as it potentially erodes the tax base of the country through the shifting from Uganda to other countries through expenses and income.

ak) The Respondent's duty is to protect the country's tax base while the Applicant has a duty to demonstrate that its expenses incurred were necessary, relevant, justified and at arm's length.

al) By failing to provide the information requested for by the Respondent, the Tribunal found that the Applicant did not discharge the burden of proof and therefore, the Respondent was justified in disallowing the expenses relating to the head office and regional office costs.

The Tribunal remitted the matter back to the Respondent and costs were awarded to the Respondent.

53 SUNDAY PLASTICS UGANDA LIMITED VERSUS UGANDA REVENUE AUTHORITY

TAT Application 249 of 2022

CASE DIGEST VOLUME IX

Head Notes:

Time for Accounting for VAT – Time of Supply of Goods for VAT Purposes

Brief Facts:

The Applicant imports raisin, a raw material used in the manufacture of plastics. The Respondent examined the Applicant's VAT returns and records for the period 1st July 2021 to 30th June 2022 and purportedly established that there was a variance between the bank credits and VAT returns of UGX 7,488,038,731.

The Respondent issued the Applicant with additional administrative assessments totalling to UGX 2, 477,914,367 for the period 15th July 2021 to 28th February 2022. The Applicant objected and the Respondent disallowed the Objection, hence this Application.

Issues for determination:

1. Whether the Applicant is liable to pay the tax assessed?
2. What remedies are available?

Ruling of the Tax Appeals Tribunal:

(Ms. Kabakumba Masiko; Mrs. Christine Katwe; Mr. Willy Nangosyah)

a) The Applicant started its operations in Uganda in July 2021. The company imports raisins, a raw material used in the manufacture of plastics. It received its first consignment in October 2021.

b) The Respondent issued an Administrative VAT Assessment for the period July 2021 to February 2022 on the booking fees paid by the Applicant.

c) The Tribunal noted that the booking fees were kept as bank deposits. However, the issue at hand was when and on what the Applicant should have charged VAT.

d) The Respondent submitted that booking fees/deposits constitute payments of the goods by the Applicant as the Applicant did not reflect them as deferred income. The relevance of recording such deposits as deferred income would support the Applicant's submission that the deposits merely constituted booking fees.

e) The Respondent submitted that the booking fees/deposits paid by the Applicant's clients comprised of part payment. The tax point is the date of the booking fees/ deposits in accordance with Section 14 (1)(c) of the VAT Act; that to date, the Applicant neglected and/or refused to account for VAT on the deposits received.

f) The Tribunal noted that the Applicant imported raisins after customers made their orders by paying booking fees. The Applicant alleged that the Respondent charged VAT on clients booking fees before the goods were imported into the country.

g) Much as the Applicant insisted that the booking fees never constituted the purchase price, during cross examination, the Applicant's witness confirmed that the booking fees were part of the final consideration, and that the tax invoice would reflect only the balance net of the booking fees.

h) The Tribunal noted that it was clear that the booking fees were part payment of the final consideration. The Applicant should have accounted for VAT at the first instance of payment to make the VAT traceable.

i) The Applicant had to make orders to the manufacturer in China after the customers had confirmed their orders by paying the booking fees. The Applicant did not dispute having received the booking fees from the clients as confirmation of their orders. The booking fees were offset against the consideration/ payment for the goods.

j) Since payment for the goods preceded delivery or issuance of the tax invoice, the supply is deemed to have taken place at the time the booking fees were paid thus creating a tax point.

k) The supply of goods or services takes place when payment for the goods or services in whole or part, is received by the supplier, including an advance payment for the supply of goods. The taxpayer is expected to apply the VAT, considering the entire total consideration because this is payment in advance. This makes it easy for both parties to account and trace VAT that is payable.

l) In cases where the customer forfeits the part consideration/payment, what happens to the booking fees? If it is vatable from the start, the tax is deducted.

m) The Applicant should have accounted for VAT upon receipt of the booking fees as it was part of the payment.

n) The Applicant in her submissions stated that the Respondent should have not charged VAT for a period where the Applicant had not yet imported the goods into Uganda; that the goods were first made available in 2021. The Tribunal noted that the the Assessment period was July 2021 to February 2022 which covers the period between October 2021 and February 2022, when the Applicant made her importations into the country.

o) It is not in dispute that there was a supply and booking fees/deposits/partial consideration was received, therefore VAT should have been accounted for at that time.

The Tribunal found that the Applicant is liable to pay VAT of UGX 2,477,914,367 and the Application was dismissed with costs to the Respondent.

Head Notes:

Taxable Supply - VAT on Imported Services – Place of Supply vis-a viz Place of Consumption of Services

Brief Facts:

The Applicant is a limited liability company engaged in the manufacture and refurbishment of transformers. The Applicant temporarily imported into Uganda transformers from the Republic of Rwanda for service, pursuant to its contractual obligations with M/s Salvi Rwanda Limited. Upon completion of the refurbishment, the Applicant initiated a refund request for the sum of UGX 32,076,969 for the period November 202 to April 2023. The Respondent rejected the refund claim and reclassified the rate applicable from zero to standard rated. Consequently, the Respondent issued the Applicant with an Administrative Additional Assessment of UGX 42,153,192. The Applicant objected and the Respondent disallowed the objection, hence this Application.

Issues for determination:

1. Whether the Applicant is liable to pay the assessed tax?
2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Mr. Siraj Ali; Mrs. Christine Katwe; Ms. Rosemary Najjemba)

a) Both parties agree that the services supplied by the Applicant to Salvi Rwanda are taxable. The point of dispute is the VAT rate applicable to this taxable supply. The Applicant's position is that the services rendered by it are liable to VAT at 0% as they were exports within the meaning of the VAT Act. The Respondent's position is that the services are liable to VAT at the standard rate of 18% since the services were performed in Uganda.

b) The Respondent's position is based on Section 16(1) of the VAT Act. The Respondent made no reference to Section 24(4) of the VAT Act, Paragraphs 1(a) and 2(b) of Schedule 4 to the Act and Regulation 12 of the VAT Regulations.

c) The above provisions read together specify a zero-rate for services exported out of Uganda. Section 16(1) of the VAT Act is not a taxing provision. It merely defines the term "place of supply of services".

d) To correctly determine the applicable rate of tax, the correct approach that should be followed is to start with Section 4 of the VAT Act which is the charging Section and provides that, *"A tax to be known as value added tax shall be charged in accordance with this Act on – (a) every taxable supply made by a taxable person"*.

e) A taxable supply is defined by Section 18 of the VAT Act to mean supply of goods or services, other than an exempt supply, made in Uganda by a taxable person for consideration as part of his or her business activities.

f) A taxable person is defined by Section 6 of the VAT Act to mean a person registered under Section 7.

g) Appling the above provisions to the present case, the Applicant is liable to VAT as imposed by Section 4 of the VAT Act.

h) Section 16(1) of the VAT Act provides that a supply of services shall take place in Uganda if the business of the supplier from which the services are supplied is in Uganda. There is no doubt that the place of supply of the services was in Uganda.

i) However, it does not follow that all services whose place of supply is in Uganda are taxable in Uganda. Services although supplied in Uganda, can be consumed in Uganda or outside Uganda. Where the services are supplied in Uganda and are consumed in Uganda, the applicable VAT rate is the standard rate of 18%. Where the services are supplied in Uganda but are consumed outside Uganda, the applicable VAT rate, subject to meeting certain requirement, is 0%.

j) The next step is to determine where the consumption of the tax supplies happened. A holistic reading of Section 24(4) of the VAT Act, read together with paragraphs 19(a) and 2(b) of the Schedule 4 of the VAT Act and Regulation 12 of the VAT Regulations, indicates that where the services are supplied (in Uganda, with the place of supply being in Uganda) by a registered taxpayer to a person outside Uganda, the services shall qualify for zero rating.

k) This envisages a scenario such as this where the place of supply is in Uganda, however, the recipient of the services is outside Uganda. The very nature of exports is that they originate from a location, which in this case is Uganda. Unlike goods which are capable of being physically moved from one point in Uganda, across the border, to a point outside Uganda, services will be supplied in Uganda. However, their export is deemed to occur when they are consumed outside Uganda because one cannot point to the physical movement of services.

l) It is for this reason that paragraph 2(b) of the Schedule 4 to the VAT Act requires documentary proof to demonstrate to the Commissioner General that a service has been supplied in Uganda, has in fact been used or consumed outside Uganda.

m) The Applicant presented documentary evidence including service orders, letter seeking temporary importation, letter authorizing the temporary importation, customs bond issued by SWICO, a collection of import declarations/entries indicating the export by Salvi from Rwanda to Uganda, letter from the Applicant seeking authorization to re-export the transformer to Rwanda., and declarations/ entries for re-export and exit notes.

n) The above documentation taken together clearly shows that the service supplied was in respect of transformers which were for use and consumption in Rwanda. The services supplied by the Applicant were exported services within the meaning of paragraph 1(a) and 2(b) of Schedule 4 to the VAT Act.

The Application was allowed with costs to the Applicant.

55 TOTAL ENERGIES MARKETING UGANDA LIMITED VERSUS UGANDA REVENUE AUTHORITY

TAT Misc. Application No. 105 of 2024

CASE DIGEST VOLUME IX

Head Notes:

Addition of New Grounds in Applications before the Tax Appeals Tribunal

Brief Facts:

The Applicant is a limited liability company engaged in the business of selling and distributing of petroleum products Petrol (PMS), Diesel (AGO), Jet fuel and Paraffin in Uganda. The Applicant imports its petroleum products from either Kenya through the Open Tender System (OTS) managed by the Government of Kenya or Tanzania through the Bulk Procurement System managed by the Government of Tanzania.

The Applicant entered into a service level agreement with Total Energies Marketing Kenya to provide handling services in respect of the importation of petroleum products for which the Applicant pays handling service fees to Total Energies Kenya. Following an audit into the operations of the Applicant, the Respondent issued administrative assessments to the Applicant totaling to UGX 7,891,991,671.24 as Value Added Tax (VAT) and UGX 6,576,659,725.34 as Withholding Tax in respect of the handling fees that the Applicant paid to Total Energies Marketing Kenya.

The Applicant objected on grounds that the handling services are incidental to the purchase and importation of fuel and the related charges form part of the customs value of the imported fuel; and that the handling services are also incidental to the international transportation of the fuel into Uganda and are zero rated for VAT purposes; while for Income Tax purposes, the handling charges are not income derived from sources in Uganda and are therefore not subject to withholding tax. The Respondent disallowed the objection and maintained the assessments. The Applicant filed an application based on the grounds as raised at its objection, then consequently filed this Application seeking to rely on the ground that the handling service fee paid to Total Kenya which is the subject of the assessments qualifies as a disbursement that does not attract any tax.

Ruling of the Tax Appeals Tribunal:

(Proscovia R. Nambi, Christine Katwe, Willy Nangosyah)

a) Section 16 (4) of the Tax Appeals Tribunal Act was intended to limit from raising new factual grounds not stated in the objection decision.

b) The Applicant argues that the Tribunal has the discretion to allow the Applicant to rely on a new ground that was not stated in the taxation decision.

c) While exercising its discretion, the Tribunal ought to do so judiciously so as not to occassion an injustice to either party.

d) When the Tribunal is considering whether to exercise its discretion to allow the Applicant to go beyond the grounds stated in the taxation decision in a review of a taxation decision, there are several factors that the Tribunal may consider.

e) The Tribunal will take into account Rule 30 of the Tax Appeals Tribunal (Procedure) Rules which provides for the applicability of the High Court Rules of practice and procedure (Civil Procedure Ruled) subject to such modifications as the Tribunal may direct.

f) The Civil Procedure Rules provide for amendment of pleadings. Specifically, Order 6 Rule 19 is to the effect that, a court may at any stage of the proceedings allow either party to alter or amend his or her pleadings in such a manner and on such terms as may be just.

g) The Tribunal assessed whether allowing the Applicant to introduce an additional ground would be fair to both parties and noted that the Applicant's submission that the Respondent would not be prejudiced as it would have the opportunity to challenge the new ground at the hearing.

h) However, as the objection process requires, the Respondent ought to have sufficient opportunity to respond to the new arguments and evidence. The Respondent would be unfairly disadvantaged by the introduction of such new issues at a later stage in the review process.

i) The Tribunal evaluated whether considering the additional ground would unduly prolong the review process or complicate the proceedings. The Tribunal considered the impact of the timelines and efficiency of the review. The Applicant argued that the hearing is yet to start, however, the hearing should have started but for this Application. Both mediation and scheduling were completed, and allowing this Application would necessitate that the processes be redone.

j) The Tribunal considered the broader public interest in the case including the importance of ensuring tax disputes are resolved fairly and efficiently. The Tribunal weighed the potential impact of its decision on the administration of tax laws.

k) A taxpayer who unintentionally omitted to raise a ground of objection may raise it during the Alternative Dispute Procedure. The Tribunal will not establish a precedent where taxpayers neglect the objection process with the Respondent and then seek Tribunal permission to add new grounds. The Tribunal's stance is that permission to introduce a new ground will only be granted in exceptionally compelling circumstance.

l) The Tribunal also evaluated whether the Applicant's proposed additional ground is pertinent to the tax decision under consideration. If a new ground is closely connected to the issues raised in the objection and significantly affects the decision, the Tribunal may be inclined to approve it.

m) Ultimately, the Tribunal will exercise its discretion based on the specific circumstances of each case and the principles of fairness, efficiency and justice.

n) The Tribunal stated that it disagrees that the Applicant has a new ground. The Applicant submitted that it inadvertently by mistake missed to raise the ground that the handling fee was a disbursement.

o) The handling fees, whether categorized as disbursement or not, would fit within the first two grounds initially raised during the objection process. The remaining question to be resolved is whether VAT and/or Withholding Tax apply to these handling fees.

p) The parties agreed in their joint scheduling memorandum that the issue for determination is whether the Applicant is liable to pay the assessed taxes. Therefore, there is no need for the Applicant to separately argue that the handling fees are

disbursement. The Tribunal saw no relevance in allowing the Application.

q) The law does not specify deadlines for submitting an application to rely on additional grounds, however, since an Application to the Tribunal must be made within 30 days and, in any case, not later than 6 months with Tribunal approval, such applications should be submitted promptly and without delay.

r) The Tribunal found that this Application was unreasonably delayed and allowing it would compromise the procedural efficiency of the review process.

The Application to introduce a new ground was dismissed with costs to the Respondent.

Head Notes:

Interpretation of Double Taxation Agreements – Application of the Commentaries to the OECD Model Tax Convention

Brief Facts:

The Applicant is a company dealing in the importation and wholesale of fast-moving consumer goods from South-Africa, Japan, South Korea, China and Kenya, among others. The Respondent carried out a comprehensive audit of the Applicant's tax records and established that the Applicant did not declare Withholding Tax on payments for the supply of domestic and international legal services by Blaser Mills LLP (Blaser Mills), a law firm based in the UK and Atigo & Company Advocates, a firm based in Uganda.

The legal fees were for services rendered by Blaser Mills to the Applicant in relation to arbitration proceedings in the UK where the Applicant was represented by Blaser Mills. The Respondent issued the Applicant with a Withholding Tax Assessment of UGX. 290,301,481 for failure to account for Withholding Tax in accordance with Section 78 of the Income Tax Act and Article 13 of the UK-Uganda Double Taxation Agreement.

The Applicant objected on grounds that the Respondent failed to properly apply the relevant provisions of the DTA and the Respondent maintained the assessment, hence this Application.

Issue for determination:

1. Whether the Applicant is liable to pay the Withholding Tax assessed?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mr. Siraj Ali; Ms. Kabakumba Masiko)

a) The contention revolves around the UK-Uganda, and particularly the withholding tax treatment of legal fees paid to a non-resident. Whilst the Applicant contends that the relevant provision is Article 15 which deals with professional services, the Respondent contends that the relevant provision is Article 13 which deals with technical services.

b) The UK-Uganda DTA is based on the OECD Model Tax Convention. Therefore, for purposes of supplementary interpretation, the Tribunal restricted itself to the commentaries to the OECD Model Convention.

c) As regards Article 13 on technical fees, the Tribunal deduced the following from the provision:

   (i) The DTA grants UK priority rights to tax technical fees arising from Uganda, derived by a resident of the UK (Blaser Mills);

   (ii) The DTA reserves a residual taxing right for Uganda subject to certain conditions, namely, that the tax shall not exceed 15% where the beneficial owner of the fees is a resident of the UK.

   (iii) The use of the word "may" in the provision as opposed to "shall" indicates that that Article 13 is a permissive provision which grants both states some degree of discretion.

   (iv) Where the beneficial owner of the technical fees has a permanent establishment in Uganda or performs in Uganda, independent personal services from a fixed base situated in Uganda, the fees shall be taxable under Article 7 (in case of a permanent establishment) or under Article 15 (where the services are independent personal services provided from a fixed base).

d) Whilst Blaser Mills is a resident of the UK, they do not have a permanent establishment in Uganda, hence Article 7 does not apply, nor does Art. 15 (1) (a) apply.

e) For clarity, it should be noted that the presence of a fixed base is one of the exceptions to the general rule in Article 15 concerning the taxation of professional or independent personal services under Article 15(1)(a). To this extent, Article 15 is subject to Article 13 in as far as the non-resident has a fixed base in Uganda.

f) The term *"technical fee"* is defined in Article 13(3) to mean *"payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature".*

g) The term is defined in the treaty. Where both the domestic law and the treaty define the term, the definition in the treaty takes precedence. This is as per Section 88 of the Income Tax Act which provides that terms of an international agreement prevail over the provisions of the Act.

h) The definition of a technical fee in Article 13 (3) is broad. This requires the Tribunal to define the terms "technical service", "managerial service" and "consultancy services".

i) The DTA does not define what technical service is and neither does the Income Tax Act. The Tribunal relied on the definition in the 2010 Commentaries to the OECD Model Tax Convention.

j) The UK-Uganda DTA came into force in 1992. The courts have held that later commentaries can be relied upon to guide the interpretation of prior treaties (Refer to HM the Queen v Prevost Inc 2009 DTC 5721, 2209 FCA, 57).

k) Regarding "technical services", the 2010 Commentary states in paragraph 36 that, *"services are of a technical nature when skills or knowledge relate to a technical field are required for the provision of such services. Whilst techniques related to applied science or craftsmanship would generally correspond to such special skills or knowledge, the provision of knowledge acquired in fields such as arts, human sciences would generally not".*

l) The above statement suggests that knowledge in fields such as arts or human science does not amount to technical services envisage applied sciences.

m) In the present case, the services in question are of a legal nature. Such services are not an applied science and by implication, are not a technical service. Blaser Mills provided legal services in the UK involving representing the Applicant in arbitration proceedings. There is no evidence that the services rendered involved transfer of knowledge, skills or know-how to the Applicant.

n) The UK-Uganda DTA does not define the term "managerial services" and neither does the Income Tax Act. The Commentary states that *"Services of a managerial nature are services rendered in performing management functions. The Committee did not attempt to give a definition of management for that purpose but noted that this term should receive its normal business meaning."*

o) The payments to Blaser Mills was for legal services provided by the firm in relation to legal proceedings in the UK whereby the Applicant was represented by Blaser Mills. They did not relate to the management of the business of the Applicant.

p) Similarly, the UK-Uganda DTA and the Income Tax Act do not define the term "consultancy service". The Commentary states that *"Consultancy Services" refer to services constituting in the provision of advice by someone, such as a professional, who has special qualifications allowing him to do so. It was recognized that this type of services overlapped the categories of technical and managerial services to the extent that the latter services could well be provided by a consultant*.

q) It can be concluded that the services provided by Blaser Mills were of a consultancy nature in as far as they constitute a provision of advice by professionals. In effect, the legal fees that were paid by the Applicant fall within the scope of Article 13.

r) A treaty must be read as a whole and for completeness, it is important to look at the provisions of Article 15 which provides for professional services.

s) The following can be deduced from Article 15:

   (i) The provision grants the UK exclusive rights to tax income derived by its residents in respect of professional services or other activities of an independent character. The exclusive rights are represented by the use of the word "shall".

   (ii) However, where the UK resident has a fixed base available to them in Uganda, their income may be taxed in Uganda.

   (iii) In the present case, we have established that Blaser Mills does not have a fixed base in Uganda. Therefore, their income is not taxable in Uganda under Article 15 (1)(a).

t) The term "professional services" is defined in Article 15(2) to include the activities of lawyers. Therefore, it is reasonable to conclude that Blaser Mills is a provider of professional services which fall within the scope of Article 15.

u) It therefore appears on the face of it, the income derived by Blaser Mills is potentially taxable under two provisions of the DTA. However, a treaty must be read as a whole and ultimately, only one provision must be applied.

v) The use of the word "shall" in Article 15 (i) indicates an imperative command, meaning that the action is mandatory and not permissive. This contrasts with the word "may" as used in Article 13 which is a permissive provision, granting both states some level of discretion regarding the exercise of their taxing rights.

w) It is a principle of interpretation of tax treaties that where an item of income falls under more than one category of income, double tax treaties resolve the conflict through ordering rules.

x) It would be an absurd outcome for Uganda's residual taxing rights under Article 13 to take precedence over the UK's exclusive rights to tax the same item of income. Therefore, Article 13 must yield to Article 15 in as far as Article 15 grants the UK exclusive rights to tax the income.

y) The Respondent does not have the right to tax the legal fees paid by the Applicant to Blaser Mills.

The Application was granted with costs to the Applicant.

Head Notes:

Extension of Time Within which to File a Review Application

Brief Facts:

The Applicant filed Income Tax Returns for the period 2021/2022 and was issued an assessment of UGX 7,785,561 on grounds of interest free loan worth UGX 23,450,000 which the former director issued to the Applicant. After the assessment, the Applicant experienced challenges as the company director was facing illness and was undergoing treatment in the Netherlands and therefore was unable to attend to company issues. The Applicant lodged an objection which was disallowed. The Applicant brought this Application seeking extension of time within which to file an application for review of a taxation decision.

Issue for determination:

Whether extension of time should be granted to file an application for review of the taxation decision?

Ruling of the Tax Appeals Tribunal:

(Mrs. Stella Nyapendi Chombo, Ms. Rosemary Najjemba, Mr. Willy Nangosyah)

a) The Applicant submitted that owing to the illness of the former director who was receiving treatment in the Netherlands, the Applicant was unable to attend to the affairs of the Applicant. The Respondent opposed the Application because the Applicant had no evidence of sufficient cause as to why time should be extended.

b) Tax laws envisage situations where a taxpayer may not be able to comply with the timelines due to extraneous circumstance which are beyond the taxpayer's control.

c) Rule 11(1) of the TAT Procedure Rules provides that the Tribunal may, in its discretion, upon the application of the Applicant in writing, extend the time for making an application. The Tribunal must be guided by the considerations laid out in Rule 11(6) of TAT Procedure Rules.

d) The objection decision was issued on 27th December 2023 and the Applicant had until 27th January 2024 to lodge its application for review of the decision. Failure of which, the Applicant had until 27th June 2025 to lodge this application for extension of time. The Applicant filed on 3rd July 2024.

e) The Applicant attached a travel ticket on its submissions showing the Director had travelled. This is sufficient evidence to show that the Director was out of the country. This qualifies as a consideration as per Rule 11(6)(a) which provides for absence from Uganda.

f) The Applicant is a small business owner and the tax in dispute is UGX 7,785,561. Allowing this Application will not cause prejudice to the Respondent.

The Application was allowed with no order as to costs. The Applicant was ordered to pay 30% upon filing the main application.

Head Notes:

Requirement to pay 30% of the Tax in Dispute – Bank Guarantee is not Payment of 30%

Brief Facts:

The Applicant is part of a group of companies called Vivo Energy Group, the parent company of which, is a United Kingdom registered company called Vivo Energy Limited ("VEL"). In July 2022, non- Ugandan resident shareholders of the Applicant holding 64% of the shares in the Applicant sold their shares through the London Stock Exchange to another shareholder called Vitol Group. The Applicant was assessed by the Respondent, objected to the assessment and filed TAT Application 128 of 2024 without paying 30% of the tax in dispute. The Applicant then filed this application praying for orders that the payment of the 30% of the tax in dispute be satisfied by a bank guarantee from a reputable Uganda financial institution.

Issue for determination:

Whether the requirement to pay 30% of tax in dispute can be satisfied by a bank guarantee?

Ruling of the Tribunal:

(Mr. Siraj Ali, Mrs. Christine Katwe, Ms. Rosemary Najjemba)

a) The Tribunal resolved that the Application No. 128 of 2024 is subject to pay 30% of the tax in dispute as required by Section 15 of the Tax Appeal Tribunal Act.

b) The resolution of the issue as to whether the Applicant should be permitted to pay 30% of the tax in dispute by way of a bank guarantee depends on the construction of the word "pay" as used under Section 15 of the Tax Appeals Tribunal Act.

c) The term 'pay' has been defined in Black's Law Dictionary, Tenth Edition by Bryan A. Garner as follows: "Pay" *1. To give money for a good or service that one buys; to make satisfaction. 2. To transfer money that one owes to a person, company, etc. 3. To give (someone) money for the job that he or she does; to compensate a person*

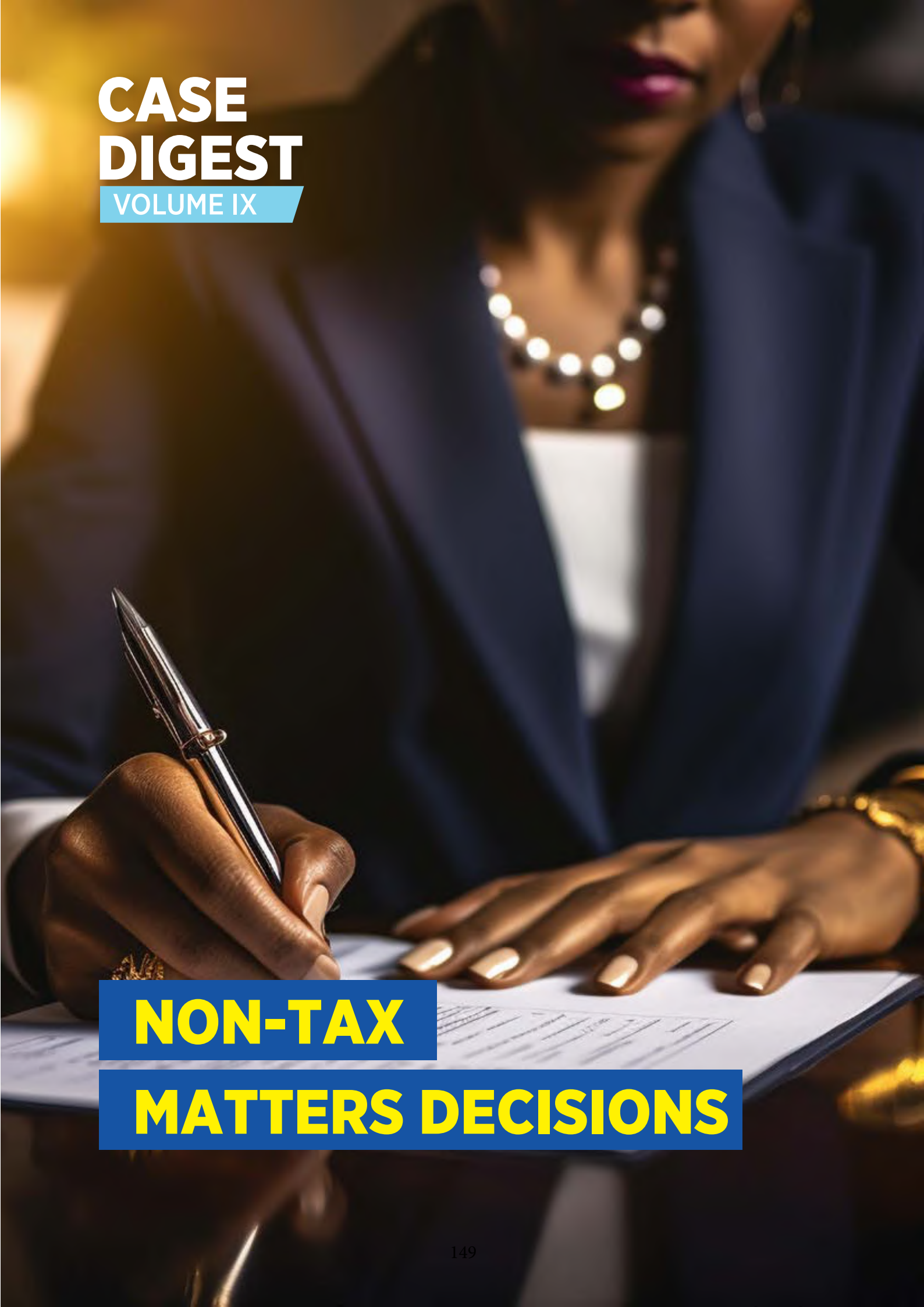
for his or her occupation. 4. To give (money) to someone because one has been ordered by a court to do so. 5. To be profitable; to bring in a return.

d) Paragraph 3 of the Bank of Uganda Financial Consumer Protection Guidelines, 2011 defines a *"guarantee"* to mean any document, notice or other written statement containing an undertaking, however described, given by a person called the guarantor promising to fulfill the obligations or discharge the liability of a third party if that third party fails to do so.

e) The above definitions show that the two terms are completely distinct. While it is true that the primary purpose of a guarantee is to ensure that a payment will be made at a certain point in time upon the occurrence of an event, that does not make a guarantee a form of payment. The requirement under Section 15 above is for a payment and not a guarantee.

f) Having determined that a guarantee is not a form of payment, The Tribunal found that the requirement to pay 30% of the tax in dispute cannot be satisfied by a bank guarantee.

The Application was dismissed with costs to the Respondent.


CASE
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59 ALVIN MUTEBI & ANOR VERSUS UGANDA REVENUE AUTHORITY

Labour Dispute Reference No. 218 of 2018

CASE DIGEST VOLUME IX

Head Notes:

Notice of Disciplinary Hearing in Employment Matters – Requirement to Avail Evidence to Employee Before Hearing - The Right to Appear Before Disciplinary Committees

Brief Facts:

The 1st and the 2nd Claimants were employed by the Respondent as officers in 1998 and 2011 respectively. The Claimants were deployed at the Medium Tax Payers office, which is responsible for auditing and ensuring tax compliance of taxpayers. On the 8th October 2015, the CEO of Netis Uganda Ltd filed a complaint with the Respondent's Commissioner Internal Audit and Compliance, against the Claimants for soliciting for a bribe of UGX 70,000,000 so as to reduce their tax liability from UGX 850,000,000 to UGX 110,000,000 or else face the risk of closing down their offices.

On the 29th September 2016, the Claimants were invited before the Management Disciplinary Committee (MDC) scheduled for 10th October 2016, on account of alleged corruption and bribery, thus committing offence No. 57 of the New Offence Schedule of 2014 as amended. On 4th and 6th October 2016, the Claimants wrote to the Chairperson of the Management Disciplinary Committee denying the said allegations. On the 13th October 2016, the Claimants appeared before the Respondent's MDC on account of alleged corruption.

Consequently, MDC having heard and evaluated evidence presented before it found the Claimants culpable of the alleged offences to which a decision was made to terminate their services for having committed offence No.57 of the New Offence Schedule of 2014 with effect from 20th October 2017, in accordance with Section 11.3.2 (h) of the Human Resource Manual of 2012, as amended.

On 10th and 11th November, 2016, the Claimants appealed to the Staff Appeals Committee (SAC) and on the 23rd day of January 2017, the Committee found no merit in the grounds advanced in support of their appeal and upheld the decision of the MDC.

Issues for determination:

1. Whether the Claimants were unfairly/wrongfully terminated by the Respondent?
2. What remedies are available to the Claimants?

The Award of the Industrial Court:

(Hon. Head Judge Linda Lillian Tumusiime Mugisha, Panelists: Mr. Charles Wacha Angulo, Ms. Beatrice Aciro Okeny, Ms. Rose Gidongo)

a) The Respondent complied with the requirements/procedure laid down in Section 66(1) of the Employment Act to the extent that they were given sufficient notice of the disciplinary proceedings.

b) Although circumstantial evidence may be relied on to make an inference of guilt and an administrative investigation need not be formal in nature, the Respondent still has the responsibility of establishing the validity and correctness of the reasons before making a decision to dismiss an employee. Court stated that it was not satisfied that this was done in this case.

c) Given the nature of the offence of solicitation against the Claimants, the Respondent was expected to rely on more conclusive evidence before terminating them. An analysis of the memorandum which communicated the decisions of the MDC, fell short of stating the evidence on which the MDC based itself to make their recommendations, and this rendered the findings inconclusive.

d) The audit and assessment of tax liability of UGX. 463,000,000 was confirmed by another team which the Respondent assigned to re-assess the taxpayer and according to the Respondent's 2nd Witness' testimony the taxpayer was directed to pay it.

e) In the circumstances, court was not satisfied that the Respondent met the threshold of proving the reasons as provided under Section 68 of the Employment Act.

f) The Claimants were not given a copy of the investigation report prior to the hearing to enable them prepare for their defence. Section 62(2) of the Employment Act is emphatic on the requirement for the employer to avail the employee sufficient opportunity to prepare for the hearing.

g) An employee is entitled to the documentation which the employer intends to rely on against him or her during the hearing. Where an employee is charged on the basis of an investigation report, it is prudent that the employee is availed with a copy of the said report to enable him or her fully prepare.

h) The right to appear is limited to appearances before the disciplinary committee (MDC) and not necessarily at the Appeals Committee (SAC) and unless the employment contract provides for an oral hearing on Appeal.

i) In conclusion, although the Claimants were notified about the reasons for their dismissal, the Respondent fell short of providing them with the findings of the investigations against them, prior to hearing, to enable them adequately prepare their defense, thus violating Section 66(2) of the Employment Act.

j) It further did not establish the existence, validity and correctness of the reasons with credible evidence, therefore, it did not meet the minimum statutory threshold provided for under Section 68 of the Employment Act.

k) In the circumstances, the Claimants' termination was procedurally and substantively unlawful.

l) On recovery of loans, in the absence of the actual loan agreement, there is no basis to make a finding in the affirmative and the claim fails.

m) On service award, there was no evidence and basis to award this and it was on record that the Claimants were duly paid their terminal benefits.

n) On payments for salary, leave days, retirement benefits and NSSF for the remainder of the contract- this claim could not hold and Court has held that there is no specific performance in contracts of employment and the claim therefore failed.

o) On general damages, by the time of termination, the 1st Claimant was earning UGX. 4,309,971 per month, therefore UGX. 70,000,000 is sufficient as general damages. The 2nd Claimant was earning UGX. 3,264,818 and he served for 5 years, the award of UGX. 32,000,000 is sufficient as general damages.

p) On interest, an interest rate of 12% per annum shall accrue on all pecuniary awards made from the date of filing this matter in the Industrial Court until payment in full.

q) No order as to costs was made.

The Claim succeeded and the Claimants were awarded general damages being UGX 70,000,000 and UGX 32,000,000, respectively with interest of 12% per annum. There was no order as to costs.

Head Notes:

Re-exportation of Goods Obtained Through Fraud – Adding Parties to a Suit

Brief Facts:

The Applicant is a company incorporated in the Federal Government of Germany engaged in the business of manufacturing and selling of chemicals and nitrogenous fertilizers. The Applicant received an email from Paul Hanbury purportedly inquiring on behalf of IMCD UK Limited asking for a quotation for 8x20ft containers of Calcium Carbide 7-15mm delivered CIF to Mombasa Port. Several correspondences followed after which the Applicant shipped two containers containing 260 steel drums of calcium carbide, CIF Mombasa to IMCD Limited of Mukono, Uganda.

The Applicant reached out to a one Becky Martenz of IMCD UK about the order and outstanding amount due for payment. IMCD UK replied stating that they had not placed the order with the Applicant and that the email received by the Applicant was not from an email address belonging to IMCD UK and Paul Hanbury. The Applicant notified the shipping agent about the fraud and sought advice on the process of returning the containers to Germany.

The Applicant later established that no consignee in Uganda is known as IMCD Ltd and filed this Application seeking for an order against the Respondent to unconditionally release the containers for return to the port of origin.

Issues for determination:

1. Whether IMCD Limited (the consignee) and Anchor Business Ventures Limited, the clearing firm that cleared the suit goods as parties to the suit?
2. Whether the suit good should be handed over to the exporter/ Applicant?
3. What remedies are available to the parties?

Ruling of High Court:

(Hon. Lady Justice Cornelia Kakooza Sabiiti)

a) Court reviewed the Bill of Lading which indicated the shipper. The consignment was two containers of calcium carbide from Germany to IMCD Ltd of Mukono, Uganda as the consignee.

b) After the Applicant realized that IMCD Ltd was a scam and they had not dealt with the real IMCD UK Ltd, it commenced the process of re-exportation. It has since been

discovered by both parties after a search with URSB dated 27th May 2024 that IMCD Ltd as presented in the Bill of Lading is not a company incorporated in Uganda, therefore non-existent.

c) Adding a party having established that it is nonexistent is inconceivable. The Applicant cannot possibly sustain a claim against a non-existent party.

d) As for adding Anchor Business Ventures Limited, there was no documentary evidence or otherwise connecting Anchor Business Ventures to the suit. There is no cause of action that the Applicant would sustain against the same.

e) The prayer to add the two parties was overruled.

f) Where the consignee is reported to be nonexistent and no one has claimed the goods for more than a year since their shipment, in addition to which, the shipper claims it was not paid and lays a claim on the goods, it is only fair that the Court allows the containers to be re-exported to the country of origin.

Court allowed the Application with orders that the Respondent releases the containers for re-export to their country of origin subject to the Applicant's fulfilment of all the dues and requirements for re-export set out by the Respondent. Each party bears its own costs.

Head Notes:

Right to be Heard by the Disciplinary Committee - No Requirement to Appear in Person for a Disciplinary Appeal

Brief Facts:

The Applicant was employed as an Officer II in the Respondent's Domestic Taxes Department. On 20th December 2022, the Applicant was dismissed on grounds of fraud. The Applicant appealed the Respondent's decision to the Staff Appeal Committee (SAC) and her appeal was dismissed. The Applicant was aggrieved and filed this Application for Judicial Review challenging her termination.

Ruling of the High Court:

(Hon. Justice Esta Nambayo)

a) The Applicant stated that the disciplinary investigation and process designed to effect termination of her appointment was irrational, ultra vires and illegal.

b) The Applicant gave evidence in detail showing that she was summoned and that she appeared before the Respondent's Disciplinary Committee for a hearing before her employment was terminated.

c) Annexture "F" to the Affidavit in Support of the Application showed that the Respondent's Disciplinary Committee considered her submission, the investigation report and other evidence adduced and found that the Applicant was culpable of fraud.

d) Annexture "G" shows that the Applicant appealed against her dismissal from the Respondent to the Staff Appeals Committee. The Applicant contended that SAC was unfair to her in that it did not notify and/or call her when hearing her appeal before upholding her dismissal.

e) Failure to give a chance to be heard amounts to a breach of the Audi Alteram Partem Rule which is cardinal rule in administrative law and should always be adhered to.

f) Regulation 11.2.4 of the Respondent's Human Resource Manual established the Staff Appeals Committee (SAC) which has the mandate to hear and determine all disciplinary cases for staff at the rank of Manager and above. SAC also considers any other staff appeals that may come to them through the normal appellate process.

g) When the Applicant presented her appeal, SAC considered both her submissions and the grounds of her appeal and found that what she advanced in support of her appeal had no merit.

h) It is not a mandatory requirement that the Appellant must appear in person for his/her appeal to be heard. Once the grounds of the appeal are presented, SAC may determine the appeal without the physical appearance of the parties.

i) The Applicant's right to be heard was not violated. The Applicant was properly heard on appeal, therefore, her claim of procedural impropriety against SAC has no merit.

The Application was dismissed with costs to the Respondent.

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HASSAN W. OMARI & ANOTHER VERSUS UGANDA REVENUE AUTHORITY & 5 OTHERS

High Court Civil Suit No. 734 of 2021

CASE DIGEST VOLUME IX

Head Notes:

Cause of Action- Striking out a Plaint- Contradictory and Inconsistent Evidence – Requirement to Declare Cash to Customs at the Border – Frivolous and Vexatious Claims – Abuse and Misuse of Court Process

Brief Facts:

The Plaintiffs declared consignments to URA stating the same to be *"other dried fish whether or not salted but not smoked"* and purportedly originating from Kenya and destined for the Democratic Republic of Congo. The consignments were intercepted by the Ministry of Agriculture, Animal Industry and Fisheries Resources in Bwera, Mpondwe in Kasese District. The consignments were moved to the Directorate of Fisheries Resources Office in Entebbe and the URA e-seals broken in compliance with a court order issued by the Chief Magistrate's Court of Entebbe.

The Plaintiff filed this case against the Defendants contending among others that Uganda Revenue Authority (URA) breached its duty of care owed to the Plaintiffs' goods and as such is liable for damages and/or losses suffered.

Issues for determination:

1. Whether the plaint discloses a cause of action against URA?
2. Whether the 1st to 4th Defendants acts of impounding and disposing off the Plaintiff's fish contained in motor vehicles Registration No. UBH 606P, UAF 813L, UBA 893G and UBE 894Z were lawful?
3. Whether URA breached its duty of care owed to the Plaintiffs' property contained in motor vehicles Registration No. UBH 606P, UAF 813L, UBA 893G and UBE 894Z?
4. What are the remedies available to the parties?

Judgment of the High Court:

(Hon. Justice Musa Ssekaana)

a) Regarding whether the Plaint discloses a cause of action against URA, in order to prove that there was a cause of action, the plaint must show that the Plaintiff enjoyed a right, that the right was violated and that the defendant is liable.

b) The Plaintiffs brought this suit to recover fish impounded and disposed of by the Fisheries Department but contended that URA breached its duty of care owed to the plaintiffs. The plaint however does not show what cause of action the Plaintiffs have against URA in the matter before Court.

c) The provision of order 7 rule 11 (a) is that the plaint shall be rejected where it does not disclose a cause of Action.

d) To enable a court to reject a plaint on the ground that it discloses no cause of action, it should look at the plaint and nothing else. When a court is considering whether a pleading raises a cause of action or not, it must only look at that pleadings only.

e) A careful scrutiny of the plaint reveals that the Plaintiffs' claim is wholly against the 1st-5th Defendants who impounded the trucks containing the fish which was premature and against the law. URA cannot owe a party who is in breach of the law any duty to protect his goods which are contraband.

f) The Plaintiffs appear as persons aggrieved by the violation of their rights and for which URA is not liable. The plaint does not set forth any facts which would disclose a cause of action against URA, who is only responsible for tax matters.

g) The Plaintiffs' allegation against URA is for negligence and does not set out how URA was negligent and no particulars of negligence are set out in the plaint.

h) As regards liability for impounding and disposing of the fish, Sections 18 and 19 of the East African Community Customs Management Act of 2004 specify prohibited and restricted goods in Part A and Part B of the 2nd Schedule to the Act to be imported to the Partner States being goods expressly prohibited and restricted under written law in the Partner States.

i) Section 30(c) of the Fish Act provides; *Any authorized officer may seize any fish, dried fish or fish product which he or she reasonably believes to have been caught or to be possessed in contravention of this Act or any rules made under this Act. Any such fish, dried fish or fish product so seized shall be sold in such manner as the authorized officer may think fit and the proceeds of the sale shall be paid into court.*

j) The Fisheries Department agents on 3rd day of October, 2021 impounded the consignment through Fish Protection Unit at Bwera-Mpondwe Customs in Mpondwe-

Lubiriha Town Council, Kasese District on allegation that they contained immature fish from water bodies in the Republic of Uganda. The drivers of the said trucks vanished and the trucks were driven back to Entebbe-Fisheries Department and were to be inspected to ensure that the consignment do not contain any immature fish.

k) URA was required to have the seals removed from the containers which they declined to do so in absence of a court order. On 13th October 2021, a court order was issued by the Magistrate's Court of Entebbe at Entebbe to officials of the Directorate of Fisheries Resources, ordering among others that the motor vehicles be opened and inspected.

l) Court noted that it is clear that the evidence on record shows that the fish which was impounded was immature and was liable to be impounded for breaching the Fish Act which bars dealing in immature fish.

m) The contract for the sale of the impounded fish was stated to be valued at 606,121,200 Kenya Shillings which translates to UGX 17,300,000,000, which is quite incredible. The said contract was signed with a person who is illiterate; at least when she appeared in Court should not read or understand English.

n) The impounded fish was claimed by several persons and the right person was not known until the filing of the suit when the proper documentation was produced in court.

o) The conduct of the drivers of the trucks is equally inconsistent with innocence, since they disappeared with all the documents of title issued by URA at Customs. They abandoned the trucks at the border at Mpondwe which is unexplained to date why they would abandon trucks which allegedly contained hard cash of UGX 800,000,000 which was to be handed to the Plaintiffs allegedly paid by Biira.

p) The alleged fish dealers never had any fishing permits authorizing them to deal in fish and it was Monday Ali who attached his fishing permit which was attached to the customs documents and yet the consignment was in the names of the Plaintiffs.

q) The sum effect of the court's evaluation of the evidence with the contradictions and inconsistencies was to render the evidence of the Plaintiff quite unbelievable and ought to be rejected. The defence evidence was unassailable that the consignment contained immature fish and it was lawfully impounded and disposed of under a court order of the Entebbe Chief Magistrates Court.

r) As regards the amount of UGX 800,000,000 stolen from the impounded trucks, the Plaintiffs sought to recover the hard cash of UGX 800,000,000 which the Plaintiffs claimed was given to the drivers of the impounded trucks and they left the money in the trucks which they had abandoned at Mpondwe border post.

s) There is no acknowledgment of receipt of the money for this huge sum of money and it remained a casual transaction.

t) The money was allegedly received on 5th October 2021 and was kept in the trucks. But the evidence on record shows that the trucks were impounded on 3rd October 2021 and they remained guarded at Mpondwe boarder by the UPDF. It is not clear how the truck drivers could keep money in the trucks which were under tight security pending instructions to verify the consignment.

u) ***Section 10(1)(a) of the Anti-Money Laundering Act, 2013*** provides for *Declaration to Customs at the Border* that;

"A person entering or leaving the territory of Uganda and carrying cash or bearer of negotiable instruments exceeding one thousand five hundred currency points or the equivalent value in a foreign currency..... shall declare that amount to the Uganda Revenue Authority in the manner prescribed by the Minister by regulations"

v) The Plaintiffs did not show whether this money was ever declared at the customs since the person who allegedly surrendered or paid this money came from the Democratic Republic of Congo (DRC)b to effect payment in Uganda.

w) The whole story of payment for the consignment of goods (fish) at UGX 800,000,000 is quite unbelievable and sounded like a movie; and how it was kept in the 4 trucks in amounts of UGX 200,000,000 per truck in quite incredible.

x) The Plaintiffs' claims are frivolous and vexatious and wholly intended to 'hit back' and scandalize the Defendants. The Plaintiffs' case is also baseless in law and an abuse of the court's process or is otherwise fundamentally improper for being frivolous and vexatious.

y) The suit was basically an intentional or even reckless misuse of the court's process in order to escalate a futile exercise and they engaged in concocting evidence through a one Biira whose identity at cross examination was quite different. There was no good faith in the conduct of litigation which is consistent with the interests of justice.

z) The pursuit of this case was not for a legitimate pursuit of a remedy since the Plaintiffs did not have any iota of evidence to show that the fish was not immature or was not from within Ugandan waters and did not have any documents-fishing permits/licence to support their claims of being authorized to deal in such huge volumes of fish worth 2.5 billion shillings.

This suit was dismissed with costs to the Defendants.

Head Notes:

Insolvency – Requirement for Statutory Demand - Proof of Inability to Pay Debts

Brief Facts:

This Petition was brought by the shareholders of M/s Fravolt Technical Services Ltd stating that that the Company is indebted in the sum of UGX 221,079,886 being the amount of money claimed by the Respondent (URA), UGX 11,000,000 being the amount claimed by UNBS, UGX 5,000,000 being salary arrears for employees and UGX 3,000,000 being rental arrears. It was stated that the company is unable to pay its debts and is therefore, insolvent. The Petitioner prayed that the court winds it up, making an order for the liquidation of the company, the liquidator Tumwebaze Elias be appointed to take over the affairs of the company and liquidate the same. The Respondent stated that according to the Petitioner's ledger balance, it has an outstanding tax liability of UGX. 244,364,659 as at the date of swearing the Affidavit in reply.

Issues for determination:

1. Whether the Petition raises grounds for winding up the company?
2. What are the remedies for the creditors?

Judgment of the High Court:

(Hon. Lady Justice Harriet Grace Magala)

a) A company is insolvent if it is unable to pay its debts, largely upon satisfying the requirements under Sections 2 and 92(1) (a) & (2) of the Insolvency Act, Cap. 108; and Regulations 85(1) & 2 and 86 of the Insolvency Regulations, S.I No. 36 of 2013.

b) The Halsbury's Laws of England, 5th Edition, Volume 16, para 392 at page 335 states the grounds for winding up by court, one of which include inability by the company to pay its debts.

c) Sections 2(1)(a) and 2 of the Insolvency Act and Regulation 85(2) of the Insolvency Regulations explain that the Court will render a company unable to pay its debts, upon evidence being shown that the debtor has failed to comply with a statutory demand of the creditor after the lapse of 30 days.

d) Inability to pay debts may also be shown in other ways than by proof of non-compliance with the statutory demand as stated under Section 2(1)(b) & (c) of the Insolvency Act and Section 2(3) of the Act.

e) The Petitioner did not dispute that it was neither served with a statutory demand as submitted by URA nor did it provide Court with any other evidence to prove its inability to pay the debts under Section 2(1) & (3) of the Insolvency Act. However, the Petitioner submitted that it was able to prove that it has failed to pay its debts by any other means except failure to satisfy a statutory demand. It submitted that the company was served with tax assessments of Uganda Revenue Authority but the company has failed to pay the debt or any part of the debt; and even if Court was to award costs against the company, the company will still be unable to pay any.

f) This being a civil claim, Court stated that the general position of the law regarding the burden of proof is that the burden lies on the party who asserts the affirmative of the issue or question in dispute. The Petitioner other than stating that she failed to pay the taxes owed to URA, UNBS, the landlord and salaries; she neither proves that she failed to pay nor adduces any evidence in court to show these liabilities and failure to pay the same.

g) This Court cannot also ignore the necessity of a statutory demand to first be issued to the Petitioner; and or any other evidence that the company had not paid its debts; and therefore, be satisfied that it was unable to do so.

h) Court also took cognizance of the Respondent's evidence at paragraph 7 of the 15 Affidavit in reply to the petition wherein it was stated that the Petitioner's liability to URA was to the tune of UGX. 244,364, 659. The Petitioner on the hand averred at paragraph 7 of the Petition that the money claimed by the Respondent is UGX. 221,079,886. Court, in the absence of a statutory demand is not certain of the exact debt. There is also no evidence on the court record of failure by the Petitioner to comply with the demand.

i) The Petitioner attached to the Petiiton what looked like a photograph taken of a letter that was not dated from the Uganda Revenue Authority informing the Petitioner to pay her outstanding tax liability of UGX. 202,079,886.91999999 by 13th March 2023. The Petitioner also submitted that the sum has risen to UGX. 221, 079,886 and with other debts which the company is unable to pay. However, URA averred that the current outstanding tax liability was Ugx. 244,364, 659.

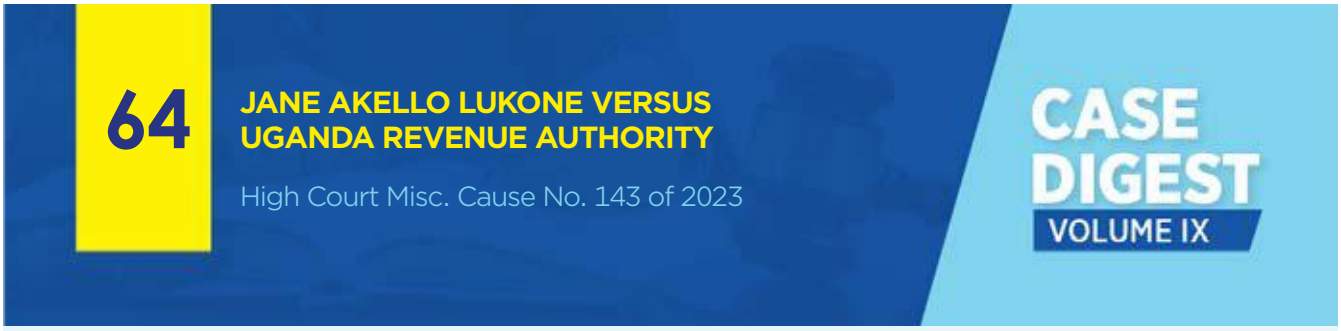
j) According to the Petitioner's submissions in rejoinder, it was inferred that even if the tax liability had risen to Ugx. 244,364,659, the company would still be unable to

pay any outstanding debts. Regarding the other debts, the Petitioner only makes mention of them but does not adduce evidence to prove the same.

k) That the parties cannot determine the liability through a winding up petition. This calls for the need for both parties to adduce evidence to fully determine the matter of controversy between them.

l) Having established that a statutory demand was never served upon the Petitioner, that the Petitioner did not adduce any evidence to prove her inability to pay the debts and the same debts were not proved by the Petitioner; Court held that it was certain that the Petitioner did not satisfy the grounds to wind up the company.

The Petition was dismissed with costs to the Respondent.



Head Notes:

Amenability to Judicial Review - Illegality as a Ground for Judicial Review

Brief Facts:

The Applicant filed this Application for Judicial Review challenging the process by which she was terminated from the Respondent's employment. She stated that at the time of her termination, she was employed as a Manager Corporate Informer Management and as such, the Respondent's Management Disciplinary Committee (MDC) which conducted her disciplinary hearing did not have the jurisdiction to hear her case. The Applicant contended that staff from the rank of Manager are subject to disciplinary hearing before the Staff Appeals Committee (SAC).

The Applicant stated that she was appointed to this position by the Respondent's Commissioner General and she was recognized and addressed throughout the Respondent institution as a Manager. The Applicant sought declarations that her termination by the Respondent is ultra-vires, irrational, illegal and tainted with procedural irregularity. She further sought an order quashing the decision by MDC to terminate her employment and another order quashing the decision of SAC upholding the said termination.

The Respondent opposed the Application maintaining that the Applicant was employed as a Supervisor Compliance and that she was was accorded a fair hearing.

Issues for determination:

1. Whether the Application is amenable to Judicial review?
2. Whether the Application raises ground for Judicial Review?
3. Whether the Applicant is entitled to the reliefs claimed?

Ruling of the High Court:

(Hon. Justice Emmanuel Baguma)

a) The matter is amenable for Judicial review because the Respondent is a public body that acted in exercise of its public function. The matter in issue involves public law principles that may have a bearing on other officers of the Respondent mainly concerning issues of discipline within the organization.

b) The Applicant based her application on illegality, stating that by the time of termination, she was a manager and hence, the Management Disciplinary Committee had no jurisdiction to hear her case.

c) Acting without jurisdiction or ultra vires or contrary to the provisions of the law or its principles are instances of illegality.

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

e) Basing on the evidence on record adduced by the Applicant, there is nothing to show that the Applicant has ever been appointed a manager by the Respondent.

f) The Applicant did not produce any single piece of evidence to show that she was a manager. The evidence adduced showed that she was a supervisor by the time of termination and the Management Disciplinary Committee had jurisdiction to handle her disciplinary case.

g) Without evidence, the Court is left with no evidence to annul the proceedings of the Management Disciplinary Committee on ground that it did not have jurisdiction

The Application was dismissed with no order as to costs.

Head Notes:

Setting Aside an Exparte Order – Sufficient Cause

Brief Facts:

The Applicant filed this Application seeking orders to set aside the orders of the Court in High Court Misc. Cause No. 0084 of 2021 which was decided without the Applicant filing his submissions.

Ruling of the High Court:

(Hon. Justice Stephen Mubiru)

a) According Order 9 rule 27 of Tthe Civil Procedure Rules, where a decree is passed ex parte against a defendant, he or she may apply to the court by which the decree was passed for an order to set it aside; and if he or she satisfies the court that the summons was not duly served, or that he or she was prevented by any sufficient

cause from appearing when the suit was called on for hearing, the court will make an order setting aside the decree as against him or her upon such terms as to costs, payment into court, or otherwise as it thinks fit.

b) The application is to be granted where the defendant and/or his counsel have good reasons for missing trial and the applicant has a good defence to suit.

c) By judicial practice however, "sufficient cause" is liberally constructed in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed. The question now is whether the grounds which have been advanced in support of the application show "sufficient reason" for the exercise of the court's discretion.

d) An application that is brought promptly will be considered more sympathetically than one that is brought after unexplained inordinate delay. Those who sleep over their rights have no right to agitate for them after the lapse of a reasonable time.

e) The application in the instant case was filed on 27th May, 2024 nearly two (2) years after the ruling was delivered on 10th June, 2022. The decisive factor in condonation of delay is not the length of delay but sufficiency of a satisfactory explanation.

f) It is the Applicant's case that because of an order issued against him by the Civil Division on 15th February, 2022 sentencing him to 18 months' imprisonment for contempt of Court, he was prevented from filing his submissions. Although he was eventually released on 25th February, 2023, he was not aware that Court had made a decision without hearing from him and only became aware of the decision on 26th March, 2024 when he was served with submissions in Mbale High Court Misc. Cause No. 29 of 2023.

g) The Applicant was in Court on 7th February, 2022 when he was given directions requiring him to file and serve his written submission by 14th February, 2022. Since the order for his incarceration was issued on 15th February, 2022, had he complied with the schedule, the incarceration would not have affected the progression of his application. He never sought an extension of time and neither did he bring it to the attention of the Court that he was still desirous of filing submissions, albeit belatedly. The Court went ahead and delivered a ruling electronically to his email address malehmkk@gmail.com on 11th June, 2022 at 1:08 pm.

h) That he only found out on 26th March, 2024 that the ruling had been delivered despite having been discharged from prison on 25th February, 2023, implies that for one and a half years following his release from prison, he never checked his 10 email. That failure is not explained at all. The one year's delay in filing the application following his discharge from prison is inordinate and no explanation has been furnished to justify it.

i) The power to set aside a judgment requires courts to strike a balance between the principles of justice and finality. It is one of the fundamental principles of justice that questions once litigated should be forever at rest. On the other hand, it is no less fundamental that no man should be condemned unheard. Therefore, a party's inaction in litigation which can be condoned by the court should fall within the scope of normal human conduct or normal conduct of a litigant. In all the circumstances of the case, the court has to be mindful of the need for proportionality and efficiency in litigation, and the need to comply with rules.

j) To succeed, the Applicant therefore must show that he or she did everything in his or her power to effectively participate in the proceedings.

k) The explanation advanced by the Applicant for his failure to comply with the timelines given by Court is most unsatisfactory. By virtue of Order 17 rule 4 of The

Civil Procedure Rules, where any party to a suit to whom time has been granted fails to perform any act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding that default, proceed to decide the suit immediately, and that is what it did.

l) In any event, it is equally important that a litigant maintains regular contact with the Court regarding the means and steps taken to accomplish the litigant's objectives. The Applicant by his conduct denied himself the opportunity to conduct this litigation in a reasonably inexpensive manner.

m) Court found no sufficient explanation for the Applicant's failure to perform the necessary act that was required of him to the further progress of his application, for which time had been allowed.

n) Where there are serious issues to be tried, the court ought to grant the application. It is a cardinal principle of fairness that both parties should be given an opportunity to be heard before court pronounces itself on the matters in controversy between the parties. This is the case where it is apparent that the Applicant is raising serious issues of law or fact for the consideration of the Court.

o) The Applicant does not in his submissions raise any arguments of fact or law that he would have wished the Court to consider, that were not otherwise considered by the Court. This is a case where finality of litigation must trump the right to be heard, which has been so abused by the applicant who seeks to re-open the hearing more than two years since the application was disposed of.

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

Head Notes:

Jurisdiction in Tax Disputes – Meaning of Tax Dispute

Brief Facts:

The Defendant carried out investigations leading to a search and recovery of 156 pieces of smart phones at the office premises of Smart Hand International Ltd located at plot No.1769 Kisugu Kasanga in Makindye Division, Kampala district, and the same were deposited in customs warehouse. The Defendant established that the Plaintiffs and other suspects had no customs clearance documents for the phones in question and consequently, issued a Seizure Notice on 9th February 2015 to the 2nd Plaintiff in respect of the 156 phones on grounds of acquisition and possession of uncustomed/ smuggled goods vide UGKLA/C37/2/2015-232. The seizure notice was received by the 2nd Plaintiff on 12th February 2015.

When the matter came up for scheduling, Counsel for the Defendant raised a preliminary objection to the effect that this Honourable Court does not have jurisdiction to hear and determine this matter.

Issues for determination:

1. Whether the dispute herein is a tax dispute?
2. Whether the Honourable Court has jurisdiction to hear and determine the dispute before it?

Ruling of the High Court:

(Hon. Lady Justice Susan Abinyo)

a) The issue in contention is whether the seizure of the Plaintiffs goods by the Defendant amounts to a tax dispute? If so, whether this Court has jurisdiction to entertain the suit?

b) A tax dispute relates to a contention on the tax decision, which arises from any action or omission in the assessment, determination, decision or notice by the Commissioner or any authorized officer.

c) The term notice is not defined by law, however, the seizure notice in itself is a taxation decision, and not just any notice issued by the Defendant.

d) The decision by the Commissioner to classify the Plaintiffs' goods as *"uncustomed goods"* envisaged in the East African Community Customs Management Act (EACCMA), and the issuance of a seizure notice to the 2nd Plaintiff on 9th February, 2015, amounts to a taxation decision by the Commissioner, which was in conclusion of several procedures that had been carried out by the Defendant.

e) Court relied on the decision in ***Uganda Revenue Authority Vs Rabbo Enterprises (U) Ltd & Anor, SCCA No. 12 of 2004***, in which the question as to whether seizure of the Respondents' goods, and vehicles is strictly a tort or a tax dispute, was answered in the affirmative in respect of the tax dispute

f) Any goods, which are imported or transferred or in any way dealt with contrary to the provisions of the customs laws, as in this case, would in practical terms pose a challenge on the assessment of tax payable, and perhaps this explains the classification of the said goods as uncustomed goods.

g) The submission by Counsel for the Plaintiffs that this is not a tax matter because there is no evidence to prove that there was an assessment, objection to the assessment, and a taxation decision was made in respect of the objection, is untenable. The question as to whether this is a tax dispute is answered in the affirmative.

h) The Supreme Court stated in Rabbo's case above that *"... the proper procedure therefore is that all tax disputes must first be lodged with the Tax Appeals Tribunal and only taken before the High Court on appeal."*

i) It is trite law that jurisdiction is conferred by statute. The proper procedure was for the Plaintiffs to lodge an application to the Commissioner for review within thirty days of the date of the decision or omission on this matter, pursuant to Section 229 of the EACCMA, and any appeal against the decision of the Commissioner made under the aforesaid section would therefore, be lodged with the Tax Appeals Tribunal in accordance with Section 230 of the EACCMA.

j) Court found merit in the preliminary objection raised by Counsel for the Defendant. Consequently, it was held that Civil Suit No. 0658 of 2019 was instituted prematurely.

The suit was accordingly dismissed for lack of jurisdiction with costs to the Defendant.

PICTORIAL

Regional Sensitization Exercise by the Legal Services and Board Affairs Department.
The Legal team shared with staff across the different regions, on a plethora of legal issues including the role of and services offered by the Legal department i.e. policy formulation and drafting, legal advisory, litigation and debt recovery; and how it supports the different operations of the organization in order to achieve the overarching mandate of collecting and surpassing the revenue target.

67 NIVED ENTERPRISES LIMITED VERSUS UGANDA REVENUE AUTHORITY

High Court Misc. Application No. 00301 of 2023

CASE DIGEST VOLUME IX

Head Notes:

Injunctive Reliefs – Mandatory Injunctions – Public Interest

Brief Facts:

The Applicant was issued with a Withholding Tax Exemption Certificate for the period of 9th March 2023 to 30th June 2023. Between 12th and 13th March 2023, the Applicant declared to the Respondent consignments of rice imported from Tanzania vide Customs Entries Nos. TZDAR C1792, C1813, C1814, C1815 and C1916. On the 26th day of March 2023, the Respondent issued the Applicant Withholding Tax assessments amounting to UGX. 576,831,330. On the 29th of March 2023, the Respondent revoked the Applicant's Withholding Tax Exemption Certificate on grounds of non-compliance.

The Applicant filed Misc. Cause No. 0111 of 2023 challenging the decision taken by the Respondent to revoke its withholding tax exemption status. The Applicant also filed the present application seeking an interlocutory mandatory injunction directing the Respondent to allow the Applicant to import 8,540 tonnes of rice without charging withholding tax on the said imports.

The Respondent opposed the Application and raised preliminary objections contending that the Applicant has not exhausted existing remedies available within the Respondent and the law; is in contempt of the Tax Appeals Tribunal's orders; the application contravenes the lis pendens rule; the affidavit in support of the application contains material falsehoods; the application is an abuse of court; and is res judicata for having been considered by the Tax Appeals Tribunal vide TAT Misc. Application No. 59 of 2023. Further, that the certificate was subject to revocation in the event of non-tax compliance; and that the Respondent issued withholding tax assessments on the said rice amounting to UGX 576,831,130 which the Applicant had never objected to.

Issues for determination:

1. Whether the Applicant fulfills the conditions for the grant of the interlocutory mandatory injunction?
2. Whether the grant of the mandatory injunction would be disposing off the main application?
3. Whether the Applicant is entitled to the remedy of interlocutory mandatory injunction that it seeks?
4. Whether the Respondent is in contempt of the court order dated the 5th day of April, 2023 granting a temporary injunction to the Applicant to import goods at the border?
5. Whether the preliminary objections raised by the Respondent are meritorious?

Ruling of the High Court:

(Hon. Justice Musa Ssekaana)

a) Injunctive reliefs whether mandatory or temporary must always be granted on sound reasons and not gratuitously. A mandatory injunction can be granted under the inherent jurisdiction of the Court and not under Order 41 of the Civil Procedure Rules.

b) A mandatory injunction is often a means of undoing what has already been done so far as possible and requires taking positive steps to undo what has been done and therefore, the case has to be unusually strong before the court can grant the same. Its purpose is to preserve the status quo and the status quo to be preserved is the one that existed before the wrongful act(s) of the Respondent. It can only be issued in special circumstances and in clear and obvious cases.

c) The granting of an interlocutory mandatory injunction or temporary injunction is an exercise of judicial discretion. Discretionary powers are to be exercised judiciously.

d) It should be noted that where there is a legal right either at law or in equity, the Court has power to grant an injunction in protection of that right. Further to note, a party is entitled to apply for an injunction as soon as his legal right is invaded.

e) The grant of an interlocutory mandatory injunction just like a temporary injunction is an equitable remedy and parties seeking an intervention of equity must show expression of good faith and clean hands. Equally a court of equity would grant an injunction if it is satisfied that the Respondent's conduct is below the expectation of equity. It must be noted that a court of equity would frown and refuse an injunction when the person seeking it is not acting in good faith.

f) The Respondent contended that the Applicant did not come to Court with clean hands since the Withholding Exemption Certificate was withdrawn due to the Applicant's transgressions and failure to comply with the tax law. The Respondent was acting and exercising their discretion depending on the circumstances and extent of what the tax law allows it to do.

g) The mandatory injunction sought by the Applicant would have the effect of perpetuating a continuous breach of the tax law where the Applicant wants to import rice without withholding any tax.

h) Where the remedy of mandatory injunction is sought at the interlocutory stage, it ought not to be granted save in exceptional circumstances such as in plain and obvious cases. Moreover, before granting a mandatory injunction, the Court has to feel a high degree of assurance that at the trial, it would appear that the injunction had rightly been granted.

i) The courts should be reluctant to restrain the public body from doing what the law allows it to do. In such circumstances, the grant of an injunction may perpetrate breach of the law which they are mandated to uphold. The main rationale for this is rooted in the fact that the courts cannot as matter of law grant an injunction which will have the effect of suspending the operation of legislation.

j) The courts should consider and take into account a wider public interest. The public bodies should not be prevented from exercising the powers conferred under the statute unless the person seeking an injunction can establish a prima facie case that the public authority is acting unlawfully. The public body is deemed to have taken the decision or adopted a measure in exercise of powers which it is meant to use for the public good.

k) The question here now is: what was the status quo at the time of the filing of this application. It is undisputed that the Applicant's withholding tax exemption certificate was revoked by the Respondent on the 29th of March, 2023. It is further undisputed that this application was filed before this court after the 22nd of June, 2023. At that material time, the status quo prevailing was the revocation of the withholding tax exemption certificate of the Applicant and the latter's liability to pay withholding tax on its rice imports.

l) In the circumstances, the Applicant seeks an order for mandatory injunction directing the Respondent to allow it import 8540 tonnes of rice without charging withholding tax as was the case as of 12th March, 2023. However, as discussed above, the purpose of this remedy is to preserve the status quo of the subject matter.

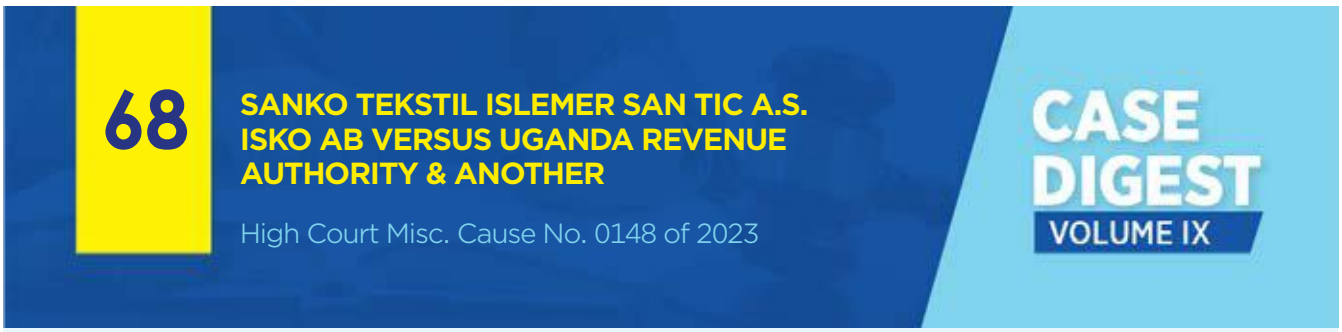
m) From the reading of this, the status quo sought to be maintained, I would suppose; is the revoked withholding exemption tax certificate and the Applicant's withholding tax liability since this was the situation as at the time of filing this Application.

n) As such, there is no status quo to be maintained in the circumstances before Court to warrant the issuance of the mandatory injunctive orders.

o) It is also argued by the Respondent that the Applicant's tax exemption certificate which was revoked has equally expired and would not be operational in any event. The Learned Judge noted that Court would act cautiously not to reverse the discretion exercised by the Respondent in revoking the Withholding Tax Exemption Certificate before determining the main cause.

p) The Applicant has not made out a case to warrant Court's orders on the reliefs sought in the Application and there are no special circumstances to warrant the grant of an interlocutory mandatory injunction..

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



Head Notes:

Re-exportation of Goods obtained Through Fraud

Brief Facts:

The Applicant entered into a contractual agreement with the 2nd Respondent (Bae Systems Ltd) for the supply of assorted goods made up of woolen denim fabric and cotton to be shipped from Turkey to Mombasa and thereafter to Uganda. The payment terms were agreed as cash against Goods 60 days after the invoice date. The goods were sent in two batches but only the first batch of goods worth €493,106 got to Uganda while the second batch was intercepted at Mombasa and a court order was secured in Kenya for their exportation because the Applicant had realized that the 2nd Respondents were fraudsters. The Uganda Police commenced investigations into the matter and it was discovered that the goods had been imported to Uganda in three containers and were warehoused at Livercot Impex Ltd at Namanve but one of the containers had already been cleared and released upon payment of the taxes by the

2nd Respondent.

The Applicant brought this Application seeking orders for a restraining order restraining the 1st Respondent from releasing goods; an order restraining the 1st Respondent from offering the said goods for auction; and an order directing the 1st Respondent to release the goods to the Applicant for re-export to their country of origin.

Issues for determination:

1. Whether the suit goods should be handed over to the Exporter/Applicant?
2. What remedies are available to the parties?

Ruling of the High Court:

(Hon. Lady Justice Cornelia Kakooza Sabiiti)

a) The consignment was shipped to Mombasa and a Bill of lading was prepared. The 2nd Respondent kept making promises to pay the Applicant while buying time until the goods reached Uganda before payment was done.

b) The said goods were pending tax clearance when the Applicant found out that the 2nd Respondent was a company of fraudsters in Uganda and was misrepresenting holding out as Bae Systems PLC, UK Company.

c) The commercial invoice dated 29th April 2021 indicated a consignment of Woven Denim fabric and cotton sold to Bae Systems PLC by the manufacturer SANKO TEKSTIL ISLETMELERI SAN. VE TIC A.S. ISKO SUBE from Turkey. This was at a consideration of 496,064.17 Euros.

d) The bill of lading still indicated the Applicant as the shipper while the 2nd Respondent was indicated as the consignee. The Bill of lading also informed that there were three containers in transit to Uganda. Court also reviewed the correspondences between the Applicant and the 2nd Respondent.

e) It is not in contention that the goods have been warehoused at Livercot Impex Ltd. It is also not rebutted that out of the three containers, taxes for one container were cleared by the 2nd Respondent.

f) From 2021 up until the date of the Ruling, no claim by the consignee had been made for the two remaining containers. The Applicant reported that it was conned by the 2nd Respondent and consideration for the consignment was never paid by the 2nd respondent who has since changed its physical address to an unknown address and its whereabouts are unknown.

g) In consideration of these facts, this is a proper case for an order of re-export of the two containers back to the Applicant who is the manufacturer/shipper and now lays a claim on the same. It is only just to allow this Application, however, the same will be on condition that the Applicant clears all the pending dues for the purposes of re-exporting the goods.

h) The 1st Respondent was ordered to release the goods to the Applicant for re-export to the country of origin subject to the Applicant fulfilling all the dues and requirements for re-export set out by the 1st Respondent. The 1st Respondent was restrained from offering the goods on auction.

The Application was allowed with orders that each party bears its own costs.

Head Notes:

Ownership as per the Bill of Lading – Procedure for Change of Ownership of Warehoused Goods – Capacity of an Advocate to depone an Affidavit

Brief Facts:

The Applicant purchased goods comprised in bill of lading No. AMC2113963 Container No. APZU3582603 from the consignee- Edison International, and all documentation concerning the goods were handed over to him in order to be able to clear the goods. Upon the goods reaching Mombasa, they were transported to Kampala and warehoused at Maina Bond pending clearance with the Uganda Revenue Authority. While the goods were at the warehouse, the Applicant formally requested that the goods be cleared, but the Respondent declined to clear the goods, hence this Application.

Issues for determination:

1. Whether the Applicant is entitled to an order releasing the goods comprised in Bill of Lading No. AMC2113963, container No. APZU3582603 amounting to 1620 roils of 100 meters each of electrical cables warehouses at Maina ICD Bonded Warehouse.
2. What remedies are available to the parties?

Ruling of the High Court:

(Hon. Lady Justice Patricia Kahigi Asiimwe)

a) Counsel for the Applicant raised a preliminary objection that the Affidavit of the Respondent is defective because it was sworn by an advocate.

b) An affidavit should be sworn by someone who has knowledge of the facts of the case. In this case, this is a legal matter and an officer in the Legal Department is best placed to swear the affidavit.

c) The fact that the deponent is an employee of the Respondent is evidence enough that she is authorized to swear the affidavit on behalf of the Respondent unless evidence is adduced to the contrary. The preliminary objection was overruled.

d) Under Section 1 of the Sale of Goods and Supply of Services Act, Cap. 292, a bill of landing is a document of title to goods.

e) In the case of ***Rahima Nagita & 2 Others Vs. Richard Bukenya & 3 Others, Civil Suit No. 389 of 2010***, it was held that the general rule is that the owner of the goods is the person named in the Bill of lading as consignee and the one who holds the original bill of landing.

f) The bill of lading is attached to the Applicant and the Respondent's affidavits showed that the owner of the goods is Edison Group International. Therefore, Edison Group International is the owner of the goods in issue.

g) Section 47(1) of the East African Community Customs Management Act, (EACCMA) provides that goods subject to import duty may on first importation, be warehoused without payment in a government warehouse or bonded warehouse.

h) Under Section 51(1)(c) of the EACCMA, where any goods are warehoused, the Commissioner may permit the name of the owner of such goods to be changed if the application is made on the prescribed form and signed by both the owner and the transferee.

i) As submitted by counsel for the Respondent, change of ownership of warehoused goods has to follow the legally provided procedure under the EACCMA and the Regulations.

j) Regulation 71 of the East African Community Customs Regulations provides that where the owner of any goods deposited in a warehouse desires to transfer them to another person, he or she and the person to whom it is desired to be transferred shall each complete and sign Form C16. The Form is addressed to the Commissioner and the owner of the goods request for permission to transfer ownership of the goods. The Transferee is required to accept ownership of the goods once the Commissioner grants the permission to transfer the goods.

k) The recognized owner of the goods in question is Edison Group International who is the consignee in the bill of lading. The Applicant relied on the sales agreement as proof of ownership. However, under the EACCMA, once the goods are warehoused, such transfer can only be done with the permission of the Commissioner and both parties have to sign Form C16.

l) There is no evidence on record to show that the parties signed Form C16 as provided for under the law. Therefore, the Applicant is not the owner of the goods and is therefore not entitled to an order releasing the goods.

The Application was dismissed with costs to the Respondent.

Head Notes:

Exercise of Judicial Review Powers - Amenability to Judicial Review

Brief Facts:

On 17th December 2019, the Applicant was issued with an Income Tax Assessment of UGX. 278,456,159 for the period between 1st July 2016 to 30th June 2017. On 7th April 2020, the Applicant objected to the aforementioned assessment and on 14th April 2020, the Respondent issued an objection decision disallowing the objection.

By a letter dated 22nd September 2022, the Applicant requested for Alternative Dispute Resolution in respect of the objection and by letter dated 1st December 2022, the Respondent declined the application for ADR stating that the objection decision was issued before the enactment of Section 24 (11) of the Tax Procedure Code Act and therefore falls outside the scope of Alternative Dispute Resolution. The Applicant then made this application for Judicial Review seeking the following orders:

- A declaration that the Respondent's decision to reject the Applicant's application for Alternative Dispute Resolution in respect of Assessment Number MA042000208165 contained in a letter dated 1st December 2022, is ultra vires, biased and procedurally improper/irregular, irrational and illegal.
- An order that of Certiorari quashing the decision of the Respondent in the letter dated 1st December 2022.
- An injunction doth issue restraining the Respondent, their agents or any other person under their authority from enforcing the Assessment Reference No. MA042000208165 and the Objection decision until this application is heard and determined.

The Respondent filed an Affidavit challenging the Application and raising preliminary objections challenging the tenability of the Application for reasons that the Court does not have the jurisdiction to entertain this matter; and the Applicant has not exhausted existing remedies under the law.

Issues for determination:

1. Whether the Application is amenable to Judicial Review?
2. Whether there are grounds for Judicial Review?
3. What remedies are available to parties?

Ruling of The High Court:

(Hon. Justice Emmanuel Baguma)

a) The position of the law is that Judicial Review is concerned not with the decision but with the decision-making process. Judicial review involves an assessment of the manner in which a decision is made. It is not an appeal and the jurisdiction is exercised in a supervisory manner, not to vindicate rights as such but to ensure that public powers are exercised in accordance with the basic standards of legality, fairness and rationality

b) For a matter to be amenable for judicial review, it must involve a public body in a public law matter. The body under challenge must be a public body whose activities can be controlled by judicial review. The subject matter of the challenge must involve claims based on public law principles and not the enforcement of private law rights.

c) In this particular case, there is evidence to show that the Applicant applied for Alternative Dispute Resolution and the Application was summarily dismissed by the 1st Respondent on ground that there was no enabling law. The Application is amenable for judicial review since it is challenging the decision-making process where the Applicant was denied a hearing.

d) Basing on Article 126 (2) (d) of the Constitution, the decision of the Respondent dismissing the Applicant's Application for mediation was irrational and irregular. Once parties express the willingness to mediate, it is highly encouraged that the same venture into it in a bid to promote reconciliation. Even if the assessment was done before the formal introduction of ADR, mediation would not cause any prejudice or miscarriage of justice to allow the applicant engage into ADR.

e) The Court held that it was accordingly proper and fair for the Respondent to accept a request for ADR to see how the Applicant can go about the taxes without necessarily closing down since it is a community service provider with interests of innocent stakeholders. Court made orders directing the Respondent to give an opportunity to the Applicant to venture into ADR.

The Application was allowed with no order as to costs.

Head Notes:

Winding up and Dissolution of a Company – Court's Power to Defer Dissolution of a Company - Grounds for Deferral of Dissolution of a Company – Responsibilities of Directors during Insolvency Proceedings – Tax Avoidance viz-a-viz Tax Evasion – Step Transaction Doctrine – Revival of a Dissolved Company – Deeming Provisions

Brief Facts:

In 2018, upon receipt of information regarding a possible tax evasion scheme orchestrated by the 1st Respondent, the Applicant commenced investigations into the affairs of the five Respondents.

The Applicant established that Mohamed Punjani, Shafiq Punjani and Salim Punjani are the shareholders of the 1st Respondent (Crane Autos Limited (In Liquidation)) with Mohamed Punjani, and Shafiq Punjani holding one share each and Salim Punjani 998 shares; Salim Punjani is the sole shareholder of 2nd Respondent (Kampala Properties Limited); Salim Punjani is the majority shareholder of 3rd Respondent (Punjani Motors Limited) holding 6995 shares therein; Mohamed Punjani, Shafiq Punjani and Salim Punjani were the shareholders of the 4th Respondent (East African Motor Supplies Limited) in which they each hold 166,667 shares; Salim Punjani and Shafiq Punjani are the shareholders of the 5th Respondent (Autotune and Engineering Limited) in which they hold 99 shares and one (1) share respectively.

The Applicant's investigations further revealed that the five companies operated as one and the same. Particularly, the five Respondent companies, carried on similar/ related business, had common shareholders, directors, employees and address. The Applicant established further that M/s Crane Enterprises (U.A.E) Limited, primarily an importer of electronics and computers and their accessories, wass incorporated in Uganda but had a branch in the United Arab Emirates established by the 1st Respondent. On or about 5th March, 2012, the 4th Respondent ordered for the supply of about 26 heavy duty trucks and spare parts from M/s Ural Automobile Works JSC based in Russia at a cost of approximately US $ 1,300,000. The trucks were instead supplied by M/s Crane Enterprises (U.A.E) Limited as opposed to the 4th Respondent dealing directly with the manufacturer, despite the 4th Respondent having been appointed as the authorised representative and distributor of Ural Automobile Works JSC, in the East African region.

Upon being advised to file its tax returns, the 1st Respondent filed returns declaring a tax liability of UGX 603,852,927. The Applicant audited the 1st Respondent for the period 2010 to 2022 and issued an Income Tax Assessment of UGX 19,525,434,879 bringing the total tax liability to UGX 20,129,287,806. The 1st Respondent did not commence any proceedings to contest the objection decision.

During this period, the directors and shareholders of the 4th and 5th Respondents divested themselves of their interests and shares, the 1st Respondent's majority shareholder and director, Mr. Salim Punjani, divested his interests and shares in the 2nd Respondent. On or about 14th March 2023, the shareholders of the 1st Respondent passed a special resolution to voluntarily wind up the company.

The Applicant filed HCMC No. 026 of 2024 seeking an order to lift the corporate veil of the 1st Respondent. Consequently, the 1st Respondent obtained from the 6th Respondent (the Official Receiver) a Certificate of Dissolution dated 7th March 2024 declaring the 1st Respondent to have been dissolved before the date on which the dissolution should have been deemed to occur. The Applicant brought this Application under Section 77(7) of the Insolvency Act seeking orders that the Certificate of Dissolution be cancelled and the date of dissolution of the 1st Respondent be deferred until final determination of Misc. Cause No. 026 of 2024.

Ruling of the High Court:

(Hon. Justice Stephen Mubiru)

a) Winding up and dissolution are two steps in the process of a company ending operations and paying off its creditors. The procedure that leads to a company's dissolution is known as winding up.

b) Sections 67(6) and 77(7) of the Insolvency Act empower courts on the application of the Liquidator or of any other person who appears to Court to have an interest in the company to make an order deferring the date on which the dissolution of a company is to take effect to a time as the court may think fit. These provisions imply that after winding up but before dissolution, the Court may for sufficient cause, prolong a company's life as a legal entity or its existence, allowing it to be sued in a court of law or otherwise dealt with as a person.

c) This three-month period recognizes the possibility that other assets of the company might be found or that there might be disagreement between the creditors and the liquidator as to whether his work is truly complete. Unless the Court makes an order deferring dissolution, a corporation undergoing liquidation is deemed to be dissolved at the expiration of three months from the registration of the return of its final meeting. In between winding-up and dissolution, the corporation exists.

d) A corporation whose dissolution is deferred continues its corporate existence, but does not carry on activities except for purposes of winding up its affairs. Deferral may be granted where it will facilitate a more economic, effective or expeditious liquidation of the company in the interests of its contributories and creditors or where there are proceedings, claims or investigations in progress which require the company to remain on the register.

e) The guiding principle in the exercise of the discretion to defer the dissolution of an insolvent company is whether the continued existence of the company is necessary in order to effect some proper purpose. Accordingly, what amounts to a "proper purpose" would depend on the facts of each case, bearing in mind the primary objectives of the liquidation process. Ordinarily, a court will consider whether the fairness and justice require the dissolution to be deferred.

f) It is therefore well settled that the directors must not engage in fraudulent trading when the company is either insolvent, or near insolvent, or of doubtful insolvency, or if a contemplated payment or other cause of action would jeopardize its solvency.

> *Section 77(7) of the Insolvency Act may be invoked in order to defer the dissolution of an insolvent company reasonably suspected to have engaged in tax fraud or unlawful tax avoidance.*
>
> **-Hon. Justice Stephen Mubiru**

g) When the company is on the verge of insolvency, its directors have a duty to act in the best interests of such creditors, regardless of whether they are voluntary or involuntary creditors. Voluntary creditors include those creditors who voluntarily enter into transactions with the company, such as trade creditors, institutional lenders, employees and debenture holders. Involuntary creditors, on the other hand, are those creditors who have entered into transactions with the company on a non-consensual basis, such as the State when it comes to levying corporate taxes on the company.

h) While the law of insolvency limits the voidable transaction regime, and hence the Liquidator's voiding powers, to a temporal scope of within a year preceding the commencement of the liquidation, thereby curtailing the liquidator's power in seeking the voiding of such transactions, on the other hand, the principles of tax administration void any transaction entered into for the purpose of tax evasion.

i) The Commissioner is empowered based on the taxpayer's return of income and on any other information available, to assess the chargeable income of a taxpayer and the tax payable thereon for a year of income within seven years from the date the return was furnished.

j) There is no suggestion in Section 77(7) of the Insolvency Act and neither is it implied therein that deferral is restricted to grounds available to the Liquidator to void transaction. All that is required are circumstances rendering it necessary in order to effect some proper purpose; deferral for purposes of investigation of suspected unlawful tax avoidance, tax fraud or evasion, qualifies for such purpose.

k) The Applicant and the Courts have the power to examine the substance of composite transaction schemes or transactions devised solely for the purpose of tax avoidance, devoid of economic substance or business purpose by using substance over form doctrine, economic reality test or the step transaction doctrine and thereby render the scheme ineffective.

l) Tax fraud occurs when a taxpayer wilfully and intentionally falsifies information on a tax return to limit the amount of tax liability. It essentially entails cheating on a tax return in an attempt to avoid paying the entire tax obligation.

m) Tax avoidance can be understood as a lawful scheme managed by an individual or by a company to reduce its tax liability. The Oxford Dictionary defines *'tax avoidance'* as the arrangement of one's financial affairs to minimize tax liability within the law. On the other hand*, 'tax evasion'* is an illegal activity in which a person or entity deliberately avoids paying a true tax liability. It can either be illegal non-payment or the illegal underpayment of actual tax liabilities due. While tax evasion requires the use of illegal methods to avoid paying proper taxes, tax avoidance uses legal means to lower the obligations of a taxpayer.

n) Courts may "pierce the corporate veil" if it can be shown that the individual creditor expressly directed the company's misconduct, such as the diversion or misappropriation of funds.

o) Section 77(7) of the Insolvency Act may be invoked in order to defer the dissolution of an insolvent company reasonably suspected to have engaged in tax fraud or unlawful tax avoidance. Therefore, the dissolution of a company may be deferred in order to facilitate an effort to confirm if the non-payment of tax was the result of committing fraud or of the concealment of reportable income.

p) The evidence before the Court should be that on basis of which a reasonable person would believe that a fraud was in the process of being committed, has been committed, or is going to be committed. It should be capable of supporting the sort of common-sense conclusion about human behaviour upon which practical people are entitled to rely.

q) The substance-over-form doctrine is to the effect that taxpayers cannot avoid taxes on services or goods by assigning that income to another entity and assignment of income allows the Applicant to ignore an entity's legal form and focus on its substance in order to prevent that entity from being said to avoid taxes. Under this principle, questions of taxation are determined by viewing what was actually done rather than the declared purpose of the participants.

r) The taxpayer has to prove that the substance of the event is the same as the form presented otherwise Court will not permit the true nature of the transaction to be disguised by mere formalism which exists solely to alter tax liabilities in which case the substance will be adopted for tax incidence matters.

s) On the other hand, the Step Transaction Doctrine states that for tax purposes, separated steps of a transaction can be considered as a single one. The doctrine can be considered as an extension of Substance Over Form Doctrine. Both pursue the real substances of the transaction. The Step Transaction Doctrine would be utilized only if the form differs from the substance of the transaction.

t) Under the step-transaction doctrine, a particular step in a transaction is disregarded for tax purposes if the taxpayer could have achieved its objective more directly, but instead included the step for no other purpose than to avoid taxes payable in Uganda; if that step does not appreciably affect the taxpayer's beneficial interest except to reduce its tax liability.

u) The Court must examine whether the individual steps or events have independent significance or merely have meaning as part of the larger transaction. When it is unlikely that any one step would have been undertaken except in contemplation of the other integrating acts, the step transaction treatment may be deemed appropriate.

v) Taxpayers are permitted to structure their business transactions to reduce or avoid taxation however those efforts will be unsuccessful if the transactions lack "economic substance".

w) At the heart of the Applicant's tax dispute with the 1st Respondent is a transfer pricing practice used to reduce and structure tax payments by processing sales in a lower-tax jurisdiction. For a transfer between related parties of valuable assets to be valid under tax law, the transfer must meet an arm's-length standard, including compensating the transferring party as though the transfer were a sale to an unrelated third party.

x) It is the Applicant's case that through its dealing with the Dubai entity, the 1st Respondent's profit margin was significantly reduced in favour of the Dubai entity which received more of the profits through an artificially manipulated price.

y) The sequence of events by the 5 Respondents supports the Applicant's assertion of an unlawful scheme designed to avoid tax, devoid of any economic substance to the extent that:

i. Although the 1st Respondent claims to have ceased doing business in Uganda approximately two decades ago around the year 2003, the need to dissolve it had never arisen until its failure to appeal its unsuccessful challenge to a tax assessment made during September, 2022 and a taxation decision made thereafter.

ii. The shareholders of the 1st Respondent then inexplicably erroneously opted for a voluntary winding up, well knowing the company was unable to pay the tax assessed. Compulsory winding up is the only option if the company is unable to pay off its debts.

iii. The 1st, 3rd to 4th Respondents are involved in various aspects of the motor vehicle business ranging from sales to repairs, and until recently, the Respondents had more or less the same shareholders and directors, with Mr. Salim M. Punjani being the dominant factor in that aspect. They operate from the same premises at plot Plot 24 Dewinton Street / Plot 32 Jinja Road, Kampala which they indicate to be their respective official address.

iv. The 1st Respondent's ceasing of business operations in Dubai during the year 2018 coincided with the year in which the last consignment of trucks purchased by the 4th Respondent from M/s Ural Automobile Works JSC was delivered. The shareholders of the 1st Respondent not only incorporated the 4th Respondent but also created the 1st Respondent's branch in the name and style of M/s Crane Enterprises (U.A.E) Limited.

v. Despite the fact that four months prior to the first consignment M/s Ural Automobile Works JSC, had designated the 4th Respondent its *"sole authorised representative of Ural Automobile Works JSC for deliveries of Ural Heavy Duty Trucks, spare parts for them and repair of the Ural Trucks in Uganda and Southern Sudan",* all transactions between it and the 4th Respondent for the next six years were routed through the 1st Respondent's branch in Dubai by an arrangement of transfer pricing and payment of management fees and bonuses to Mr. Salim M. Punjani, the Manager M/s Crane Enterprises (U.A.E) Limited, the now sole director of the 1st Respondent.

vi. The 1st Respondent's creation of the branch in Dubai as the "middleman" between supplier and customer does not seem to be a sensible business decision with tangible economic benefit. Although the 1st Respondent's counsel claimed it was to serve as a distributorship to the East African Region, no evidence of that was adduced. The only dealings on record it had are with the 4th Respondent. Creation of that branch in the dealings with M/s Ural Automobile Works JSC does not make business sense and it is highly doubtful that parties in an arms-length transaction would seek to purchase from an intermediary at a substantially higher price when they have an official status allowing them to purchase at the significantly much lower factory price.

vii. Insertion of the Dubai branch into the transactional flow resulted in a more expensive supply chain. The cost plus the small percentage mark-up produced only limited income to the 4th Respondent in return for its obligation to maintain normal operations in support of the trucks and parts sales business and to bear the ultimate economic risk for the replacement parts business.

viii. The scheme was clearly designed to transfer the profits earned on its sales of Ural trucks to the Dubai based entity and to avoid, minimise or defer paying taxes on that income in Uganda, by keeping it offshore. The dealings between the 4th Respondent and the Dubai branch are in essence a profit split constituting an improper transfer of profits to a tax haven, in order to avoid or minimise taxation in Uganda where it has a substantial business presence. The scheme lacks economic substance and has no business purpose other than tax avoidance.

ix. When the principle of looking on a planned series of steps as a whole transaction is applied to the facts of this case, it reveals that the objective of the composite transaction was to minimise or defer paying taxes on income in Uganda on the profits earned in the dealings with M/s Ural Automobile Works JSC. For fiscal purposes the steps involving the sale by M/s Ural Automobile Works JSC to M/s Crane Enterprises (U.A.E) Limited can be disregarded. The fiscal focus can therefore be on the end result, viz the receipt by M/s Crane Enterprises (U.A.E)

Limited of the profit earned on the transaction with the 4th Respondent and the payment of management fees and bonuses to Mr. Salim M. Punjani, as Manager M/s Crane Enterprises (U.A.E) Limited, who now is the sole director of the 1st Respondent.

x. In short, the arrangement was therefore an ineffective tax avoidance scheme. A company cannot enter tax shelters simply to avoid taxation; it must have a legitimate business reason for doing so. These insolvency proceedings are incidental to an even wider scheme of unlawful tax avoidance devised by the 1st Respondent against income tax. Tax avoidance was the whole substance and raison d'être of the transaction and the end result intended by the parties. It was nothing more than a means to the end of achieving payment to Mr. Salim M. Punjani of a substantial portion if not almost all the transactional profits, in the hope that it would be treated as non-taxable income for tax purposes in Uganda.

xi. In a case like this where there is an arguable possibility of the Liquidator having recourse to recovery and bringing into the pool of assets available for settling the 1st Respondent's tax liabilities by voiding an unlawful tax avoidance scheme, the creation of an opportunity to explore fully the possibility of further and hitherto unrecognised avenues of recovery for the benefit of the liquidation of the 1st Respondent must, of its nature, represent a beneficial purpose justifying the deferral of the 1st Respondent's dissolution.

xii. The dealings between the 4th Respondent and the Dubai branch are in essence a profit split constituting an improper transfer of profits to a tax haven, in order to avoid or minimize taxation in Uganda where it has a substantial business presence. The scheme lacks economic substance and has no business purpose other than tax avoidance.

z) An order under Section 77 (7) of the Insolvency Act can ideally only be made before the end of three months after the lodgement of the return. The Court is satisfied that there is sufficient reason in the instant case to condone the delay and that it is in the public interest to do so. The issues at stake encompass complex matters of taxation, affecting the well-being or welfare of citizens and in which the public has a stake in ensuring proper tax administration.

aa) At common law, and under statute, a company ceases to exist as an entity upon the effective date of its dissolution. By virtue of Sections 67 (6) and 77 (7) of the Insolvency Act, the company is automatically dissolved on the expiration of three months after the Liquidator's lodgement of the return with the Registrar of Companies and the Official Receiver, and no further formality is required.

ab) In the Cayman's Island, courts have jurisdiction to restore a company to the register when it has been dissolved following a voluntary liquidation if an applicant for such relief can prove that there was a fraud in respect of the liquidation.

ac) Uganda has not enacted a statutory process for applicants to restore dissolved companies, unlike other jurisdictions where Legislatures have passed laws which permit applications for companies that have been dissolved to be restored within a specific timeframe. I therefore find the approach by the Caymans Island to be more persuasive. This is more so given the fact that by using the expression *"the company shall be taken to be dissolved,"* in Sections 67 (6) and 77 (7) of The Insolvency Act, 2011, the Legislature adopted a deeming provision that is permissive rather than imperative such as would have been the case by adopting the expression, *"shall be dissolved,"* without providing for a corresponding power of restoration.

ad) In construing a deeming provision, it is necessary to bear in mind the legislative purpose. By the expression *"taken to be,"* used a as a variant of the verb *"deem,"* the Legislature created a circumstance notionally true that might not, or would not, otherwise actually be true. Deeming provisions do not always produce the stipulated result decisively and so irrefutably. The meaning to be attached to the expression *"taken to be"* must depend upon the context in which it is used. A deeming provision creates a fiction which may be legally irrefutable or just rebuttably presumptive, i.e. positing that a legislation is to be applied as if something were different from what it *"actually"* is.

ae) There ought to be situations, such as the one at hand, in which the presumption of dissolution of a corporation is rebuttable. Even though the presumption of dissolution of a company has great consequences and is important for attaining finality, in the case of a company whose affairs have not been fully wound up (for example, the discovery of a significant asset), or where the Court is satisfied that it is just that the company be restored to the register, the presumption of dissolution ought to be rebutted, or the company deemed to have continued in existence as if it had not been struck off the register of companies.

af) This view is further augmented by the fact that Section 199 (a) of the Insolvency Act requires the Official Receiver, to investigate the directors, shareholders, contributories and all present and past officers of an insolvent company or of a company which is being wound up or liquidated; not for the repayment of or recovery of assets for creditors, but for the purpose of establishing any fraud or impropriety.

ag) If a company or any member or creditor thereof is aggrieved by the company having been dissolved and struck off the register in accordance with Sections 67 (6) and 77 (7) of the Insolvency Act, 2011, the Court on the application of such company, member or creditor may, if satisfied that the dissolution was vitiated by fraud, or otherwise, that it is just that the company be restored to the register, ought to order the name of the company to be restored to the register. Court rejected Counsel for the Respondents' argument that a company deemed dissolved cannot be revived. Such a construction substantially emasculates the effectiveness of the power of Court to deal with exceptional situations that emerge after the dissolution, such as purported dissolutions vitiated by fraud or where some practical benefit is likely to flow from setting aside the impugned dissolution.

ah) Court found that there were exceptional public interest grounds in the instant case to justify the orders sought. There is an obvious public interest in the pursuit of undoing a reasonably suspected unlawful tax avoidance scheme. While the principles of preserving the finality of dissolutions and preventing the prevailing of a fraud both remain essential and in effect, the evidence in this case demonstrates that exercise of the discretion in favour of finality would result in extreme and irreparable prejudice to the sole creditor of the company seeking to recover unpaid taxes. All in all, the Applicant has made out a proper case for deferring the dissolution of the 1st Respondent.

The Application was allowed. The Dissolution Certificate issued on 7th March, 2024 was revoked and the dissolution of the 1st Respondent was deferred for six months from the date of this decision, i.e. until 16th January, 2025 or such other time as the Court may from time to time direct. The costs of the application were awarded to Applicant, to be recovered as part of the costs of liquidation of the 1st Respondent.

Head Notes:

Lifting/ Piercing of the Corporate Veil – Specific vis-a-viz General provisions – Doctrine of Harmonious Construction – Theory of Single Economic Unit – Tax planning vis-a-viz Tax avoidance

Brief Facts:

In 2018, upon receipt of information regarding a possible tax evasion scheme orchestrated by the 1st Respondent, the Applicant commenced investigations into the affairs of the five Respondents.

The Applicant established that Mohamed Punjani, Shafiq Punjani and Salim Punjani are the shareholders of the 1st Respondent (Crane Autos Limited (In Liquidation)) with Mohamed Punjani, and Shafiq Punjani holding one share each and Salim Punjani 998 shares; Salim Punjani is the sole shareholder of 2nd Respondent (Kampala Properties Limited); Salim Punjani is the majority shareholder of 3rd Respondent (Punjani Motors Limited) holding 6995 shares therein; Mohamed Punjani, Shafiq Punjani and Salim Punjani were the shareholders of the 4th Respondent (East African Motor Supplies Limited) in which they each hold 166,667 shares; Salim Punjani and Shafiq Punjani are the shareholders of the 5th Respondent (Autotune and Engineering Limited) in which they hold 99 shares and one (1) share respectively.

The Applicant's investigations further revealed that the five companies operated as one and the same. Particularly, the five Respondent companies, carry on similar/ related business, have common shareholders, directors, employees and address. The Applicant established further that M/s Crane Enterprises (U.A.E) Limited, primarily an importer of electronics and computers and their accessories, is incorporated in Uganda but has a branch in the United Arab Emirates established by the 1st Respondent. On or about 5th March, 2012, the 4th Respondent ordered for the supply of about 26 heavy duty trucks and spare parts from M/s Ural Automobile Works JSC based in Russia at a cost of approximately USD 1,300,000. The trucks were instead supplied by M/s Crane Enterprises (U.A.E) Limited as opposed to the 4th Respondent dealing directly with the manufacturer, despite the 4th Respondent having been appointed as the authorised representative and distributor of Ural Automobile Works JSC, in the East African region.

Upon being advised to filed its tax returns, the 1st Respondent filed returns declaring a tax liability of UGX 603,852,927. The Applicant audited the 1st Respondent for the period 2010 to 2022 and issued an Income Tax Assessment of UGX 19,525,434,879 bringing the total tax liability to UGX 20,129,287,806. The 1st Respondent did not commence any proceedings to contest the objection decision.

During this period, the directors and shareholders of the 4th and 5th Respondents divested themselves of their interests and shares, the 1st Respondent's majority shareholder and director, Mr. Salim Punjani, divested his interests and shares in the 2nd Respondent. On or about 14th March 2023, the shareholders of the 1st Respondent passed a special resolution to voluntarily wind up the company.

The Applicant filed this Application under Section 20 of the Companies Act, Section 108 of the Insolvency Act and Section 98 of the Civil Procedure Act seeking orders that the corporate veils of the Respondents be lifted to facilitate and ensure due completion of the dissolution of the 1st Respondent in a just and equitable manner; the assets of the 2nd to 5th Respondents be pooled with the assets of the 1st Respondent and the same be applied to settle the outstanding tax liability claims of the 1st Respondent; and the 2nd to 5th Respondents pay the whole of the claims against the 1st Respondent and costs of its Liquidation.

The Applicant also filed an Application seeking an order deferring the effective date of dissolution of the 1st Respondent. Accordingly, the dissolution was deferred for 6 months until 16th January 2025 or such other time as the Court may from time to time direct.

Ruling of the High Court:

(Hon. Justice Stephen Mubiru)

a) One of the tools at the disposal of the Applicant in its quest to recover an outstanding tax debt of a corporation from its members is the doctrine of the lifting or piercing of the corporate veil. Section 20 of the Companies Act, 1 of 2012 (now Cap. 106) empowers courts to pierce the "corporate shield" or lift the "corporate veil," but this will only be done when there is evidence to show that the corporate structure was used purposely to avoid or conceal liability.

b) The veil will be lifted where the corporate form has been abused to further an improper purpose and not a bona fide, usually commercial, transaction. The courts very often resort to piercing the veil in order to find out the true purpose/intent behind the activities of the company.

c) One of the situations is where due to glaring facts established on record, it is found that a complex web has been created only with a view to defraud the revenue interest of the state; where companies are used as conduits to escape tax liabilities.

d) When it is found that incorporation of an entity is only to create a smoke screen to defraud the revenue and shield the individuals who behind the corporate veil are the real operators of the company and beneficiaries of the fraud, the courts have not hesitated in ignoring the corporate status and striking at the real beneficiaries of such complex design. The Court is entitled to pierce the veil of corporate entity and pay regard to the economic realities behind the legal façade.

e) It was counsel for the 2nd to 5th Respondents' submission that the specific legislation on lifting the veil in liquidation is Section 108 of the Insolvency Act and therefore that the general provision in Section 20 of the Companies Act cannot apply to this matter.

f) Section 20 of the Companies Act empowers the Court to lift the veil *"where a company or its directors are involved in acts including tax evasion, fraud or where, save for a single member company, the membership of a company falls below the statutory minimum."* On the other hand, Section 108 of the Insolvency Act empowers the Court to lift the veil where it is *"satisfied that it is just and equitable to do so, ... of any associated company .....to facilitate and ensure due completion of the liquidation process in a just and equitable manner."* Therefore, whereas The Companies Act broadly applies to all situations involving *"tax evasion or fraud,"* The Insolvency Act limits it to instances where it is *"equitable to do so,"* and only in respect of *"associated companies"* and for the purpose of *"a just and equitable"* liquidation.

g) Whereas Section 20 of the Companies Act limits the grounds to tax evasion, fraud and situations where the membership of a company falls below the statutory minimum, Section 108 of the Insolvency Act is broader since it applies to all situations where it is "equitable to do so," but at the same time restricting the extent of use of that power only to the "associated companies," defined as those companies or businesses in which the insolvent "holds majority or controlling shares."

h) Secondly, whereas the focus of Section 20 of the Companies Act is an individual company, that of Section 108 of the Insolvency Act, 2011 is directed at a group of associated companies. Lastly, whereas Section 108 of the Insolvency Act is directed at lifting the veil of the "associated companies," Section 20 of the Companies Act may be invoked for lifting the veil of the insolvent company itself.

> *Where the veil of the insolvent company is lifted prior to or contemporaneously with that of the associated companies, "association" ceases to be based on corporate majority shareholding in and control of the companies associated to the insolvent, but rather devolves unto the situs of the directing mind and will which control what it does.*
>
> **-Hon. Justice Stephen Mubiru-**

i) The principle is that where there are provisions in a special Act and in a general Act on the same subject which are inconsistent, if the special Act gives a complete rule on the subject, the expression of the rule acts as an exception to the subject matter of the rule from the general Act.

j) Although the Companies Act, 2012 (now Cap. 106) was enacted after the Insolvency Act, 2011 (now Cap. 108), the law is that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, the earlier and special legislation may not be held indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. Section 20 of the Companies Act is a general provision, while insolvency is a special matter dealt with by Section 108 of the Insolvency Act as a special law. In such situations the provisions of a general statute yield to those of a special one.

k) On the other hand, is the doctrine of harmonious construction to the effect that when there is a conflict between two or more statutes, or if two or more than two provisions of the same Act are inconsistent with each other, then they must be interpreted in such a manner that effect should be given to both. The doctrine follows a very simple premise that every statute has a purpose and intent as per law and should be read as whole.

l) When dealing with seemingly contradictory statutory provisions, it is a well-established rule to uphold and give effect to all the provisions as far as it may be possible and avoid an interpretation which may render any of them powerless. As much as possible, the Court should adopt an interpretation that makes them work together smoothly instead of declaring one inapplicable.

m) Harmonisation is done between the conflicting provisions so that one does not defeat the purpose of another. In following that doctrine, it seems to me that the power to lift the veil where it is "equitable to do so," conferred by Section 108 of the Insolvency Act includes the power to do so "where a company or its directors are involved in acts including tax evasion, fraud or where..... the membership of a company falls below the statutory minimum" provided for under section 20 of the Companies Act. Except that when lifting the veil under Section 108 of The Insolvency

Act, 2011, that power extends only to "associated companies," which in essence are subsidiaries of the insolvent company. This allows for a group of associated companies to be treated as one.

n) Therefore, reliance may otherwise be placed on Section 20 of the Companies Act for lifting the veil of the insolvent company. In a case like this, where lifting the veil of both the insolvent company and its associates is sought, refence to the provisions of one Act may not be made to the exclusion of the other. Invoking both provisions thus is not erroneous.

o) The veil of incorporation is lifted in respect of the company that has been used as a stratagem, mask, cloak or facade, and all associated corporations whose directors or shareholders are complicit in the fraud, tax evasion, unlawful trading, avoidance of legal obligation or any other situation where the device of incorporation is used to conceal directors' or shareholders' activities which are directly prohibited by law, or for some other illegal or improper purpose, or by reason of an overriding public interest.

p) It follows that the personal fault of the directors and managers who represent the directing mind and will of the company, and control what it does will in circumstances justifying the lifting of the corporate veil, may then be attributed to the associated companies. The implication is that separate legal personality will not avail associated companies of the tax liability of their insolvent associate, provided they have the same control or ownership. This theory of single economic unit postulates that a group of companies, as long as it is under common ownership and/or control, should be taken as a single entity.

q) Where the veil of the insolvent company is lifted prior to or contemporaneously with that of the associated companies, "association" ceases to be based on corporate majority shareholding in and control of the companies associated to the insolvent, but rather devolves unto the situs of the directing mind and will which control what it does. Lifting the corporate veil describes a situation when the courts completely ignore the company's separateness and consider the rights and liabilities of the company as that of the shareholders, which means that the "separate legal personality" principle is overlooked. After the veil is lifted, reference to the corporate entity in the definition then is practically a reference to the directors, shareholders or officers who represent its will, since they can no longer take advantage of the corporate veil.

r) Once the veil of incorporation of the insolvent company is lifted, then the phrase "in which the insolvent company holds majority or controlling shares" is interpreted to mean "in which the directors, shareholders or officers of the insolvent company hold majority or controlling shares," they being the persons in control and ownership of the insolvent company.

s) The consequences of an insolvent company being found to be a shadow of its directors, shareholders or officers used as a vehicle in the commission of fraud, tax evasion, unlawful trading, avoidance of legal obligation or any other situation where the device of incorporation is used to conceal directors', officers' or shareholders' activities which are directly prohibited by law, or for some other illegal or improper purpose, or by reason of an overriding public interest, can be very significant. Other companies in which such directors, shareholders or officers hold majority or controlling shares, hence in respect of which they are the directing minds and will of the company, are the "alter ego" of and control what such companies do, come into the ambit of the definition.

> *The main test in unlawful tax avoidance is whether the purpose of an arrangement or transaction is to avoid the payment of tax, or whether it is used for a legitimate business purpose.*
>
> **-Hon. Justice Stephen Mubiru-**

t) Court cited the example of a company which has very substantial assets but is the shadow, stratagem, mask, cloak or facade of a director, shareholder or officer of a second company which has few assets. The second company is being wound up because it is insolvent and cannot pay its debt. The liquidator of the second company will be keen to increase the funds available to pay the creditors of the second company. If the liquidator can establish that the first company was used as a stratagem, mask, cloak or facade of its directors, shareholders or officers who are also a director, shareholder or officer of the second company, who hold majority or controlling shares in the first company, then the substantial assets of the first company can be made available to pay the debts of the second company. Thus, once the veil of incorporation of the insolvent is lifted, a company is associated to it not only where the insolvent has control of the other company, but also where both companies are under common control.

u) This advances the overall goal and spirit of Section 108 of the Insolvency Act, 2011; that the directors of an insolvent company may not use associated companies to commit a fraud against its creditors, place assets out of the reach of the Liquidator, or otherwise use the solvent associates to immunise themselves from the liabilities of the insolvent company, such that in the case of insolvency all assets of companies within a group should be available to meet the liabilities of the insolvent company.

v) An applicant must first prove that the company, from whom the contribution is sought, is associated to the company in liquidation and then adduce evidence that it is just and equitable to make an order. By this provision, Parliament intended the Courts to have the broadest discretion to ensure that equity is done and to effect a result which accords with common notions of fairness in all the circumstances, bearing in mind the cardinal principle of insolvency administration.

w) The intention behind this provision is primarily the pooling of assets of various companies that are de facto managed as if they were one entity, or under the control of the insolvent company. Therefore, in deciding whether it is just and equitable to lift the veil of an associated company, the Court will consider the extent to which the directors, shareholders or officers of the insolvent corporation exercise domination and control over the associate (excessive exercise of control).

x) The finding though will be more readily reached where; - (i) the businesses of the companies have been so carried on that the separate business of each company, or a substantial part of it, is not readily identifiable; where the businesses of the companies have been intermingled; (ii) the companies jointly own or operate particular property that is or was used, or for use, in connection with a business, a scheme, or an undertaking, carried on jointly with the insolvent company; (iii) the associated company owns particular property that is or was used, or for use, by the insolvent company in connection with a business, a scheme, or an undertaking, carried on jointly by the companies.

y) As piercing the veil undermines the concept of limited liability, the courts approach the issue cautiously and will only make such an order where the associate company in question has been so dominated and controlled by the insolvent one that the court can conclude that it is the insolvent company's mere instrumentality. In such cases it can, therefore, be said that it lacks separate legal existence.

z) Tax planning is an entitlement of the assessee within the contours of law; hence tax planning should not involve use of colourable devices for reducing tax liability. The main test in unlawful tax avoidance is whether the purpose of an arrangement or transaction is to avoid the payment of tax, or whether it is used for a legitimate business purpose. Attempts to use the corporate vehicle not for a bona fide transaction but to achieve an improper purpose will often involve some degree of dishonestly or lack of moral probity. Hence acting capriciously for an extraneous purpose without a legitimate commercial interest based on the life of the contract can be sufficient mala fides combined with control to pierce the corporate veil.

aa) In Miscellaneous Application No. 0372 of 2024, this Court found that the 1st Respondent colluded with the rest of the Respondents in the implementation of an unlawful tax avoidance scheme.

ab) The sequence of events outlined above was found to constitute an unlawful scheme designed to avoid tax, devoid of any economic substance.

ac) The Applicant having proved that the corporate veil was used by the shareholders of the 1st Respondent, who incorporated the 4th Respondent and later M/s Crane Enterprises (U.A.E) Limited as its branch in in the United Arab Emirates' Sharja Airport International Free Zone, Dubai and used it to conceal the true state of affairs in their dealings with M/s Ural Automobile Works JSC of transfer pricing arrangement designed to ensure that most of the profit is made in a country with low taxes, and payment of management fees and bonuses to Mr. Salim M. Punjani in Dubai rather than Uganda, in order to evade an existing obligation to pay tax in Uganda on those transactions, which conduct constitutes using the veil of incorporation for an improper purpose, yet other methods of recovery of the unpaid tax are unavailable, by invoking the provisions of Section 20 of the Companies Act, the 1st Respondent's veil of incorporation is hereby lifted, thereby attributing liability for the unpaid tax to its directors and shareholders.

ad) As regards the rest of the Respondents, in the terms of Section 108 of The Insolvency Act, 2011 in deciding whether it is just and equitable to lift their respective veils of incorporation, the Court considered the following; - the extent to which the directors, shareholders or officers of the 1st Respondent exercise domination and control over them; the extent to which the circumstances that gave rise to the liquidation of the 1st Respondent are due to their actions; the extent to which the businesses of the associated companies have been combined with those of the 1st Respondent; the extent to which creditors of the 2nd to 5th Respondents may be advantaged or disadvantaged by the order, and whether the corporations dealt with each other on an uncommercial basis particularly in the lead-up to the appointment the liquidator.

ae) Insolvency jurisdiction does not routinely interfere with limited liability, which is the very foundation of corporate finance. Hence, a contribution order or extension of liability is generally based on circumstances where the insolvent entity has been misused by the associated entities, almost under circumstances which may be either fraudulent or implying a mischief.

af) A director, shareholder or officer of the insolvent company is presumed to exercise this control when he or she directly or indirectly holds a percentage of the voting rights higher than 40% and when no other member or shareholder directly or indirectly holds a percentage higher than his or her percentage, by virtue of which they have the power to exercise decisive influence over the activities of the company in question. The key elements of control include actual control or capacity to control, either directly or indirectly, financial and operating policy and decision making.

ag) The 1st to 5th Respondents operated under more or less the same management and control in that at all material time, Mr. Valerii Makarie was/is the Sales Manager of

the 1st, 4th and 5th Respondents. He was/is also a signatory to the 2nd Respondent's bank accounts in Centenary Bank and Bank of Africa and its Representative in Uganda. Mr. Mahmood Haroon was/is the Operations Manager of the 1st, 4th and 5th Respondents. Mr. B. Jayakumar was/is the Chief Finance Officer of the 1st, 4th and 5th Respondents. Mr. H. Raghu Ram was/is the Financial Controller of the 1st, 4th and 5th Respondents. He was also the 2nd Respondent's representative in Uganda.

ah) Mr. Salim Punjani became a shareholder of the 1st Respondent and has since assumed the status of being its sole director, while Mr. Shafiq Punjani its Company Secretary. Mr. Salim Punjani was also the sole director of the 2nd Respondent until 26th October 2022, when Shabbir Hussein took over after Mr. Salim Punjani divested his interests in the company to him. On 17th November, 2022 the Company appointed Mr. Valerii Makarie as its representative in Uganda replacing a one Raghu Ram. The current shareholders and directors of the 3rd Respondent are Salim Punjani and Gulamabbas M. Pujani while Mohamed Rashid Punjani is the Secretary thereof. As at the 7th December, 2016, the shareholders of the 4th Respondent were Salim Punjani, Shafiq Punjani, and Mohamed Punjani. On 11th May, 2022, they divested their shares to the Company's Sales Manager, Mr. Valerii Makarie whereupon Elena Sokolovskaia became its Company Secretary. The shareholders of the 5th Respondent as at 28th May 2019 were Salim Punjani and Shafig Punjani. They continued to be directors until 30th May, 2022 when Mr. Valerii Makarie took over as the sole Director and Secretary of the Company.

ai) Mr. Salim Punjani joined the 1st Respondent on 12th October, 1995 as a majority shareholder holding 998 shares. He became its sole director on 1st March, 2023. The 2nd Respondent was registered in Uganda as a foreign company on 9th February, 2012. At the date of registration in Uganda, Mr. Salim Puniani was its sole shareholder and director. On 26th October 2022, he divested his interests in the company to Mr. Shabbir Hussein. The shareholders of the 3rd Respondent are Mr. Salim Punjani and Mr. Gulamabbas M. Punjani, holding 6995 and 5 shares respectively. As at the 7th December, 2016 the shareholders of the 4th Respondent were Mr. Salim Punjani, Mr. Shafiq Punjani and Mr. Mohamed Punjani, each holding 166,667 shares, the first two doubling as its directors while the latter as its Company Secretary. It is on 20th May, 2022 that the three of them transferred all their shares to Mr. Valerii Makarie who on 6th July, 2022 became its sole director. The shareholders of the 5th Respondent as at 28th May, 2019 were Mr. Salim Punjani and Shafiq Punjani holding 99 and 1 share respectively. Both of them transferred their respective shares to Mr. Valerii Makarie on 30th May, 2022 thereby becoming its sole Director and Secretary.

aj) Factors that might indicate the existence of control of an entity by a shareholder could include the ability to control the majority of the votes cast at a meeting of its board or governing body. A person is taken as having control of a company if he or she is entitled to exercise, or control the exercise of, one-third or more of the voting power at any general meeting of the company or of another company that has control of it. It is also possible that separate holdings of separate shareholders can be added together to give joint control. If two or more persons together satisfy that condition, they are taken as having control of the company.

ak) It emerges from the above set of facts that until the year 2022, the Respondents had a high degree of cross-ownership controlled by what appears to be closely knit persons in which, save for the 4th Respondent where he holds equal 5 shares with the rest of the shareholders, the majority shareholder at all material time in the rest of the Respondents is Mr. Salim Punjani.

al) By virtue of that position, before the year 2022, Mr. Salim Punjani had the power to exercise decisive influence over the activities of all the said respondents. The

control exercised over the Respondents as associated companies rendered them inextricably connected as to be in reality, part of one concern. The general tendency in situations like this is to ignore the separate legal entities of various companies within the group, and to look instead at the economic entity of the whole group.

am) Once it can be proved that the associated company's interference has undermined the independence of the insolvent and contributed to its insolvency, it might be a different story. The corporate veil could then be pierced and the associated company held liable where the insolvent company is dependent on its associate for support with no assets of its own, such as where the associated company withdraws support previously provided to the insolvent on the basis that the insolvent was struggling. In the instant case, there is no direct evidence of any of the 2nd to 5th Respondents having engaged in any conduct that gave rise to the liquidation of the 1st Respondent. The evidence before Court only shows that the changes in the 4th and 5th Respondent's shareholding occurred after the Applicant commenced investigations into the tax affairs of the 1st Respondent. On the other hand, the changes in ownership of the 2nd Respondent occurred after the applicant communicated the outstanding tax liability to the 1st Respondent.

an) The timing of the said changes in shareholding and directorship of the 2nd, 4th and 5th Respondents, after the 1st Respondent facing actual financial distress, provides strong circumstantial evidence of an intention to disassociate those Respondents from the 1st Respondent, just before commencement of the insolvency proceedings, rather than as a matter of prudent corporate planning. These changes occurred when it was clear that the 1st Respondent was nearing insolvency and may be facing insolvency proceedings. They were made in contemplation of the insolvency.

ao) Here, there is no evidence suggesting independent volition on the part of the Respondents. To the contrary, the evidence suggests that the Respondents operate as a corporate group. Legally independent companies become a group if they are effectively operating under a uniform management, which here is based on the de facto effective common control of Mr. Salim Punjani. The Respondents are his mere instrumentalities; his control over them is so complete that they are his alter ego.

ap) Secondly, the 1st Respondent's official address for tax purposes is Plot 24, Dewinton Road, Kampala Nissan workshop. Its objects include buying, selling, repairing and servicing of new and used vehicles or other motors of any description. The registered address of the 2nd Respondent is Plot 32A Jinja Road, Kampala. The registered address of the 3rd Respondent is Plot 32A Jinja Road, Kampala. Its objects include buying, importing, exporting and dealing in new and used motor vehicles. The 4th Respondent's official address is Plot 24, Dewinton Road, Kampala Nissan workshop. Its objects include buying, selling, repairing and servicing new and used vehicles among other things. The 5th Respondent's official address is Plot 24, Dewinton Road, Kampala. Its objects include dealing in the business of repair of all sorts of cars, facilitating travel for tourists, acquiring motor vehicles for managing driving schools and manufacture of auto accessories.

aq) Save for the 2nd Respondent who is proprietor of both Plot 24, Dewinton Road and Plot 32A Jinja Road housing the rest of the Respondents, the businesses conducted by the rest of the Respondents is in a related field; motor vehicle sales and repairs. By incorporating the different components of their motor vehicle business as separate companies, the shareholders and directors of the Respondents evidently sought to reap the advantages of conducting business through a corporate group structure enabling the group to diversify its activities into various types of related businesses, each operated by a separate group company, as a means to reducing commercial risk, or maximising financial returns.

ar) The 1st and 4th Respondents are the creatures of the majority shareholder of the 1st Respondent and the mask which is held before his face in an attempt to avoid recognition by the eye of equity or is a mere cloak or sham and in truth the business was being carried on by one person, Mr. Salim Punjani, and not by the two companies as separate entities.

as) Despite the fact that four months prior to the first consignment, M/s Ural Automobile Works JSC had designated the 4th Respondent its *"sole authorised representative of Ural Automobile Works JSC for deliveries of Ural Heavy Duty Trucks, spare parts for them and repair of the Ural Trucks in Uganda and Southern Sudan,"* all transactions between it and the 4th Responent for the next six years were routed through the 1st Respondent's branch in Dubai. By an arrangement of transfer pricing and payment of management fees and bonuses to Mr. Salim M. Punjani, the Manager M/s Crane Enterprises (U.A.E) Limited, the now sole director of the 1st Respondent. Under his management agreement with Manager M/s Crane Enterprises (U.A.E) Limited, Mr. Salim M. Punjani was entitled to a "bonus equal to 15% of the Gross profit of the Business," which is defined as "*the aggregate of all revenue of the company, including all sates, receipts, receivables, sales of merchandise made or services rendered in, at, on, or from the Business less the cost of goods sold, including the purchase price, freight and all other associated costs."* In effect, Salim M. Punjani is guaranteed a bonus equivalent to the corporation's gross earnings, whether or not a profit has been earned.

at) The 1st Respondent and its branch in Dubai in their dealings with the 4th Respondent were in effect dummies for their respective individual shareholder who is in reality carrying on business in his personal capacity for purely personal rather than corporate ends. An artificial division of a single economic enterprise into two or more separate corporations should not be permitted to defeat the Applicant's recovery merely because the tax liability attaches to a particular entity with no or insufficient assets to meet the debt.

au) In making the order, the Court must have regard to the extent to which creditors of the associated company may be advantaged or disadvantaged by the order. If the contribution sought from an associated company threatens that company's solvency, then the court must consider the equities involved affecting the creditors of that company. There being no evidence before Court relating to the creditors of the 2nd to 5th Respondents, the comparison cannot be made.

av) It is apparent that the persons responsible for managing these companies see them as being separate facets of one enterprise and manage them accordingly, dealing with particular situations as is most convenient at the time without reference to strict legal differentiation. The shareholders and directors of the 1st Respondent tend to view the 2nd to 5th Respondents more as an integral part of their core business than as independent investments.

aw) Since the conditions for lifting the respective veils of incorporation of the 2nd to 5th Respondents have been met within the terms of Section 108 (a) of the Insolvency Act, accordingly, it was ordered that the Respondents jointly and severally, alongside their shareholders and directors, pay to the liquidator the whole of the claims made in the liquidation. The costs of the Application were awarded to the Applicant, to be recovered as part of the costs of liquidation of the 1st Respondent.

The Application was allowed with costs to the Applicant.

Head Notes:

Consideration of Application for Interpleader

Brief Facts:

The Applicant brought this Interpleader Application seeking Court's direction as to who of the 2nd and 3rd Respondents is entitled to access, manage and control the 1st Respondent's Tax Identification Number (TIN). The 2nd and 3rd Respondents are shareholders of the 1st Respondent. The 3rd Respondent instituted HCCS No. 0837 of 2024 against the 1st and 2nd Respondents seeking declarations in respect of shares in the 1st Respondent. In the meantime, in Miscellaneous Cause No. 25 of 2023, the Chief Magistrate's Court at Mukono ordered the Applicant to appoint a clearing agent and to amend particulars of the registration of the 1st Respondent's TIN to allow the 2nd Respondent access and control it through the company email. Subsequently, the 3rd Respondent secured an order from the Chief Magistrate's Court at Nakawa directing the Applicant to reverse the amendment of the particulars of registration of the 1st Respondent's TIN and reinstate the 3rd Respondent's email address as the principal contact.

In the meantime, the 1st Respondent imported goods which could not be dealt with until the issue of ownership of the 1st Respondent and ultimately the right to operate the TIN, are determined. In order to avert abuse of the TIN access details and in light of the competing interests therein, the Applicant suspended the 1st Respondent's TIN pending guidance from Court on what Order to implement. The Applicant desires to be discharged from any liability arising out of any claim or action that may arise out of maintaining the status quo pending the orders of this Honourable Court and any damages potentially arising out of the same actions.

Ruling of the High Court:

(Hon. Justice Stephen Mubiru)

a) The essence of an interpleader proceeding is that the party holding property or debt is liable to one of the claimants but does not know who it belongs to. An interpleader avoids a situation where liability can arise because property is transferred to the wrong party.

b) It is a procedure by which a person, faced with competing claims in respect of personal property (which he does not claim as his won), can protect himself from the uncertainty and expense of separate legal proceedings with each claimant by applying to the court to compel the claimants to settle, between themselves, their entitlements to the property, where a suit dealing with the subject matter is pending.

c) In the underlying HCCS No. 0837 of 2024, the 3rd Respondent seeks to obtain specific performance of contract of sale of shares in the 1st Respondent against a backdrop of the 2nd Respondent accusing the 3rd Respondent of mismanagement of the affairs of the 1st Respondent.

d) In the meantime, cargo belonging to the 1st Respondent, some of which is dangerous cargo that requires expeditious customs clearance, lies in custody of the Applicant. The Applicant claims no interest therein, other than for charges and costs, and is ready to pay or deliver it to the rightful claimant. It is evident that the Applicant has no financial stake in the outcome of the proceedings and has no interest in either side emerging victorious.

e) Why the Applicant is caught in between the disputants is that the 2nd and 3rd Respondents each contests the other's authority to manage the company email address associated with the management of the company's tax affairs.

f) By a resolution dated 6th August 2024, the 1st Respondent decided that the company changed its TIN from the private email to its official company email.

g) In today's business world, it is almost impossible to be competitive in the market without a strong online presence, hence the practice of adoption of corporate and presentable email addresses as a high-quality marketing and management strategy for long-term goals.

h) A personal email address is used primarily for non-business communication. It could be with friends, family, or acquaintances. Ultimately, using a personal email for business purposes can be off-putting to potential partners and customers.

i) This being a dispute concerning authority to many the company's assets through the use of its TIN and the email address associated with it, therefore, it is necessary to look at the articles to see where the responsibility of managing such affairs of the 1st Respondent is.

j) The 1st Respondent having adopted "Table A" of the Companies Act, the articles may give powers to the directors to appoint one of their number to be managing director. Article 109 thereof provides that the directors may entrust to and confer upon a managing director any of the powers exercisable by them upon such terms and conditions and with such restrictions as they may think fit, and wither collaterally with or to the exclusion of their own powers and may from time to time revoke, withdraw, alter or vary all or any of such powers. The articles are silent as regards the powers which were delegated to the Managing Director.

k) It is trite corporate governance that a Managing Director is a high-level executive responsible for leading and overseeing the overall operations and business strategy of a company in line with objectives, articles of association as well as vision, mission, policies, business strategies, goals and operating plan, financial goals and budget approved by the Board of Directors.

l) One of the functions of a Managing Director is to establish and maintain effective formal and informal links with major customers, relevant government departments and agencies, local authorities, key decision-makers and other stakeholders generally, to exchange information and views and to ensure that the company is providing the appropriate range and quality of services.

m) In order to execute the roles associated with the function, it is necessary that the managing director operates the corporate official email address. Being in charge of the company's daily operations, it is implied in the resolution of 6th August 2024 that the Managing Director of the 1st Respondent would operate the official email account that was so created.

n) It so happens that in this case there are two conflicting orders from different Magistrate's Courts directed at the Applicant. In arriving at their decisions, the two courts did not take into account the fact that as opposed to a private email address, a corporate email address creates a sense of consistency, professionalism and brand identity in the mind of the receiver and management of communications using the official email address is part of the day-to-day affairs of the company entrusted to its Managing Director.

o) Accordingly, both orders were set aside and instead replaced with the order directing the Applicant to register the 1st Respondent's official email associated to its Tax Identification Number to be operated by the 1st Respondent's Managing Director, Mr. Peter Mulongo until decided otherwise by its Board of Directors.

The Applicant was directed to register the official email address with orders that each party bears its own costs of the Application.

CASE DIGEST

VOLUME IX

CRIMINAL DECISIONS

74 OYET PETER OJOK VERSUS UGANDA (URA)

High Court Criminal Appeal No. 0014 of 2024

CASE DIGEST VOLUME IX

Head Notes:

The Offence of Acquisition of Uncustomed Goods under the EACCMA – Determination of Customs Tax Values

Brief Facts:

The Appellant charged on Count 1 with the offence of Acquiring uncustomed goods contrary to Section 200(d)(iii) of the East African Community Customs Management Act (EACCMA). The particulars were that- in May 2020, the Appellant acquired uncustomed goods, to wit, 140 bombers×20sticks of super match cigarettes loaded on Motor Vehicle Reg. No. UAZ 112C valued at UGX which he knew or ought to have known to be uncustomed. On Count 2, he was charged with the offence of Aiding and abetting the commission of an offence contrary to Section 208 of the EACCMA.

He was found guilty by the Trial Magistrate, convicted and sentenced to a fine of UGX. 133,000,690 and in default to serve 3 years' imprisonment. He then lodged an appeal in the High court.

Grounds of Appeal:

1. The Learned Trial Magistrate erred in law by not addressing and evaluating the evidence of the prosecution witnesses who presented that they did not know the appellant but went ahead and sentenced the Appellant basing on their evidence.
2. The Learned Trial Magistrate erred in law and fact by shifting the burden of proof to the Appellant without even corroborating the evidence of the prosecution witnesses, thereby convicting the accused wrongly.
3. The Learned Trial Magistrate erred in law and fact when she failed to evaluate the evidence as a whole and thereby arriving at a wrong conclusion sentencing the Appellant to imprisonment of 3 years or pay a fine of UGX. 133,000,690 without carrying out any valuation report of the goods which makes it a harsh sentence.

Judgement of the High Court:

(Hon. Justice Lawrence Gidudu)

Ground 1:

a) Ground one, is with respect, framed unrealistically. The complaint is that PW2 and PW3 did not know the Appellant. This is not true.

b) Evidence of PW2 is that he had known the Appellant as a fellow business man in Kitgum Town for ten years. There is no record saying the witnesses did not know the Appellant. On the contrary, witnesses knew him and even had him arrested from his home when he switched off his phones.

c) When the driver, PW3 was called to bring the lorry to go out as hired, he testified that it was Oyet, the Appellant, who had hired it. When he arrived, he instead found the brother of the Appellant who was to show him where the goods were. This would be normal business if the goods were not contraband.

d) It is clear the Appellant planned to execute a smuggling mission using decoys and tricks. He had full knowledge that his cargo is uncustomed. There is no other conclusion.

e) His physical presence during the smuggling was not material. He was using an agent and monitoring the mission. As soon as it burst, he went underground. This was not a coincidence. He was managing the mission by remote control.

Ground 1 failed.

Ground 2:

f) The Appellant complained that the Trial Magistrate shifted the burden of proof to him. This complaint was not substantiated. No submissions were made to support it. It was abandoned.

Ground 3:

g) Despite its lack of proper grammar and legal drafting, Court stated that it understood the complaint to mean that the value attached to the Super Match cigarettes was not a result of a costed evaluation report to inform the total value from which 50% dutiable value would be ascertained.

h) It was submitted that the value of UGX 133 million which is 50% of the dutiable value is not supported by evidence.

i) Values of taxes under customs are not determined like pieces of land where quantity surveyors and valuers cost the property to arrive at the market value, force sale value, etc. Taxes are paid on the basis of pre-determined rates fixed by law. It is not a question of evidence.

j) Courts take judicial notice of tax rates applicable in the country unless the contrary is brought to the attention of court.

k) The Appellant did not bring a rate different from the one imposed on Super Match cigarettes. Is a legitimate taxpayer has issued with taxes imposed, the taxpayer is required to raise an appeal with the Tax Appeals Tribunal.

l) In this case, the smuggler was not in a position to contest the value because he was not a legitimate importer. But if the value attached were considered arbitrary or contrary to the law, this should have been part of evidence in the lower court.

m) The Appellant was sentenced to pay the fine of 50% of the value of the Super Match cigarettes which translated to UGX 133 million or serve three years' imprisonment. That is the law upon conviction. There was no evidence that the cigarettes were of a smaller value than that. Court found no merit in ground 3.

n) The Appellant was a known smuggler. A plan was hatched to catch him or his agents or goods. His conduct after the event was not that of an innocent person. An attempt by some security operatives to save him was futile. Instead, it demonstrated how much he had infiltrated law enforcement agencies to smoothen his illegal trade.

o) He was in charge of the mission and was properly convicted. The sentence he was given is a dictate of the law.

The Appeal was dismissed and the conviction and sentence were affirmed.

75 UGANDA (URA) VERSUS WANDERA JOHN PAUL & 2 OTHERS

Anti-Corruption Court Criminal Case No. HCT-00-AC-C0-0097-2022

CASE DIGEST VOLUME IX

Head Notes:

Offences Under the EACCMA – Corroboration of Evidence – Matter proceeding in absence of the Accused – Plea Bargain

Brief Facts:

On 7th October 2022, the Accused persons without authority, interfered with goods under Customs control that were declared vide Entry No. UGKLA S 98799 dated 7th October 2022 from Malaba to Maina ICD, to wit, 6 packages of Assorted garments loaded on Motor Vehicle Registration No. KCC 138U with a dutiable value of UGX. 14,749,632.3 by removing the said goods from the said motor vehicle.

The Charges were:

Count 1: Interfering with goods under customs control contrary to section 203(f) of the East African Community Customs Management Act, 2004.

Count 2: Fraudulent evasion of payment of duty control contrary to section 203(e) of the East African Community Customs Management Act, 2004.

Count 3: Acquiring uncustomed goods contrary section 200 (d) (iii) of the East African Community Customs Management Act, 2004.

Count 4: Aiding Acquiring uncustomed goods contrary Sections 208 & 200 (d) (iii) of the East African Community Customs Management Act, 2004.

A1 was charged with Counts 1 to 3. He pleaded not guilty while A2 and A3 entered a Plea Bargain Agreement and were convicted and sentenced.

While A1 initially attended Court, at some point, he stopped attending Court. As such, the matter proceeded in his absence, following an application by the Prosecutor.

Judgment of the Chief Magistrate's Court:

(Her Worship Esther Asiimwe)

Count 1:

a) PW3 the driver of the truck testified that the truck had two doors. The behind door which had a customs seal, and the side one which did not. That on the instructions of A1, 6 bales of goods were removed through the side door of the truck.

b) This evidence was corroborated by that of PW2 Kennedy Opondo who was present when these items are said to have been removed, and PW3, the investigating officer.

c) The verification account for consignments S98799 indicates that whereas the declared net weight of the goods at Malaba on 7th October 2022 was 1260 Kgs, only one bale weighing 102 Kgs was verified and found in the truck on 19th October 2022. This further confirms the account that some of the goods on the truck were removed before it reached its final destination at Maina ICD.

d) This evidence remained unchallenged and Court believed it to be true.

e) PW3 testified that after the 6 bales were removed, he was instructed to go to Maina where the owner of the goods would clear with URA. This, and the evidence that the goods were removed through the door without the customs seal, confirms that the goods were interfered with while still under customs control.

f) PW2 and PW3 who were present when the goods were removed, both testified that they were removed on instructionfrom A1. A1 was present in court when this evidence was given, and he did not object or challenge it through cross examination.

g) Prosecution proved all the ingredients of this offence. Court convicted the Accused on Count 1.

Count 2:

h) PW3 testified that when they reached Mukono, on instructions of A1, 6 bales of goods were removed. That thereafter, he was instructed to take the remaining 1 bale to Maina for clearance with URA. While the truck had a customs seal on the door at the back, the goods were removed through the side door.

i) This evidence remained unchallenged. Court found that removing some goods before URA clearance, while avoiding the customs seal, and at a place different from the declared destination of the goods, was a calculated move to evade payment of duty.

j) PW4 testified that Gold Coast Hauliers in which A1 was a director, were the consignees for the goods. The taxpayer profile for Gold Coast Hauliers also indicated A1 as a director in the company.

k) PW1 and PW2 confirmed that they communicated with A1 on phone as the owner of the goods, and PW2 and PW3 testified that the 6 baled were removed on A1's instructions.

Count 3:

l) A1 acquired 6 packages of assorted garments with a dutiable value of UGX 14,749,632.3 headed for Maina ICD on Motor Vehicle No. KCC 138U.

m) The Prosecution's evidence showed that as the director of Gold Coast Hauliers Ltd, A1, through an agent identified as Robert, imported goods from Kenya. A3 was hired to transport these goods and along with the said Robert and PW2-A2, they cleared with Customs at Malaba and headed for Kampala to Maina ICD. However, before reaching Maina, PW3 was led to a yard, where, on instructions of A1, six out of the seven bales were unloaded from the truck.

n) PW2 and PW3 testified that while at Maina ICD, when the goods were going to be weighed, A1 fled. PW4 testified that when a team went to the accused's home, he refused to open for them, jumped over the wall fence and was arrested upon being pursued.

o) Relatedly, when he was granted bail by this Court, he jumped after hearing the evidence of the first three prosecution witnesses. The Court was forced to hear the forth witness in his absence.

p) All these factors pointed to a guilty mind.

The Accused was found guilty and convicted on all three counts.

CASE DIGEST

VOLUME IX

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30% TAT PAYMENT

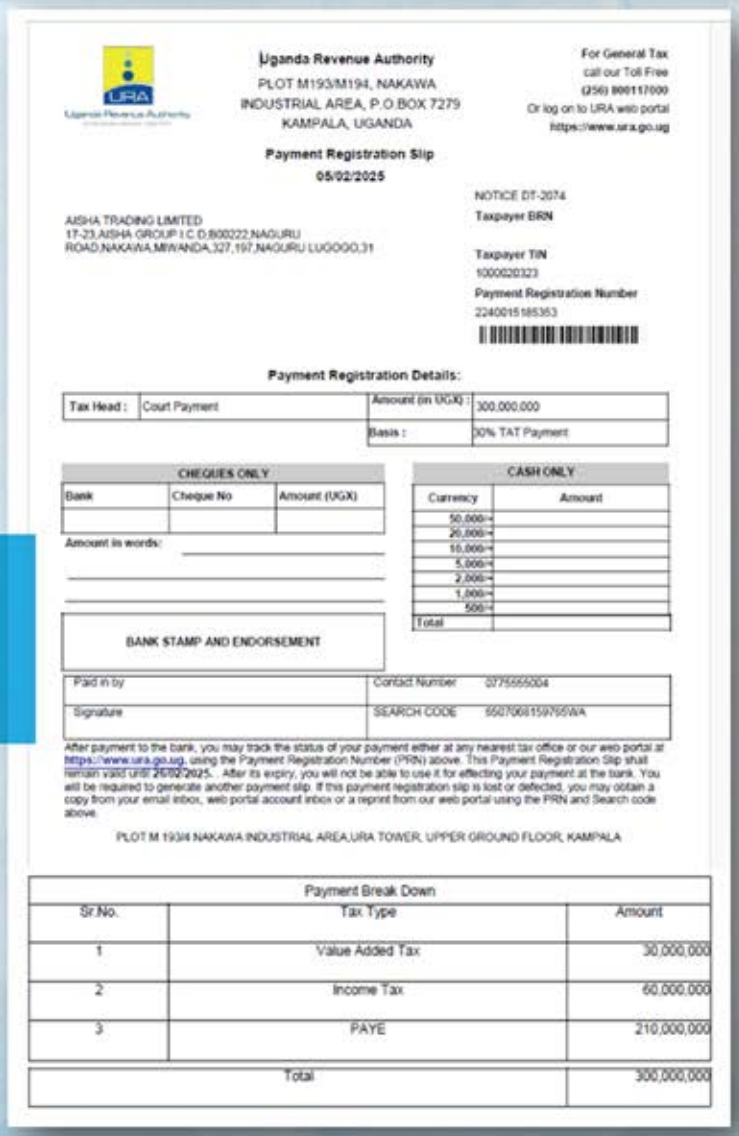
1. A Tax payer who is not satisfied with an objection decision given by URA may make an appeal to Tax Appeal Tribunal.

Such a Taxpayer is required to pay the Tax Not in Dispute or 30% of the Tax in dispute.

2. Current Challenge

Payment made is respect of 30% TAX cannot be identified thus making it difficult to reconcile these payments.

3. A new Tax Type called **"Court Payment"** has been created to enable tax payers to register and pay for the 30% TAT Payment.



Uganda Revenue Authority
PLOT M193/M194, NAKAWA
INDUSTRIAL AREA, P.O.BOX 7279
KAMPALA, UGANDA

For General Tax call our Toll Free (256) 800117000 Or log on to URA web portal https://www.ura.go.ug

Payment Registration Slip
05/02/2025

NOTICE DT-2074
Taxpayer BRN

AISHA TRADING LIMITED
17-23,AISHA GROUP I.C.D,800222,NAGURU ROAD,NAKAWA,MIWANDA,327,197,NAGURU LUGOGO,31

Taxpayer TIN
1000020323
Payment Registration Number
224001518536 3

Payment Registration Details:

Tax Head :	Court Payment	Amount (in UGX) :	300,000,000
		Basis :	30% TAT Payment

CHEQUES ONLY		
Bank	Cheque No	Amount (UGX)

CASH ONLY	
Currency	Amount
50,000=	
20,000=	
10,000=	
5,000=	
2,000=	
1,000=	
500=	
Total	

Amount in words:

BANK STAMP AND ENDORSEMENT

Paid in by	Contact Number	0775555004
Signature	SEARCH CODE	550706615976SWA

After payment to the bank, you may track the status of your payment either at any nearest tax office or our web portal at https://www.ura.go.ug, using the Payment Registration Number (PRN) above. This Payment Registration Slip shall remain valid until 21/02/2025. After its expiry, you will not be able to use it for effecting your payment at the bank. You will be required to generate another payment slip. If this payment registration slip is lost or defected, you may obtain a copy from your email inbox, web portal account inbox or a reprint from our web portal using the PRN and Search code above.

PLOT M 193/4 NAKAWA INDUSTRIAL AREA,URA TOWER, UPPER GROUND FLOOR, KAMPALA

Payment Break Down		
Sr.No.	Tax Type	Amount
1	Value Added Tax	30,000,000
2	Income Tax	60,000,000
3	PAYE	210,000,000
	Total	300,000,000

Therefore, Tax Payer who intend to lodge a case in TAT must among the documents provide a paid PRN clearly showing
TAT Payment

Uganda Revenue Authority
DEVELOPING UGANDA TOGETHER

Because of you

Uganda is a top global producer of coffee.

THANK YOU FOR PAYING YOUR TAXES