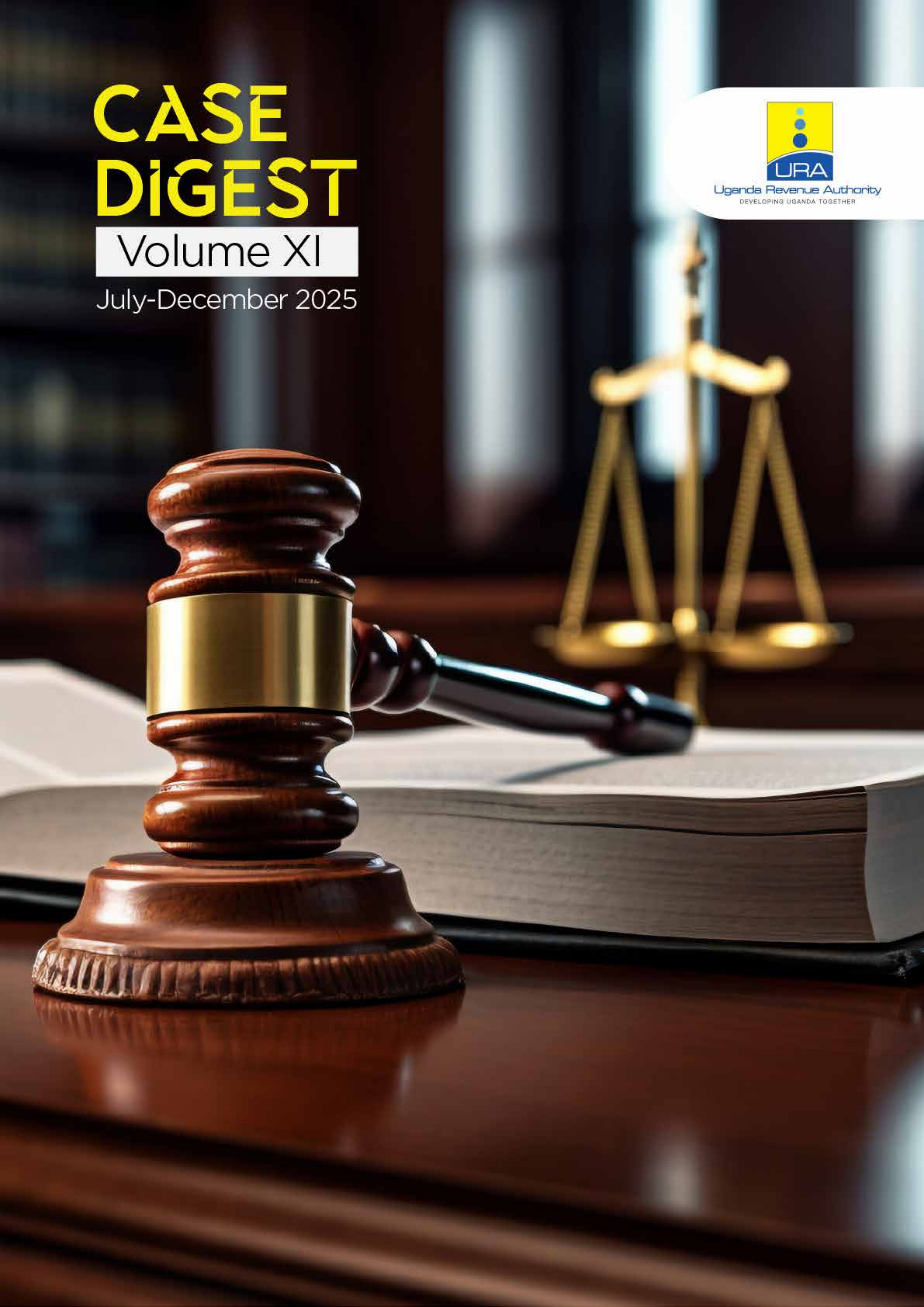

CASE DIGEST

Volume XI

July-December 2025

Uganda Revenue Authority

DEVELOPING UGANDA TOGETHER

URA

Uganda Revenue Authority

DEVELOPING UGANDA TOGETHER

Our Vision

To be a transformational revenue service for Uganda's economic independence.

Our Mission

To Mobilize Revenue for National Development in a Transparent and Efficient manner

Our Core Values

Patriotism | Integrity | Professionalism

FOREWORD

Dear esteemed Readers!

It is with great pride that we reflect on the progress made in strengthening Uganda's tax system through well-rounded tax jurisprudence and reaffirm our commitment to fostering a transparent and well-informed tax environment. At the Uganda Revenue Authority (URA), this commitment remains firmly anchored in our mission to enhance revenue mobilisation for national development, while upholding integrity, professionalism and service excellence, through continued engagement with our stakeholders and cultivation of trust across the tax ecosystem.

It is my distinct pleasure to present Volume XI of the URA Case Digest, comprising decisions delivered between July and December 2025. This edition showcases a diverse range of rulings that illuminate the evolving contours of tax administration in Uganda. By distilling complex decisions into clear and accessible summaries, the Digest serves as a practical reference tool that supports learning and strengthens voluntary compliance.

"the Digest serves as a practical reference tool that supports learning and strengthens voluntary compliance."

As Uganda's economy grows and adapts to new realities, the nature of tax disputes also continues to evolve in scope and complexity. In this context, the role of the Tax Appeals Tribunal and the Courts of Judicature in shaping tax jurisprudence remains vital in clarifying statutory obligations, guiding administrative behaviour and influencing taxpayer compliance. The decisions captured in this Digest underscore the importance of principled interpretation of tax laws and reinforce confidence in a responsive and principled tax system.

To this end, I particularly commend the Litigation Division and the Editorial Team for their diligence and commitment to producing this Digest. I also extend my appreciation to the taxpayers, practitioners, and institutional partners whose collaboration continues to enrich our collective efforts. We hope that this Volume will remain a valuable resource in your professional engagements and deepen your understanding of Uganda's tax jurisprudence.

As we journey through 2026, I invite all stakeholders to continue working with the URA to advance voluntary compliance and strengthen revenue mobilization for national development. Together, we can build a tax system founded on fairness, certainty and shared prosperity.

"Developing Uganda Together"

Catherine Donovan Kyokunda (Mrs.)

COMMISSIONER LEGAL SERVICES & BOARD AFFAIRS

EDITORIAL NOTE

Dear Esteemed Reader,

We are delighted to present to you Volume XI of the Uganda Revenue Authority Case Digest, a curated collection of concise and authoritative summaries of judgments and rulings in tax matters and related fields. This edition covers 38 decisions delivered between July and December 2025, each contributing to the evolving landscape of tax administration and jurisprudence in Uganda.

The decisions captured in this volume span a wide range of substantive and procedural issues. In the spirit of Roscoe Pound's reminder that "the law must be stable, yet it cannot stand still," this volume captures the evolving jurisprudence that continues to shape Uganda's tax landscape. They include significant developments in domestic taxation, customs administration, tax dispute procedures, civil jurisprudence, and criminal law and procedure. In preparing this volume, we have drawn out key highlights from the index — including emerging themes such as the characterization of income and expenditure, the scope of record keeping obligations, the treatment of imported services, the doctrine of legitimate expectation, and the evidentiary standards applicable in tax related criminal prosecutions.

Across these diverse subject areas, the Courts of Judicature and the Tax Appeals Tribunal continue to clarify complex statutory provisions, shape compliance expectations, and guide administrative practice. Through this Digest, we endeavor to distil the essence of these decisions to support taxpayers, practitioners, scholars, and administrators in navigating the ever-developing tax environment.

The Litigation Division and the Editorial Team remain committed to maintaining high standards of accuracy, clarity, and accessibility in our publications. Your continued engagement, feedback, and support inspire us to refine and enhance the Case Digest's value with each edition.

On behalf of the Editorial Team, we sincerely appreciate and value your readership and patronage. We look forward to consistently providing you with prompt, insightful, and reliable content.

Wishing you a productive and fulfilling year ahead.

Diana Prida Praff

ASSISTANT COMMISSIONER LITIGATION

EDITORIAL TEAM

DIANA PRIDA PRAFF

AC Litigation

RYTTER MUZIRA

Manager PR. and Communications

TONNY KALUNGI

Supervisor Litigation

CHARLOTTE KATUUTU

Supervisor Litigation

ANDREW ODOCH UMAHTETE

Officer Corporate Brand Managment, PCA

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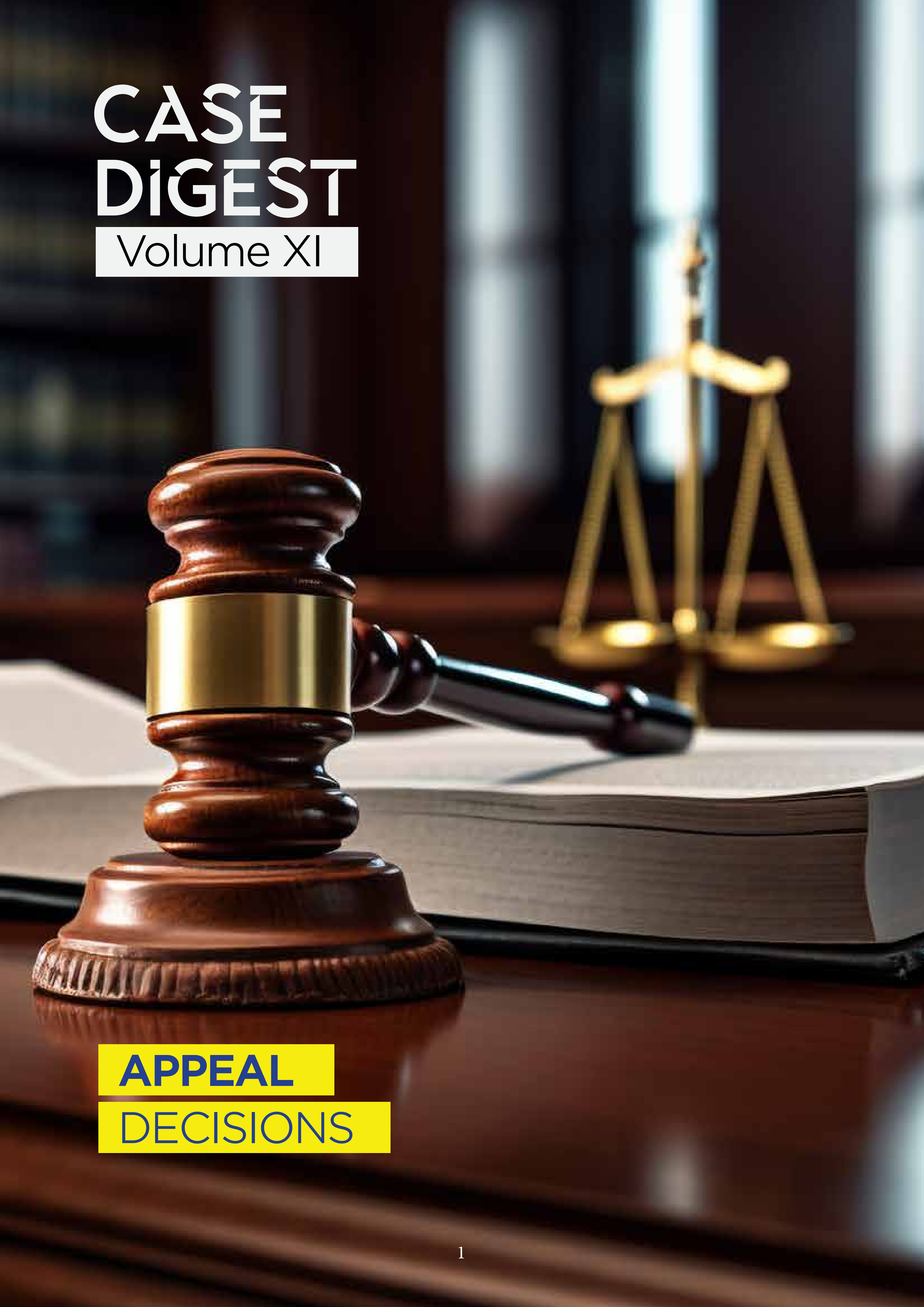

CASE DIGEST

Volume XI

APPEAL DECISIONS

01

Britania Allied Industries Limited Versus Uganda Revenue Authority, High Court Civil Appeal No. 0042 of 2023 (Arising from TAT Application No. 103 of 2021)

Head Notes:

Customs Classification of Fruit Pulps – Duty Remission – The Doctrine of Legitimate Expectation

Brief Facts:

The Appellant, Britania Allied Industries Limited, is a limited liability company incorporated in Uganda involved in the business of manufacturing assorted biscuits and beverages. The Appellant is an Authorized Economic Operator, meaning that at the point of importation, its goods are not subjected to verification. Verification by the Respondent is done by way of document checks in Customs Post Clearance Audits.

The Respondent, Uganda Revenue Authority, conducted a post-clearance customs audit on the Appellant for the period 2017 to 2020. The audit revealed that the Appellant imported mango and guava pulp in the period, which was misclassified under the apple and orange subheadings. This caused a short levy of UGX 1,246,386,089 for the period under review.

The Appellant objected to the assessment, the Respondent disallowed the same and upheld the assessment on the basis that the guava and mango pulp imports did not qualify under the duty remission scheme. Dissatisfied with the objection decision, the Appellant filed an application for review in the Tax Appeals Tribunal, and in its Ruling, the Tribunal held that mango and guava fruit pulp were distinct from apple and orange pulp, and thus did not qualify for duty remission. The Appellant was dissatisfied with the Ruling of the Tax Appeals Tribunal and appealed against the same in the High Court.

Grounds of Appeal:

1. The Honorable Members of the Tax Appeals Tribunal erred in law when they disregarded the procedural requirements for duty remission set out under customs laws and regulations, thereby arriving at a wrong decision that the Appellant's mango fruit pulp could not be imported under the duty remission scheme.

2. The Honorable Members of the Tax Appeals Tribunal erred in law when they found that the Respondent's Commissioner's recommendations and subsequent gazettement of the Appellant for duty remission did not create a substantive and procedural legitimate expectation.

3. The Honorable Members of the Tax Appeals Tribunal erred in law in finding that the Respondent, in performance of statutory duties, is entitled to renege on past assurances and representations that it made to the Appellant.

4. The Honorable Members of the Tax Appeals Tribunal erred in law in holding that the Appellant's mango fruit pulp or guava fruit pulp could not be classified under HS Code 2009.79.00 or HS Code 2009.19.00.

5. The Honorable Members of the Tax Appeals Tribunal erred in law in holding that the Appellant's mango fruit pulp or guava fruit pulp is classifiable under HS Code 2009.89.00.

6. The Honorable Members of the Tax Appeals Tribunal erred in law in holding that the Appellant's mango fruit pulp or guava fruit pulp could not be imported under the duty remission scheme.

7. The Honorable Members of the Tax Appeals Tribunal erred in law when they failed to evaluate evidence on record and thereby arriving at the wrong decision that the Respondent is not bound by past conduct.

Judgment of the High Court:

(Hon. Lady Justice Susan Odongo)

<u>Grounds 2, 3 and 7:</u>

a) The Appellant argued that the Respondent's repeated actions of inviting it to apply for remission, reviewing and verifying its applications for remission (including cross-checking listed raw materials against Gazetted items), giving recommendations for gazettement, and consistently clearing the goods under the scheme since 2013 created a procedural and substantive legitimate expectation.

b) It was the Appellant's contention that the Respondent is estopped from reneging on its past assurances or representations, and the same amounts to an abuse of power.

c) The Respondent argued that a claim for legitimate expectation can only be upheld if the taxpayer has provided full and honest disclosures. In the present case, the Appellant misclassified the items and failed this requirement. Additionally, any tax remission granted was conditional upon the accuracy of the information provided by the Appellant and was always subject to change upon the discovery of new information during post-audit verification.

d) Court held that while the Respondent holds the statutory power to administer and enforce tax laws and correct erroneous interpretations, this power must be exercised fairly and reasonably.

e) An interpretation of a law assigned by the Respondent is a lawful construction until changed. Additionally, a public authority's change of position takes effect prospectively from the time that it is made and is not applied retrospectively.

f) It is not a correct position of the law that if the Authority later on discovers that it was wrong in a previous interpretation of the law, and as a result changes its position, that the earlier position is deemed illegal and unreliable.

g) The Respondent's demand for taxes based on reclassification after years of approving and clearing the goods, amounts to conspicuous unfairness and is unlawful in its application. The Respondent's conduct in charging the taxes and making its effect retroactive is illegal.

h) The Court found that the Tribunal erred in law by disregarding the procedural requirements adhered to and the consistent past conduct of the Respondent, thereby incorrectly concluding that no legitimate expectation was created or that it was lawful for the Respondent to renege on its prior position retrospectively.

Grounds 2, 3 and 7 succeeded.

Grounds 1, 4, 5 and 6:

a) The Appellant contested the Tribunal's determination that mango/guava pulp did not qualify for classification under HS 2009.79.00 or 2009.19.00, asserting instead that it fell under the residual HS 2009.89.00, thereby rendering it ineligible for importation under the remission scheme.

b) The Court agreed with the Tribunal's explanation of the language nomenclature under the HS Code. However, it disagreed with the position on the retroactive application of the re-classification.

c) Court found that the determination of whether mango or guava pulp qualifies as juice or a raw material or other product is a technical one which requires an expert opinion. As such, the court referred the matter to the World Customs Organisation for an objective position. In the meantime, it was directed that the classification under HS codes 2009.19.00 or 2009.79.00 should be retained.

Grounds 1, 4, 5 and 6 succeeded.

The Appeal succeeded on all grounds and the Appellant was awarded costs of the Appeal

02 Chefette Catering Ltd Versus Uganda Revenue Authority, High Court Misc. Application No. 1606 of 2025 (Arising from HCCA No. 0080 of 2025)

Head Notes:

Stay of Execution – Procedural Requirements of Appeals from TAT to the High Court - Competence of a Notice of Appeal – Effect of Statutory Timelines

Brief Facts:

On 21st March 2024, the Applicant, Chefette Catering Ltd, was served with an Objection Decision for an objection against Income Tax and VAT assessments in the amount of UGX 1,406,110,791 by the Respondent, Uganda Revenue Authority. The Applicant stated that it instructed its lawyers to file an Application for review before the Tax Appeals Tribunal, but the lawyers did not do so. The Applicant learnt that the Application for review had not been lodged on 29th January 2025 when the Respondent issued a Third-Party Agency Notice in which it sought to appoint Standard Chartered Bank as a collection agent. The Applicant stated that it then instructed new counsel who subsequently filed Miscellaneous Cause No. 22 of 2025, an Application to extend the time within which to file the Application for Review before the Tribunal, considering that the statutory 30-day period had lapsed.

In its Ruling dated 24th April 2025, the Tax Appeals Tribunal dismissed the Application with costs to the Respondent on the grounds that the Applicant had not provided sufficient reasons for granting the extension of time within which to file an Application for review before the Tribunal.

By letter dated 6th May 2025, the Respondent served upon the Applicant a demand notice requiring the Applicant to settle the sum of UGX 1,406,110,791. On 12th June 2025, the Respondent also authorized its auctioneers, Asante Auctioneers Ltd, to recover the amount from the Applicant. On 3rd July 2025, the said auctioneers communicated the Warrant of Distress to the Applicant.

The Applicant then filed an Appeal in the Court of Appeal vide Civil Appeal No. 0344 of 2025 on 12th May 2025. The said Appeal was then transferred to the Commercial Division of the High Court vide High Court Civil Appeal No. 0080 of 2025.

The Applicant also filed Miscellaneous Application No. 1539 of 2025 seeking leave of Court to regularize the appeal having been transferred to the High Court after the lapse of the 30-days prescribed time for filing an appeal from the Tax Appeals Tribunal. The Applicant also filed the instant Miscellaneous Application No. 1606 for Stay of Execution pending hearing and determination of the Appeal.

Issue for determination.

1. Whether there are grounds for granting a Stay of Execution of the Orders arising from TAT Miscellaneous Cause No. 22 of 2025 pending the hearing and determination of Civil Appeal No. 0080 of 2025?

Ruling of the High Court:

(Hon. Lady Justice Susan Odongo)

Competence of the Notice of Appeal/Likelihood of Success of the Appeal:

a) Court analysed that according to Order 43 Rule 4(3) of the Civil Procedure Rules, S.I. 71-1, an application of this nature must be made after the Notice of Appeal has been filed. The Applicant should be prepared to meet the conditions set out in that Order including: furnishing proof of the fact that substantial loss may result to the Applicant unless the stay of execution is granted; that the application has been made without unreasonable delay; and that the Applicant has given security for due performance of the decree or order as may ultimately be binding upon him.

b) The Applicant contended that the Tax Appeals Tribunal delivered the decision from which the Applicant intended to appeal against. That the Applicant filed a Notice of Appeal vide Civil Appeal No. 0380 of 2025 on 13th May 2025, albeit erroneously in the Court of Appeal but on 8th July 2025, the appeal was transferred to the Commercial Court vide Civil Appeal No. 0080 of 2025. That the Applicant filed Miscellaneous Application No. 1539 of 2025 in the High Court seeking leave of Court to regularize the appeal which had been transferred to the Court after the lapse of the 30-days prescribed time within which to lodge an appeal from the Tax Appeals Tribunal.

c) Court observed that the averments of the Applicant were confirmed by ECCMIS, that Civil Appeal No. 0080 of 2025 Chefette Catering Limited Versus Uganda Revenue Authority was filed on 8th July 2025 and Miscellaneous Application No. 1539 of 2025 seeking an order regularizing the appeal erroneously filed in the Court of Appeal was filed on 10th July 2025. The Application was yet to be heard and determined by the Court.

d) Court further observed that the law explicitly stipulates that appeals originating from the Tribunal must lie in the High Court and must be lodged within thirty (30) days of notification of the decision being challenged, unless the High Court enlarges the time. Filing an appeal in any Court other than the High Court is not in conformance with the proper appellate process established by law. Furthermore, attempting to subsequently file the same appeal in the High Court after expiration of the prescribed period does not rectify the procedural irregularity. Adherence to the specified timelines and the designated Court is essential to ensure that the appeal is given credence.

e) Court held that, premised on the established facts and the available evidence, the appeal was filed beyond the prescribed 30-day period, and the Court had not exercised its discretion to enlarge the time for filing or to validate the appeal. In the absence of this, the appeal could not be considered valid before the Court. It followed, therefore, that there was no subsisting appeal to which the present Application for stay of execution could attach, pending its determination.

f) Court further held that since the Application was predicated on an Appeal that was not properly before the Court, the Application was unfounded.

The Application was dismissed with costs to the Respondent.

03

Nile Breweries Limited Versus Uganda Revenue Authority, Stanbic Bank Uganda Limited & Standard Chartered (U) Limited, High Court Civil Appeal No. 0014 of 2022 (Arising from TAT Misc. Applications No. 58 and 61 of 2022)

Head Notes:

Right of Appeal from Decisions of the Tax Appeals Tribunal – Contempt of the Tribunal's Orders – Meaning of "Tax in Dispute" in Tax Matters- The Requirement to Deposit 30% of the Tax in Dispute

Brief Facts:

During the year 2022, the Appellant, Nile Breweries Limited, self-assessed for Local Excise Duty and Value Added Tax. The 1st Respondent, Uganda Revenue Authority, carried out an audit into the tax affairs of the Appellant and raised additional administrative assessments for both tax heads. The Appellant paid the self-assessed taxes but disputed the additional administrative assessments before the Tax Appeals Tribunal. The Appellant filed an Application seeking a Temporary Injunction restraining the 1st Respondent from collecting the disputed tax. The same was granted by the Tribunal on condition that the Appellant paid 30% of the tax in dispute or the tax not in dispute, whichever is greater. The 1st Respondent demanded the payment of the 30%, but the Appellant declined, contending that the amount it had paid already represented the tax not in dispute, and it was greater than 30% of the tax in dispute being demanded. In an effort to recover the payment, the 1st Respondent issued third-party agency notices to the 2nd and 3rd Respondents, both of which were not honored.

The 1st Respondent filed Miscellaneous Application No. 58 of 2022, seeking to have the Appellant, 2nd Stanbic Bank Uganda Limited Respondent and 3rd Respondent Standard Chartered (U) Limited sanctioned for contempt of the Tribunal's conditional injunction order. The 1st Respondent argued that the Appellant, 2nd and 3rd Respondents, had refused, failed or neglected to remit 30% of the tax in dispute as directed by the Tribunal and should therefore be held in contempt. In turn, the Appellant filed Miscellaneous Application No. 61 of 2022 seeking the Tribunal's interpretation of the conditional injunction order issued. It was the Appellant's case that having paid the undisputed amount of both taxes which was greater than 30% of the tax in dispute, the Appellant had complied with the conditional injunction order. The Tribunal consolidated the Applications and found in favor of the 1st Respondent, hence this appeal.

Grounds of Appeal:

1. The Tax Appeals Tribunal erred in law when it made a finding of contempt against the Appellant without jurisdiction.

2. The Tax Appeals Tribunal erred in law when it misconstrued the provisions of Section 15 of The Tax Appeals Tribunals Act and failed to distinguish between the tax assessed and the tax in dispute.

3. The Tax Appeals Tribunal erred in law when it erroneously held that under Section 15 of The Tax Appeals Tribunals Act, the Tribunal should only concern itself with the tax in dispute and not that which is not in dispute.

4. The Tax Appeals Tribunal erred in law in disregarding the clear provisions of Section 15 of The Tax Appeals Tribunals Act and erroneously held that the intention of the Legislature was for the taxpayer to pay 30% of the tax in dispute or the amount which is not in dispute, whichever is greater.

5. The Tax Appeals Tribunal erred in law when it failed to interpret Section 15 of The Tax Appeals Tribunals Act and disregarded the undisputed Value Added Tax and the Local Excise Duty for the tax assessed in the period between January, 2021 and August, 2021, that the 1st Respondent (now Appellant) had paid.

6. The Tax Appeals Tribunal erred in law when it held that Sections 2 and 23 of The Tax Procedures Code Act, 2014, in as far as they define the "tax assessed" and "additional assessment", have no bearing on the interpretation of Section 15 of The Tax Appeals Tribunals Act which provides for and makes a clear distinction between the "tax assessed" and "tax in dispute."

Judgment of the High Court:

(Hon. Justice Stephen Mubiru)

<u>Right of Appeal:</u>

a) The 1st Respondent argued that the Appellant had no automatic right of appeal from a decision of the Tax Appeals Tribunal regarding a finding of contempt of Court since it did not arise from a proceeding of a tax dispute.

a) The 1st Respondent further argued that Section 34 (now 37) of The Tax Appeals Tribunals Act mandates the Tribunal to impose sanctions for civil contempt. That provision does not impose a pecuniary limit on the power to sanction civil contempt. The Tribunal's order was therefore clear and unambiguous.

b) The Appellant argued that it has a right of appeal insofar as the Tribunal relied on provisions of the Civil Procedure Act to sanction it; that leave to appeal is required only for orders made under the Civil Procedure Rules and not the Act.

c) The Appellant contended that Section 34 (now 37) of the Tax Appeals Tribunals Act mandates the Tribunal to punish any act or thing which would constitute contempt, if the Tribunal were a Court of record, and specifies only penal sanctions for such conduct; that the Tribunal instead invoked its inherent jurisdiction and imposed a civil sanction.

d) Section 28 (1) of The Tax Appeals Tribunals Act allows a party to a proceeding before a Tribunal to lodge a Notice of Appeal with the Registrar of the High Court. Appeals therefore lie from a proceeding before a Tribunal. Interpreting the expression *"an application to a Tribunal for review of a taxation"* as excluding ancillary orders made before, during and after such proceedings, which are separate but related to the main application for review of a taxation decision, would lead to an absurd, oppressive or unjust result that the Legislature could not possibly have intended.

e) The right of appeal from a review of a taxation decision should be construed as including appeals from ancillary final orders, on matters incidental to the main decision or order. When an ancillary proceeding concludes with a *"final order",* that is, one which resolves all issues within that specific ancillary matter, that final order can be appealed

Ground 1:

a) The Appellant argued that the Tribunal did not have jurisdiction to make a finding of contempt against it as well as impose sanctions against it.

b) Administrative Tribunals possess contempt powers, which allow them to sanction individuals for disrupting proceedings, disobeying orders, or showing disrespect, though the extent of these powers is defined by specific legislation.

c) The Tribunal misdirected itself when it found that it did not have criminal jurisdiction to impose a fine under Section 37 (d) of the Tax Appeals Tribunals Act. The contempt for which the Appellant was accused arose over alleged breach of the Tribunal's orders and is therefore a species of contempt *ex facie curiae*. It therefore falls within the purview of Section 37(d) of The Tax Tribunals Act and is punishable as criminal contempt.

d) To qualify as criminal contempt, the contemptuous conduct occurs mainly in three categories: actions or omissions undermining or lowering the authority of a court or Tribunal, interfering with normal judicial or quasi-judicial processes, and interfering with the administration of justice. In the present case, the evidence before the Tribunal did not prove to the required standard that any of the Respondents intended or were reckless as to the fact that not paying the 30% tax of the amount in dispute would publicly bring the Tribunal into contempt.

e) Failure to comply with the requirement to deposit 30% of the tax in dispute, as a condition for the temporary injunction order, ought to have resulted in the lapsing of the injunction and a possible dismissal of the tax application. The Tribunal abused its contempt powers and acted in an arbitrary manner.

f) The finding of contempt against the Appellant and the resultant sanctions were set aside.

Ground 1 succeeded.

Grounds 2, 3, 4, 5 & 6:

a) The Appellant challenged the conclusions drawn by the Tribunal that the expression *"the tax assessed"* refers to an assessment as objected to by the taxpayer and/or what was decided in the objection decision; that it does not concern itself with the self-assessed or paid tax, not in dispute paid by the Appellant.

b) It was a misdirection on the part of the Tribunal to disregard the Tax Procedures Code Act, 2014, on the ground that it was a later statute, when one of its avowed objectives as reflected in its long title is *"to harmonise and consolidate the tax procedures under existing tax laws".*

c) The Tax Procedures Code Act classifies tax assessments into four categories, namely: self-assessment, default assessment, advance assessment and additional assessment. The *"tax assessed in dispute"* or *"not in dispute"* may therefore arise from either the original tax liability as self-assessed by the taxpayer or from an additional assessment raised by the tax administration. This is because the self-assessed tax liability may be disputed by the tax authority, while the additional assessment may be disputed by the taxpayer.

d) Disputes on account of *"tax assessed"* may arise in connection with any of the four modes of assessment, that is, self-assessment, default assessment, advance assessment and additional assessment.

e) In the instant case, the dispute was over the additional assessments raised by the 1st Respondent, hence the 30% deposit requirement applied to the amount stated in the additional assessment. The fact that the Appellant had paid the amount arrived at in its self-assessment prior to the filing of the TAT application, was irrelevant.

f) The Tribunal therefore correctly applied Section 15 (1) of the Tax Appeals Tribunals Act to the amount arising from the disputed form of assessment, that is, the additional assessment raised by the 1st Respondent, rather than the Appellant's self-assessment.

Grounds 2 to 6 failed.

The Appeal succeeded on only one Ground and 5 grounds failed. The Appellant was awarded half of the costs of the Appeal.

04 Housing Finance Bank Ltd Versus Uganda Revenue Authority, Court of Appeal Misc. Application No. 79 of 2020 (Arising from CACA No. 22 of 2012)

Head Notes:

Considerations for an Application of Great Importance

Brief Facts:

This was an Application brought under Rule 39(1)(a), Rule 41 and Rule 2(2) of the Judicature (Supreme Court Rules) Directions and Rule 2(2) of the Judicature (Court of Appeal) (Rules). The Application sought that a Certificate of Importance arising out of Civil Appeal No. 22 of 2012 and/or leave to appeal to the Supreme Court be granted in Civil Appeal No. 22 of 2012, Housing Finance Bank Ltd Versus Uganda Revenue Authority. They also sought that costs of the Application be provided for.

The Respondent, Uganda Revenue Authority, successfully appealed to the High Court against a decision of the Tax Appeals Tribunal. The Applicant, Housing Finance Bank Ltd, being dissatisfied with the decision of the High Court, appealed to the Court of Appeal. However, the Court of Appeal struck out the said Appeal on the grounds of lack of jurisdiction.

The Applicant then filed this Application for a Certificate of Great Importance to appeal to the Supreme Court.

Ruling of the Court of Appeal:

(Hon. Mr. Justice Geoffrey Kiryabwire JA, Hon. Mr. Justice Muzamiru M. Kibeedi JA, Hon. Mr. Justice Christopher Gashirabake JA)

Grounds 1,2 & 3:

a) For the Court to grant a Certificate of Importance sought by the Applicant, it must be satisfied that the intended appeal to the Supreme Court concerns a matter of law and the said matter of law must be either of great public importance or of general importance.

b) The onus is on the Applicant to satisfy the Court that indeed the question intended to be determined on appeal is one of great public or general importance.

c) A matter of general public interest could take different forms, for instance, a statement of law which may affect a considerable number of people in their commercial practice, or a holding in law which may affect the Court's scope for dispensing redress, or the mode of discharge of duty by public officers.

d) The Court stated the following principles for the Court to consider in granting an application of this nature:

   (i) For a case to be certified as one involving a matter of public importance, the intending appellant ought to have demonstrated that such a point was a substantial one, the determination of which would have a significant bearing on public interest.

   (ii) Where the Application for certification has been occasioned by a state of uncertainty in the law arising from contradictory precedents, the Supreme Court could resolve the uncertainty as it may determine, or refer the matter to the Court of Appeal for its determination.

   (iii) The intending Applicant has an obligation to identify and concisely set out the specific elements of general public importance which he or she attributes to the matter for which certification was sought.

e) In the present case, the questions to be considered by the Supreme Court are:

   (i) Whether an Appeal to the High Court from the Tax Appeals Tribunal is a first or second appeal, in relation to the provisions of the Tax Appeals Tribunal Act and the Value Added Tax Act, as amended.

   (ii) Whether an Application to the Tax Appeals Tribunal is a judicial appeal or it commences judicial proceedings, considering that evidence was adduced before it.

   (iii) Whether the Court was right in holding that the Applicant had no right of appeal in light of Section 72(1) of the Civil Procedure Act.

f) Court found that the decision of the Court of Appeal in Civil Appeal No. 22 of 2012 was a two-to-one decision, so the decision was not a unanimous one. Secondly, the Court found that the matter is one on a question of jurisdiction, and it is therefore important that questions of jurisdiction should be clarified at the highest level.

g) The Court further found that matters of taxation affect the rights of many people in their individual and commercial endeavors. As such, such rights need clarification.

h) It was also the finding of the Court that the Application involved the discharge of duty by public officers, namely, Uganda Revenue Authority, and it is therefore of great public interest that such duties are clarified.

<u>The Application was allowed, and a Certificate of Importance was granted with no order as to costs since the Respondent did not oppose the Application.</u>

05

Kampala Club Versus Uganda Revenue Authority, High Court Civil Appeal No. 0115 of 2023 (Arising from TAT Application No. 256 of 2022)

Head Notes:

Taxable Supplies – VAT on Annual Subscription and Registration Fees – Business Activities vis-à-vis Leisure Activities

Brief Facts:

The Appellant, Kampala Club, a non-profit company limited by guarantee and operating health club facilities for its members, was subjected to a Value Added Tax (VAT) assessment for the years 2020 and 2021. The Appellant objected, and the Respondent, Uganda Revenue Authority, maintained VAT of UGX 166,541,103, which related to annual subscription and registration fees paid by its members. The Appellant challenged the tax liability before the Tax Appeals Tribunal, contending that the annual subscription and registration fees did not constitute taxable supplies. The Tribunal delivered its Ruling in favour of the Respondent. The Appellant was aggrieved and appealed to the High Court.

Grounds of Appeal:

1. The Honorable members of the Tax Appeals Tribunal erred in law when they found that the annual membership fees paid by the Appellants' members are subject to VAT under the VAT Act, Cap 349.

2. The Honorable members of the Tribunal erred in Law when they failed to properly evaluate the evidence and found that the Appellant was liable to pay the tax assessed.

Judgment of the High Court:

(Hon. Lady Justice Susan Odongo)

<u>Ground 1:</u>

a) Section 4 of the VAT Act establishes that VAT is imposed on every taxable supply made within Uganda by a taxable person, on every import of goods save for exempted imports, and on the supply of any imported services by any person.

b) Court noted that it was undisputed that the Appellant qualifies as a taxable person pursuant to Sections 6 and 7 of the VAT Act. The pivotal issue was whether the payments remitted by members, characterised as subscription and membership fees, amount to taxable supplies within the meaning of the legislation.

c) From the concept of taxable supply under Section 18(1) of the VAT Act, it emerges that:

(i) A taxable supply entails the provision of goods or services.

(ii) The goods or services supplied must not fall within the category of exempt supplies, which are specific goods or services excluded from VAT.

(iii) The supply must be made by a taxable person, namely an individual or entity engaged in business and registered or required to be registered for VAT.

(iv) The supply must be provided for consideration, that is, some form of payment or recompense, either direct or indirect.

(v) The supply must form part of the supplier's business activities, signifying that it is carried out in the ordinary course of commercial or economic endeavour.

d) Court noted that Section 18(1) of the VAT Act must be construed alongside Section 18(3) of the VAT Act, which clarifies that, *"The business activities of an individual do not include activities carried on by him or her only as part of his or her hobby or leisure activities."*

e) Court further noted that this indicates that for an activity to qualify as a business activity, it must extend beyond mere pastime or recreational engagement. Hobby or leisure activities are primarily undertaken for enjoyment, relaxation, or personal satisfaction without the dominant purpose of profit-making or structured commercial enterprise. In contrast, business activities typically consist of tasks conducted regularly, with an intent to profit, and in an organised commercial manner. Mere recreational or hobby pursuits, even if they occasionally yield income, do not constitute business activity.

f) It was noted that the General Manager's witness statement in paragraphs 3 and 4 stated that the Appellant is a company limited by guarantee and does not operate for profit. Consequently, the Court held that the services which the Appellant offers do not amount to a business activity but rather serve leisure and recreational purposes.

g) The Appellant argued that it is not a commercial establishment like a gym or hotel. Access is exclusively limited to its members, and the leisure activities provided do not amount to taxable business activities under the VAT Act.

h) The General Manager's testimony and cross-examination indicated that members pay annual subscription fees for membership and not as direct payment for health or sports services. Thus, the Court found that these fees could not be construed as direct remuneration for services supplied.

i) The mere fact of charging subscription fees does not ipso facto equate to offering commercial supplies. It must be shown that the transaction fundamentally constitutes a business activity conducted for profit, not merely a collective or non-commercial arrangement.

j) Court stated that the Tribunal's assumption that members would not pay fees without receiving services disregarded other legitimate non-commercial motivations for membership, including social, recreational, and communal benefits, which do not necessarily amount to taxable supplies. The connection between fees and maintenance costs does not automatically transform such fees into payment for services; they may constitute cost-sharing rather than direct commercial transactions.

k) Court stated that the evidence indicated that the Appellant is a company limited by guarantee offering recreational facilities limited to members only. It does not operate as a profit-making commercial gym or hotel. The nature of the services is predominantly recreational, social, and communal.

l) The Appellant's evidence showed that membership fees are paid solely for membership qualification, not as a direct fee for specific services rendered. The Club's constitution made it clear that non-payment results in denial of access; however, such access arises as a member's right, not as a separately contracted service. Therefore, the subscription fee functions as a condition precedent to the enjoyment of membership rights rather than consideration for a discrete service.

m) Non-payment results in suspension or forfeiture of membership rights, including access, rather than breach of the service contract. Thus, the subscription fee secures continued qualification for membership privileges, distinct from a service fee. Consequently, the Court held that the Tribunal erred in concluding that the subscription and membership fees payable by the Appellant's members constitute payments for services.

Ground 1 succeeded.

<u>Ground 2:</u>

a) Where an appellate court determines that there was no evidence to substantiate the finding of the lower court, the issue thereby becomes a question of law.

b) The Appellant discharged this burden competently by demonstrating that the payment of subscription and membership fees by its members does not fall within the scope of Section 18 of the VAT Act.

c) The Appellant has been collecting subscription fees since its inception in 1912, during which period the Respondent tax authority has existed but has never imposed VAT on such fees. Court held that the sudden imposition now lacked justification and the charges levied were without basis and the resultant assessments are null and void.

Ground 2 succeeded.

<u>The Appeal was allowed, the decision of the Tribunal was set aside, and the VAT assessments were quashed.</u>

06

Uganda Revenue Authority Versus M-Kopa Uganda Limited, High Court Civil Appeal No. 030 of 2019 (Arising from TAT Application No. 15 of 2017)

Head Notes:

Customs Duties and Exemptions - Customs Classification of Solar Home Systems – The Doctrine of Legitimate Expectation vis-à-vis Statutory Obligations

Brief Facts:

The Respondent, M-Kopa Uganda Limited, is a limited liability company engaged in the business of solar lighting and the supply of solar energy equipment. The Appellant, Uganda Revenue Authority, conducted a Post Clearance Audit for the period spanning January 2013 to December 2015 and communicated the audit findings, indicating that certain imports declared under the Customs Procedure Code (CPC) 472 had been erroneously declared, resulting in an assessment. On 2nd May 2017, the Appellant further clarified that the provisions of the Fifth Schedule to the East African Community Customs Management Act (EACCMA), 2004, had been amended to render taxable the importation of solar equipment and accessories. The Respondent challenged the tax liability before the Tax Appeals Tribunal, which set aside the tax assessment of UGX 429,603,357. The Appellant was aggrieved and appealed to the High Court.

Grounds of Appeal:

1. The Honorable members of the Tribunal erred in law when they failed to properly evaluate the evidence on record and ruled that the Applicant's imported solar accessories are exempt from tax.

2. The Honorable members of the Tribunal erred in law when they held that where an assurance not on law but facts is made on full disclosure of facts by a taxpayer to the appellant or its officers, then it is bound by the assurance.

3. The Honorable members of the Tribunal erred in law when they failed to properly evaluate evidence on record and ruled that the Appellant set aside the tax assessment of UGX 429,603,357.

Judgment of the High Court:

(Hon. Lady Justice Susan Odongo)

<u>Ground 1:</u>

a) Customs duties and exemptions are governed by the 5th Schedule of the EACCMA, 2004. Paragraph 26 originally provided exemptions for specialised solar-powered equipment.

b) The World Customs Organisation Explanatory Notes further clarify that items eligible for exemption include those directly involved in the generation of solar power.

c) The generation process involves the solar panel capturing sunlight and converting it into energy, which is then stored in deep-cycle batteries. Any other components drawing energy from this stored power do not participate in the generation and are merely load devices consuming the generated energy.

d) The solar home system at issue comprises a solar panel that captures sunlight, converting it into electrical energy stored within an embedded battery unit. This unit featured terminals enabling power distribution to various devices such as radios, torches, chargers, and bulbs. These devices merely consume the electricity generated and stored by the solar energy system and do not contribute to the generation process.

e) The Respondent argued that the equipment operates as an indivisible unit, pointing out that devices such as chargers, radios, and torches are dependent on this unit and cannot function independently.

f) Court found that solar power generation, scientifically defined, involves capturing sunlight via photovoltaic panels or concentrating solar power systems, converting this energy into usable electricity.

g) The evidence indicated that only batteries and solar panels conform to the criteria under CPC 472 for exemption, while other devices function as consumer accessories dependent on the generated energy. Indeed, the tested indivisibility of the unit does not elevate these accessories to the status of generation equipment under the law.

h) Generation occurs when solar panels capture sunlight and convert it into electrical energy, which is stored in batteries. Any apparatus that draws power from the stored energy does not constitute generation equipment but rather energy-consuming devices.

Ground 1 succeeded.

<u>Grounds 2 & 3:</u>

a) A declaration premised on advice cannot override explicit statutory provisions. Statutory duties incumbent upon parties cannot be circumvented or nullified due to any mistake. No corporate entity can be compelled to contravene statutory mandates.

b) In the present circumstances, the Respondents acted on advice from the Appellant purporting to exempt them from tax. However, the Respondents were unaware that imposition of taxes is exclusively a statutory function, which cannot be waived unless explicitly allowed by statute.

c) The law safeguards only those expectations that are legitimate. Legitimate expectation cannot arise if it exceeds the decision-maker's lawful authority.

d) Even if the Appellant set out certain facts and the Respondent relied upon them, if the Appellant erred, it may rectify its position and collect the taxes legally due.

Grounds 2 & 3 succeeded.

<u>The Appeal succeeded on all grounds, and the Respondent was found liable to pay the tax assessed.</u>

07

Uganda Revenue Authority Versus Norbrook Uganda Limited, High Court Civil Appeal No. 36 of 2020 (Arising from TAT Application No. 18 of 2018)

Head Notes:

Customs Classification of Medicaments & Food supplements – Binding Effect of Tax Authority Clarifications – Legitimate Expectation – Estoppel

Brief Facts:

The Respondent/Cross-Appellant, Norbrook Uganda Limited, is an importer of Alamycin egg formula, Alamycin chicken formula, Calvasone, Multijet IMM, Calcijet and multivitamin injection for animals in Uganda. In 2011, the Respondent/Cross Appellant asked the Appellant/Cross Respondent, Uganda Revenue Authority, for clarification about the treatment and classification of the imports under the East African Community Customs Management Act for purposes of import duty assessment. The Appellant wrote back to the Respondent clarifying that the imports were classified and treated as medicaments and not as supplements under the ECCMA. This meant that the imports could not suffer any import duty, Value Added Tax (VAT) and Withholding Tax (WHT).

Following this clarification, the Respondent went ahead and imported the said imports for about five years. In 2017, the Appellant conducted an audit into the affairs of the Respondent and reclassified the imports as food supplements and issued retrospective assessments for import duty, VAT and WHT on the Respondent. The Respondent objected to the assessments, but the Appellant disallowed the objection, hence the filing of an Application with the Tax Appeals Tribunal.

The Tax Appeals Tribunal while considering the evidence filed by the parties found that first, Calvasone, Multijet IMM and Multivitamin injection are medicaments and vacated all assessments issued in respect thereof. Secondly, the Tribunal found that Alamycin egg formula and Alamycin chicken formula are supplements and ordered the Respondent to honour the assessments issued in respect thereof. Dissatisfied with this Ruling, the parties appealed to the High Court.

Grounds of Appeal:

The Appellant was dissatisfied with the findings, ruling, and decision of the Tax Appeals Tribunal in respect of multivitamin injection and appealed on the following grounds:

1. The Tax Appeals Tribunal erred in law in failing to properly evaluate the evidence on record, thereby erroneously concluding and holding that multivitamin injection is not merely a food supplement but a medicament whereas not.

2. The Honorable Members of the Tribunal erred in law in binding the Appellant to its letter of 4th October 2011 which stated that multivitamin injection is a medicament, when the said letter was contrary to the law and ipso-facto, the Appellant was not estopped from departing from it.

3. The Honorable Members of the Tribunal erred in law in holding that the multivitamin injection is both a medicament and food supplement and is classified under HSC

300.50, when medicaments and food supplements are technically and legally unclassifiable under HSC Code 300.50.

4. The Honorable Members of the Tax Appeals Tribunal erred in law in vacating the tax assessments issued on the Respondent in respect of the multivitamin injection (UGX 2,919,094,217.51) without legal basis.

Grounds of the Cross Appeal:

The Respondent was dissatisfied with the findings, decision and orders of the Tax Appeals Tribunal in relation to alamycin egg formula, alamycin chicken formula, and thus cross-appealed on the following grounds:

1. The Tribunal erred in law in finding that alamycin egg formula and alamycin chicken formula are not medicaments.

2. The Tax Appeals Tribunal erred in law when it concluded that the Commissioner was not bound by the previous representation made by the Respondent on the classification of alamycin egg formula and alamycin chicken formula.

Judgment of the High Court:

(Hon. Lady Justice Patricia Mutesi)

<u>Grounds 1 of the Main Appeal and Ground 1 of the Cross-Appeal:</u>

a) The Court held that since the burden of proof was on the Respondent, it failed to adduce evidence conclusively to prove that multivitamin injection /alamycin egg formula and alamycin contain at least one active pharmaceutical substance and have therapeutic/prophylactic uses. The Respondent had a duty of proving that its imports were medicaments.

Ground 1 of the main appeal succeeded while Ground 1 of the Cross-Appeal failed.

<u>Grounds 2 of the Main and Ground 2 of the Cross-Appeal</u>

a) Counsel for the Appellant submitted that the letter classifying multivitamin injection as a medicament is not binding on the Appellant since it is a statutory body which is not capable, at law, of divesting itself of, or fettering, its powers of tax assessment and collection. That the doctrine of estoppel and legitimate expectation do not apply to this case.

b) As regards Ground 2 of the Cross Appeal, the Respondent (Cross Appellant) criticized the Tribunal for disregarding the letter classifying alamycin egg formula and alamycin chicken formula as medicaments. Counsel for the Appellant supported the Tribunal's decisions, affirming that the doctrine of estoppel and legitimate expectation do not apply to the present case.

c) The Court held that the Appellant was bound by its clarifications made on the letters issued on 4th October 2011, confirming that multivitamin injection is a medicament under HSC 3004.50.00 of the EAC-CET and the one on the 21st December 2011 clarifying alamycin chicken as a medicament under HSCode 3004.20 of the EAC-CET which attracted 0% import duty.

d) The Court further held that the powers of the Appellant under Section 236 of the EACCMA render prior transactions which were free from tax not subject to tax; however, the change in position cannot affect the said prior transactions.

e) The Court further held that since the Appellant's unique and pivotal role is classification of imports as it administers the EACCET, there is a legitimate expectation that the Appellant responds to import classification queries after proper scrutiny. If the Appellant provides guidance on the classification of imports, it is bound by its guidance.

f) The Court ruled that ground 2 of the Main Appeal failed because the Tribunal was right to rely on the Appellants letter dated 4th October 2011 as part of its reasons for vacating the multivitamin assessments.

Ground 2 of the Cross Appeal succeeded in part because the letter of 23rd December 2011 did not create expectation for alamycin egg formula.

Ground 3 of the Main Appeal:

a) The Court held that the Tribunal erred in holding that multivitamin injection can either be a medicament or a food supplement; it is legally impossible for a product to be both a medicament and a supplement for tax purposes.

This Ground succeeded. However, based on the finding of Ground Two, it is inconsequential since all multivitamin injection assessments were held to be illegal and void.

Ground 4 of the Appeal:

a) Court held that there was a proper legal basis for vacating the retrospective multivitamin injection assessments as stated in Ground 3

Ground 4 failed.

Court ordered that all tax assessments issued by the Appellant on the Respondent in respect of multivitamin injection and alamycin chick formula for Financial Years 20112/2013 to 2016/2017 be vacated. The Appellant was directed to issue fresh assessments on the Respondent for the tax due on the import of amalycin chicken egg formulas for the Financial Years 2012/2013 to 2016/2017; and each party to bear its own costs.

08

Uganda Revenue Authority Versus TATA Uganda Limited, High Court Civil Appeal No. 0057 of 2021 (Arising from TAT Application No. 041 of 2019)

Head Notes:

Customs Classification of Lozenges– The Doctrine of Estoppel/ Legitimate Expectation – Difference between Medicaments (HS 3004) and Confectionery (HS 1704)

Brief Facts:

The Respondent, TATA Uganda Limited, imported Zecuf Herbal cough lozenges under the brand name Zecuf in different flavors such as orange, strawberry, raspberry, honey lemon, and pineapple, which were classified under HS Code 3004.90 (attracting 0% duty charges) and applied CPC 403, meaning that no taxes were paid on these imports.

In 2018, the Appellant, Uganda Revenue Authority, audited the Respondent and re-classified the imports under HSC 1704 and CPC 405, giving rise to a tax liability of UGX 726,666,331. The Respondent objected to the assessment, which objection was disallowed, hence the filing of an Application for review before the Tax Appeals Tribunal challenging a Customs Duty assessment of UGX 726,666,331 resulting from the re-classification of imports. The Tribunal heard the Application and on 28th October 2021, delivered its Ruling finding for the Respondent herein and setting aside the assessments by the Appellant. The Appellant, being dissatisfied, filed this Appeal before the High Court.

Grounds of Appeal:

1. The Honorable members of the Tribunal erred in Law in holding that the Ruling of the World Customs Organization on the Zecuf Lozenges is not binding on the Parties.
2. The Honorable members of the Tribunal erred in law in holding that the Respondent is estopped from considering Zecuf Lozenges as sugar confectioneries.
3. The Honorable members of the Tribunal erred in law in holding that the National Drug Authority's Approval of Zecuf Lozenges as Drugs, qualifies the same to be medicaments under the Harmonized Commodity System (HSC).
4. The Honorable members of the Tribunal erred in law in solely relying on Rule 3(a) and ignoring Rule 1 and 6 of the General Rules of Interpretation to conclude that the Zecuf Lozenges fall under HSC 3004.09.
5. The Honorable Members of the Tribunal erred in law in holding that no evidence was adduced to show that Zecuf lozenges consisted of sugars and flavoring agents

Judgment of the High Court:

(Hon. Justice Ocaya Thomas O.R Judge)

Ground 1:

a) The Harmonized System is designed to ensure that goods are classified similarly across jurisdictions, thereby facilitating global trade and reducing disputes at borders. While national authorities and Tribunals are not strictly bound to follow World Customs Organization opinions, any deviation should be justified by cogent legal, technical, or contextual reasons clearly articulated in the decision.

b) As regards Article 3(9) of the World Trade Facilitation Agreement and the Revised Kyoto Convention, those provisions do not clothe the decisions of the WCO with binding character since the WCO is not a customs authority within the meaning of the Kyoto Convention or the World Trade Facilitation Agreement.

c) Court noted that the contents of the email said to contain the Ruling of the WCO (RE12) explicitly stated that it is not binding. The Tribunal considered other WCO rulings (RE18 and RE19) side by side with the impugned ruling/email (RE12) and essentially found that there was a significant variance between RE12 on one hand and RE18 and RE19 on the other, and ruled that the Appellant had not demonstrated that the said Ruling, no matter its effect, was an authentic decision of the WCO.

d) Court found that the Appellant did not show Court why the Tribunal ought to have found that RE12 was an authentic decision of the WCO. Additionally, the Appellant did not establish that the Tribunal wrongly applied the law, or the legal standards on authenticity and admissibility of documents in disregarding RE12.

Ground 1 failed.

<u>Ground 2</u>

a) The Appellant did not dispute the fact that it had considered the Zecuf Lonzenges imported by the Respondent as medicine, thus not subject to taxation. This fact by itself aligns with the principle of the doctrine of legitimate expectation, that the authority must have made a promise, assurance, or by act of practice a statement unambiguous without qualification that the individual relied on it.

b) The doctrine of legitimate expectation is not premised on representations per se, but curtailing abuses of power or preventing reneging on representations where it would be manifestly unfair to do so. What constitutes a legitimate expectation is a question of fact, and should be considered on a case-by-case basis.

c) The Tribunal was correct in holding that the Appellant was barred, by the doctrine of legitimate expectation, from retrospectively asserting that the Respondent's lozenges had been wrongly classified and were, in fact, subject to tax.

d) The Appellant, despite being vested with the statutory power and responsibility to verify and collect taxes at the point of importation, failed or neglected to exercise that power for a period exceeding four years. During that time, the Respondent repeatedly imported the lozenges under the express approval of the Appellant on the understanding that the products were tax-exempt.

e) The prolonged inaction by the Appellant created a legitimate and reasonable expectation on the part of the Respondent that the imports were not subject to tax. The Respondent relied on that representation in good faith, planning, pricing, marketing, and selling the lozenges on the Ugandan market accordingly.

f) To now demand retrospective payment of taxes on goods that were lawfully imported under the explicit sanction of the Appellant would be fundamentally unjust. This of course, has no bearing on any claims for tax that may be made after the time when the Appellant showed the Respondent that it now took a different view of the classification of the said lozenges.

Ground 2 failed.

Ground 3:

a) Court found that the Tribunal clearly stated in its Ruling that the Respondent (the Appellant now) did not adduce any evidence to show that the Zecuf Lozenges is a confectionary contrary to the evidences presented, including the findings of the National Drug Authority (NDA), whose secretary Mr. David Nahamya, testified that the ingredients on the leaflets are listed English Pharmacopoeia. A pharmacopoeia is an official publication containing a list of medicinal drugs with their effects and directions for their use.

b) Whereas the Tribunal ruled that NDA approval of the lozenges as drugs qualifies them as medicaments, this was not the sole basis for the decision of the Tribunal. This finding along with additional findings particularly the expert evidence of the National Drug Authority that Zecuf Lozenges is a flu and cough medication, were the basis for the decision that the Respondent's lozenges were medicaments and ought to be classified as such.

c) Court made a comparative analysis of several cases from various jurisdictions that dealt with similar issues regarding classification of products under HS 3004. The Court observed that the key principle that is distillable from the different precedents, which are cited only persuasively, is that HS Code 3004 applies to products that are objectively prepared and intended for therapeutic or prophylactic use, regardless of their marketing presentation. Classification must be guided by the product's composition, function, and use in context, with a clear focus on its medicinal character.

d) The Court was therefore of the considered view that the Tribunal correctly found that the said lozenges were classifiable in the manner they did.

Ground 3 failed.

Ground 4

a) Court noted that the Tribunal began by considering Rules 1-3 of the General Interpretative Rules (GIRs). The Tribunal then made reference to Rule 3(a), which provides that when goods are prima facie classifiable under two or more headings, classification shall be effected under the heading which provides the most specific description.

b) The contention that there was no consideration of other interpretive rules or guidance is without merit. The Tribunal properly applied its mind to the GIRs and explanatory notes and properly applied Rule 3(a)

Ground 4 failed.

Ground Five

a) Court held that the Tribunal did not hold that no evidence was adduced to show that Zecuf lozenges consisted of sugars and flavouring agents. It held that there was no evidence to show that Zecuf Lozenges were essentially consisting of sugars and flavouring agents, thereby making them pastilles and not medicaments.

b) The determination as to whether the Zecuf Lozenges are medicaments did not turn on the presence or absence of sugar or flavouring agents per se, but on whether the said lozenges were medicinal and had therapeutic abilities/components.

c) The Tribunal assessed all the evidence on the record regarding the use and contents of the lozenges, and correctly found that they have curative/medical properties.

Ground Five failed.

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

09

Wananchi Group Uganda Ltd Versus Uganda Revenue Authority, High Court Civil Appeal No. 0053 of 2025 (Arising from TAT Application No. 273 of 2022

Head Notes:

Import duty – Customs Classification of CAM cards under the EACCET

Brief Facts:

The Appellant, Wananchi Group Uganda Ltd, operates cable television services under the brand Zuku Television. Between 2019 and 2021, the Appellant imported Conditional Access Modules (CAM cards) declared under HS Code 8528.71.00, which attracts 0% import duty. In January 2022, the Respondent, Uganda Revenue Authority, reclassified the goods under HS Code 8529.90.00, attracting 25% import duty, and retrospectively reassessed prior imports, issuing a tax demand of UGX 814,142,369. The Applicant's objection was rejected, hence the Application for review before the Tax Appeals Tribunal.

The Tax Appeals Tribunal upheld the Respondent's decision, finding that the CAM cards were not independent signal reception apparatus but parts of a television apparatus, properly classified under HS Code 8529.90, attracting 25% duty. Dissatisfied with the Ruling, the Appellant appealed to the High Court.

Grounds of Appeal:

1. The Tax Appeals Tribunal erred in law when it interpreted the provisions of the East African Community Common External Tariff on the Harmonized Commodity Description and Coding System (EAC CET) to hold that the Appellant's CAM cards were not independent signal reception apparatus classifiable under HS Code 8528.71.00

2. The Tax Appeals Tribunal erred in law when it held that the Appellant's CAM cards were correctly classified under HS code 8529.90.00 as parts of television apparatus and therefore attracting import duty at a rate of 25%.

3. The Honorable members of the Tax Appeal Tribunal erred in law when they held that the Appellant company was not entitled to the refund of the taxes paid following the Respondent's erroneous reclassification of the Appellant's CAM cards.

Judgment of the High Court:

(Hon. Lady Justice Susan Odongo)

Grounds 1 & 2:

a) The Appellant submitted that CAM cards fall squarely within HS code 8528.71 because, although not designed to incorporate video display, they are reception apparatus for television receiving the data part of TV broadcast (encryption keys) necessary to decrypt and access video and sound.

b) The Appellant further submitted that that the Respondent's restrictive interpretation excludes the data component, which is inseparable from TV broadcast signals, contrary to the integrated function of reception. Reliance is placed on international telecommunications guidance describing broadcast content as vision, sound, and data.

c) The Appellant submitted that CAM cards receive data integral to reception and thus qualify under the reception apparatus description attracting zero duty. The Appellant further argued that HSC 8529.90 is a generic provision and should not override the more specific HSC 8528.71.

d) The Respondent submitted that the CAM card is not a reception apparatus but a device solely for decrypting already received signals. The evidence showed that CAM cards do not receive broadcast signals but decrypt what reception apparatus has already received. CAM cards are thus correctly classified under HS 8529.90, which covers parts suitable for use with monitors and televisions.

e) The Respondent stated that the system can operate without the CAM cards, which only enable access to subscription channels and function like a key or password.

f) The Court, in coming to its decision, stated that clause 85.28 of the HS Code relates to monitors and projectors not incorporating reception apparatus, including reception apparatus for television, with subheading *8528.71.00* covering apparatus *"not designed to incorporate a video display or screen"* subject to 0% duty. Clause 85.29 covers parts suitable for use with apparatus of headings 85.24 to 85.28, including aerials and other parts, both attracting 25% duty.

g) The Court further noted that CAM Cards, which decrypt encrypted content in television decoders, do not constitute monitors or projectors themselves nor fit within apparatus *"not designed to incorporate a video display or screen"* under 8528.71.00. Their role as an accessory or part of equipment classified under headings 85.24 to 85.28 places them squarely within the ambit of clause *85.29*.

h) The Court thus held that CAM cards do not receive television signals but only decrypt encrypted content. They therefore qualify as *"parts suitable for use solely or principally with apparatus of headings 85.24 to 85.28 - other"* under HS Code 8529.90.00, attracting 25% duty.

Ground 3:

a) The Appellant contended that the Respondent's reclassification of the Appellant's CAM cards under HS Code 8729.90.00 of the EACCET was erroneous. Accordingly, the Appellant sought for a refund under Section 123 of the Income Tax Act, Cap 338, of all monies paid following the said erroneous reclassifications and assessments commencing from 2019, inclusive of the 30% tax imposed at the Tribunal level.

b) The Respondent argued that under the East African Community Customs Management Act (EACCMA), a refund is justified only where taxes were erroneously paid or overpaid. The Respondent further contended that the Tribunal correctly classified the CAM cards under HS Code 8529.90.00, subject to a duty rate of 25%; and that since the duty imposed was lawful, there exists no basis for a refund.

c) The Court held that the Appellant sought a refund relying on Section 123 of the Income Tax Act, which the Court found inapplicable to the matter before it. Further, since the Court upheld URA's classification, there was no wrong or overpayment, and hence no entitlement to a refund.

Grounds 1 to 3 failed.

The Appeal was dismissed in its entirety, the decision of the Tax Appeals Tribunal was upheld, and Costs were awarded to the Respondent.

10

Whistleblower (Ref: 170819150) Versus Uganda Revenue Authority, Court of Appeal Civil Application No. 0527 of 2024 (Arising from Misc. Application No. 1475 of 2024) (Arising from CACA No. 492 of 2024)

Head Notes:

Stay of Execution – Competence of Notice of Appeal in Tax Matters – Proof of Irreparable Damage – Security for Due Performance of the Decree

Brief Facts:

The Applicant, Whistleblower (Ref: 170819150), acting as a whistleblower, provided information to the Respondent, Uganda Revenue Authority, that led to the recovery of UGX 2,200,000,000 as a tax obligation from M/s Royal Van Zanten Uganda Limited. Pursuant to Section 7A of the Tax Procedures Code (Amendment) Act, 2019, the Applicant was rewarded with UGX 118,624,679 equivalent to 5% of the recovered amount. Dissatisfied with this reward, the Applicant successfully appealed to the Tax Appeals Tribunal, contending that the reward should have been 10%, being the applicable rate at the time the information was provided, in accordance with Section 8 of the Finance Act 2014. The Tribunal ordered that the Respondent pay the Applicant UGX 118,624,679, which is the balance on 10% of the principal tax recovered.

The Respondent appealed to the High Court Commercial Division vide Civil Appeal No.0030 of 2021, where Court held that the Respondent was entitled to apply the law in force at the time the Applicant's claim became enforceable which was Section 74A of the Tax Procedures Code (Amendment) Act, 2019 and not Section 8 of the Finance Act, 2014 which had been repealed. The orders of the Tax Appeals Tribunal were reversed and set aside. The costs of the Appeal and of the proceedings before the Tribunal were awarded to the Respondent.

The Applicant vide Civil Appeal No.0492 of 2024 appealed to the Court of Appeal against the judgment of the High Court and applied for stay of execution in the High Court vide Miscellaneous Application No. 1475 of 2024 which was dismissed, hence the instant Application. The Applicant brought the Application by way of Notice of Motion under Rules 2(2),6(2)(b), 42(1), 43 (I) & (2) of the Judicature (Court of Appeal Rules), Directions Statutory Instrument 13-10 of 2000, seeking orders that a stay of execution doth issue against the Respondent, its agents, legal representatives, assignees, servants or any other persons acting under its instructions from executing the decree in Civil Appeal No. 0030 of 2021 until the disposal of Civil Appeal No. 0492 of 2024.

Issue for determination.

1. Whether the Application discloses sufficient grounds for a stay of execution of the High Court's orders issued vide HCCA No.0030 of 2021?

Ruling of the High Court:

(Hon. Lady Justice Ketrah Kitariisibwa Katunguka) JOA (Single Judge)

Likelihood of Success of the Appeal:

a) The Applicant contended that he filed Civil Appeal No 0492 of 2024 in the Court of Appeal, which is pending hearing, and that the said Appeal has a high likelihood of success.

b) The Respondent contended that Court of Appeal Civil Appeal No 0492 of 2024 is incompetent insofar as the Notice of Appeal filed therein did not disclose the grounds of appeal as required under the law governing appeals relating to tax matters; that the appeal had no reasonable chance of success and that the Applicant had not demonstrated any such alleged high likelihood of success; and that the Respondent filed its bill of costs in the Tax Appeals Tribunal, which had since been taxed and allowed and execution had already ensued.

c) The Applicant rejoined that when he was initiating the appeal to the Court of Appeal Court, he filed a Notice of Appeal in the High Court and the said Notice of Appeal is competent on the basis that Rule 76(3) of the Judicature (Court of Appeal Rules) Directions which provides for the contents of the Notice of Appeal, does not require that the Notice of Appeal should contain the grounds of Appeal.

d) The Applicant cited Rule 6(2)(b) of the Judicature (Court of Appeal) Rules to submit that, contrary to the Respondents' averments, a competent Notice of Appeal had been lodged in the High Court per Rule 76(3) of the Judicature (Court of Appeal Rules) Directions; that whereas section 27(2) of the Tax Appeals Tribunal Act Cap.341 provides that the Notice of Appeal should contain the grounds of appeal, which Rule only applies to appeals from the Tax Appeals Tribunal to the High Court; and not appeals from the High Court to the Court of Appeal, and that the grounds of appeal were set out in the Memorandum of Appeal pursuant to Rule 86 of the Judicature (Court of Appeal Rules) Directions.

e) The Court held that the condition of likelihood of success does not require the Court to determine if the Applicant is likely to win but he must present arguable points deserving of the Court's consideration. Court further held that according to the Memorandum of Appeal, the Appeal raised an arguable question as to what law was applicable to the Applicant's claim; whether it was at the time the agreement was made or when the Respondent recovered the tax. The Court found that the appeal was not frivolous.

This ground succeeded.

Competence of the Notice of Appeal:

a) Court held that tax appeals are specifically governed by the Tax Appeals Tribunal Act. The Court held that the Notice of Appeal clearly does not state that it is on questions of law only and does not state the questions or question it intends to raise on appeal in line with Section 12(1) of the Judicature Act.

b) Court held that the Notice of Appeal is defective.

This ground failed.

Irreparable damage/Whether the appeal will be rendered nugatory?

a) The Applicant contended that the Respondent filed a Bill of Costs in the Tax Appeals Tribunal which was taxed and had started demanding payment of the taxed costs, but the execution process had not been concluded and the present Application for stay of execution had not been overtaken by events; there was still a serious threat of execution of the High Court decree; and, if execution is not stayed, he will suffer irreparable damage, and the appeal shall be rendered nugatory.

b) The Respondent contended that the Application was overtaken by events, and the grant of the Application in those circumstances would be simply moot and academic, that the High Court order sought to be stayed was a monetary award only involving the movement of currency from one party to another and the Applicant would not be exposed to any irreparable damage/loss and had not demonstrated any special circumstances showing any undue difficulty that could be occasioned to him if he paid the taxed costs, and the collection of the taxed costs would not render Court of Appeal Civil Appeal No. 0492 of 2024 nugatory.

c) The Respondent further argued that since execution concerned money (UGX 7,195,400), if the appeal were successful, the amount would be refunded, so there was no demonstration of any irreparable damage that money cannot cure.

d) The Court observed that the orders of the High Court were that the costs of the appeal and of the proceedings before the Tribunal payable by the Appellant were awarded to the Respondent. The Respondent admitted that the bill of costs had already been taxed to UGX 7, 195,400 and there was a letter attached to the Applicant's pleadings, written by the Respondent demanding the payment of the taxed costs.

e) It was held that Court must always balance the interests of the Applicant who is seeking stay of execution and those of the Respondent who is entitled to enjoy the fruits of his judgment. The Court agreed that money replaces money and in case of any inflation, the value may be enhanced at the time of rendering judgment.

f) Court found no proof of irreparable damage or possibility of the appeal being rendered nugatory, because in case the appeal is granted, the taxed costs can be transferred back to the Applicant.

This ground failed.

Inordinate delay

a) The Applicant contended that the Application was brought without delay.

b) The Court observed that the Judgement appealed against was delivered on 16/1/2024, the Applicant lodged a Notice of Appeal on 30/l/2024; the certificate of taxation shows that the Respondent's bill of costs was taxed and allowed on 17/4/2024. On 18/4/2024, the Applicant received a demand Notice from the Respondent. He applied for a stay of execution before the High Court (Commercial Division) vide Misc. Application No.1475 of 2024, which was heard and dismissed on 2/9/2024.

c) The Court held that the instant Application was brought without unreasonable delay.

This ground succeeded.

Security for due performance of the decree or order:

a) The Applicant adduced evidence of a cheque for UGX 200,000 issued to the Registrar High Court as security for performance of the decree but the Respondent contended that this is insufficient to give comfort to the Respondent as compared to the value of the taxed costs of UGX 7, 195,400.

b) The Court held that the security for due performance of the decree was insufficient.

This ground failed.

Court held that the Applicant failed to prove irreparable damage, and the Application was based on a defective Notice of Appeal. The Application was dismissed with costs to the Respondent.

11

World Point Group Limited Versus Attorney General & Uganda Revenue Authority, Court of Appeal Civil Appeal No. 105 of 2018 (Arising from High Court Civil Suit No. 227 of 2013)

Head Notes:

Breach of Import Licences – Courts Refusal to Enforce Illegal Acts – Statutory Obligations

Brief Facts:

In May 2011, following a sugar crisis, the government invited private companies to import sugar duty-free. The Appellant, World Point Group Limited, obtained a licence to import 2,000 metric tonnes of sugar from India and complied with all stipulated procedures. However, operational delays at Mombasa impended timely clearance of the sugar. The 2nd Respondent, Uganda Revenue Authority (URA), refused to honour the duty-free facility and demanded payment by the Appellant of import duties. The Appellant paid some taxes and re-exported part of the consignment at a significant cost. The Appellant claimed to have suffered special damages amounting to UGX 206,093,100 and loss of expected profits estimated at USD 1,873,872.

The Appellant instituted a suit against the Respondents in the High Court Commercial Division jointly and severally, seeking to recover the monies paid in taxes to the 2nd Respondent on behalf of the 1st Respondent, the Attorney General, the Ministry of Trade, Industry and Cooperatives.

The Appellant's claim arose from the Government's purported unjustified cancellation, lifting or failure to extend a duty-free sugar import clearance licence that had been granted to the Appellant under the Sugar Policy of 2010. The Appellant claimed special damages, general damages, interest, and costs, contending that the Respondents' actions led to the wrongful imposition of taxes on sugar that was imported pursuant to a valid duty-free licence issued during a period of national sugar scarcity in 2011. The Respondents denied the claim, arguing that the licence had expired and the taxes were properly assessed and imposed.

The Trial Court found in favor of the Appellant and made the following orders: that the Appellant was entitled to a refund of the taxes, interest of 2% on duties imposed on the Appellant, further interest on the aggregate sum at the rate of 20%; the claims for aggravated and exemplary damages as well as general damages were not granted; and that part of the suit which had succeeded, succeeded with costs.

Grounds of Appeal:

The Appellant dissatisfied with the decision of the Trial Court appealed to the Court of Appeal on the following grounds:

1. The Learned Trial Judge, in the circumstances of the case, erred in law and in fact when he found that the re-export of the sugar was contrary to public policy and that as such the Appellant was not entitled to an award of damages of transport and demurrage charges.
2. The Learned Trial Judge erred in law and fact when he failed to grant general, aggravated and exemplary damages to the Plaintiff.
3. The learned Trail Judge erred in law and fact when he found that the Second Respondent did not owe a duty of care to the Appellant.

Grounds of the Cross-Appeal:

The Second Respondent filed a Cross Appeal contending that the Courts decision ought to be varied or reversed on the following grounds:

1. The learned Trial Judge erred in fact and in law in holding that the Cross- Appellant should refund any taxes paid on the sale of sugar in the Domestic Market.

Judgment of the Court of Appeal:

(Hon. Mr. Justice Geoffrey Kiryabwire, Hon. Mr. Justice Christopher Gashirabake and Hon. Mr. Justice Moses Kawumi Kazibwe)

<u>Grounds 1 & 2 of the Main Appeal:</u>

a) Counsel for the Appellant submitted that the Learned Trial Judge erred in holding that the re-export of sugar by the Appellant was unlawful and contrary to the duty-free import policy under EAC Legal Notice No.37 of 2011.

b) Counsel for the Appellant further submitted that the Appellant's actions of re-exporting some of the sugar to Rwanda were in line with the well-established legal doctrine of mitigation of damages where a claimant is required to take reasonable steps to mitigate loss resulting from a defendant's wrongdoing.

c) Counsel for the Appellant submitted that the Appellant imported sugar within the validity period of the licence, and delays at the port and subsequent expiry of the policy were beyond its control. In these circumstances, the Appellant's re-exportation was a reasonable and necessary business decision to avoid loss, and the trial court's dismissal of its claim for damages related to demurrage and re-exportation was erroneous.

d) The 1st Respondent submitted that the trial Judge did not err in holding that the re-exportation of sugar was unlawful and contrary to public policy. That the Appellant had been granted a duty-free sugar import licence under explicit conditions, one of which prohibited the re-export of the sugar to any East African Community (EAC) partner states. This condition was clearly provided for in the licence.

e) Counsel for the 1st Respondent submitted that the Appellant's cause of action was founded upon an illegal act and the courts should not aid a party who seeks to benefit from their own wrongdoing. Counsel also relied on the doctrine of *ex turpi causa*, which bars courts from enforcing claims arising out of illegal or immoral conduct.

f) Counsel for the 1st Respondent submitted that the Appellant was not entitled to exemplary or aggravated damages either which are only awarded in limited circumstances, particularly where there has been oppressive, arbitrary, or unconstitutional conduct by the defendant. In the present case, the Appellant did not demonstrate any such conduct on the party of the Respondents.

g) Counsel for the 2nd Respondent submitted that the East African Legal Notice No. 37 of 2011 had allocated Uganda a quota of 40,000 metric tons of duty-free sugar for local consumption, and any attempt to re-export it to neighboring countries such as Rwanda, Sudan, or Congo was a breach of the exemptions' purpose and therefore unjustifiable. It followed therefore that the Trial Court correctly declined to award damages for demurrage and transport costs associated with the re-export.

h) Counsel for Second Respondent argued that the Trial Court correctly applied the principle that a party who knowingly breaches regulatory terms cannot seek redress for losses stemming from that breach. Furthermore, that the claim for damages was not supported by the required legal foundation of liability, and the Court was right to reject it.

i) The Court, while agreeing with the reasoning of the High Court, held that the re-export of sugar to other countries, especially so, within East African Partner States, was in direct violation by the Appellant of its sugar licence and no business expediency could remedy that. That being the case, general and special damages could not arise.

j) The Court further stated that since the records establishing the actual amounts of sugar sold in Uganda were not on court record, it was hard to determine the quantum of the damages.

Grounds 1 & 2 failed.

<u>Ground 3 of the Main Appeal:</u>

a) Counsel for the Appellant submitted that the 2nd Respondent owed a duty of care to the Appellant arising from its statutory role in operationalizing and overseeing the implementation of Legal Notice No. EAC/37/2011, which granted Uganda a quota of duty-free sugar importation.

b) Counsel for the Appellant submitted that this duty of care was breached when the 2nd Respondent failed to directly communicate confirmation to the Kenya Revenue Authority (KRA) that the Appellant was a bonafide beneficiary of the licence instead the 2nd Respondent routed the confirmation through the Appellant's agent, which KRA rejected as insufficient.

c) Counsel for the Appellant submitted that owning the Respondent's negligence and failure to discharge its duty, the Appellant incurred special damages of UGX 400,000,000 for transportation and warehousing, as well as an estimated profit loss of USD 1,873,872.

d) The 1st Respondent submitted that the Appellant's claim for special damages amounting to UGX 400,000,000 was rightly dismissed by the Trial Judge. That the Trial Judge correctly applied the principle as regards special damages to the effect that they must be specifically pleaded and strictly proved.

e) Counsel for the 2nd Respondent submitted that the 2nd Respondent did not owe any duty of care to the Appellant, and that even if the duty existed, it was discharged appropriately.

f) Counsel for the Respondent submitted that Legal Notice No. EAC/37/2011 did not impose such a compensatory obligation on the 2nd Respondent, and therefore no breach of duty could arise. Moreover, the grant and administration of the licence were solely within the domain of the Ministry of Trade, not the second Respondent, whose sole role was operational and limited to the duty-free implementation already fulfilled.

g) The Court held that Legal Notice No. EAC/37/2011 did not impose a statutory obligation or create a private right to sue the Second Respondent in damages. The Court observed further that there was no material omission or evidence of unreasonable delay attributable to the 2nd Respondent. The 2nd Respondent issued a letter on 31st October 2011 certifying the Appellant's bonafide status. This communication was made prior to the sugar's arrival at Mombasa and was aimed at facilitating clearance. Therefore, the 2nd Respondent was not liable in tort.

Ground 3 failed.

Grounds 1 & 2 of the Cross Appeal:

a) Counsel for the 2nd Respondent/Cross Appellant submitted that the Trial Judge erred in both law and fact in ordering a refund of taxes allegedly paid by the Appellant on duty -free sugar sold in the domestic market. That the Trial Judge's findings were not grounded in any credible evidence. That had the Trial Judge properly evaluated the evidence on record he would have concluded that no taxes were paid and thus no refund was due.

b) The Cross Respondent/Appellant did not file submissions as regards the Cross Appeal.

c) The Court in determining this issue held that the letter issued on the 21st June 2012 by the 2nd Respondent to the Appellant clearly showed that taxes had to be paid and further that since the consignment of sugar was duty free, no taxes were to be paid.

d) The Court held that the Trial Judge rightly decided that the amount of sugar sold in Uganda where taxes were paid yet the sugar was duty free, be established.

Ground 1 & 2 of the Cross Appeal failed.

Both the Main Appeal and the Cross Appeal were dismissed with orders that each party bears its own costs.

CASE DIGEST

Volume XI

TAX APPEALS TRIBUNAL DECISIONS

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Adraa Agriculture College Versus Uganda Revenue Authority, TAT Misc. Application No. 06 of 2025 (Arising from TAT Application No. 005 of 2025)

Head Notes:

Binding Nature of an ADR Settlement Agreement – Grounds for Grant of a Temporary Injunction

Brief Facts:

The Applicant, Adraa Agriculture College, is a trust entity engaged in educating and training people from rural communities in Uganda, among other East African countries. On 26th April, 2024, the Respondent, Uganda Revenue Authority, issued a tax management letter of tax amounting to UGX 110,294,946 based on the claim that no supporting information was provided to validate the expenses claimed by the Applicant. On 7th June 2024, the Applicant objected and on 9th September 2024, the Respondent disallowed the objection and upheld the assessment due to the Applicant's failure to submit requested information. On 10th September 2024, the Applicant submitted an Application for Alternative Dispute Resolution (ADR) for the Respondent to review the objection decision in respect of Income Tax for 2020. Subsequently, the parties concluded an ADR Settlement Agreement, by which the Applicant undertook to pay the tax liability of UGX 61,378,928.

Upon the Applicant's failure to pay the agreed sum, the Respondent issued a Third-Party Agency Notice on 30th December 2024, hence the Applicant filed an Application before the Tax Appeals Tribunal challenging the liability. Subsequently, the Applicant also filed an Application for Temporary Injunction.

The Respondent opposed the Application for Temporary Injunction, contending that the Applicant is bound by the ADR Settlement Agreement, having willingly entered into the same.

Issue for determination:

1. Whether the temporary injunction should be issued?

Ruling of the Tax Appeals Tribunal:

(Mr. Siraj Ali; Ms. Christine Katwe; Mr. Willy Nangosyah)

a) The Tribunal restated the grounds for grant of a temporary injunction, namely, first- a prima facie case with a probability of success; secondly- likelihood to suffer irreparable injury; and thirdly- when the court is in doubt, the balance of convenience is considered.

b) The Tribunal stated that in order for the Applicant to succeed on the first ground, the Applicant must establish that it has a prima facie case with probability of success against the Respondent.

c) It was noted that in the instant case, the dispute between the Applicant and the Respondent was resolved through Alternative Dispute Resolution (ADR).

d) The Applicant agreed to pay the sum of UGX 61,378,928 in full and final settlement of the dispute. The Tribunal noted that, however, the Applicant turned around and disowned the settlement agreement and filed an Application before the Tribunal for review of the ADR Settlement Agreement.

e) The Tribunal held that there is no statutory authority on the basis of which the Tribunal can be said to have jurisdiction to determine the matter before it. Accordingly, it was held that there were no serious questions for determination in a matter where the Tribunal lacks jurisdiction.

f) Regarding the condition of irreparable injury, the Tribunal noted that it was difficult to see any injury that the Applicant could suffer since any recovery measures taken by the Respondent, would be in furtherance of the settlement agreement which is binding on the Applicant.

The Application was dismissed with costs to the Respondent.

13 Aggreko International Services Limited Versus Uganda Revenue Authority, TAT Application No. 103 of 2025

Head Notes:

Applicability of the Requirement to Pay 30% of the Tax in Dispute

Brief Facts:

The Applicant, Aggreko International Services Limited, is a foreign company that was previously engaged in electricity generation and supply in Uganda. The Respondent, Uganda Revenue Authority, issued a reminder notice in May 2023, requiring the Applicant to pay UGX 44,608,947,330 in various tax heads.

The Applicant filed this Application in the Tax Appeals Tribunal challenging the Respondent's methodology used to allocate payments to the Applicant's tax ledger. This challenged allocation resulted in an outstanding liability of UGX. 33,718,915,000 on the Applicant's ledger.

The Respondent raised a preliminary objection, arguing the Application was improperly before the Tribunal because the Applicant failed to pay 30% of the assessed tax, which translated to UGX. 10,115,674,500.

Issue for determination:

1. Whether the Applicant is required to pay 30% of the tax assessed or that part of the tax assessed not in dispute as per Section 15(1) of the TAT Act?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Ms. Prosocvia R. Nambi; Mrs. Stella Nyapendi Chombo)

a) The Respondent argued that the Applicant expressly affirmed the disputed tax of UGX 33,718,915,000, and therefore must deposit 30% of that amount according to Section 15(1) of the Tax Appeals Tribunal Act.

b) The Applicant argued that the obligation to pay 30% is inapplicable because the liability arose from the Respondent's erroneous allocation of payments, and not from an assessment that the URA issued.

c) The Tribunal found that the dispute was purely a question of law concerning the proper and lawful allocation of payments, which falls within the exception set out in *Fuelex (U) Limited V URA, Constitutional Petition No. 1 of 2009*. The *Fuelex* case held that the 30% deposit requirement does not apply to disputes that are purely legal or technical in nature.

d) The Tribunal held that an assessment, against which an objection has been lodged, is a prerequisite for the 30% deposit under Section 15 of the Tax Appeals Tribunal Act.

e) Section 15 of the TAT Act, read harmoniously with Section 26 of the TPCA, clearly envisages an assessment that has been issued by the Respondent.

f) The Tribunal held that the 30% deposit requirement does not apply where there is no formal assessment issued by the Respondent, because a taxpayer cannot object to their own voluntarily filed self-assessment. Therefore, in the absence of an assessment from the Respondent, the Applicant is not required to pay the 30% deposit.

g) The Tribunal found that the dispute which challenges the legality of payment allocation, falls within the *Fuelex* exception.

h) The Tribunal noted that the point of contention in the present case was whether payments were properly and lawfully allocated by the Respondent, which is a question of interpretation and application of tax law (specifically Section 41 of the Tax Procedure Code Act).

i) The Tribunal found that this dispute does not challenge the arithmetic accuracy of the tax amounts, but rather the interpretation and application of the law and applying the 30% deposit to such a question of law would be unconstitutional.

<u>The Preliminary Objection was dismissed and the case was set down for hearing.</u>

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Black Cob Versus Uganda Revenue Authority, TAT Application No. 112 of 2021

Head Notes:

Informer Rewards – The Doctrine of Estoppel – Special Damages

Brief Facts:

The Applicant, Black Cob, stated that on 22nd June 2015, he provided information to the Respondent, Uganda Revenue Authority, about the tax evasion by East African Breweries International (EABL) and Uganda Breweries Limited (NBL). The Applicant was issued with a Tax Evaders Information Form. He claimed that he was entitled to the statutory reward of 10% of the taxes collected from both UBL and EABL. He received UGX 1,168,759,201 as a reward for the provision of information. After the payment, the Respondent collected taxes of UGX 39,337,583,798 from UBL and UGX 4,661,205,846 from EABL.

The Respondent contended that the information supplied by the Applicant was not helpful towards recovery of taxes from UBL and EABL and that the Respondent conducted internal investigations and established that the Applicant's information did not cause the Respondent to conduct any audit and that as such, no tax was recovered due to the Applicant's information.

Issues for determination:

1. Whether the Applicant is entitled to the reward from the collections made from UBL and EABL?

2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mr. Siraj Ali; Mrs. Kabakumba Masiko)

a) At the time when the dispute arose, the governing law was Section 8 of the Finance Act of 2014, which stated that, *"The Commissioner General shall pay to a person who provides information leading to the recovery of tax or duty, the equivalent of ten percent (10%) of the principal tax or duty recovered".*

b) However, in 2019, the reward was reduced to 5% by the Tax Procedures Code (Amendment) Act, 2019.

c) The Tribunal restated the principles governing the payment of rewards to informers as laid down in *Nelson Habaasa V Uganda Revenue Authority, HCCS No. 192 of 2019*, that for one to succeed as an informer, the following must be proven:

   (i) There must be a person;

   (ii) The person must provide information to the Commissioner General of the Respondent;

   (iii) The information should lead to the recovery of a tax or duty;

(iv) The Commissioner General is able to recover the tax or duty; and

(v) If the Commissioner General recovers tax or duty, the informer's payment shall be the equivalent of 10% of the principal tax or duty recovered

d) The Applicant alleged that he provided information to the Respondent, which the Respondent relied upon to recover taxes from UBL and EABL. The Respondent argued that this was not the case and that the audit of the two entities and the subsequent recovery of taxes were the result of a directive from the Respondent's board of directors.

e) The Tribunal reviewed a letter from the Respondent to UBL dated 22nd July 2015 requesting for intercompany transactions with EABL. It was noted that the Respondent's information request was made a month after the Applicant submitted a Tax Informer Form and supporting documents.

f) The Tribunal noted that having reviewed the board of director's minutes dated 7th July 2014, there was no mention of transactions between UBL and EABL but rather, the board of directors asked for a report on allegations that UBL was classifying Bell Beer as a locally made beer for excise duty purposes.

g) The Tribunal further noted that a review of other correspondences in 2014 between the Respondent and UBL concerned verification of the input/output ratio, and there was nothing indicating an investigation into transactions between UBL and EABL.

h) As such, the Tribunal stated that the most likely and reasonable conclusion was that the Respondent acted on information provided by the Applicant to instigate audits into the transactions between UBL and EABL.

i) It was noted that the Applicant provided evidence of correspondences between him and a high-ranking officer of the Respondent spanning a period of 6 months.

j) According to the Investigation report of the Respondent, none of the people who carried out the audit were never involved or interviewed as part of the investigation and the Applicant was not implicated in any fraudulent activity.

k) It was noted that in the course of the audit, reconciliations and TAT Applications, the Applicant reached out and corresponded with the leadership of the Respondent, providing analysis, following up on progress of the audits and reconciliations, and offering insights on his own volition. The Tribunal noted that these were not actions of a fraudulent man but of one who was wholly invested in exposing the purported tax evasion.

l) Further, the Tribunal noted that at the hearing of TAT Application No. 28 of 2017, UBL V URA, the Respondent's witness on oath stated that he became aware of transactions between UBL and EABL through an informer.

m) In December 2020, the Respondent instigated an investigation into allegations of a breach of confidentiality and of flouting informer management and reward policies. The Tribunal noted that some of the details in this investigation report corroborated the role of the Applicant in reporting the tax evasion and the recovery of taxes as a result of the information he provided.

n) The Tribunal found that there was overwhelming evidence that the Applicant provided information to the Respondent; that the information led to the recovery of taxes; and that the Respondent was able to recover the taxes.

o) At no moment did the Respondent inform the Applicant that his information was unhelpful/unreliable or was already within the domain of the Respondent.

p) The Tribunal held that this falls squarely within the scope of the doctrine of estoppel which precludes a person from denying, or asserting anything to the contrary of, that which has, in contemplation of law, been established as the truth.

q) The Tribunal noted that the total principal tax payable was UGX 52,690,644,709 and the Applicant was entitled to 10% of the total sum, which was UGX 5,269,064,471. Since the Applicant had been paid UGX 1,169,759,207, the Respondent was ordered to pay to the Applicant the balance of UGX 4,099,305,264.

r) The Applicant prayed for damages of UGX 500,000,000 as a result of the inconvenience and associated risk from disclosure of his identity and loss of income.

s) The Tribunal denied the prayer for damages noting that special damages must be pleaded and strictly proved, yet the Applicant had not proved loss suffered.

The Application was allowed with costs.

15 Century Bottling Co. Ltd Versus Uganda Revenue Authority, TAT Application No. 096 of 2022

Head Notes:

Timelines for Additional Assessments – Proof of Discovery of New Information – Successive Additional Assessments – VAT on Imported Services – Distinct Supplies vis-a-viz Services Incidental to a Good – Tax Treatment of Finance Leases vis-a-viz Operating Leases – Deductibility and Deferral of Capital Allowances – Record Keeping Obligations for Tax Purposes – Commissioner's Powers to Amend Prior Periods

Brief Facts:

The Applicant, Century Bottling Co. Ltd, manufactures and distributes nonalcoholic beverages under the CocaCola franchise. Between 2013 and 2018, the Respondent, Uganda Revenue Authority, conducted a transfer pricing audit and issued additional assessments totaling UGX 10,214,827,515. These comprised: VAT on services from Krones AG and affiliates, treated by the Respondent as imported services distinct from the supply of equipment; Income Tax from disallowance of computer recharge expenses paid to Dataflo SA and Dimension Data, reclassified as imported services rather than deductible operating leases; and Income Tax from loss crystallization, arising from adjustments to carryforward losses.

The Applicant objected, contending that the assessments were timebarred, that the computer recharges were deductible operating lease expenses, and that the loss crystallization was premature given a pending related case. The Respondent disallowed the objections, maintaining that the assessments were valid, hence this Application.

Issues for determination:

1. Whether the assessments were timebarred?

2. Whether the multiple additional assessments were erroneous?

3. Whether the Applicant is liable to pay VAT on imported services from transactions with Krones AG?

4. Whether the computer recharges were deductible revenue costs or finance leases?

5. Whether the loss crystallisation by the Respondent was lawful?

6. What remedies are available to the parties?

Ruling of the Tribunal:

(Mrs. Stella Nyapendi Chombo, Ms. Proscovia R. Nambi, Ms. Grace Safi)

<u>Issue 1- Timelines of Assessments:</u>

a) The Applicant argued that assessments for 2013 and 2014 were raised five to eight years after returns were filed. The Applicant argued that this was outside the threeyear statutory limit under Section 25 of the Tax Procedures Code Act.

b) The Respondent submitted that it obtained new information during the audit on complex crossborder transactions which altered the tax characterization of the Applicant's dealings. The Respondent's audit team testified that the Applicant repeatedly sought extensions to provide documents, delaying the audit. Several contracts and invoices were only furnished after reminders, proving discovery of new information.

c) The Tribunal noted that the record showed that the audit process began in 2016; the Applicant provided some documents on 19th June 2016 and thereafter sought and received multiple extensions. The objection decision and schedules traced the Respondent's reliance on documents received over the period.

d) The "new information" exception is not mere administrative delay or late submission of documents. It must be information not previously in the Respondent's possession, material to liability, and reasonably capable of changing the assessment.

e) The Tribunal listed the items of information which the Respondent relied upon and when they were first obtained and noted that Applicant did not demonstrate that the listed items were already on the Respondent's possession before the audit, nor that they were reasonably accessible to the Respondent.

f) It was noted that the numerous extensions, while not a legal estoppel against limitation, explained the chronology of the audit and subsequent additional assessments. The Tribunal found that it was reasonable to conclude that the Respondent acted on the information when it became finally available and the Respondent could not be faulted for acting only after it received the complete information.

The Tribunal held that the Respondent proved discovery of new information and the assessments were therefore not timebarred.

Issue 2- Multiple Additional Assessments:

a) The Applicant argued that the Respondent unlawfully issued parallel assessments for overlapping years, first from a general audit and then from a transfer pricing audit, amounting to duplication.

b) The Respondent maintained that the assessments were sequential and targeted distinct exposures. The general audit addressed local compliance and statutory return checks, while the transfer pricing audit focused on cross-border transactions and imported services, among others. The Respondent submitted that Section 25 of the Tax Procedures Code Act does not restrict the Commissioner to a single additional assessment, and emphasized that the Applicant was reading words into the law that Parliament had not enacted.

c) The Respondent's witness further testified that the two audits did not overlap issues, and that where potential overlaps were identified, the transfer pricing audit team deliberately dropped those items to avoid duplication.

d) The Tribunal noted that the statutory purpose of Section 25 of the Tax Procedures Code Act in authorizing the Commissioner General to make an additional assessment, is accuracy. It was further noted that the said Section does not limit the Respondent to a single additional assessment, but rather permits successive additional assessments in cases of new information, fraud or gross /willful neglect. A construction limiting the Respondent to a single lifetime amendment would frustrate the statute's corrective purpose.

e) There was no evidence to show that the assessment amounts of the general audit included VAT on Krones' post-import services, nor the computer recharges disallowance, which were in issue in the transfer pricing audit. There were no overlapping assessments on the same tax head and period.

f) The Tribunal found that the newly discovered items included in the transfer pricing audit assessments were genuinely not before the Respondent at the time of the first assessments, which arose from the general audit. These items materially affected the tax liability.

g) The Tribunal accepted the Respondent's delineation of scope, timing, and evidence, finding that the assessments were distinct, procedurally fair, and not overlapping.

The Tribunal held that the multiple assessments were lawful and properly issued.

Issue 3- VAT on Imported Services (Krones Transactions):

a) The Applicant contended that installation, commissioning, and training services provided by Krones AG to the Applicant were incidental to the imported bottling machinery/ equipment and should have been treated as part of the customs value, exempting them from separate VAT.

b) On the other hand, the Respondent maintained that the services were independently requisitioned and invoiced, and ASYCUDA checks showed that the said services were not included in the customs value and therefore reverse-charge VAT applied.

c) The Tribunal noted that the documentary record indicated that the Krones post-import services were not included in the Cost Insurance Freight (CIF) / customs value declared at entry. Further, the record showed that the services were requisitioned and priced separately, and delivered post-import to install/commission/repair the machinery. This, the Tribunal noted, pointed to distinct supplies.

d) It was further noted that even if the Tribunal was to treat the services as incidental, still, Section 23(c) of the VAT Act treats their value as part of the taxable value of the goods for VAT purposes. Having not been included in the taxable value of the goods when they were imported, the Respondent was correct to treat the services as imported services and to assess VAT on the reverse-charge basis.

The assessment of VAT on imported services was upheld.

Issue 4- Computer Recharges:

a) The Tribunal sought to determine whether the "computer recharges" were deductible revenue costs, or capital/finance-lease in character.

b) The Applicant argued that the computer recharge payments to Dataflo SA and Dimension Data were operating leases or service costs for Information Technology (IT) infrastructure, systems support, software, and maintenance. The Applicant stated that ownership of the equipment remained with the suppliers, risks and rewards did not transfer, and the arrangement did not meet the criteria for a finance lease under International Accounting Standard (IAS) 17.

c) The Applicant expensed the charges in its accounts and maintained that they were deductible revenue expenses.

d) The Respondent's witness testified that the Applicant claimed UGX 24,001,525,211 as computer recharges between 2013–2019; that the Applicant withheld tax on the payments but did not declare VAT on imported services. The Respondent requested the Applicant to provide asset registers, ledgers, agreements, goodsreceived notes, and customs import entries. The Applicant provided some documents, but did not provide customs import entries.

e) Furthermore, the Respondent's witness testified that the Financial Statements of Dataflo for 2010–2013 reported revenue as finance lease income and services, carrying assets as finance lease receivables, showing that the Applicant was treated as a lessee under a finance lease.

f) The Applicant's asset register included leased assets not capitalized, supporting the Respondent's conclusion that the payments were for imported services, not tangible goods.

g) The Respondent rejected the deductions because the payments lacked customs documentation, were not capitalized in the Applicant's asset register, and did not qualify as deductible operating expenses.

h) The Respondent relied on Section 22(2)(b) of the Income Tax Act, which disallows deductions not supported by documentary evidence of tangible assets, and argued the payments were properly reclassified as imported services liable to VAT and Income Tax.

i) The Tribunal noted that the Applicant maintained access to core IT infrastructure (hardware, software platforms, network, data-centre facilities, and ancilliary components, together with periodic support and training) on fixed quarterly charges over several years, an enduring advantage integral to its income-earning structure.

j) The Tribunal held that recurrent payments do not prevent capital character if the payments secure an enduring advantage forming part of the income-earning structure.

k) The Applicant acknowledged a low residual value at lease expiry relative to initial fair value. On the balance of probabilities, the Tribunal found that at least one limb of Section 58(3) of the Income Tax Act was satisfied, making them finance leases for tax purposes. The Tribunal further noted that in any case, in Dataflo's Audited Financial, the computer recharges were treated as a finance lease, which corroborated the finance lease character.

l) The Tribunal noted that the Applicant did not provide a split between fixed/principal and variable/service elements, nor did the Applicant produce asset-level particulars sufficient to base capital-allowance computations. It was further noted that this omission was material because the inability to distinguish between the fixed (possibly capital) and variable (perhaps recurrent service) components, prevents proper apportionment and undermines the Applicant's claim that the whole expenditure was of a revenue nature.

m) Noting that the Applicant withheld tax on some of the payments made to the non-resident suppliers in compliance with Section 83 of the Income Tax Act, the Tribunal held that such withholding constitutes final tax on the non-resident's Uganda-source income but does not alter the character of the underlying expenditure. Where a payment is capital in nature, it remains non-deductible even if withholding tax has been remitted.

n) The consequences of determining that the computer recharges are finance leases is that the payments must be apportioned into principal (capital) and interest (revenue) in accordance with Section 58 of the Income Tax Act. The interest component is deductible under Section 22(a), while the principal is not deductible under Section 22(3)(b) and must be added to the cost base/pool of the relevant asset class once identified.

o) The Tribunal noted that the Respondent did not deny the capital allowances under Section 27 of the Income Tax Act but conditionally deferred them pending the Applicant's furnishing of satisfactory asset-level particulars (identity, location, use and timing). It was found that the Applicant failed to produce documentation segregating these elements.

p) On recordkeeping, the Applicant argued that under the law, a taxpayer is only required to keep records for five years from the end of the relevant tax period. It maintained that since the Respondent requested records dating back to 2013, this was beyond the statutory retention period.

q) The Respondent emphasized that the audit process was ongoing from 2016 until 2021, and therefore, the obligation to maintain records continued until the audit was concluded. The absence of customs import entries and supporting documents justified disallowing the deductions.

r) The Tribunal noted that at the time the review exercise commenced in 2016, the Applicant should have had the records for 2013 (4 years earlier). It was emphasized that it is only logical that once an audit commences for a period, a taxpayer should keep the relevant documents for that period until the audit is closed, especially when the same taxpayer continuously seeks extensions of time to provide information.

s) Accounting classifications under International Accounting Standard (IAS) 17 or International Financial Reporting Standard (IFRS) 16 cannot override the statutory provisions of the Income Tax Act.

The Tribunal upheld the recharacterization and the resulting assessment.

Issue 5: Loss Crystallization:

a) The Applicant argued that the Respondent wrongly assessed loss crystallization by removing its 2017 carryforward loss of UGX 18.9 billion. The Applicant maintained that this adjustment was based on earlier additional assessments (2014 – 2017) which were themselves under dispute in TAT Application No. 33 of 2020. That by issuing a new assessment, the Respondent effectively preempted the outcome of the pending Tribunal case.

b) The Respondent's witness testified that the Applicant had been in a loss position for 2013–2017, but after the transfer pricing audit adjustments, the losses were eliminated. The Respondent argued that the loss crystallization was a consequential adjustment, meaning that the carryforward loss was overstated and had to be corrected. The Respondent maintained that the general audit liability does not nullify the transfer pricing audit liability.

c) The Tribunal cited Section 36 of the Income Tax Act and Section 25(1)(a) of the Tax Procedures Code Act and noted that the law intends that if earlier periods were wrongly computed, the Commissioner must amend those periods so that, for each such year, the assessed loss (or profit) is corrected. If new information shows that the losses were overstated, additional assessments may be issued for the affected period subject to Section 25(2) of the Tax Procedures Code Act.

d) The Tribunal further noted that the carry forward loss in TAT Application No. 33 of 2020 was substantially lower than the carry forward amount of UGX 18,923,430,582 as stated by the Applicant. Therefore, the Ruling in TAT Application No. 33 of 2020 was found to have no bearing on this instant case.

e) The Tribunal held that the liability arising from "loss crystallization" was not a separate item of tax but a necessary mathematical consequence of correcting earlier years.

f) Given the Tribunal's finding on the computer recharges, the Respondent's elimination of the 2017 carried-forward loss and the resulting positive 2018 liability arose from the re-computation, there was no double assessment.

The loss crystallization was found to be lawful.

The Tribunal upheld the Assessments of UGX 10,214,827,515 and the Application was dismissed with costs to the Respondent.

16

Exp Momentum (U) Limited Versus Uganda Revenue Authority, TAT Application No. 213 of 2023

Head Notes:

Rejection of Invalid Objections - Validity of Objections and Objection Decisions – Statutory Waiver of Taxes – Reversal of Double-Claimed Expenses

Brief Facts:

The Applicant, Exp Momentum (U) Limited, is in the business of marketing and advertising. The Respondent, Uganda Revenue Authority, conducted a return examination into the affairs of the Applicant and issued an Administrative Additional Income Tax Assessment amounting to UGX. 263,850,113 on the grounds that there were sales variances between Income Tax and Value Added Tax (VAT) returns.

In February 2022, the Applicant objected to the assessment on grounds that the variance in its VAT returns and Income Tax returns arose from timing differences in income recognition for VAT and income tax purposes. Further, the Applicant claimed that when filing the online objection, they erroneously entered the assessed amount in the non-disputed tax column instead of the disputed tax column.

The Respondent issued an objection decision on the basis that the Applicant had not disputed the assessed amount. Further, the Respondent issued an additional assessment of UGX. 33,554,047 based on an amended objection return to correct a double claim of UGX.111,813,498 in the Applicant's original income tax return. The Applicant disputed the additional assessment and penal tax for the period March 2016 on the basis that it was issued in respect of an outstanding VAT liability.

Issues for determination:

1. Whether the Applicant is liable to pay the Income Tax assessed?
2. Whether the Applicant is liable to pay the VAT assessed?
3. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mr. Siraj Ali; Mrs. Christine Katwe)

<u>Validity of the Objection:</u>

a) The Respondent argued that it issued the objection decision allowing the Applicant's objection on the ground that the Applicant did not dispute the assessed tax. The Applicant argued that it made an error when it stated that the tax liability not in dispute was UGX 263,850,113 and that this error was a technicality that could not render the other ingredients of the objection, invalid.

b) The Tribunal noted that the Respondent had, pursuant to the objection, issued a 'Valid Objection Notice'; that the Objection Notice described the grounds of objection;

that the Respondent requested the Applicant to provide documents in support of the objection; and that the Applicant provided the requested information.

c) It was further noted a review of the Valid Objection Notice confirmed that when a taxpayer files an objection, the Respondent is required to determine whether this objection is valid before proceeding to determine it on its merits. Sections B and C of the Valid Objection Notice showed that the system provides a mechanism through which invalid objections are sent back to the taxpayer and only valid objections are sent to the objections team for determination.

d) The Tribunal held that an objection which asserts two contradictory positions is invalid for being ambiguous, as no proper determination can be made by the Respondent. The Respondent ought to have rejected the objection for being invalid.

e) Further, an objection decision based on an invalid objection, is itself invalid. The Respondent should not have rendered an objection decision in respect of an invalid objection.

f) It was noted that the objection decision was based solely on the ground that the Applicant did not dispute the assessed amount without addressing the question of whether the variance arose as a result of accrual of income.

The Assessment of UGX 263,850,113 was remitted to the Respondent for consideration.

The Additional Income Tax Assessment:

a) The Applicant argued that the assessment was baseless, while the Respondent contended that the tax arose when the Applicant revised their income tax return to reverse a rental expense that the Applicant had double claimed.

b) The Tribunal held that a reversal of a double claim gives rise to tax equivalent to 30% of the reversed amount, as the effect of the reversal is to increase the chargeable income by the same amount.

The Income Tax of UGX 35,644,049 on the reversed double claim was upheld.

The VAT Penalty Assessment:

a) The Respondent imposed Penal Tax under Section 65(6) of the Valued Added Tax Act. The Applicant submitted that the VAT penalty of UGX 13,460,567 was outstanding as at 30th June 2020 and therefore, it ought to have been waived in accordance with Section 46 of the Tax Procedures Code Act.

b) The Tribunal held that if a statute says that a tax is waived, then it is waived, and the Respondent has no tight to claim it.

The VAT Penalty Assessment of UGX 13,327,296 was set aside.

The Application succeeded partially, failed partially, and was partially remitted to the Respondent, with orders that each party bears their own costs.

17

Finn Church Aid Uganda Versus Uganda Revenue Authority, TAT Application No. 366 of 2024

Head Notes:

Liability to pay Stamp Duty - Stamp Duty on Employment and Supplier Contracts – Meaning of an Instrument for Stamp Duty Purposes

Brief Facts:

The Applicant, Finn Church Aid Uganda, was registered in Uganda in 2014 as an international non-governmental organization working to support people in fragile and disastrous regions of Uganda. On 27th September 2024, the Respondent, Uganda Revenue Authority, issued the Applicant an assessment of UGX 53,800,000 for stamp duty on employment and supplier agreements that were executed in the period 2014 to 2024. On 5th October 2024, the Applicant objected to the assessment on the ground that they did not have the numbers of employment and supplier contracts assessed and that the Stamp Duty Act does not specify the party that should bear the cost of stamp duty in respect of employment and supplier contracts. On 4th December 2024, the Respondent issued its objection decision maintaining the assessment, hence this Application.

Issues for determination:

1. Whether the Applicant is liable to pay the stamp duty as assessed by the Respondent?

Ruling of the Tax Appeals Tribunal

(Ms. Crystal Kabajwara; Mrs. Kabakumba Masiko; Ms. Proscovia R. Nambi)

a) The Applicant contended that it was not liable to pay the stamp duty assessed on the ground that Section 2 of the Stamp Duty Act read together with Item 5 of the Second Schedule to the Act, do not impose any liability or obligation on the Applicant to pay stamp duty for contracts executed either for employees or service providers.

b) The Respondent argued that the Applicant executed employment and supplier contracts that accrued stamp duty and is therefore liable to stamp duty.

c) Section 2(1)(a) of the Stamp Duty Act provides as follows:

"(1) Subject to this Act, the following instruments shall be chargeable with duty in accordance with Schedule 2 to this Act –

(a) *Every instrument mentioned in Schedule 2 to this Act which, not having been previously executed by a person in Uganda, is executed by a person in Uganda and relates to property situated, or to a matter or thing done or to be done, in Uganda."*

d) Further, Section 2 of the Stamp Duty Act defines an "instrument" to include: *"a document by which a right or liability is, or purports to be created, transferred, limited, extended, extinguished or recorded."*

e) The Tribunal noted that the above definition is broad and thus, written contracts including employment and supply contracts fall within this definition as they create rights and liabilities.

f) Further, Section 3(1) imposes duty on all instruments listed in the Second Schedule to the Act, that are executed in Uganda. In this regard, Item 5 of the Second Schedule charges a flat rate of UGX 10,000 on every *"agreement or memorandum of an agreement"*.

g) The Tribunal noted that any written agreement executed in Uganda, not otherwise exempted, attracts stamp duty. The instrument is dutiable regardless of the income or profitability of the executors.

h) The Tribunal held that the Applicant's non-profit status or the fact that contracts might involve grants or service fees, was irrelevant because stamp duty is a tax that applies to documents and is not based on profit.

i) The Applicant submitted that the Respondent relied on Pay As You Earn (PAYE) returns and Withholding Tax returns to assess stamp duty and thereby made assumptions.

j) The Tribunal noted that whilst the information in PAYE and Withholding Tax returns is indicative of the existence of employment and supplier arrangements, the returns on their own do not specify the number of or the specific agreement that are dutiable.

k) The Tribunal further noted that the Respondent did not request for the said agreements during review and only requested for them a week before the objection decision.

l) The Applicant argued that the Stamps Act does not assign the liability and that if it does to the employer or contractor, that would be discriminatory.

m) Section 9 of the Stamps Act provides that: *"The expense of providing the proper stamp shall be as set out in Schedule 3 to this Act".* Paragraph 1 of the 3rd Schedule to the Stamps Act provides that: *"In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne, in the case of an instrument described in Schedule 2 to this Act, by the person drawing, making or executing the instrument."*

n) The Tribunal held that the Applicant's argument that the Act is silent on which party bears the duty, could not hold.

o) The Tribunal held that whilst it agreed with the Respond that employment and supplier contracts are chargeable to duty, it is important that the very existence and execution of the same is ascertained to enable the correct determination of the duty payable.

The Assessment was set aside and the case was remitted to the Respondent to re-compute the duty based on the actual agreements, with each party bearing its own costs of the Application.

18

G4S Secure Solutions Uganda Limited Versus Uganda Revenue Authority, TAT Application No. 98 of 2024

Head Notes:

Employment Benefits as Part of Employment Income - Pay As You Earn on Meals – The Equal Terms Condition of Employment Benefits

Brief Facts:

The Applicant, G4S Secure Solutions Uganda Limited, provides security solutions in Uganda. The Respondent, Uganda Revenue Authority, carried out a comprehensive audit on the Applicant for the period January 2018 to December 2022 and communicated administrative additional tax assessments to a tune of UGX 7,518,961,948 comprised of Income Tax, Value Added Tax (VAT), PAYE and Withholding Tax. The Applicant objected and the Respondent disallowed the objections, hence this Application.

During mediation, the parties resolved issues concerning VAT, WHT and Income Tax, and agreed to refer to the Tribunal for determination, PAYE of UGX 1,795,735,201 arising from meals provided to the Applicant's security guards at specific client premises.

Issues for determination:

1. Whether the Applicant is liable to pay the PAYE of UGX 1,795,725,201?
2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Ms. Proscovia R. Nambi; Mrs. Stella Nyapendi Chombo)

a) According to Section 19(1) (a) and (b) of the Income Tax Act, the value of any benefit granted forms part of a person's employment income and is subject to income tax.

b) The Income Tax Act does not define the term "benefit". The term is defined by Black's Law Dictionary, 10th Edition, on page 188 as *"the advantage or privilege; the helpful or useful effect something has"*.

c) In the present case, the Applicant provided its employees with meals depending on their deployment. The meals are an advantage or privilege that the Applicant accords the employees. It is reasonable to conclude that the meals are a taxable benefit.

d) The Applicant argued that they were not the provider of the meals and that the meals were provided by third-party suppliers at the Applicant's client premises following a request by the client. The Applicant further stated that they invoice the clients for the cost of the food, and they in turn pay the service providers.

e) The Tribunal noted that under the Income Tax Act, it is immaterial whether the meals are provided directly by the employer or by third parties under an arrangement with the employer.

f) Section 19(6) of the Income Tax Act states that a benefit is derived in respect of employment if it is: (a) provided by an employer or by third party under an arrangement with the employer or associate of the employer; provided to an employee or to an associate of the employees; and (c) provided in respect of past, present or prospective employment.

g) The Tribunal found, as a fact, that the meals were provided to certain employees under an arrangement facilitated and controlled by the Applicant. Even though the Applicant was reimbursed by clients, the Applicant procured the meals, remitted payment to caterers, and managed deployment. These elements constituted an arrangement with the employer within the meaning of Section 19(6) of the Income Tax Act.

h) The Tribunal also considered the exceptional circumstances under which benefits would ordinarily form part of taxable income are exempt from income tax. The Tribunal held that under Section 19(2)(e), for the meals to be excluded from the employees' taxable income, it must be available to all full-time employees, on equal terms; in other words, there should be no special treatment for categories of employees over others.

i) In the present case, the meals were not made available to all full-time employees on equal terms.

j) The Tribunal noted that at the hearing of the case, the Applicant's witness testified that operational and administrative staff are not given meals; not all guards are given meals; and only those guards who are deployed to particular sites are given meals in request by the client.

k) The 'equal terms' condition was not satisfied as access to the benefit was dependent on deployment to particular client sites where meals were provided, which is contingent upon assignment and not employee status. Rotational deployment does not constitute equality of entitlement as contemplated under Section 19(2)(e).

l) The Tribunal found that the Applicant is liable to pay the PAYE that they failed to withhold from the employees who received the meal benefit.

m) The Applicant's argued that the meals were made available to the employees only on request by the clients and the Applicant merely acted as a broker between the clients and the service providers.

n) The Tribunal held that this does not absolve the Applicant from accounting for tax on the value of the benefit. Under Section 142 of the Income Tax Act, liability attaches to the employer once it facilitates or arranges for a benefit in respect of employment, regardless of whether the employer recoups the cost from third parties.

o) The commercial arrangements between the Applicant and the suppliers do not diminish the value of the benefit nor the Applicant's duty to account for PAYE on the employee's benefit.

p) The Applicant further submitted that the assessment was erroneous because it did not consider the PAYE threshold of security personnel.

q) Section 6(1) of the Income Tax Act provides that the chargeable income of an individual for the year of income is charged at rates specified in Part 1 of the 4th Schedule to the Act.

r) The Tribunal noted that the taxable value per employee may not be apparent from each invoice. The Respondent adopted an indiscriminate approach, and while this may be convenient, it may not be accurate or complete.

s) There is a need for a more comprehensive and logical approach to determining the taxable value of the benefit. This requires the Applicant to provide the Respondent with the details of the employees who benefited from the meals for purposes of determining the PAYE due.

t) The Tribunal directed the Applicant to furnish a list of affected employees and their related documentation to enable accurate re-computation, pursuant to which, the Respondent was directed to recompute and issue a revised assessment reflecting the appropriate PAYE liability.

The Tribunal held that the Applicant is liable to PAYE; the Assessment was set aside for re-computation by the Respondent in accordance with the Ruling; Costs were awarded to the Respondent.

19 International School of Uganda Versus Uganda Revenue Authority, TAT Application No. 188 of 2024

Head Notes:

Withholding Tax on Interest Payments – Withholding Tax as a Final Tax – Exempt Organizations

Brief Facts:

The Applicant, International School of Uganda, provides education services and was granted an Income Tax Exemption by the Respondent for the period 2016 to 2020, during which period the Applicant earned interest of UGX 1,053,010,485 from fixed deposit accounts with Stanbic Bank and declared this interest as exempt income. The Respondent, Uganda Revenue Authority, issued assessments totaling UGX 315,905,143 for the same period, arguing that Withholding Tax (WHT) on interest from fixed deposits is not a final tax under the Income Tax Act.

The Applicant objected contending that WHT on interest paid to exempt organizations should be treated as a final tax with no further liability. The Respondent upheld the assessment stating that WHT as a final tax applied only to treasury bills and government securities under Section 139(a) of the Income Tax Act, and not to fixed deposits. The Applicant was dissatisfied and filed this Review Application.

Issues for determination:

1. Whether the tax withheld at source by Stanbic Bank is a final tax?

2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mrs. Stella Nyapendi Chombo; Ms. Proscovia R. Nambi)

a) Section 127 (1) of the Income Tax Act provides as follows: *"...a resident person who pays interest to another resident person shall withhold tax on the gross amount of the payment at the rate prescribed in Part IX of Schedule 4 to this Act".*

b) The Tribunal noted that Stanbic Bank, a resident person, paid interest to the Applicant, another resident person. Therefore, Stanbic Bank was required to withhold tax at a rate of 15%, which the bank rightfully withheld.

c) Section 139(a) of the Income Tax Act provides as follows:

"Where

(a) *Tax has been withheld under Section 127 on a payment of interest on treasury bills or other Government securities by the Bank of Uganda to any person, or by a financial institution to a resident individual, other than in the capacity of trustee, resident retirement fund, or to an exempt organization:*

(b) ....

(c) ....

The withholding tax is a final tax, and

(d) *No further tax liability is imposed upon the taxpayer in respect of the income to which the tax relates...."*

d) For a tax withheld to be treated as a final tax under Section 139, the transaction must fall within the two scenarios envisaged by the provision, namely:

(i) The tax should have been withheld on the payment of interest on treasury bills or other government securities by the Bank of Uganda to any person; or

(ii) The tax should have been withheld by a financial institution to a resident individual, other than in the capacity of trustee, resident retirement fund, or to an exempt organization.

e) The Tribunal held that the two scenarios are alternate as they are separated by the conjunction "or".

f) The Tribunal, while analyzing the second scenario, noted that, in the present case, the payment was made by a financial institution, Stanbic Bank.

g) The Tribunal further analyzed whether the Applicant is an exempt organization and noted that the Applicant, an educational institution was issued a written Ruling by the Commissioner General, stating that it is an exempt organization.

h) It was held that the tax which was withheld by Stanbic Bank from interest payments to the Applicant was a final withholding tax. As such, in line with Section 139(d) of the Income Tax Act, no further liability ought to have been imposed on the Applicant in relation to the income to which the tax relates.

i) Regarding the Respondent's argument in relation to Section 21(f) of the Income Tax Act, the Tribunal noted that the said Section should be read in harmony with the other provisions.

The Application was allowed with costs to the Applicant.

20

JK Country Homes Limited Versus Uganda Revenue Authority, TAT Application No. 41 of 2024

Head Notes:

Taxation of Rental Income – Rental Income Deductions

Brief Facts:

The Applicant, JK Country Homes Limited, deals in real estate. On 11th September 2023, the Respondent, Uganda Revenue Authority, issued the Applicant an Administrative Additional Income Tax Assessment amounting to UGX 17,286,922 arising from disallowed expenses in respect to its declared rental income for the period 1st July 2021 to 30th June 2022. The Applicant objected and the Respondent disallowed the objection, hence this Application.

Issue for determination:

1. Whether the Applicant is liable to pay the tax assessed?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mrs. Kabakumba Masiko; Mr. Willy Nangosyah)

a) The Applicant claimed that the assessment was unlawful because: (i) The Respondent capped the Applicant's expenses to 75% of the Applicant's rental income. The Applicant claimed that the capping only applies to individuals and partnerships; and (ii) that as the Applicant is a company, all expenses claimed ought to have been allowed as a deduction against its rental income.

b) The Applicant claimed that they obtained a loan from Stanbic Bank issued to the Applicant's shareholder for purposes of developing the property which generates the rental income that was subject to tax.

c) The Respondent argued that the loan in question was obtained by the Applicant's shareholder in his individual capacity and thus, cannot, for tax purposes, be treated as a loan of the Applicant. Therefore, expenses attributed to the loan were not expenses wholly and exclusively incurred by the Applicant in the production of the rental income.

d) The Tribunal noted that the period in question was 1st July 2021 to 30th June 2022 and that the correct provision for purposes of determining the allowable deductions is the provision that was repealed by the Income Tax (Amendment Act, 2022. Under Section 5(3)(c) of the said Act, it was provided that, *"Expenditures and losses incurred by a person, other than an individual, in the production of rent shall be allowed as a deduction under this Act for any year of income."*

e) The Tribunal reviewed the documents provided by the Applicant, namely: (i) A loan agreement between the Applicant's shareholder and Stanbic Bank dated 10th April 2015; and (ii) Bank statements of the said shareholder. It was noted that the purposes of the loan was to refinance an existing salary loan and to purchase land for future development. There was nothing in the agreement to suggest that the shareholder borrowed on behalf of the Applicant.

f) Further, the Tribunal noted that there was no board resolution, shareholder agreement, or corporate documentation presented to show that the company assumed liability or reimbursed the shareholder for the loan.

g) The bank statement adduced was for the shareholder and there was no evidence that the funds obtained from Stanbic Bank were transferred to the Applicant's bank account. It was admitted at the hearing that the Applicant does not own a bank account.

h) The Tribunal also noted that the Applicant's failure to provide the loan documentation at the objection stage despite repeated requests by the Respondent indicated the non-existence of information that points to the Applicant's ownership of the property or the liability.

i) The Applicant's witness admitted that the property comprised in FRV 1421, Folio 23, Kyadondo, Block 242, Plot 632, Bukasa, Kirinya, is registered in the names of the shareholder. The Tribunal found that this, coupled with the other evidence, showed that the property and rental income belonged to an individual and not a company.

j) It was held that the Respondent rightfully treated the rental income as that of an individual and not of a company by applying the 75% cap to expenses in line with Sections 22(1)(c) of the Income Tax Act. The Respondent lawfully disallowed the expenses purportedly incurred by the Applicant in respect of the loan including the corresponding interest expense.

The Application was dismissed with costs to the Respondent.

21

Lake Victoria Hotel Limited Versus Uganda Revenue Authority, TAT Application No. 300 of 2024

Head Notes:

Rental Income vis-a-viz Business Income – Rental Income from Leased Properties

Brief Facts:

The Applicant, Lake Victoria Hotel Limited, is a hotel establishment engaged in the hospitality industry in Uganda with its primary objectives including operation of hotels, restaurants, cafes, conference centers, lodging houses, safari lodges, as well as operating as a refreshment room contractor, refreshment room proprietor, caterer, travel agent, dry cleaner, theatre operator and manager, and tourist agent, among others.

The Applicant entered into a lease agreement dated 21st December 2020 and leased the hotel facility and its establishments to Granada Hotels Uganda Limited, a company under the Granada Hotel Group. The lease facility agreement was executed with an annual amount of USD 850,000.

On 20th March 2024, the Respondent, Uganda Revenue Authority, issued the Applicant with an Administrative Income Tax Assessment of UGX 810,470,298 for the years 2021 and 2022, arising out of the undeclared rental income of UGX 2,701,567,662. The Applicant objected contending that the hotel business, including goodwill and inventory, had been transferred to Granada Hotel Limited, and that the income charged constituted business income and not rental income. The Respondent issued its objection decision maintaining the assessment of UGX 118,460,942 based on the characterization of the income received from leased properties as rental income.

Issues for determination:

1. Whether the income received by the Applicant is Business income or rental income?
2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mrs. Stella Nyapendi Chombo; Ms. Safi Grace)

a) The Tribunal noted that the Income Tax Act contains a special regime for the taxation of rental income which is treated differently to the other gross income.

b) Section 5 of the Income Tax Act imposes tax on any person who has rental income for the year of income. Further, Section 5(3) of the Income Tax Act categorically states that rental tax is separate from the tax imposed under Section 4 and is not to be included in the gross income of the person that is subject to tax for any year of income.

c) The Tribunal noted that the Income Tax Act ringfences rental income from other kinds of business income that would ordinarily have been taxed under Section 4, had it not been for the exclusion under Section 5(3) of the Income Tax Act.

d) Section 2 of the Income Tax Act defined the term 'rent' as *"Any payment, including a premium or like amount, made as consideration for use or occupation of, or the right to use or occupy, land or buildings".* Therefore, for an item of income to qualify as rent, it must have been made in consideration for the use of occupation of land or buildings.

e) The Tribunal reviewed the lease agreement dated 21st December 2020 which transferred the hotel facility and its establishment to Granada Hotels Uganda Limited and established that the main purpose of the transaction was to grant the lessee rights to use the building comprising the various rooms.

f) The Tribunal further noted that the obligations imposed upon the lessee such as maintaining the hotel at a 4-star standard, termination in case of bad services, maintaining designated employees to monitor the activities, and ensuring that the standards of the hotel are met, are no different from conditions precedent to a property lease arrangement, such as restrictions on the use of property.

g) The Tribunal found that the remuneration for the transactions under clause 7 of the agreement with an agreed annual lease amount of USD 850,000 exclusive of taxes is in itself an intention to let out property and not a business. If the Applicant intended to let a business, the consideration would have reflected such intention with a share of the earnings generated from operating the hotel business.

h) The Tribunal, having studied the agreement in its entirety, concluded that the consideration received by the Applicant was for the right to use and occupy property, which falls squarely within the statutory definition of rental income.

i) Although the agreement included operational obligations for the lessee, the Tribunal found that these were incidental to the main purpose of granting possession and use of the property.

<u>The Assessment of UGX 118,460,942 was upheld and the Application was dismissed with costs to the Respondent.</u>

22 Machame Estates Limited Versus Uganda Revenue Authority, TAT Application No. 49 of 2025

Head Notes:

Withholding Tax on Purchase of a Business Asset – Computation of Withholding Tax on a Land Swap Arrangement

Brief Facts:

The Applicant, Machame Estates Limited, entered into a land swap arrangement with food empire limited, where the Applicant exchanged their land in Kamira sub county, Kikyusa Bulemezi-Luwero District for land comprised in FRV 838 FOLIO 24 Plot 83-85 Prince Charles Drive. The Respondent, Uganda Revenue Authority, issued the Applicant with an assessment of 6% withholding tax claiming that the Applicant purchased property and did not withhold the tax. The Applicant objected to the said assessment asserting that the transaction was a land swap and not purchase. On 5th February 2025, the Respondent issued an objection decision rejecting the Applicant's objection, asserting that the transaction constituted a purchase and that the Applicant was obliged to withhold tax.

Issues for determination:

1. Whether the Applicant is liable to the withholding tax that was assessed by the Respondent in respect of the land swap arrangement?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Ms. Proscovia R. Nambi; Mrs. Stella Nyapendi Chombo)

a) The Applicant contended that the transaction is not liable to Withholding Tax as it was a land swap arrangement and not a 'purchase' within the meaning of Section 130(2) of the Income Tax Act.

b) Section 49 of Income Tax Act states that an exchange of assets is treated as a disposal for income tax purposes, however, Section 51(1) provides that the consideration received on disposal of an asset includes the market value at the date of the disposal of any consideration received in kind.

c) The above provision means that even where the consideration is in kind, the value of the consideration should be established so that its monetary equivalent is determined for income tax purposes.

d) In the present case, the consideration that the Applicant gave for the property on

Prince Charles Drive was their land in Luwero. Therefore, for income tax purposes, the transferor is deemed to have disposed of the property at Prince Charles Drive for a monetary sum equivalent to the market value of the land in Luwero.

e) The Tribunal held that based on the above, it is reasonable to conclude that the transferor derived income subject to income tax, when they disposed of their land at Prince Charles Drive to the Applicant.

f) Although the Applicant alleged that the property swap did not amount to a purchase, the transaction led to a change in ownership where the Applicant became the owner of the property. Therefore, in the eyes of equity, there was a purchase and the Applicant ought to have withheld the tax.

g) The Respondent assessed Withholding Tax equivalent to 6% of the value of the property as was established by the Chief Government Valuer for purposes of stamp duty to be UGX 14.8 Billion.

h) For purposes of ascertaining the Withholding Tax payable, the market value of the consideration, being the land in Luwero should have been established and this would have formed the base for determining the 6% Withholding Tax payable.

i) The Income Tax assessment of UGX 888,000,000 was set aside and the Respondent was advised to re-assess Withholding Tax based on the market value of the land in Kamira Sub-county, Kikyusa Bulemezi-Luwero District that prevailed as at December 2023 being the period of the land swap arrangement between the Applicant and the transferor.

The Application was dismissed with costs to the Respondent.

23

Nile Breweries Limited Versus Uganda Revenue Authority, TAT Application No. 135 of 2024

Head Notes:

Statutory Timelines for challenging Objection Decisions – VAT on Local Sales – Place of Supply for VAT Purposes – ZeroRated Exports – Agency vis-a-viz Local Sales – Tax Point for Local Excise Duty

Brief Facts:

The Applicant, Nile Breweries Limited, manufactures alcoholic beverages for both local sale and export to South Sudan and the Democratic Republic of Congo. In March 2024, the Respondent, Uganda Revenue Authority, issued additional administrative assessments totaling UGX 18,509,052,729 (Local Excise Duty of UGX 10,465,959,379 and VAT of UGX 8,043,093,350) for the period January – November 2022. The Respondent contended that the Applicant's supplies to Kabaco (U) Ltd and Ituri Investments Ltd were local sales misclassified as exports. The Applicant objected, arguing that Kabaco and Ituri were export agents under a principalagent relationship, and that the beer was exported. The Respondent disallowed the objections, hence this Application.

Issues for determination:

1. Whether the Application is time barred in respect of some of the objection decisions?
2. Whether the Applicant is liable to pay VAT as assessed?
3. Whether the Applicant is liable to pay Local Excise Duty as assessed?
4. What remedies are available to the parties?

Ruling of the Tribunal:

(Mrs. Stella Nyapendi Chombo, Ms. Proscovia R. Nambi, Mrs. Christine Katwe)

Timelines for Filing Review Application:

a) The Respondent contended that part of the Applicant's challenge was time barred. The Applicant contended that this issue was improperly raised for the first time in submissions. The Tribunal noted that jurisdictional issues including statutory timelines may be raised at any stage, even if not pleaded.

b) The Tribunal noted that the application for review was filed on 30/05/2024, while several objection decisions were communicated in October 2022, November 2022 and January 2023. The Applicant did not apply for an extension of time for any of the disputed assessments.

c) It was held that the Tribunal lacks jurisdiction over the assessments whose objection decisions fall outside the statutory filing period. The preliminary objection succeeded.

VAT on Local Sales:

a) Zero-rating applies only where goods are exported by the supplier according to Section 24 and Paragraph 1(a) of the Third Schedule to the VAT Act. Regulation 11 of the VAT Regulations prescribes mandatory proof of export.

b) A taxable supply occurs when goods are delivered or made available in Uganda. Zero-rating requires the supplier to export the goods and issue a zero-rated export invoice to a foreign purchaser. The legal test for an export is therefore both transactional (supply) and documentary (proof of export).

c) The Applicant argued that Kabaco and Ituri were export agents under Section 13(1) of the VAT Act, such that any exports by them constituted exports by the Applicant. The Tribunal noted that Section 13 applies where a genuine agency relationship exists.

d) A genuine agent (i) does not take title to the goods; (ii) does not pay a purchase price; (iii) earns a commission from the principal; and acts on behalf of the principal and binds the principal to third parties.

e) The Tribunal noted that the exhibited agreements bore characteristics of a sale, not agent, and were inconsistent with agency for the following reasons:

    (i) Upon payment, the goods were delivered ex-works and title passed to Kabaco/Ituri. The agents were also liable for liabilities, risk and damages.

    (ii) The agreement required Kabaco/Ituri to pay the "purchase price" at ex-factory price. Agents do not pay purchase price. Kabaco/Ituri were purchasers not mere agents earning a commission.

    (iii) The agreements had clauses requiring Kabaco/Ituri to register as exporters with the Respondent and obtain export licenses, as well as bear penalties for non-compliance. These obligations are borne by independent exporters, not agents.

(iv) The agreements prohibited the companies from representing the Applicant.

(v) Kabaco/Ituri earned from their own resale margin, not an agency commission.

f) Under Section 15 of the VAT Act, the supply occurred in Uganda because the goods were delivered ex-works at Jinja/ Mbarara; title passed at the factory gate; consideration was paid in Uganda; and Kabaco/Ituri thereafter arranged transport and export.

g) The Tribunal noted from the evidence that the Applicant did not issue zero-rated invoices to foreign buyers. They did not present export documentation in their own name for all consignments, nor did they deliver goods to a port of exit as required by Regulation 11.

h) The Tribunal further relied on the case of *Nile Breweries Ltd V URA, HCCA No. 113 of 2023* where the High Court held that similar agreements constituted sales, not agency. Since the factual matrix in the present case was not materially distinguishable, the Tribunal held that it was bound to apply the interpretation of the High Court.

i) The Tribunal found that the Applicant made taxable supplies in Uganda to Kabaco and Ituri and the subsequent exportation by those companies did not convert the Applicant's local sales into exports. The VAT Assessments were found to be proper and lawful.

Excise Duty on the Goods:

a) Excise duty is imposed on locally manufactured excisable goods under Section 4 and 3(2)(b) of the Excise Duty Act. Beer is an excisable good under Schedule 2 to the Excise Duty Act.

b) The evidence showed that goods were removed ex-works from Jinja/ Mbarara; title and risk passed to Kabaco/Ituri upon removal, and full payment was made before removal. Therefore, LED became payable upon the goods leaving the factory premises, regardless of their subsequent export.

c) Remission under Section 10(3a) only applies where the manufacturer exports the goods, and the Commissioner is satisfied that the goods have been exported by that manufacturer.

d) The Applicant did not export the goods, issue export invoices, or deliver the goods to a port of exit. Kabaco and Ituri exported the goods as independent purchasers, not as agents. The Applicant therefore did not qualify for remission. The LED Assessments were upheld.

The VAT and LED Assessments of UGX 18,509,052,729 were upheld in full and the Application was dismissed with costs to the Respondent.

24

Rwenzori Commodities Limited Versus Uganda Revenue Authority, TAT Application No. 36 of 2024

Head Notes:

EBITDA - Capping of Interest Expense – Net Interest – Gross Interest – Applicability of Accounting Principles in Tax – Applicability of International Best Practices vis-a-viz Domestic Law

Brief Facts:

The Applicant, Rwenzori Commodities Limited, grows tea and manufactures tea products. The Respondent, Uganda Revenue Authority's International Tax Team reviewed the Applicant's Corporate Income Tax returns for 2019 - 2020 and found that the Applicant had claimed an interest expense of UGX 1,738,250,300 that exceeded the 30% Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA) cap. Relying on Section 25(3), the Respondent disallowed this excess interest and raised Additional Assessments totaling to UGX 521,475,118.

The Applicant objected on grounds that it had paid both interest on debt and earned taxable interest income and the net interest expenses should be used in the EBITDA calculation. The Applicant contended that the Respondent's use of gross interest was contrary to international best practice (OECD BEPS Action 4) and resulted in double taxation. The Respondent rejected the objection maintaining that the interest expenses were correctly considered in the computation of EBITDA.

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; Mr. Siraj Ali; Mrs. Christine Katwe)

a) Section 38(1) of the Income Tax Act which provides that: *"A taxpayer's method of accounting shall conform to generally accepted accounting principles".* The Tribunal noted that while accounting principles govern how taxpayers maintain their financial records, taxation does not always follow accounting.

b) The Tribunal analysed Section 25 of the Income Tax Act which was at the heart of the dispute and noted that the provision caps "deductible interest", which is the interest amount that would otherwise have been allowed under subsection (1).

c) The Tribunal further noted that deductible interest is interest incurred and nowhere does the Act refer to net interest. The EBITDA formula in subsection (5) reinforces that the interest to be capped is the amount deducted under subsection (a), which is the gross interest expense.

d) It was noted that net interest is not "interest incurred", neither does it arise from a debt obligation nor is it tax deductible. Net interest refers to the interest income after deducting all interest expenses such as interest paid on deposits or borrowed funds.

e) Therefore, a plain reading of the provision reveals that the section is concerned with the interest expenses that was incurred by the taxpayer which in the absence of the capping provision, would have been fully deductible. It does not apply to net interest income or net interest expense.

f) The Tribunal emphasized that the words "interest incurred" in Section 25(1) and "deductible interest" in Section 25(3) mean exactly what they say and there is no reference or basis in the Act for netting interest income from interest expense. Accordingly, only gross interest incurred qualifies for the deduction and is therefore the basis for the 30% EBITDA limitation.

g) The Tribunal noted that the OECD BEPS Action Plan 4 recommends the use of net interest expense to prevent double taxation and ensure economic neutrality. However, even where OECD guidelines are persuasive, they cannot override a clear statutory provision.

h) Further, the OECD BEPS Action Plan came into force in 2015, while Section 25 in its current form was introduced by the Income Tax (Amendment) Act, 2018, 3 years after the BEPS Project. If there was any intention to align Section 25 with the BEPS Action Plan 4, the BEPS recommendations would have been fully adopted, but this was not the case.

i) The Tribunal held that the Respondent correctly applied Section 25 of the Income Tax Act and there was no misinterpretation or misapplication of the law.

The Applicant was found liable to pay the tax assessed; and the Application was dismissed with costs to the Respondent.

25

Sai Office Supplies Limited Versus Uganda Revenue Authority, TAT Application No. 12 of 2024

Head Notes:

EBITDA – Tax EBITDA vis-a-viz Accounting EBITDA - Allowable Deductions – Capping of Interest Deductions – Carry Forward Losses as Allowable Deductions

Brief Facts:

The Applicant, Sai Office Supplies Limited, trades in office supplies, computers and stationery. In their final Income Tax return for the year 2019, the Applicant claimed an interest deduction/ expense amounting to UGX 1,099,803,000. In determining their Tax EBITDA under Section 25 of the Income Tax Act, the Applicant did not deduct carry forward losses on the understanding that they are not an allowable deduction in respect to the computation of Tax EBITDA. Upon review, the Respondent Uganda Revenue Authority found that the Applicant's interest deduction was overstated as a result of having not included carry forward losses in the allowable deductions that are offset against gross income. This resulted in tax liability of UGX 291,603,729 which the Respondent assessed. The Applicant objected and the Respondent issued an objection decision maintaining the assessment, hence this Application.

Issues for determination:

1. Whether the Applicant is liable to pay the tax assessed?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mrs. Kabakumba Masiko; Ms. Rosemary Najjemba)

a) The dispute concerned the interpretation of Section 25 of the Income Tax Act which restricts the amount of interest that taxpayers who are members of a group may claim as deductions for income tax purposes. The claimable interest is limited to 30% of Tax EBITDA.

b) The Tribunal noted that the purpose of Section 25 of the Income Tax Act is to restrict deductions claimed by taxpayers who are members of a group. This is aimed at preventing such taxpayers from using interest payments to suppress their chargeable income.

c) The general rule of thumb is that all expenditures and losses incurred by a taxpayer during a year of income are allowable deductions save for those specifically mentioned under Section 22(2) as non-allowable. The purpose of Section 22 is to determine the chargeable income of a person for a year of income.

d) Section 22(1) of the Income Tax Act does not enumerate different types of allowable deductions. However, Sections 23 – 36 cover provisions which contain special considerations for certain types of allowable deductions. These provisions lay down the rules for treatment of the specified allowable deductions. For instance, whilst the general rule is that all expenditures and losses are allowable deductions, Section 25 of the Income Tax Act caps interest deductions.

e) Section 36 of the Income Tax Act treats carry forward losses as an allowable deduction for purposes of ascertaining chargeable/ taxable income for a year of income.

f) The Tribunal noted that, in effect, an assessed loss arises when the total deductions exceed the gross income. The resulting loss, is then treated as a carry forward loss, that is an allowable deduction in determining the taxpayer's future chargeable income.

g) The Tribunal noted that there was no need for Section 25 of the Income Tax Act to specify carried forward losses since they are treated as allowable deductions for income tax purposes. If the Legislature intended for carried forward losses to be excluded, the provision would have been worded to that effect, as Section 36 has historically existed in the Income Tax Act and carry forward losses have always been treated as allowable deductions.

h) The Tribunal further held that it is not correct that allowable deductions are limited to expenses incurred during the year of income. A holistic and harmonious interpretation of the Act indicates that Section 22 (1) which contains the general rule in respect of expenditures and losses incurred in the year of income, is subject to other provisions of the Act such as Section 36 which treats other items such as carry forward losses which may not have been incurred in the current year of income, as allowable deductions. The same principle applies to Section 25 of the Income Tax Act which allows the excess interest to be carried forward for not more than three years.

i) The Tribunal held that the Applicant's argument that Section 25 only applies to current year deductions, could not hold since excess interest can be carried forward to future years of income.

j) The Tribunal agreed with the Applicant that EBITDA is derived from a typical income statement, which means that is derived from accounting EBITDA. However, the Tribunal pointed out that the language used in Section 25 of the Income Tax Act is "Tax EBITDA" which differs from Accounting EBITDA.

k) In the same vein, deductions cannot be limited to current year expenses as is the practice in accounting.

l) Where taxable profits are generated by a taxpayer, the interest restrictions under Section 25 would most likely come into play. However, if the taxpayer is loss making, it invariably follows that Section 25 will serve its purpose to restrict interest deductions for loss making entities.

m) The Tribunal held that the inclusion of carry forward losses in allowable deductions in the Tax EBITDA formula is in line with the treatment of such losses as allowable deductions for income tax purposes.

The Application was dismissed with costs to the Respondent.

26

Shahil Investments Limited Versus Uganda Revenue Authority, TAT Application No. 82 of 2024

Head Notes:

Best Judgment Assessments – Duplication of Assessments – Cost of Sales in Calculating Profits – Input Tax – Proof of Invoice Trading – General Damages in Tax Matters

Brief Facts:

The Applicant, Shahil Investments Limited, is a limited liability company engaged in the distribution of hardware materials in Uganda. Between 2018 and August 2022, the Respondent Uganda Revenue Authority's Domestic Taxes Department conducted three audits of the Applicant's tax affairs and further investigations were carried out by the Tax Investigations Department including a search and seizure exercise at some of the Applicant's premises. During this exercise, the Respondent seized business records and conducted physical stock-taking in selected branches. Following these investigations, the Respondent concluded that the Applicant had significantly under-declared sales and had allegedly facilitated VAT evasion through invoice trading during the period 2021 - 2022.

The Respondent issued multiple Administrative Additional VAT and Income Tax Assessment with total liability of UGX 2,786,178,077. The Applicant objected principally challenging the additional estimated sales and methodology. The Respondent issued objection decisions upholding the assessments stating that the Applicant had failed to provide sufficient supporting documents. The Applicant contended that this was unfair because the Respondent seized its documents during the investigations, hence this Application.

Issues for determination:

1. Whether the impugned tax assessments were lawful and valid in fact and in law?
2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Proscovia R. Nambi; Ms. Grace Safi; Mrs. Kabakumba Masiko)

The Power to make Additional and Estimated ("Best Judgment") Assessments:

a) Under Section 12 of the Tax Procedures Code Act, a default assessment may be issued where a taxpayer fails to furnish a tax return as required by law. Under Section 25 of the Tax Procedures Code Act, an additional assessment may be raised where the Commissioner is satisfied that the taxpayer has been under assessed, has failed to assess tax correctly, or has made an omission or error in a return.

b) The Tribunal noted that these provisions, though not using the phrase "best judgment", effectively grant the Commissioner authority to estimate a taxpayer's liability where necessary information is unavailable, incomplete, or unreliable.

c) It was stated that while the Commissioner enjoys broad discretion in issuing such assessments, the exercise must be rational, evidentially supported, and procedurally fair. AN estimated assessment must have a reasonable basis and should not be arbitrary, capricious, or devoid of factual underpinning.

d) The Commissioner is required to rely on objectively relevant material, whether derived from the taxpayer's partial records, industry benchmarks, third-party data (such as customs or bank information), or other credible sources.

e) Where the Respondent establishes that a taxpayer had engaged in invoice-trading or fictitious supplies, the Commissioner may disallow input tax credit, and rely on Section 32 of the Value Added Tax (VAT) Act and Section 25 of the Tax Procedures Code Act to raise further assessments.

f) Where the Respondent alleged invoice trading, it must prove, on the evidence, that the underlying supplies did not take place or that the taxpayer knew or ought reasonably to have known that the transactions were part of a fraud.

Duplication and Overlap of Assessments:

a) The Respondent's witness acknowledged that there were contradictions and overlaps between assessments issued by the different teams of the Respondent from Domestic Taxes and Tax Investigations Department for the same periods and that the teams had not fully reconciled their figures. The witness also confirmed errors in computation and that bank deposits traceable in the cash books had been double-counted.

b) The Tribunal was satisfied that the Applicant had shown that part of the assessed amounts represented double or overlapping taxation of the same sales.

Computational Errors and Double-counting:

a) The Applicant's witness testified that the Respondent added bank deposits to cashbook sales, even where such deposits were already recorded in the cash books, and treated the total as "sales increment", thereby double-counting those receipts.

b) The Tribunal found that the computational flaws were material and that the Applicant had demonstrated that the assessments were excessive.

Use of Estimates and Rejection of Records:

a) The Respondent relied on estimates, treating all unexplained deposits into specific bank accounts as undeclared sales of the Applicant. The Respondent's justification was that the Applicant's records were incomplete or unreliable.

b) The Respondent's witness confirmed that the audit team reviewed cashbooks for Kampala and Paidha, but lacked records for other branches. The Respondent also disregarded the cashbooks from Pondwe and Bwera as inauthentic but never produced the investigation report or other forensic basis for such a finding. The Respondent treated all unexplained deposits from these branches as undeclared sales.

c) The Tribunal held that the Respondent had not shown a rational basis for discarding entire branch records while still attributing all bank deposits from those branches as undeclared sales. That approach amounts to presuming non-compliance first, and then forcing the numbers to fit the presumption.

Mischaracterization of Corporation Tax:

a) The Applicant contended that Corporation Tax was computed on estimated sales alone, without considering cost of goods or other deductible expenses, contrary to Section 18 of the Income Tax Act.

b) The Respondent's witness admitted that she did not know the Applicant's cost of goods sold and that the Respondent, having identified undeclared sales from bank lodgments, effectively treated these amounts as taxable income without articulated profit calculation.

c) The Tribunal noted that Income Tax is a tax on profits, not on gross receipts. Section 18(1) of the Income Tax Act imposes income tax on a person's chargeable income, which, for a business, is the profits or gains derived from that business after deducting allowable expenditures, including cost of goods sold.

d) It was stated that while the Respondent is not required to calculate profits with mathematical accuracy in a best-judgment assessment, it must at least make a reasonable allowance for cost of sales where it is evident that the taxpayer trades in physical goods and purchase records exist, more so where the Respondent itself has seized those records.

e) Since no allowance for cost of sales was shown, the Tribunal agreed with the Applicant that the Corporation Tax assessment was misconceived in law for levying tax on gross turnover, contrary to Section 18 of the Income Tax Act.

Invoice Trading and Fictitious Sales:

a) The Respondent's case was that the Applicant engaged in invoice trading and fictitious sales contending that the Applicant had failed to prove the complete supply chain. The Applicant countered that the Respondent failed to produce Electronic Fiscal Receipting and Invoicing Solution (EFRIS) records or other evidence to prove that these transactions were fictitious.

b) The Tribunal noted that the Respondent did not tender into evidence the investigation report not the EFRIS reports nor reconciliations relied upon in the investigation. There were also no written statement or confirmations from the alleged third-party companies denying transacting with the Applicant.

c) The Applicant presented evidence that VAT on may of the challenged transactions had been actually declared and paid and the Respondent had accepted those returned without rejection in EFRIS.

d) Further, the Respondent's witness conceded that she could not state the precise value of undeclared or fictitious sales and that those VAT returns still stood in the system.

e) The Tribunal held that the Respondent, having accepted VAT returns and payments in respect of certain supplies, could not, absent clear evidence of fraud, simply re-label those same supplies as fictitious to support new assessments.

f) It was found that the Respondent did not establish on the evidence that the Applicant engaged in invoice trading on the scale reflected in the impugned assessments, nor that the vast sums assessed as undeclared sales were justified correctly.

Remedies:

a) The Applicant prayed for vacation of the assessments, award of damages for inconvenience suffered and costs for the Application.

b) The Tribunal set aside the objection decisions and vacated the assessments pursuant to Section 20 of the Tax Appeals Tribunal Act.

c) The Tribunal held that while Section 22(6) of the Tax Appeals Tribunal Act empowers the Tribunal to award damages, such damages must be based on pleaded and proved loss. They must be compensatory rather than punitive.

d) The Applicant did not lead evidence of quantifiable economic loss directly attributable to the impugned assessments. The Tribunal held that the inconvenience and uncertainty suffered, while unfortunate, are inherent risks of a contested tax audit and do not, without more, ground an award of general damages against a public authority carrying out its statutory mandate. Further, there was insufficient evidence of malice or bad faith to justify an exceptional award of damages. The prayer for damages was declined.

The Application was allowed, the assessments were vacated, and costs were awarded to the Applicant.

27

Slunko (U) Limited Versus Uganda Revenue Authority, TAT Application No. 28 of 2025

Head Notes:

Allowable Deductions in Rental Income – Capital Expenditure vis-a-viz Revenue Expenditure – Capping of Allowable Deductions

Brief Facts:

The Applicant, Slunko (U) Limited, is engaged in the business of real estate activities with owned or leased properties. The Respondent, Uganda Revenue Authority, conducted a compliance check into the Applicant's affairs and established that the Applicant had filled a nil Income Tax return yet it had received Rental Income of UGX 113,142,603 according to the previous year's declaration. On 23rd October 2024, the Respondent raised an additional Income Tax assessment of UGX 33,942,780 for the period July 2022 to June 2023. The Applicant objected to the entire assessment on ground that the correct gross Rental Income was UGX. 103,252,888. The Respondent issued an objection decision partially allowing the objection and adjusting the tax from UGX 33,942,780.90 to UGX. 15,487,933.20. The Applicant being dissatisfied with the objection decision filed this Application for review.

Issue for determination:

1. Whether the Applicant is liable to pay the tax assessed?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mr. Willy Nangosyah; Ms. Rosemary Najjemba)

a) The Applicant challenged the Respondent's application of a 50% cap under Section 22(2) of the Income Tax Act, to all the Applicant's expenses, including carried forward losses and Industrial Building Deduction (IBD).

b) The Applicant argued that carried forward losses, expenditure of a capital nature, and IBD should not be subjected to the 50% cap, and that only expenditure of a revenue nature should be capped.

c) The Respondent maintained that only expenditures meeting the conditions under Section 22(1)(c) were allowable against rental income, and that such deductions were capped at 50%.

d) The Tribunal held that the Income Tax Act distinguishes between revenue and capital expenditure. Under Section 22(1)(c), only expenditures and losses of a revenue nature that are incurred in the same year as the rental income are deductible.

e) By contrast, carried forward losses, though of a revenue nature, relate to prior years and therefore do not qualify since they were not incurred in the current year of income.

f) Accordingly, carried-forward losses cannot be deducted against rental income. On the other hand, industrial/commercial building allowances are treated as revenue in nature and are allocated annually. They qualify as deductible but like all other revenue expenditures incurred in the year, they remain subject to the 50% cap on rental income.

g) The Tribunal agreed with the Respondent that the capping provision under Section 22(1)(c) only applies to current-year revenue expenditure. Expenses outside that scope, such as carried-forward losses, are not deductible at all.

<u>The Application was dismissed with costs to the Respondent.</u>

28

Total Energies EP Uganda Limited Versus Uganda Revenue Authority, TAT Application No. 131 of 2024

Head Notes:

Taxpayers Duty to Provide Information – Penalty for Failure to Provide Information – Transfer Pricing Audits – Harmonious Interpretation of Tax Statutes

Brief Facts:

The Applicant, Total Energies EP Uganda Limited, operates the Tilenga oil and gas project. On 15th June 2023, the Respondent, Uganda Revenue Authority, commenced a transfer pricing audit of the Applicant's transactions with associated/ related entities. On 15th August 2023 and 18th August 2023, the Respondent requested various documents and information from the Applicant to aid the transfer pricing audit. On 27th November 2023, the respondent wrote to the Applicant requiring that all information in relation to the transfer pricing audit be provided by 31st December 2023 and that a failure would result in a penalty of USD 500,000 in accordance with Section 89QA(1) of the Income Tax Act (currently Section 112).

On 10th January, the Applicant provided information and clarified that a substantial amount was being obtained from Total Energies SC, the group's headquarters in France. On the same date, the Respondent issued a penalty assessment of USD 100,000 for failure to provide information in relation to the transfer pricing audit. The Applicant objected to the penalty assessed and the Respondent issued an objection decision maintaining the penal tax assessment.

Issues for determination:

1. Whether the Applicant is liable to pay the penalty assessed by the Respondent?

2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mrs. Stella Nyapendi Chombo; Mrs. Christine Katwe)

a) Section 89QA(1) of the Income Tax Act provides that, *"Notwithstanding the provisions of Sections 48 and 49A of the Tax Procedures Code Act, 2014, a licensee who fails to furnish a return or provide any other document within the time prescribed by this Act is liable to a penalty of not less than fifty thousand United States Dollars and not exceeding five hundred thousand United States Dollars."*

b) The Applicant argued that Section 89QA expressly disapplies the provisions of Sections 48 and 49A of the Tax Procedures Code Act and therefore, the Respondent could not rely on those provisions to impose a penalty for failing to meet the timelines specified in the Tax Procedures Code Act when the Income Tax Act does not prescribe any timelines.

c) The Respondent contended that there is no conflict between Section 89QA of the Income Tax Act and Section 49A of the Tax Procedures Code Act. While Section

89QA(1) of the Income Tax Act lacks explicit timelines, Sections 48 and 49A of the Tax Procedures Code Act provide clear procedural timelines and penalty provisions.

d) The Tribunal noted that the strict rule of interpretation had been long established in tax law, however, other principles of statutory interpretation apply, mainly when there is a conflict between two statutes.

e) In considering the historical context of the Tax Procedures Code Act, the Tribunal noted that until 2014, individual taxing Acts contained provisions on tax administration procedures, However, in 2014, all procedures for administering specified tax laws were consolidated under the Tax Procedures Code Act.

f) The Tribunal held that the reference in Section 89 QA (1) to the provision of documents *"within the time prescribed by this Act"* can only mean that time prescribed by the Tax Procedures Code Act, because Section 89QA was introduced by the Income Tax (Amendment) Act, 2010, which preceded the Tax Procedures Code Act.

g) Prior to the enactment of the Tax Procedures Code Act, the timelines for the provision of information under the Income Tax Act were contained in Section 132 of the Income Tax Act, which was repealed by the Tax procedures Code Act and replaced by Section 42 of the Tax Procedures Code Act.

h) Section 49A of the Tax Procedures Code Act, 2014 provides: *"A person who, upon request by the Commissioner, fails to provide records in respect of transfer pricing within 30 days after the request, is liable to a penal tax equivalent to fifty million shillings"*.

i) Section 89QA of the Income Tax Act provides: *"Notwithstanding the provisions of Section 48 and 49A of the Tax Procedures Code Act, 2014, a licensee who fails to furnish a return or provide any other document within the time prescribed by this Act is liable to a penalty of not less than fifty thousand United States Dollars and not exceeding five hundred thousand United States Dollars"*.

j) Upon examining the two provisions, the Tribunal noted that the penalty under Section 89QA(1) is significantly higher than that prescribed in Section 49A of the Tax Procedures Code Act. However, the Tribunal found no conflict regarding the timeframe for supplying information to the Respondent because Section 89QA refers to timelines set out in the Income Tax Act.

k) The Tribunal found that the only aspect of Section 49A of the TPCA that is overridden by Section 89 QA(1) of the Income Tax Act is the amount of penal tax to the extent that a higher penalty if imposed by Section 89QA91).

l) Reference was also made to Section 42 (now 49) of the Tax Procedures Code Act which requires a person to furnish any information stated in the notice, within the time specified in the notice. The Tribunal noted that the timelines set by the Commissioner General by written notice constitute timelines referred to in Section 89QA of the Income Tax Act.

m) The Tribunal noted that the penalties imposed under Section 89QA of the Income Tax Act are intended, by design, to operate as a statutory deterrent against non-compliance and to enforce strict adherence to tax obligations within specified time frames.

n) The Tribunal further noted that the Respondent issued several notices requiring information within specified time periods, the first one having been issued on 15th June 2023 and the final request on 29th November 2023.

o) The present Application was filed on 29th May 2024 and at the hearing of the case in March, April and May 2025, the information still remained outstanding from the Applicant.

p) The Tribunal found that the Applicant repeatedly failed to comply with the Respondent's lawful requests for information within the timelines specified in the Respondent's letter.

q) Section 89QA(1) stipulates that the penalty shall not be less than USD 50,000 and not exceed USD 500,000. The Respondent imposed a penalty of USD 100,000 which lies within the statutory range.

The Tribunal found that the Penalty was appropriate and lawful. The Application was dismissed with costs to the Respondent.

29 Tradeworth Establishment Limited Versus Uganda Revenue Authority, TAT Application No. 338 of 2025

Head Notes:

Zero-Rated Supplies – Standard-Rated Supplies – Equal Treatment of Supplies within the East African Community

Brief Facts:

The Applicant, Tradeworth Establishment Limited, carries on the business of importation of agricultural produce and general trade. In the period 2018 to 2022, the Applicant imported rice from Tanzania and was charged input VAT at a rate of 18%. The Applicant paid the VAT amidst several protest. The Applicant contended that the importation of rice is subject to VAT at zero rate, in line with the Second Schedule of the VAT Act (now Schedule 3) read together with the Treaty for the Establishment of the East African Community ("EAC Treaty") and Protocol on the Establishment of the East African Customs Union) the "Customs Union Protocol").

In July 2020, the Applicant along with other importers sought intervention from the Ministry of Trade and from the Office of the Attorney General about the perceived unfair treatment by the Respondent, Uganda Revenue Authority. In September 2020, the Respondent forced the Applicant to amend its returns to reflect the rice sales as standard rated yet the Applicant had not charged VAT on the sale of the imported rice.

On 14th June 2022 and 1st February 2024, the Attorney General's Office guided that all rice imported into the country from Partner states of the East African Community should be accorded the same VAT treatment as that which is grown and milled in Uganda.

The Applicant wrote to the Respondent Uganda Revenue Authority requesting for a refund of the VAT that was collected at importation. Following guidance from the Attorney General, the Respondent entered into a Memorandum of Understanding with importers of rice from Tanzania to the effect that the said claims for VAT refund would be verified and resolved.

The Respondent carried out a verification exercise and with regard to the Applicant, confirmed that the Applicant was entitled to a refund of UGX 7,563,332,543 for the period July 2017 to June 2022. The Applicant initiated an e-system application seeking refund of the VAT.

However, on 21st October 2024, the Respondent declined the Applicant's refund, contending that the Applicant had recovered the input VAT of UGX 7,100,420,132 by charging output VAT; and that the balance of UGX 1,320,522,555 was verified and granted as a credit and marked up by 6% to obtain an output tax of UGX 1,399,753,908, giving a net payable of UGX 79,231,353.

Issues for determination:

1. Whether the Applicant is liable to pay the penalty assessed by the Respondent?

2. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Ms. Grace Safi; Mr. Willy Nangosyah)

a) The Tribunal analysed the definition of a cereal in the Britannica Encyclopedia and the Cambridge Dictionary and made a finding that rice is a cereal.

b) According to Section 4 of the Vat Act, Paragraph 1(h) the supply of cereals where the cereals are grown, milled or produced in Uganda are zero rated.

c) According to Section 76 (now Section 49) of the VAT Act, the terms of the EAC Treaty and the EAC Customs Union Protocol are binding on the Respondent.

d) The Tribunal further analysed Article 15(1) and (2) of the protocol on the Establishment of the East African Customs Union and noted that it is clear that rice from Tanzania is a cereal and the Respondent should have accorded it the same VAT treatment as rice grown and milled in Uganda.

e) The Respondent's decision to treat the Applicant's imported rice as standard rated was found to be unlawful.

f) The Tribunal noted that the Respondent sought and obtained guidance from the Attorney General and that while such opinion is not binding in the Respondent, it would be disingenuous for the Respondent to disclaim the very opinion that they acted on.

g) The Respondent verified the total amount of UGX 8,426,806,106. The Respondent's witness did not adduce any evidence of third-party declarations to match the supposed output tax of UGX 7,100,420,132. The Respondent neither had third-party information or declarations nor tax invoices to prove the Applicant's sales were VAT inclusive.

h) Regarding the 6% mark-up, the Tribunal noted that the Respondent provided no legal, economic or commercial bases for applying the mark-up. The Tribunal found that the Respondent acted unlawfully, with impunity, and in total abuse of their powers and authority.

i) The Tribunal directed the Respondent to refund the VAT unlawfully collected; pay interest of 2% per month compounded; Damages of UGX 100,000,000; the Assessment of UGX 79,231,353 was set aside; and costs were awarded to the Applicant.

<u>The Application was allowed with costs to the Applicant.</u>

30 Yogi Steels Limited Versus Uganda Revenue Authority, TAT Application No. 224 of 2024

Head Notes:

Duty Remission – Revocation of Duty Remission – Legitimate Expectation

Brief Facts:

The Applicant, Yogi Steels Limited, manufactures steel products and was granted a Duty Remission for 15,000 MT of bars and rods (under HS Code 7213.91.10) in accordance with Section 140 of the East African Community Customs Management Act, applicable for the 12-Month period of the Financial Year 2023/2024.

On 1st April 2024, the Applicant procured a consignment of 255 steel wire rods in coils, with a total net weight of 527.97 MT from Indo Gulf Steel FZE, United Arab Emirates. The consignment was from Tianji Port in China via carrier Lynux Shipping Limited destined for Mombasa Port.

On 7th June 2024, the Applicant attempted to process the customs entry for the goods but discovered that the duty remission had been revoked. On 10th June 2024, the Applicant was notified that the duty remission for the items was revoked vide Legal Notice EAC/93/2024 dated 15th April 2024. The Applicant warehoused the goods in Mombasa, incurring significant demurrage costs while engaging with the Respondent Uganda Revenue Authority to resolve the issue of the duty remission revocation.

At the time of the revocation, the Applicant had utilized 1,549.260 MT of the 15,000 MT granted and no reasons were communicated of the revocation. The Applicant wrote to the Ministry of Finance, Planning and Economic Development challenging the revocation and requesting for an extension of the duty remission, but the requests were denied, hence this Application.

Issue for determination:

1. Whether the revocation of grant of duty remission granted under the EAC Gazette Vol. AT 1 – No. 6, dated February 17, 2024, was lawful?
2. Whether the Applicant is entitled to duty remission for the consignment of steel wire rods purchased before the revocation of the duty remission?
3. What remedies are available to the parties?

Ruling of the Tax Appeals Tribunal:

(Ms. Crystal Kabajwara; Mrs. Stella Nyapendi Chombo; Ms. Grace Safi)

a) Section 140 of the East African Community Customs Management Act, 2004 provides that the Council may grant remission of duty of goods imported for the manufacture of goods in a Partner State.

b) Regulation 15 of the EAC Customs Management (Duty Remission) Regulations, 2008 provides that: *"The Council may for reasons to be communicated to the Applicant revoke a grant of duty remission."* The Tribunal noted that this provision requires that the reasons for revocation be communicated to the beneficiary of the remission.

c) The Gazette Notice of 15th April 2024 simply stated that the duty remission to Yogi Steels was revoked, with no elaboration. There was no evidence indicating that the Applicant received a formal communication from the Respondent of the EAC Council of Ministers. It was held that failure to state reasons amounted to procedural irregularity.

d) Regarding the substantive power to revoke, the Tribunal noted that Regulation 7 of the EAC Customs Management (Duty Remission) Regulations, 2018 attaches certain conditions to duty remission which must be complied with. However, there was no evidence whether any of the conditions were not complied with by the Applicant.

e) The Tribunal further held that the fact that the duty remission was for a 12-months period created a legitimate expectation on the part of the Applicant that the remission would be available for the entire duration of the 12-months period as specified in the gazette legal notice.

f) The Tribunal found that when the Applicant purchased their consignment on 15th April 2024, they did so on the assurance of the Legal Notice believing that they had duty remission that was valid and running until June 2023. The Applicant acted on the assurance off the Legal Notice and made irreversible commercial decisions on the understanding that the steel rods would be subject to duty at 0%.

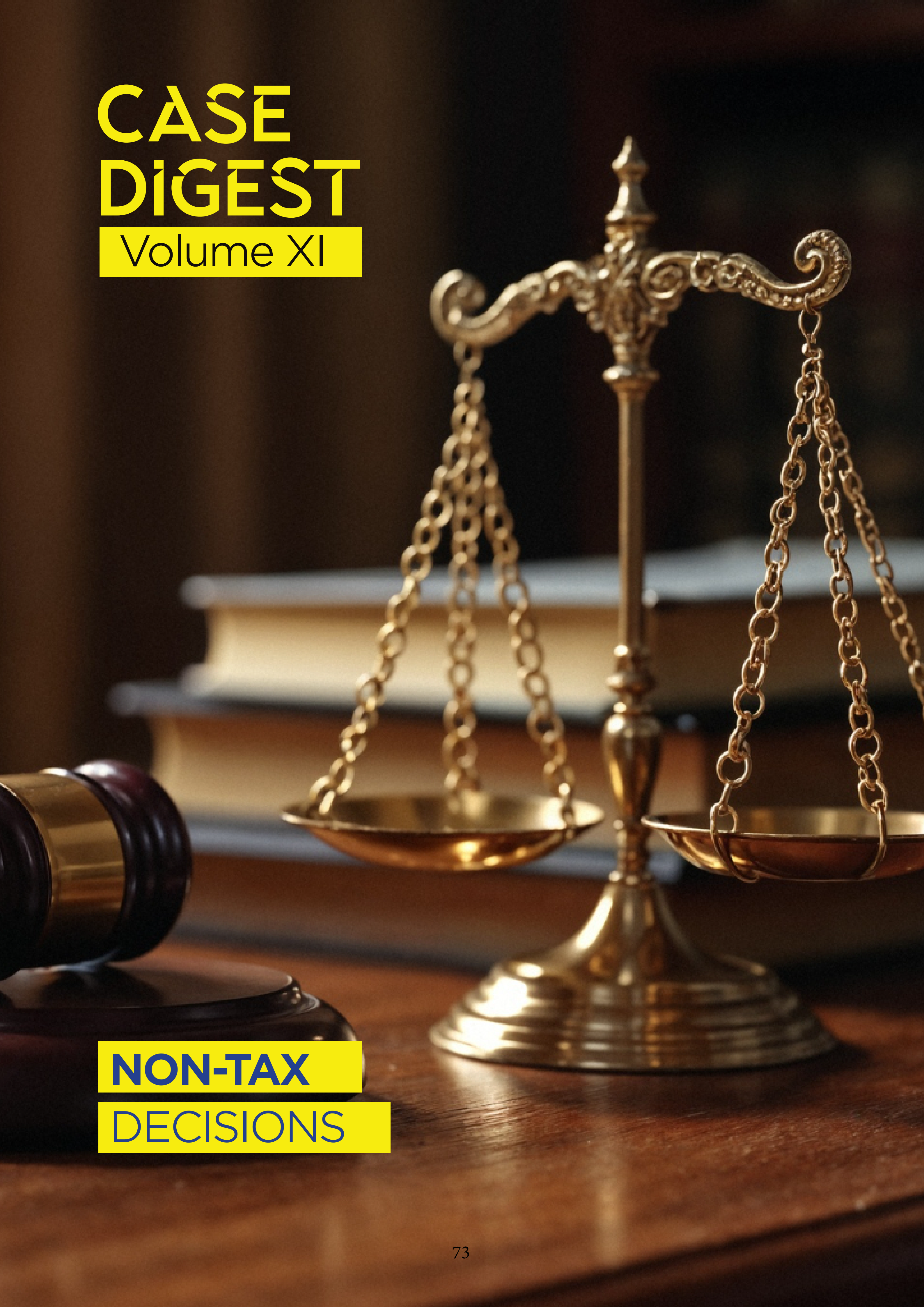
g) It was held that the Council of Ministers and its agents, which include the Respondent cannot, without justification, go back on the assurance or promise made to the Applicant by virtue of the Legal Notice of 5th June 2023 which granted the Applicant remission for 12 months.

h) The Applicant submitted that its competitors were allowed to continue importing the same products under duty remission which were revoked for other importers, creating unlevelled ground.

i) The Tribunal found this to be an abuse of discretion which undermined both administrative fairness and the right to equal treatment under the scheme.

j) The Tribunal held that the revocation of duty remission was procedurally improper and unlawful; the Applicant was entitled to duty remission in respect of the consignment of 527.97 MT of steel wire; and the Respondent was ordered to refund the 30% of the import duty that the Applicant paid as security.

The Application was allowed and costs were awarded to the Applicant.



CASE DIGEST

Volume XI

NON-TAX DECISIONS

31

Aronda Barnabas Versus Uganda Revenue Authority, Labour Dispute Reference No. 78 of 2023

Head Notes:

Unlawful Dismissal - Requirement to Avail Evidence and Investigation Reports to Employees Prior to Hearing - Adequacy of Particulars in Offence Notification Forms – Procedural and Substantive Fairness – Right to a Fair Hearing

Brief Facts:

The Claimant, Aronda Barnabas, was a former employee of the Respondent, Uganda Revenue Authority, who was subjected to disciplinary proceedings on allegations of gross negligence, abetting offences and flouting informer management and reward procedures related to informer payments made between 2015 and 2019.

On 28th April 2022, the Respondent issued the Claimant with an Offence Notification Form (ONF) requiring him to appear before the Management Disciplinary Committee (MDC) on 12th May 2022, however, the hearing did not take place. A subsequent ONF dated 14th June 2022 required the Claimant to appear before the MDC on 22nd June 2022. The MDC heard the matter and found the Claimant culpable, leading to the termination of his employment on 1st July 2022 pursuant to the Respondent's Human Resource Management Manual (HRMM).

The Claimant appealed to the Staff Appeals Committee (SAC) and on 16th August 2022, SAC found no merit in the grounds advanced in support of his appeal and upheld the original decision of MDC.

Issues for determination:

1. Whether the Claimant's termination by the Respondent was unfair, unlawful and malicious?
2. What remedies are available to the parties?

Award of the Industrial Court:

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

a) The Court reaffirmed that dismissal for misconduct must satisfy both procedural and substantive fairness under the Employment Act.

b) The Court found that the Offence Notification Forms issued to the Claimant failed to provide sufficient particulars of the allegations to enable him prepare an effective defence. Further, that the Respondent failed to provide the Claimant with the investigation report, witness statements and supporting documentary evidence prior to the MDC hearing, contrary to the Respondent's HRMM and the rules of natural justice.

c) The Court emphasized that an investigation report is integral to a fair disciplinary process and must be availed to the employee to enable meaningful participation in the hearing. The refusal by the Respondent to provide the investigation report and related documentation rendered the disciplinary proceedings procedurally unfair.

d) The Court further noted that the Respondent failed to furnish the Claimant with the minutes of the MDC hearing to facilitate a meaningful appeal.

e) On substantive fairness, the Court found that the Respondent failed to prove the alleged offences against the Claimant to a reasonable degree, as no credible evidence was placed before the Court to establish his culpability.

f) In the absence of proof of misconduct, the Court found that the Respondent did not establish a valid reason for dismissal as required under Section 68 of the Employment Act.

g) The Court declared the dismissal unfair and unlawful. Court awarded general damages of UGX 29,665,965, being equivalent to seven months' salary; severance pay of UGX 43,651,439, calculated at one month's salary for each completed year of service; interest at 12% per annum on the general damages and severance pay from the date of the award until payment in full; and the Respondent was ordered to issue the Claimant with a Certificate of Service within fourteen (14) days.

The Claimant's dismissal was found to be procedurally and substantively unlawful, and Court awarded the Claimant one-half of the taxed costs of the claim.

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David Kalemera Versus Uganda Revenue Authority, Labour Dispute Reference No. 158 of 2019

Head Notes:

Employment Disciplinary Hearings – Right to a Fair Hearing in Disciplinary Hearings - Procedural and Substantive Fairness

Brief Facts:

The Claimant, David Kalemera, was employed by the Respondent, Uganda Revenue Authority, as an Officer 1 on the 24th August 2007 and later confirmed on 11th April 2003. Investigations by the Respondent revealed that the Claimant was engaged in actions of fraud, abetting of offences, impersonation and conflict of interest, in relation to transit diversion. He appeared before the Respondent's Management Disciplinary Committee (MDC) for a disciplinary hearing. On 24th March 2017, he was dismissed from the service of the Respondent. He appealed to the Respondent's Staff Appeals Committee (SAC), which upheld the MDC decision.

The Claimant filed this Claim seeking a declaration of unlawful dismissal, various damages, and remuneration for the unexpired contract term. He contended that his dismissal resulted from a procedurally unfair disciplinary process, citing receipt of a hearing notice on 17th March 2019 for a hearing conducted on the same day, affording him no time to prepare his defence, and that he was not allowed to cross examine witnesses. He further claimed that the allegations were not fairly or adequately proven against him.

The Respondent opposed the Claim contending that the Claimant's dismissal was lawful and justified by the Claimant's serious misconduct including fraud, abetting of offences, impersonation, and conflict of interest, leading to significant tax evasion of UGX 518,446,682. The Claimant was also holding out as a clearing agent, and he received over UGX 190,100,000 from taxpayers for diverted goods. The Respondent maintained that both disciplinary and appeal proceedings culminating in the dismissal were fair lawful and adhered to the Respondent's Human Resource Management Manual.

Issues for determination:

1. Whether the Claimant was unlawfully and unfairly dismissed?
2. What remedies are available to the parties?

Award of the Industrial Court:

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

a) An employee seeking a declaration of unlawful or unfair dismissal has the burden to prove the fact of dismissal and the the dismissal was procedurally and substantively unfair.

b) Procedural fairness relates to the process of dismissal, while substantive fairness concerns the reason for dismissal.

<u>Procedural Fairness:</u>

a) The statutory pedestal of procedural fairness is Section 65(1) of the Employment Act which requires an employer to explain the reasons for which it is considering dismissal, to an employee in a language that the employee understands. The Court regards this as the right to be heard or the right to a fair hearing.

b) Court cited the case of ***Ebiju James V Umeme Limited, HCCS No. 0133 of 2012*** and noted that the right to be heard means that: (a) There must be sufficient notice of the allegations with particulars; (b) The notice must be served on the employee in a reasonable time to prepare a defence; and (c) The notice must state the employee's right to have a representative, to call witnesses, to present a defence, to attend with a person of one's choice, to provide a written response and to appear before an impartial Tribunal.

c) On 9th March 2017, the Respondent issued an Offence Notification Form which described the offences which the Claimant was alleged to have committed, gave the time and place for the hearing and required the Claimant to provide documents in support of his defence together with a list of witnesses.

d) The Respondent's Human Resource Management Manual (HRMM) provided that the Offence Notification Form shall state the nature of the offence, the date and time of the hearing, the required documentation, evidence of receipt, and must be served at least five (5) days before the hearing.

e) Except for the time of service of the Offence Notification Form, Court noted that it was satisfied that the Offence Notification Form was procedurally compliant with Clause 11.2.3(i) of the Respondent's HRMM.

f) The Claimant argued that the Offence Notification Form merely outlines general offences instead of detailed allegations and that he was not provided with the documents, including the investigation report.

g) Court noted that the Respondent's HRMM provides an elaborate procedure but no part provides for an employee's access to particulars of the offence, an investigation report, or full disclosure of the evidence against them.

h) Court stated that the absence of the provisions on full disclosure contravenes established labour principles. Failure to provide particulars of the offences and the investigation report contravenes rules of natural justice.

i) Court held that the Offence Notification Form did not pass the test. Additionally, no investigation report, witness statements or evidentiary documents were attached to the Offence Notification Form.

j) Court noted that the Respondent's witness RW1 testified to the forensic examination of the Claimant's finances, his telephone records and dealings with one Wang Lei, Golooba and Kiwanuka, but that the witness did not tell Court if these details were shared with the Claimant before the disciplinary hearing.

k) The Respondent's witness RW2 conceded that the Claimant was not given a copy of the investigation report but that he was aware of the allegations, and that the Respondent's practice was to share information with suspect employees at the Internal Audit & Compliance Department (IACD).

l) Court held that the evidence shows that the disciplinary practices of the Respondent were not consistent with the right to a fair hearing in modern and recent employment and labour jurisprudence. The generalized Offence Notification Form was found to be inconsistent with the obligation to provide sufficient particulars to enable the employee to respond to the allegations.

m) The failure to share an investigation report is an unfair labour practice. It is not enough to say that the Claimant knew about the allegations, because an investigation report is integral to procedural fairness. It is the formal inquiry that bears the facts supporting the charges, and therefore, ought to be shared.

n) Court cited the case of ***Akala V Kenya Commercial Bank Limited [2025] KEELRC 1724 (KLR)*** where it was held that selective disclosure of adverse material undermines an employee's right to be heard meaningfully; that it is not enough to extract sections from an investigation report. The full and complete documents must be duly served upon an employee.

o) The other procedural complaint was that the Claimant was not given sufficient time to prepare for his defence. Court noted that the Offence Notification Form was dated 9th March 2017. The hearing was scheduled for 16th March 2017. The Claimant acknowledged receipt on 17th March 2017 and the hearing took place on the same date.

p) The Respondent's HRMM prescribed a five working day window between service of the Offence Notification Form and the hearing. Court found that the less than one-day notice was insufficient and the Claimant did not have adequate time to prepare for the hearing. Court further noted that the Respondent's failure to adhere to its own internal disciplinary procedure constituted a procedural unfairness in industrial jurisprudence.

q) The other complaint was that the Claimant was denied the right to cross-examine the witnesses. Court noted that while the right to cross-examine witnesses in a disciplinary hearing may not be a standalone right, it is still an essential element of the right to be heard.

r) The Claimant suggested that he was being witch-hunted. The Respondent had evidence of Wang Lei and Ji Feng by way of written statements but it was not shown in the minutes that these witnesses attended the disciplinary hearing to confirm that the Claimant acted as a clearing agent or that the deposits to his accounts were for the purposes of clearing goods.

s) Establishing the veracity of the events as recounted by the Claimant would have aided a conclusive decision by MDC. Court found that by not providing the witnesses for cross-examination, the Respondent was procedurally unfair.

Substantive Fairness:

a) Under Section 67(2) of the Employment Act, the threshold for a reason for dismissal shall be matters that the employer genuinely believed to exist at the time of the dismissal. Genuine belief requires proof of the reason for dismissal.

b) Substantive fairness is achieved when there is a credible, well-founded, and substantive reason for dismissal, specifically, verifiable misconduct rather than conjecture or the employer's personal discretion. The employer must establish that the employee was indeed guilty of misconduct.

c) Court noted that the Respondent alleged that the Claimant's serious misconduct, fraud, abetting, impersonation, and conflict of interest led to UGX 518,466,682 tax evasions via transit diversion. The Respondent relied on the statement of Wang Lei & Ji Feng identifying the Claimant as a clearing agent who received substantial payments in his Bank of Africa Account.

d) It was argued by the Respondent that the Claimant failed to account for these monies, had a connection with Julius Golooba, a clearing agent for Comfy Investment Textiles (via A.O. Consultants), who frequently communicated with the Claimant, and the printouts of phone records revealed calls between the Claimant, Wang Lei and Muwonge Ibrahim around the dates of deposit of monies and diversion of cargo. The Respondent further stated that were also unexplained and undeclared properties, as well as the conviction by the Anti-Corruption Court in Criminal Case No. 7 of 2018, in which the Claimant was found guilty of using customs documents, acting as a clearing agent, and retaining illicit funds.

e) The Respondent's witnesses provided detailed accounts of extensive investigations, including forensic analysis of bank and phone records, as well as statements from two Chinese nationals.

f) Court held that in its view, the analysis revealed substantial and unexplained deposits made by Chinese nationals who made statements placing the Claimant at the center of a tax diversion scheme. The Claimant was in contact with other persons involved in the scheme, received money from individuals within the scheme, and declined to explain himself both before the MDC and in Court. Explaining himself was an opportunity to advance a robust defence against the allegations which the Respondent wished to dismiss him for.

g) Court held that the evidence pointed to a genuine belief that the Claimant had been involved in tax evasion. The MDC also noted that the Claimant did not deny that money was deposited on his account by Wang Lei and Ji Feng but he suggested that the money was for his private business. He did not tell MDC or Court what that business was. He was unwilling to disclose any further information to the committee regarding his dealings with Wang Lei.

h) Court refused to believe the Claimant's evidence and noted that the Claimant did not, before MDC or Court, offer a realistic, believable or reasonable hypothesis to describe and explain his relationship with the Chinese or the other clearing agents involved in the tax diversion scheme.

i) Court's view was that the Respondent had placed the Claimant at the center of a tax evasion scheme and carried out an investigation as detailed by the Respondent's 1st witness. On a balance of probabilities, Court held that the evidence showed that the Respondent genuinely believed that by his conduct, the Claimant was in breach of the New Offence Schedule 2014 and by that alone, the Respondent had a genuine belief that the Claimant's misconduct existed and warranted his dismissal at the time.

j) Court found that there was substantive justification for the dismissal and that Respondent was substantively fair in dismissing the Claimant.

k) Court noted that the bedrock of the employment relationship is mutual trust and confidence. Court stated that its view is that the dismissal was substantially justified because the Claimant had, by his conduct, fundamentally breached the employment contract. This entitled the Respondent to dismiss the Claimant.

<u>Remedies:</u>

a) Court declared that the Claimant was unfairly and unlawfully dismissed from employment with the Respondent.

b) The Claimant was awarded four weeks net pay in the sum of UGX 3,491,758 on account of the procedural missteps and unfairness.

c) The Claimant prayed for general damages of UGX 300,000,000. Court noted that whereas there was procedural unfairness, there was overwhelming evidence of substantive justification for the dismissal. Court awarded general damages of UGX 6,983,516 being two-months' pay.

d) The Claimant sought aggravated damages which were denied by the Court as there was substantive justification for the dismissal and there were no aggravating circumstances.

e) The Claimant sought severance allowance of UGX 20,000,000 which prayer was denied by court for reasons of substantive justification of his dismissal.

f) The Claimant sought gratuity of UGX 36,000,000 and service award of UGX 36,000,000. Because the Claimant's substantive position was Officer Compliance, Court awarded service award of UGX 40,578,562.9.

g) The Claimant prayed for costs of the claim. Court noted that the Respondent had substantially justifiable reasons for dismissing the Claimant and rejected the claim for costs.

<u>The Claim was partially successful.</u>

33

Gelnex Industria E Commercio Ltd Versus Uganda Revenue Authority, High Court Misc. Application No. 0060 of 2025

Head Notes:

Elements of a Valid Contract – The Law on Sale of Goods – The Unpaid Seller's Lien on Goods – Amendment of a Bill of Lading

Brief Facts:

The Applicant, Gelnex Industria E Commercio Ltd (Gelnex), agreed to supply the goods to "Organic Chem Procurement & Holdings (U) Ltd." The goods were shipped to Mombasa, Kenya, under Bill of Lading No. 1KT978445, with the buyer named as the consignee. The payment terms were cash, but the buyer failed to pay. Upon investigation, the Applicant discovered that "Organic Chem Procurement & Holdings (U) Ltd" was a fictitious entity registered with the Uganda Registration Services Bureau (URSB). Since no payment was made and the buyer was non-existent, the Applicant sought to render the Bill of Lading inoperative and transfer the goods to a new purchaser. The Respondent, Uganda Revenue Authority, confirmed it held the goods solely due to its mandate as a tax collection agent and claimed no ownership. The Respondent requested the Applicant to execute an indemnity against any third-party claims.

Issues for Determination:

1. Whether the Bill of Lading should be rendered inoperative?
2. What the Honorable Court should be inclined to grant the orders as sought and enable the Applicant effect a manifest corrector Bill of Lading?

Ruling of the High Court:

(Hon. Lady Justice Susan Odongo)

a) Parties to a contract are bound to fulfill their respective obligations, and upon breach by one party, the other party is entitled to repudiate the contract.

b) For a contract to be valid and enforceable, the following elements must be present: capacity to contract; intention to contract; consensus ad idem; valuable consideration; legality of purpose; and sufficient certainty of terms.

c) Court noted that the Applicant received a procurement request by email from one Julaido Ignatius, procurement manager of Organic Chem Procurement & Holdings (U) Ltd.

d) It is well settled that a contract is not confined to a single paper document but may be constituted by a series of transaction documents collectively outlining its essential ingredients.

e) Court noted that in the present case, there was a contract which the Applicant fulfilled by delivery but it emerged that the buyer was a fictitious entity and consequently, the Applicant did not receive payment, thus no consideration.

f) Court analysed Section 43 and 44(1) of the Sale of Goods and Supply of Services Act and noted that once the buyer or their agent obtains possession of the goods, such goods are deemed delivered and the seller's lien ceases.

g) Since the fictitious buyer neither took lawful possession nor paid consideration, Court held that the goods remained in transit under the possession of the Applicant, who retained ownership and the unpaid seller's lien.

h) It was held that where a document of title is executed in the name of a buyer who fails to fulfil contractual obligations, such a document should be rendered inoperative.

i) Court granted the order rendering inoperative the Bill of Lading issued in the name of Organic Chem Procurement & Holding (U) Ltd.

j) The Applicant was allowed to amend the Bill of Lading and sell the goods to any person that is ready to buy. The Applicant was directed to execute an indemnity and guarantee to indemnify the Respondent from any potential third-party Claims.

The Application was allowed with orders that each party bears its own costs.

34 Kansiime Selgio Muhangi Versus Uganda Revenue Authority, Labour Dispute Claim No. 284 of 2014

Head Notes:

Adequacy of Notice of Disciplinary Hearing in Employment Matters – Procedural vis-a-viz Substantive Fairness

Brief Facts:

The Claimant, Kansiime Selgio Muhangi, was employed by the Respondent, Uganda Revenue Authority, as an Assistant Revenue Officer on 29th August1997, promoted to Acting Revenue Officer in September 2004, and confirmed as Officer 1 in February 2006. In May 2008, the Claimant released 603 cartons of counterfeit Kanta hair dye to African Queens Ltd without authorisation and falsely claimed to have witnessed their destruction. He prepared the release documentation and later signed a certificate of destruction, which indicated that he had witnessed the destruction of the goods.

Subsequently, a complaint arose alleging that the goods had been released to African Queen Limited and were never destroyed, and that the Claimant falsely declared that he had witnessed their destruction. Following these allegations, the Claimant was on 25th July 2008, placed on 30-days forced leave, which was informally extended. He was later notified of a Management Disciplinary Committee (MDC) hearing scheduled for 31st October 2008, which he requested to reschedule. A subsequent hearing was set for 20th November 2008 but did not occur. Instead, the MDC convened on 21st November 2008, without the Claimant and resolved to summarily dismiss him for misconduct.

Aggrieved, the Claimant filed a claim before the Industrial Court challenging the dismissal as unlawful and unfair, alleging that he was denied the opportunity to be heard fairly. He sought declarations of unfair dismissal, special damages amounting to UGX 34,493,000 for salary, leave arrears, service award, RBS contribution, transport/repatriation, and notice pay, together with terminal benefits or general damages in lieu, plus interest at 25% from the date of dismissal.

The Respondent maintained that the dismissal was lawful, citing gross misconduct, breach of procedure, and sufficient evidence presented at the MDC hearing despite the Claimant's absence.

Issues for determination:

1. Whether the Claimant was unlawfully dismissed?
2. What remedies are available to the parties in the circumstances?

Award of the Industrial Court:

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

a) The Court reiterated that dismissal for misconduct under the Employment Act must satisfy both procedural and substantive fairness. On procedural fairness, the Court found that the Claimant was not notified of the MDC hearing held on 21st November 2008 and was dismissed in his absence without notice, contrary to Section 65 of the Employment Act and the right to be heard.

b) The Court rejected the Respondent's argument that the Claimant waived his right to be heard, finding no credible evidence that he was notified of the rescheduled MDC hearing.

c) On substantive fairness, the Court found that by signing a certificate asserting that he had witnessed the destruction of goods which he had not witnessed, the Claimant gave the Respondent a genuine belief that he had committed misconduct.

d) The Court held that the Respondent established substantive justification for dismissal under Section 67(2) of the Employment Act.

e) The Court however noted that substantive justification cannot cure procedural defects, and failure to follow due process renders the dismissal unlawful.

f) Consequently, the Claimant's dismissal was declared procedurally unfair and unlawful, despite being substantively justified.

g) Pursuant to Section 65(4) of the Employment Act, the Claimant was awarded four weeks' net pay amounting to UGX 2,500,000. The Respondent was ordered to issue the Claimant with a Certificate of Service within twentyone (21) days. All other claims for remedies were dismissed.

The Claim partially succeeded.

35

M/s Urgent Cargo Handling Ltd Versus Uganda Revenue Authority, High Court Civil Suit No. 026 of 2012

Head Notes:

Jurisdiction of the High Court – Unlimited Jurisdiction of the High Court – Jurisdiction of the Tax Appeals Tribunal

Brief Facts:

The Plaintiff, Urgent Cargo Handling Ltd, filed this suit claiming general damages for trespass, special damages interest and unconditional release of a truck that had been impounded by the Defendant, Uganda Revenue Authority, on allegation of conveying uncustomed goods. At the hearing of the matter, Counsel for the Defendant raised a preliminary point of law to the effect that the High court lacks the original jurisdiction to hear the case, being a tax matter.

Issue for determination:

1. Whether the High court lacks the original jurisdiction to hear the case, being a tax matter?

Judgment of the High Court:

(Hon. Justice Dr. Lubega Farouq)

a) Jurisdiction is the power bestowed to a court by law to hear and decide cases. It is a creature of statute, which preserve cannot be under estimated in the course of dispensing justice. It is settled law that any judgement passed by court without jurisdiction is a nullity.

b) By virtue of Article 139 (1) of the 1995 Constitution, the High Court has unlimited original jurisdiction in all matters, however, in rare instances, the inherent jurisdiction of the High court can be sidestepped by statutory provisions enacted to address grievances of a particular nature.

c) Court cited the case of ***Uganda Revenue Authority V Rabbo Enterprises (U) Limited and Anor (Civil Appeal No. 12 of 2004)*** where the Supreme Court held thus:

   "Much as the High Court has unlimited original jurisdiction, where there is a law in place that has vested it with appellate jurisdiction, then the High Court shall not be the court of first instance but shall be an appellate court."

d) It was the Court's finding that for any matter to fall under the original jurisdiction of the Tax Appeals Tribunal, it must arise from the decision of the Uganda Revenue Authority made under a taxing Act.

e) Court found that the Defendant's decision to impound the Plaintiff's vehicle was made pursuant to the provisions of the East African Customs Management Act, (2004). Therefore, any grievance arising out of that decision would as a matter of law be addressed by the Tax Appeals Tribunal which is enjoined with the original jurisdiction in tax matters.

<u>The preliminary objection raised by the Defendant's Counsel was upheld and the suit dismissed with costs to the Defendant.</u>

36 Michael Bhamusangala Versus Sharifa Nassali & Uganda Revenue Authority, Nakawa Chief Magistrates Court Misc. Cause No. 479 of 2024

Head Notes:

Jurisdiction in Tax Disputes

Brief Facts:

The Applicant, Michael Bhamusangala, filed this case seeking to challenge an Income Tax Assessment amounting to UGX. 47,398,903, citing various Articles of the Constitution, sections of the Human Rights (Enforcement) Act and Tax Procedures Code Act.

The Respondents Sharifa Nassali & Uganda Revenue Authority raised three preliminary objections, but the Court focused on the issue of whether the Court had jurisdiction to entertain a matter that pertains to a tax issue.

Ruling of the Chief Magistrate:

(Her Worship Nantege Christine)

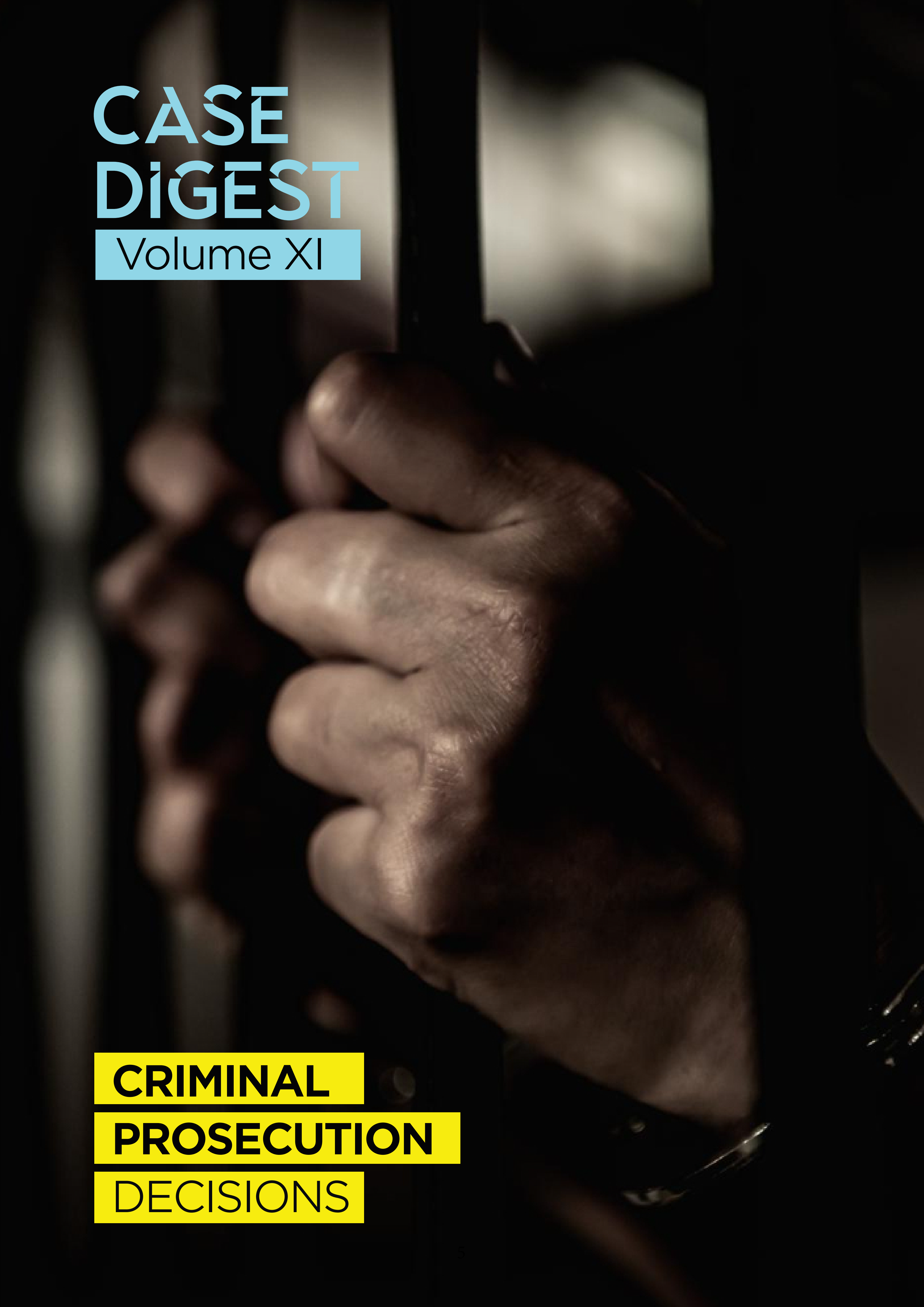
a) The Court defined jurisdiction as the authority a court has to hear and decide a case, noting that a decision made without it is a nullity.

b) It determined that the Applicant was seeking to challenge an income tax assessment, which constitutes a taxation decision under the law.

c) Citing Section 14 of the Tax Appeals Tribunal Act and a Supreme Court precedent (***Uganda Revenue Authority v Rabbo Enterprises (U) Limited and Anor***), the Court found that original jurisdiction for reviewing taxation decisions lies exclusively with the Tax Appeals Tribunal (TAT).

d) The Court concluded that the Chief Magistrates Court lacked jurisdiction to hear the matter as a court of first instance for a taxation dispute.

The preliminary point of law on jurisdiction was upheld, and the application was dismissed with costs to the Respondents.



CASE DIGEST

Volume XI

CRIMINAL PROSECUTION DECISIONS

37

Uganda Versus Rumena Richard & 2 Others, Anti-Corruption Division HCT-00-AC-CO-011-2023

Head Notes:

Burden and Standard of Proof in Criminal Cases – Offences under the Anti-Corruption Act – Abuse of office – Corruption – Solicitation of a Bribe

Brief Facts:

Richard Rumena (A1), Gerald Mujurizi (A2) and Joseph Nsubuga (A3) are former employees of Uganda Revenue Authority (URA). On the 30th day of August 2023, while employed by the Uganda Revenue Authority at the Jinja Branch Customs Office, they released Motor Vehicle Registration Number UAW 347W with 500 bags of sugar, which had been impounded for non-compliance with the Digital Tracking Solution (DTS) and Electronic Fiscal Receipting and Invoicing Solution (EFRIS) requirements, without following due process. On 23rd October, 2023, the Accused persons were charged before the Chief Magistrate's Court of Buganda Road, Anti-corruption Division.

Richard Rumena (A1) was charged with two counts: Count one of Causing Financial Loss contrary to Section 20 of the Anti-corruption Act, 2009; and Count Two of Abuse of Office contrary to Section 11 of the same Act.

Gerald Mujurizi (A2) was charged with four counts: Count one of Causing Financial Loss contrary to Section 20 of the Anti-corruption Act, 2009; and Count Two of Abuse of Office contrary to Section 11 of the same Act; Counts 3 and 4 of Corruption contrary to Section 2(a) & 26(1) of the Anti- Corruption Act, 2009.

Joseph Nsubuga (A3) was charged with one count of Corruption contrary to Sections 2(a) & 26(1) of the Anti- Corruption Act, 2009.

All the Accused persons pleaded not guilty and were subsequently released on bail. Later, when the case came up for hearing, A1 Richard Rumena pleaded guilty following a Plea Bargain process, was convicted and sentenced.

Judgment of the Chief Magistrate's Court:

(Her Worship Esther Asiimwe, Magistrate Grade One)

Burden & Standard of Proof:

a) In criminal matters, the accused is presumed innocent until proved guilty, and the burden is on the prosecution to prove the ingredients of the offence against the accused beyond reasonable doubt.

b) Reasonable doubt does not mean beyond a shadow of doubt. This standard is said to have been met when all evidence suggesting the innocence of the accused, at best creates a mere fanciful possibility but not any probability that the accused is innocent.

Ingredients of the Offences:

a) On Count 1 of Causing Financial Loss per Section 19(1) of the Anti-Corruption Act, the Prosecution needed to prove the following ingredients: (i) That the accused was an employee of government; (ii) That he did or omitted to do an act which he had knowledge would cause financial loss; and (iii) That loss occurred.

b) On Count 2 of Abuse of Office per Section 10(1) of the Anti-Corruption Act, the Prosecution needed to prove the following ingredients: (i) That the accused was an employee of a public body or company in which government has shares; (ii) That the accused did or directed to be done an arbitrary act in abuse of the authority of his office; and (iii) That the arbitrary act was prejudicial to the interests of his employer or any other person.

c) On Count 3 of Corruption- Solicitation for Gratification per Section 2(a) and 26(1) of the Anti-Corruption Act, the Prosecution needed to prove the following ingredients: (i) That the accused was a public official; (ii) That the accused directly or indirectly solicited for gratification for himself or any other person or entity; and (iii) In exchange for an act or omission in the performance of public functions.

d) On Count 4 of Acceptance of Gratification per Section 2(a) of the Anti-Corruption Act, the Prosecution needed to prove the following ingredients: (i) That the accused was a public official; (ii) That the accused directly or indirectly accepted gratification for himself or another; and (iii) in exchange for an act or omission in the performance of his public functions.

<u>Counts 1 & 2 against A2 for Causing Financial Loss & Abuse of Office:</u>

a) A2 was acquitted on Counts 1 and 2 which were Causing Financial Loss and Abuse of Office respectively, due to insufficient evidence.

<u>Count 3 against A2 for Corruption- Solicitation for Gratification:</u>

a) It was an undisputed fact that the Accused person (A2) was a former employee of URA and thus a public official. The first ingredient was therefore found to have been proved.

b) Regarding the second ingredient which is that the accused person directly or indirectly solicited for gratification for himself or any other person, although PW8 turned out to be a hostile witness due to the conflicting versions between his evidence in court and his recorded statement, Court concluded that he was lying in court and thus relied on his recorded statement.

c) Court noted that it is true that A2 met with PW8 outside working hours to solicit for a bribe of UGX 20,000,000 to have PW8's truck released. This was corroborated by the various phone calls made between A2 and PW8, and their respective meeting at Salt 'N' Pepper Restaurant in Jinja as testified by PW9 and PW10.

d) A2's conduct after arrest also confirmed his guilt after he told the arresting officers that the money/bribe was supposed to be given to one of his colleagues.

Court found that Prosecution proved all the ingredients of the offence of Corruption and therefore convicted A2 on Count 3.

<u>Count 4 against A3 for Corruption- Solicitation for Gratification:</u>

a) On the first ingredient, it was an undisputed fact that the Accused person (A3) was a former employee of URA and thus a public official.

b) Regarding the second ingredient which is that the Accused directly or indirectly received gratification for himself or another, PW8 testified that A2 told him to go to

Salt 'N' Pepper Restaurant from where one of his colleagues would collect the money. He further testified that while there, a person driving a Subaru UBH 631N called and told him to go outside the gate. PW8 gave that person the money and the Subaru left. PW8 immediately rushed back to URA and upon getting there, his vehicle was released.

c) PW9 testified that he witnessed everything at Salt 'N' Pepper, saw the money being handed to the Subaru driver who later drove off. The money was however never recovered. It was later found out that the Subaru belongs to A3 and the number he used to call PW8 belonged to his girlfriend.

d) On the third ingredient, PW8 testified that the bribe was to facilitate the release of his Truck and indeed it was released after giving the money to A3.

Court found that the Prosecution had proved the ingredients of Count 4 against A3 and he was convicted.

A2 & A3 were both convicted and sentenced to a custodial sentence of 1-year imprisonment and they were disqualified from holding a public office for the next 10 years.

38 Uganda (URA) Versus Sentongo Amuza, Anti-Corruption Division HCT-00-AC-CO-0092-2023

Head Notes:

Customs Offences - Possession of Uncustomed Goods– Conveyance of Uncustomed Goods

Brief Facts:

On 22nd August 2023, the Accused person, Sentongo Amuza, at Pakwach URA check point in Pakwach District being in charge of Motor vehicle Reg. No UAN 910 was found conveying and in possession of uncustomed goods, being, 223 bags of 25 kilograms of Eurosome Powdered butter milk made in France with a dutiable value of UGX 102,710,176 which he knew or ought to have known to be uncustomed.

The Accused was charged with two counts of: Possession of uncustomed goods and Conveyance of uncustomed goods contrary to Sections 200(d)(iii) and 199(b)(iii) of the East Africa Community Customs Management Act, 2004 (EACCMA) Act 2004 as amended, respectively.

Issues for determination:

1. Whether the Accused had uncustomed goods in his possession?

2. Whether the Accused knew or ought to reasonably have known that the goods were uncustomed?

3. Whether the goods were being conveyed and the Accused was in charge of the Motor Vehicle conveying the goods?

Judgment of the Anti-Corruption Court:

(Her Worship Esther Asiimwe, Magistrate Grade One)

<u>Ingredients of the Offences:</u>

a) On Count 1 of Possession of uncustomed goods contrary to Section 200(d)(iii) of the EACCMA, the Prosecution needed to prove the following ingredients: (i) The Accused had uncustomed goods in his possession; and (ii) The Accused knew or ought reasonably to have known that the goods were uncustomed.

b) On Count 2 of Conveyance of uncustomed goods contrary to Section 199(b) of the EACCMA, the Prosecution needed to prove the following ingredients: (i) The Accused was in charge of a vehicle; and (ii) The vehicle was coveting uncustomed goods.

<u>Count 1- Possession of Uncustomed Goods:</u>

c) On the first ingredient that the Accused had uncustomed goods in his possession, Court noted that the Prosecution's evidence proved that the Accused was in possession of 223 bags of uncustomed powdered milk. His names were indicated on the seizure notices and the persons who arrested him at the scene testified in court. This ingredient was found to have been proved.

d) On the second ingredient that the Accused knew or ought to reasonably have known that the goods were uncustomed, Court noted that it was the prosecution evidence that the truck approached the URA checkpoint, it was stopped and the driver refused to stop. Instead, he accelerated and branched into Murchison Falls National Park.

e) Further, the Accused admitted to the offences and signed the request for settlement of both offences and the said requests are on court record.

f) Court cited the case of ***Uganda vs Yowana Baptist Kabandize (1982) HCB 93***, where the conduct of the Accused running away from the scene was held to be inconsistent with his innocence.

g) The second ingredient was found proved to have been beyond reasonable doubt.

The Accused convicted on count 1.

<u>Count 2- Conveyance of Uncustomed Goods:</u>

a) Court noted the Prosecution's evidence of the vehicle being intercepted and the issuing of seizure notices which showed that the Accused was the driver of the truck, Reg. No. UAN 910J.

b) The seizure notice for the vehicle indicated that the motor vehicle was carrying uncustomed goods.

<u>The Accused was convicted on both counts and sentenced to 14 months in prison. The goods and motor vehicle were forfeited to the State.</u>

TOPIC-SPECIFIC INDEX

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