THE REPUBLIC OF UGANDA

IN THE ANTI-CORRUPTION DIVISION OF THE HIGH COURT AT KOLOLO

CRIMINAL APPEAL NO 009 OF 2020

(Arising out of Anti-Corruption Division Criminal Case No 0135 of 2016)

ALIKIRIZA LEONARD ..... **APPELLANT**

VERSUS

UGANDA ..... **RESPONDENT**

BEFORE: Justice Jane Okuo Kajuga

JUDGEMENT

This is an appeal from the decision of Asiimwe Abert (Magistrate Grade 1) sitting at the Anti-Corruption Division delivered on 23rd July 2020 in which the Appellant was convicted of six (6) Counts of making false and misleading statements to a tax officer c/s 58 (1) (a) of the Tax Procedure Code Act of 2014. He was sentenced to a fine of 25 currency points on each count translating to a total of Ushs 3,000,000/=

He was also ordered to pay the entire tax loss incurred under Leds (U) Ltd and 50% of the tax loss under Nyaks and Lenny Enterprises. These taxes were to be paid within the period of six (6) months from the date of judgement and sentence. In default of paying the fine, the appellant was sentenced to three years' imprisonment on each count to run concurrently.

The facts of the case from which this appeal emanates are as follows:

The Appellant is the Managing Director of **Leds (U) Ltd** and **Nyaks and Lenny Enterprises (U) Ltd**. It was alleged by the prosecution that in the period 2012 to 2015, tax returns which were false/ misleading were filed electronically for the two Companies,

purporting that certain business transactions had taken place. These transactions involved transportation of raw materials to Tororo Cement Company from Karamoja and hiring of vehicles by Nyaks and Lenny Enterprises and Leds from two Companies known as **Hongai General Supplies** and **Xing Dongmin**. The Tax Returns in issue were admitted in Court as prosecution **Exhibits No 21, 22, 23, 24** and **25.** They cover the periods cited in Counts1,2,3,5,6 and 7 of the Charge sheet.

Suspecting Nyaks and Lenny and Leds U Ltd for VAT (Value Added Tax) fraud, Uganda Revenue Authority (URA) conducted investigations to establish whether Xing Dongmin and Hongai made any sales to these companies. These latter companies were VAT registered and their returns tallied with those of the appellant's companies. The invoices and receipts produced by the appellant to support the transactions in issue also tallied with the returns.

On the other hand, the investigations produced evidence which led the Respondent to conclude that Hongai and Xing Dongmin were nonexistent companies. Evidence was led to show that the registration for VAT had been fraudulently procured using forged certificates of incorporation. The companies could not be found at their registered address at Plot 42 Kampala Road.

A search conducted at the premises of Nyaks and Lenny at Eco Bank Plaza revealed that this company shared premises with Royal Transit Ltd and the Accounts Assistant Miiro Enock used to file returns for Nyaks and Lenny. Amongst many documents recovered were invoice books for Hongai and Xing Dongmin. The Director of Royal Transit Company, Tadeo Mukonyezi was a friend to the appellant and was handling the filing of his returns. He was also an employee of URA at the time.

Letters dated 29th December 2014 signed by the appellant and admitted as **P Exhibit 4 (b)** and **(c)** provided a list of the Registration Nos of 16 vehicles allegedly hired by Leds and Nyaks and Lenny from the two companies. Prosecution tendered evidence to support their argument that these trucks could not have been used in the transactions captured

in the returns. These included evidence that none of the trucks was registered in the names of the transport service providers; many bore foreign number plates which the URA TEVIES system did not show as having entered the country; and some of the provided number plates were invalid. Tororo Cement Factory, where the raw materials were allegedly delivered denied having had any transactions with Leds.

The above findings, amongst others, lead to the conclusion that the returns were false and misleading to that effect, and that the appellant relied on these false transactions to claim input tax credit, thus reducing his tax liability under the two companies. This led to the institution of criminal charges against the appellant, and his subsequent conviction and sentence.

The appellant being dissatisfied with the conviction filed this appeal to this Honorable Court on the following grounds;

1. The trial magistrate erred in law and fact when he found that the tax payments made by the appellant were made to non-existent companies and thereby occasioning a miscarriage of justice

2. The trial Magistrate erred in law and fact by finding that the transactions did not take place and thereby arriving at a wrong decision

3. The trial Magistrate erred in law and in fact by relying on invoices and receipts that were recovered from an illegal search and thereby arriving at a wrong decision

4. The trial magistrate erred in law and fact by relying on accomplice evidence of an employee of the Respondent and thereby occasioning a miscarriage of justice

5. The trial magistrate erred in law and fact by finding that the Respondent had facilitated the commission of the offense by registering the two companies and yet ended up convicting the appellant thereby occasioning a miscarriage of justice.

Representation:

The appellant was represented by **Kirunda Mathew** of Muwema and Co. Advocates while **Diana Prida Praff** of Uganda Revenue Authority appeared for the Respondent. Both filed written submissions and adopted the same at the hearing of the appeal.

Counsel for the appellant argued grounds 1, 2 and 5 together and grounds 2 and 4 alone. The Respondent on the other hand chose to handle each ground on its own.

This Court will analyze and resolve each ground of appeal separately.

Resolution of the Appeal

Both parties aptly stated the law regarding the duty of a first appellate court to carefully and exhaustively reevaluate the evidence as a whole and come to its own decision on the facts, being mindful of the judgement appealed from and the fact that it did not have the opportunity to see the witnesses testify. **Kifamunte Henry V Uganda SCCA No, 10 of 1997 and Bogere Moses and Anor V Uganda, Supreme Court Criminal Appeal No. 1 of 1997**). I will therefore not dwell on the same, but proceed to subject the evidence to fresh and exhaustive scrutiny without ignoring the judgement that has been appealed from.

I am mindful of the fact that the burden to prove the charge against an accused person lies on the prosecution. **Woolmington V DPP [1935] AC 462.** This right stems from the presumption of innocence principle enshrined in **Article 28 (3) (a) of Uganda's Constitution**. Any conviction must be based on the strength of the prosecution case and not the weaknesses of the defense case **(Ssekitoleko V Uganda [1967] EA 531).** The law is that the accused does not bear any burden to prove his innocence except in a few statutory exceptions. The Respondent Submits that this is one of such cases by virtue of **Section 26 (a)** and **(b)** of the **Tax Procedures Code Act** which provides that in any proceeding under the Act, for a tax assessment or any other tax decision, the burden is on the tax payer to prove that the assessment is incorrect or for the person objecting to

the decision to prove that it should not have been made or should have been made differently. The court will address the applicability or otherwise of this legal provision when resolving the appeal.

I am further mindful that the standard of proof to secure a conviction is well settled as proof beyond reasonable doubt. This standard was elaborated in **Miller V Minister of Pensions [1947]2 All ER 372** as being satisfied once all the evidence suggesting the innocence of the accused, at its best creates a mere fanciful possibility but not any probability that the accused is innocent.

In the consideration of this appeal, this court will reevaluate the testimonies of the witnesses and the tendered exhibits, while considering whether the prosecution met the burden of proof to the requisite standard, and whether therefore, the conviction of the appellant by the trial court was proper.

Ground 1:

The trial magistrate erred in law and fact when he found that the tax payments made by the appellant were made to non-existent companies and thereby occasioning a miscarriage of justice

Counsel for the appellant submitted that whereas there was no contention that the statements were made to a tax officer, there was no evidence that they were made by the appellant to non-existent companies, thereby suggesting that the transactions did not take place.

Counsel for the Respondent prayed to court to strike out this ground as the issue of tax statements made to non-existent companies did not arise during the trial, nor had the trial magistrate held anywhere in his judgement that false or misleading tax statements had been made to non-existent companies. She asked the court to consider the decision in ***Tembo Steels U Ltd V Uganda Revenue Authority, Civil Appeal No 77/2011*** where the Court of Appeal dismissed grounds of appeal whose contents differed from the

judgement of the lower court as the appellate court could not fault the lower court for what it had not held

In rejoinder, counsel for the appellant admitted that the issue of tax statements made to non-existent companies didn't arise from the judgement, nevertheless he opposed the application to strike out ground one on the basis that any defect in the formulation of this ground went to form and not substance and is curable under Article 126 of the 1995 Constitution of Uganda. In his view, the phrase may have been erroneously referred to but the Court can discern from the memorandum of appeal what this ground actually constitutes. He further argued that the authority of *Tembo Steels* cited by the Respondent's Counsel did not apply as it was a civil appeal where the standard of proof is different from that in criminal appeals, and that it was decided under a different law.

In resolving the above issue, I make recourse to the provisions of the **Criminal Procedure Code Act**, **Cap 116** regarding the framing of grounds of appeal.

Section 28(4) thereof provides as follows;

> *'Where the Appellant is represented by an advocate or the appeal is preferred by the Director of Public Prosecutions, the grounds of appeal shall include particulars of the matters of law or of fact in regard to which the court appealed from is alleged to have erred' (emphasis mine).'*

It is clear that the grounds framed by the appellant must relate to the matters where the court is alleged to have erred, thus meaning that the grounds must flow from the decision of the trial court. This is the import of this provision of the law.

I have carefully studied ground 1, and considered the arguments of both parties on this issue. I have combed the judgement and not seen any finding to the effect that tax statements were made to non-existent parties. What the Court found as nonexistent were Hongai and Xing Dongmin and these were not the Companies to whom the returns were

filed. This is clear from the paragraph which learned counsel for the Appellant cited and which I reproduce here below:

'. . .I am not even surprised that the invoices and receipts purported to belong to ***non-existent Hongai General Supplies and Xing Dongmin*** *were recovered from Royal Transit office . . .'*

Indeed, **Section 58 (1) of the Tax Procedure Code Act, 2014** provides that the offense charged is committed when "a person recklessly or knowingly makes ***to a tax officer*** *(emphasis mine) statements that are false or misleading in material particular".*

Section 3 of the *Tax Procedures Code Act* defines a tax officer as a commissioner or officer of the Authority. The returns in this case were filed online to Uganda Revenue Authority.

The framing of Count I suggests that the tax returns in this case were not filed to a tax officer within the meaning of the law but to another nonexistent company. This is not flowing from the facts or the judgement of the lower Court. The issue of making tax returns to a non-existent company does not therefore arise. If the magistrate did not make a decision, then he cannot be said to have erred in it, and therefore it cannot constitute a ground of appeal.

I agree with the Respondent that the ground is incompetent and I accordingly proceed to strike it out. Article 126 of the Constitution does not apply in this case as the requirement for framing of grounds discussed above is not a technicality. I note that even when Counsel for the appellant suggests that the challenge in the formulation of the ground did not affect the substance, it is not possible to fathom what he really intended to mean. His rejoinder does not clarify what he meant either. The only meaning Court can derive is from the words he used in framing the ground in the memorandum of appeal and I am satisfied it is not based on any error in the lower court's decision. Article 126 cannot be relied on to cure ground one which faults the magistrate for a decision he never took.

Ground 2:

The trial Magistrate erred in law and fact by finding that the transactions did not take place and thereby arriving at a wrong decision

Counsel for the appellant contended that there were no false or misleading statements made to the Respondent as none of the witnesses who testified brought any cogent evidence to the effect that the transactions cited in the filed returns did not take place. As such, the trial magistrate arrived at a wrong conclusion.

He took issue with many aspects of the evidence;

1. He faulted the trial magistrate for convicting the appellant on the basis of the fact that he shared an office with his friend Tadeo Mukonyezi instead of addressing his mind to whether Hongai and Xing Dongmin existed and ascertaining the authenticity of the statements made to URA. He submitted that the friendship was never an issue in court and that Tadeo was never charged.

2. He contended that the purchases declared by the appellant's companies were tallying with the returns of Hongai and Xing Dongmin, and also with the invoices and receipts which were provided by the appellant. This was sufficient proof that the transactions took place.

3. He argued that the evidence of PW1, should not have been relied upon by the trial court as she confirmed that the VAT tax returns were not reported accurately and that she did not conduct an investigation into the output tax. In his view, considering the output tax would have helped explain the input side.

4. That the evidence from the Temporary Motor Vehicle Importation and Exportation system (TEVIES) was insufficient to prove that the foreign registered vehicles did not enter or exit Uganda. There was no evidence adduced to corroborate or support this claim. PW 1 had not carried out any verification/comparison of the list provided by Tororo Cement which had the vehicles which had entered the factory

site. This could have helped identify vehicles genuinely hired by Nyaks and Lenny. Further, that PW 8's evidence that his Company, Mansons Uganda Ltd had never dealt with the appellant in transportation was not plausible as he admitted under cross examination that he was not directly responsible for vehicles and it was possible that the vehicles could have been hired out without his knowledge.

5. Counsel for the appellant also criticized the evidence of PW8 Sarah Nakyagaba as inconsistent because under cross-examination she admitted that both Companies were duly registered with URA for tax purposes, and that a 3rd party would be able to deal with an entity if fully registered. This was inconsistent with her evidence-in-chief that Hongai and Xing Dongmin were fictitious. He prayed that court considers the effect of this inconsistency on the credibility of the evidence, and cited the law on inconsistencies in *Hajji Musa Ssebirumbi V Uganda, Criminal Appeal No 10/1989*

Counsel for the Respondent on the other hand supported the finding of the trial magistrate that the transactions captured in the returns did not take place. She highlighted the evidence on the record which supported this conclusion. This included the testimony of PW3, Brij Mohan Gagrani that they had no transactions with Leds and of PW8 Financial Controller of Mansons U Ltd that they had no business with both Leds and Nyaks and Lenny. This contradicted the returns filed and the evidence presented to the investigators by the appellant. Also, Kamo and Sons had purchased one of the vehicles RAB 879F as spare parts in 2011. It couldn't therefore have been used thereafter to transport raw materials as claimed by the appellant. Another of the vehicles was a Toyota Corolla which also could not have been used to transport limestone.

She also contended that under Section 26 of the Tax Procedures Code Act, the appellant failed to discharge the evidential burden on him to prove that the transactions had taken place.

In rejoinder, the appellant faulted the trial Magistrate for finding that the evidential burden shifted to the appellant to prove that the vehicles entered Uganda and were hired by

Hongai and Xing Dongmin. In his view, the burden to prove the case rested on the prosecution which had failed to discharge the same.

In resolving this ground I have carefully studied the Monthly Returns filed by Leds U Ltd and Nyaks and Lenny which were admitted as **Prosecution Exhibits 22, 23, 24 (a), (b) and (c) and 25**. These all indicate that VAT was paid on transport to Hongai and Xing Dongmin for both Companies.

The crux of this case rests on whether the transactions cited in these returns are false and misleading in material particulars. Court has to examine the veracity of the transactions. Once this question is answered in the negative, then Court has to establish whether the appellant was responsible for filing them to the tax officer, and whether at the time of doing so, he had knowledge that they were not truthful. **Section 58 (1) (a) of the Tax Procedures Code Act** further allows the court to convict the accused person even where he may not have had knowledge but acted recklessly in making the statement.

Oxford Dictionary of law 6th Edition defines the term recklessly as *'A form of mens rea that amounts to less than intention but more than negligence. Many common law offenses can be committed either intentionally or recklessly, and it is now more common for statutes to create offenses of recklessness. Recklessness has normally been held to have a subjective meaning of being aware of the risk of a particular consequence arising from one's actions but deciding nonetheless to continue with one's actions and take the risk where it is unreasonable to do so'*

I have considered in detail the Judgement of the lower court in regards to the issue of veracity of the transactions. It is clear that the trial magistrate considered several pieces of evidence in arriving at the conclusion that the transactions did not take place. One of this is the non-existence of Hongai General Supplies Ltd and Xing Dongmin in the law. He relied on the evidence of **PW1, Caroline Nangobi** to the effect that the Assistant Commissioner Tax Investigations wrote to the Registrar of Companies to confirm if the two companies were registered. They established that they did not appear in the data base for Uganda Registration Services Bureau (URSB), and that the certificates of

incorporation used to secure VAT Registration with URA were a forgery. These certificates were admitted as **Prosecution Exhibits P 17 and 18**.

The evidence of **PW1** was corroborated by that of **PW5, Ruzindana Deo** who testified that the two companies had provided Plot 42 Kampala Road as their address. All efforts to trace them at this location were in vain. It was also the evidence of **PW9, Sarah Nakyagaba** that the two Companies were not registered with URSB and that they had presented false information to URA for registration. This evidence supports the analysis that the companies did not exist legally and in fact and that their registration for tax purposes was for the sole reason of perpetrating a fraud. PW 5's self-recorded statement which further explained the non-existence of the two companies and their efforts to locate them was admitted in evidence as **PEX 10**.

The appellant claimed he did not know these companies or have their contacts since he dealt with them through a broker. The said broker **Majidu Musisi** who was acquitted by the trial Court on Charges of conspiracy in this same matter, informed the investigators that he also dealt with the two companies through a broker called Raymond. He failed to provide the second name of this Raymond, contacts, or any other useful information that could assist the investigators to trace him.

It is this Court's view that the above facts clearly painted a picture of a non-existent Company. It is difficult to fathom that Nyaks and Lenny and Leds U Ltd would transact business involving such huge sums of money as indicated in the monthly returns, and have absolutely no contact information with the two supplier companies. It is noted that the appellant alleged to have conducted business with them for over 3 years. If this was the only evidence on which the court relied to arrive at the conclusion that the companies in issue were no- existent, then the appellant's argument that the transactions were genuine could be given the benefit of a doubt, however slim.

The trial Magistrate's conviction that the said transactions were false were however bolstered by the findings of the investigation team that carried out a search at the

premises of Nyaks and Lenny at Eco Plaza. This search indicated that Nyaks and Lenny was operating from the same premises as another company under investigation known as **Royal Transit Limited**. They retrieved blank booklets of invoices for Xing Dongmin and Hongai General Supplies. The booklets were in the general office of Nyaks and Lenny and Royal Transit, and the officer in charge was Enoch. They further ascertained that he was the one filing returns for Royal Transit and Nyaks and Lenny though employed by Royal Transit.

The officer, **Enock Miiro** testified as PW 4 and informed Court that he worked as an accounts assistant for Royal Transit from 2011-2014. While there, he had tax invoice books for Xing Dongmin and Hongai. He confirmed that the books were seized when URA tax investigators came to their office.

The finding of these books on the premises of Nyaks and Lenny and Royal Transit tells its own story. The question was never answered as to what these books were in fact doing in the possession of Nyaks and Lenny. They should not have been in their possession ordinarily. Counsel for the appellant faults the trial Magistrate for making conclusions regarding Tadeo Mukonyezi and his friendship with the appellant. This court is of the view that there is a clear link to him from the evidence adduced before Court. For unknown reasons, the Respondent appeared to have opted to ignore the facts implicating him and not to expand the investigation to cover him.

Nevertheless, in light of the foregoing, I find it impossible to fault the trial magistrate's conclusion at page 5 of his judgment where he states as follows:

'I am convinced to believe that while A1 was responsible for filing misleading statements the architecture of the deal was done in Royal Transit, I am not even surprised that the invoice and receipts purporting to belong to non-existing Hongai General Supplies Ltd and Xing Dongmin were recovered from Royal Transit office which shared office space with Nyaks and Lenny. This alone makes me believe the prosecution's evidence that indeed the transactions did not take place. . . but the accused A1 and his tax consultant and friend Mukonyezi chose to reflect in the tax returns that A1's companies had transacted with Hongai and Xing Dongmin which were found

to be non-existent save for their invoice being found in the shared office of Royal Transit and Nyaks and Lenny.'

The above conclusion stemmed from the evidence of PW 4 that they used to do consultancy services which entailed handling tax matters for companies and advising on correspondence. He was working for Tadeo Mukonyezi, an employee of URA at the time and the Director of Royal Transit Co. He used to file tax returns for Nyaks and Lenny and Royal Transit. He informed the Court of the close friendship between his boss and the appellant. He stated that he used to review schedule of purchases of Nyaks and Lenny from his boss Mukonyezi. I agree that the above facts are incriminating and suggestive that the transactions did not take place.

The trial Magistrate also considered the evidence from the prosecution that the vehicles that were allegedly hired by Nyaks and Lenny and Leds could not have provided the services cited in the monthly returns filed. This court has considered evidence that was provided by the appellant himself and admitted as Prosecution **Exhibits 4 (b) and (c).** These exhibits were letters signed by the appellant providing the list of vehicles that were hired by Leds and Nyaks and Lenny for the periods of January 2012 to June 2014 from Xing Dongmin and Hongai. Leds U Ltd provided 6 vehicle Registration Numbers, i.e. **RAC 179G, RAC 197C, KAZ 587Z, UAQ 040L**, **A0356A** and **RAB 844I**. Nyaks and Lenny provided ten vehicle Registration Numbers i.e. **RAB 843E, RAB 879F, SK 6473BB, SK 7690BB, KAV 524R, 326 UAX, A6144A, 561 UDA, CG00 1487AB22** and **CGBW 55833**

The outcome of the investigations was presented before the court through PW1, PW3, PW5 and PW8 and considered by the trial Magistrate. These were captured at pages 6 and 7 of the judgement.

I have considered Counsel for the appellant's contention that the list of foreign registered vehicles submitted in the Temporary Motor Vehicle Importation and exportation system (TEVIES) cannot be relied upon because there was no corroboration. He argued that without such corroboration, it could not be concluded that there was no entry or exit of the

said vehicles into the country. I indeed take note of the fact that reference was made to the system, but no evidence from the same was laid before the court to show that the foreign registered vehicles never entered Uganda during the period in question. This in my view constituted an oversight on the part of the prosecution.

The appellant's submissions in this regard seem to suggest that these vehicles could have entered illegally into the country and been used in the transactions. I note that the trial magistrate was alive to this possibility in the last paragraph on page 6 of the judgement. He resolved that whereas this was a possibility, the evidential burden had shifted to the accused and that he had failed to discharge it. I will deal with the evidential burden later in this judgement.

In respect of the submissions of Counsel for the appellant, I proceed to reevaluate the evidence on record and observe as follows;

a) Kamo and Sons from Rwanda wrote a letter to URA Uganda which was admitted as **Prosecution Exhibit 20,** which states that Mercedes Benz RAB 879F was bought on 7th July 2011 as spare parts and had never been used as a means of transport since then. This was before the dates within which the returns in question were filed. This vehicle appears on the list which the appellant claims delivered materials for Nyaks and Lenny.

b) Kenya Revenue Authority in their response to URA admitted as part of Exhibit PE 3 indicated that M/V Reg. No KAV 524R alleged by the appellant to have ferried materials was a Toyota Corona registered in the name of David Wamamili Wanyonyi. This appears in the list of vehicles alleged by the appellant to have been used by Nyaks and Lenny. It could not possibly have been used to transport raw materials as alleged. Another such vehicle whose capacity to transport materials is questionable is a Suzuki Maruti whose registration number was among those furnished by the appellant. I also note that none of the vehicles was registered in the names of Hongai or Xing Dongmin.

I considered the testimony of PW5 Ruzindana Deo alongside his recorded statement admitted as PEX 10. I note that there were vehicles registration numbers which he claimed were provided by the appellant in his letters admitted as PEX 4 (b) and (c) which he claimed that the Kenyan authorities informed them were invalid. These were KBN 55C and KBQ57C. I note that these two numbers were never provided by the appellant. Neither were KBC 527Q and KBC 228 A. It remains unclear to court what the origin of these plates were. It was therefore erroneous for the court to rely on the report from Kenya fully, to arrive at the conclusion that some of the numbers were invalid as the Kenyan motor vehicle Registration system had three digits as part of the number plate and not two. The invalid number plates cannot be linked to the appellant. What remains clear however is the report that there was no record of these Kenyan registered cars coming into Uganda in the period in question and none of them was registered in the names of Hongai or Xing Dongmin.

c) The evidence of Carriers U Ltd that they have had no transactions with Led U Ltd at all. This puts in question the claim by the appellant on behalf of Leds that foreign registered vehicles were used to deliver to Tororo. This court is mindful of the fact that the appellant raised the defense that Tororo Cement could not tell which trucks delivered as they would put the materials at the stock pile and trucks which were not tipping were not allowed to enter. This was confirmed by PW3 during cross examination.

I am of the view that this argument would have held sway if he made it in respect of only Nyaks and Lenny. Since Tororo Cement denies any agreement with Leds, it is not possible that the trucks listed could have delivered on behalf of Leds. All the transactions for Leds are thus thrown into issue.

d) Letter from Rwanda Revenue Authority admitted as part of PEX 11 showed that vehicles Nos RAC 179G, RAC197C, RAB8441, RAB 843E, and RAB879F alleged by the appellant to have been hired by Nyaks and Lenny and Leds were all not registered in the names of Hongai or Xing Dongmin. All had different registered

owners, including the one for Kamo and Sons. I have referred to this in (a) hereinabove.

e) The evidence of PW8 Gurmet Singh of Mansons that they were the registered proprietors of M/V Reg. Nos. 561 UDA and 326 UAX. They had never worked with Nyaks and Lenny and Leds, neither had they worked with Hongai and Xing Dongmin. The appellant had provided these vehicles as having been used to transport goods for Nyaks and Lenny. The appellant criticizes the evidence of this witness as unreliable. I find otherwise. He testified as the Financial controller. He informed court that he was responsible for invoicing, payment collection, and signs contracts for the company. If there had been a contract with any of the four companies in issue he was well placed to know of it. He did not know of any. He informed court that he checked all the finances of the company and did not know the appellant. His assertion that it's the duty of the logistics manager to track whereabouts of vehicles does not in any way affect his evidence. I find his evidence credible.

f) The evidence of PW3, Carriers U Ltd was that they had no contract with Leds U Ltd as transporter. He however knew the appellant as a supplier of raw materials to Tororo Factory site. Of all the vehicles provided by the appellant, only one Reg No UAQ 040L was found to have transported materials to TORORO car

I observe that none of the foreign registered vehicles listed by the appellant showed up in the system (TEVIES) as having entered into Uganda. It would have been different if one or two did, as this would validate the claims of the appellant that the transactions in issue took place.

I have considered the invoices and receipts provided by Nyaks and Lenny and Leds. None of them cite the registration numbers of the vehicles allegedly hired. Prosecution should have gone ahead to have them examined for handwriting similarities with any of

the persons involved. However, even in the absence of this evidence, I am satisfied, as the trial magistrate was, that the evidence summarized above was cogent and reliable.

I now proceed to consider the appellant's argument that the fact that the returns filed by the appellant's companies were tallying with the returns of Hongai and Xing Dongmin showed that the transactions took place. Further, that the receipts and invoices provided by the appellant were also found to be tallying with the returns filed by the appellants, which are in issue in this case.

The Respondent skirted around this issue in her response and did not address it. The trial court did not specifically address it either. I am however of the view that the trial Magistrate having found that Xing Dongmin and Hongai were non- existent, could not logically have believed the submission that the tallying of returns of these companies and invoices and receipts presented by the appellant proved that the transactions took place. The court had to rely on the independent evidence which showed to the contrary that the transactions had not taken place.

I too am similarly convinced by the independent evidence which showed that Hongai and Xing Dongmin were a creation of the appellant and Royal Transit and the receipts and invoices they presented were therefore suspect. I particularly take note of the fact that these two companies were unregistered with URSB, that they could not be located at the address given, that they used false certificates of incorporation to get VAT registration, that the appellant and A2 failed to lead investigators to these two companies which they had dealt with for many years, the recovery of the invoice books for the two companies on the premises of Nyaks and Lenny, the relationship between Royal Transit Co and the appellant, and the evidence showing that motor vehicles allegedly used could not possibly have been used. In light of the above, the registration by URA for tax purposes could not be relied upon to confirm that the businesses of Xing Dongmin and Hongai existed.

In determining whether the transactions took place, all the pieces of evidence must be considered together. I am convinced that when this is done, all the evidence points to the fact that the transactions took place.

The Respondent submitted that the appellant failed to satisfy the evidential burden placed on him by **Section 26 of the Tax Procedures Code Act** to show that the vehicles that he had used to transport raw materials had indeed entered Uganda, contrary to the assertions of the investigation team.

Section 26 (b) of the Act provides that *'In any proceeding under this Act, for any other tax decision the burden is on the person objecting to the decision to prove that the decision should not have been made or should have been made differently.'*

A tax decision is defined under section 3 as *a tax assessment or a decision on any matter left to the discretion, judgement, direction, opinion, approval, satisfaction, determination of the commissioner, other than a decision made in relation to a tax assessment.*

I also consider that there are facts within the knowledge of the accused person in this case. Under Section 105 of the Evidence Act the burden of proving these facts falls on the accused. See **Teddy Ssezi Cheeye V Uganda** (Supreme Court Criminal Appeal No 32/ 2010) where the court upheld the decision of the Court of Appeal to the effect that the appellant was the only person who knew how the money put on the account of UCA of which he was the sole signatory was spent. It was therefore upon him to explain. They supported the application of S. 105 of the Evidence Act.

The decision arrived at by the Respondent in this case is that the transactions cited in the monthly tax returns for Nyaks and Lenny and Leds did not take place, meaning that the appellant had not paid due taxes, and caused a loss to the Respondent. This decision is a tax decision. As such S. 26 (b) applies.

Whereas the trial magistrate stated that the evidential burden was not discharged because the appellant had failed to convince court that the vehicles had come into the country and been used, I am of the considered view that this burden stretched to the entire transactions in issue, i.e. to prove that the transactions took place. I find that the

appellant failed to meet this burden because he failed to satisfy the court that Xing Dongmin and Hongai existed.

The existence of the two questioned companies was only known to the appellant and his co accused. They failed to lead investigators to the premises and to provide telephone contacts, physical addresses, names of Directors or company employees, photos, or other evidence. The appellant wants the court to believe that money to the tunes alleged in the returns were paid on the street to people who cannot be found, yet they had dealt with them for years!! I note that the receipts and invoices alleged to have been received from the street cover payments worth high amounts per transaction e.g. 156 million, 88 million, 129 million etc. The defense that they used to meet on the streets, pay money and receive invoices and receipts is laughable.

I find the defense case incredible. Even if the argument of counsel for the appellant that the evidential burden did not shift to his client is true, the court had the duty to analyze both the prosecution case and the defense case and make a finding on which side was to be believed. I find that the trial magistrate duly met this burden as he analyzed then disregarded the evidence of the appellant as incredible.

This ground has not been proved. I am satisfied that there was sufficient evidence that the transactions did not take place and that the statements made to URA were false. The evidence was circumstancial in nature. I am satisfied that there are no other co-existing circumstances in this case which would weaken or destroy the inference that the transactions did not take place. **Simon Musoke Versus R 1958 EA 715**
Ground 2 fails.

Ground 3:

The trial Magistrate erred in law and in fact by relying on invoices and receipts that were recovered from an illegal search and thereby arriving at a wrong decision

Counsel for the Appellant faulted the trial Magistrate for relying on invoices and receipts that were recovered from an illegal search at the premises of Royal Transit Ltd. The search warrant was never availed to court thus it could be surmised that the search was conducted without a warrant. While conceding that Section 41 (1) of the Tax Procedures Code Act allowed the Respondent to search without a warrant, Sub section 6 of the same section provided that any records or data storage devices seized and retained shall be signed for by the Commissioner General. This was not done yet the said subsection is mandatory. The Respondent did not comply with the law so it cannot be confirmed whether the invoices were indeed obtained from the search.

Counsel for the Respondent on the other hand submitted that the trial magistrate did not rely on invoices and receipts recovered from an illegal search as these were never adduced in evidence. The invoices and receipts tendered in Court as P EX 5, 6, 7 and 8 were presented by the appellant as proof of the purported transactions. She supported this with the evidence of PW1 Caroline Nangobi, PW5, Deo Ruzindana and PW 10, Sarah Nakyagaba. She prayed court to dismiss this ground.

In rejoinder, counsel for the appellant submitted the Respondent was still duty bound to ascertain the authenticity of the alleged invoices and receipts by interviewing the Directors of the two companies and establishing whether they had issued the receipts and invoices.

From the arguments of counsel for the appellant, it is clear that what is in issue is the invoices that were allegedly recovered from the premises of Nyaks and Lenny / Royal Transit. I have carefully considered the judgement appealed from and the evidence of the prosecution witnesses. I note that the invoices were never tendered before Court. There is however evidence before Court from witnesses regarding the fact that these invoices were recovered. PW 1 states that the search was conducted on 24th November 2014 at Eco plaza and they retrieved invoices and receipt books for Nyaks and Lenny and Leds U Ltd. They also found half invoice books for Hongai among others. She later stated that the invoices were not relating to the period in question, thus the request to the appellant to provide the relevant invoices and receipts. These were provided in December 2014. I

note that the defense opted not to contest the question of the recovery of the invoices for the non- existent companies.

PW 4 Enoch Miiro testified that he had documents being tax invoice book bearing Xing Dongmin and Hongai, at least one of the two companies He stated that when URA officers came for a search they took the tax invoice book. Again, this evidence went uncontroverted.

PW 9 Nakyagaba Sarah testified that they secured necessary authorization i.e. management letter from Assistant Commissioner tax investigations and court orders to facilitate the search. She stated that they were able to retrieve blank copies of the invoices for Xing Dongmin and Hongai. These booklets were in the general office of Nyaks and Lenny and the officer in charge was Enoch. They recorded the exhibits and took the same with them.

This evidence was relied upon by the trial Magistrate at page 5 of the judgement, paragraph 1, where he observed as follows:

'. . .I am not even surprised that the invoices and receipts purporting to belong to non-existing Hongai General supplies and Xing Dongmin were recovered from Royal Transit. . ..'

Further on at the same page he concludes as follows:

'. . . the accused A1 with his tax consultant and friend Mukonyezi Tadeo chose to reflect in the tax returns that A1's companies had transacted with Hongai and Xing Dongmin which were found to be non-existence save for their invoice being found in the shared office of Royal Transit and Nyaks and Lenny'

It is my view that the trial magistrate had evidence before him regarding the recovery of blank invoice books belonging to the Companies that were alleged by the appellant to have provided transportation services. He was right to rely on this uncontroverted evidence. Though the physical invoices were not tendered in court, there was a reasonable description and explanation.

Further, the fact that the Respondent had powers to search any premises even without a search warrant under Section 41 of the Tax Procedures Code Act means that the search could not have been illegal. Verbal evidence from the search tendered in court cannot be inadmissible. Since the documents were not tendered in Court, Section 41 (c) which requires the commissioner to sign for all records does not apply. The non-production of the books in court is not fatal as the witnesses clearly testified about the same.

This ground of appeal fails

Ground 4:

The trial magistrate erred in law and fact by relying on accomplice evidence of an employee of the Respondent and thereby occasioning a miscarriage of justice

Counsel for the appellant submitted that PW4 Miiro Enoch was an accomplice under the law and his evidence therefore required corroboration as a rule of practice. He contended that there was in this case no such corroboration, neither was there any evidence led to dispel the fear that he had been induced or coerced by the Respondent to testify. The evidence shows that he left employment with Royal Transit and joined URA. It is the circumstances of this employment which the appellant finds suspicious and affecting his credibility as a witness against the appellant.

Counsel for the Respondent in reply, supported the reliance of the trial magistrate on the evidence of PW4, who in her considered view was not an accomplice. In any event, the trial magistrate exercised the necessary caution, found the witness truthful and unbiased. He also found sufficient corroboration of the evidence of PW4. She urged court to find that Court properly relied on the evidence.

I have noted from the judgement that the Trial magistrate considered PW4 as an accomplice and proceeded to warn himself of the danger of acting on his evidence. He observed that he appeared to be unbiased and truthful.

I find that there's insufficient evidence from which to draw the conclusion that the PW4 was an accomplice within the meaning of the supreme court decision of *Nassolo v Uganda 2003 1 EA 181*. In that case a witness is said to be an accomplice if interalia he participated in the commission of the offense which is the subject of the trial as a principal or an accessory, in one degree or another.

Whereas PW4 admits filing returns for the appellant's companies it's not clear whether he was aware of the crime being committed and participated in it. He stated that he got information from the appellant and his boss regarding the transactions and he then prepared the returns. Whereas he was aware of the blank receipt books the evidence falls short of showing that he was aware of what they were used for, how they had come on the premises or that he had used them himself. The evidence falls short of showing that he knew that Hongai and Xing Dongmin were non-existent. The requisite mens rea has to be proved through the acts of the person alleged to be an accomplice. It cannot be presumed.

The treatment of PW4 as an accomplice by Court was however not fatal. His evidence was sufficiently corroborated. I also note that the question of bias and coercion to testify by the Respondent were never raised during cross examination of PW4 to impeach his credibility / testimony. It is not proper for the issue to be raised in submissions on appeal when it was not canvassed in the hearing. I note that the testimony of PW 4 was not in any other way destroyed by the cross examination.

The submissions of Counsel for the appellant may have been inspired in part by the judgement of the trial magistrate when he, rather inconsistently, at page 9 noted as follows:

> 3. *'Notwithstanding his rights like any qualified person, the employment of Miiro Enoch who testified in court as PW4 as its staff yet he was one of the key witnesses in this case before he could even testify could be misinterpreted especially by the accused*

as an inducement for him to give implicating evidence against the accused much as he appeared a honest witness besides his evidence being corroborated'

With due respect there was no factual basis for this conclusion for the reasons I have already cited. I find no basis for the allegation of bias as in my view the witness told the truth and his credibility was not impeached. I agree with the trial Magistrate on this.

This ground also fails.

Ground 5

The trial magistrate erred in law and fact by finding that the Respondent had facilitated the commission of the offense by registering the two companies and yet ended up convicting the appellant thereby occasioning a miscarriage of justice.

Counsel for the appellant contends that the trial Court rightly observed that the Respondent had allowed the registration of Hongai General Enterprises and Xing Dongmin for VAT purposes and thus had facilitated the commission of the crime. The Respondent should have carried out due diligence before allowing the registration for VAT. This was exacerbated by the fact that none of the Directors of the two Companies were interviewed and had denied issuing the receipts. The evidence was therefore inconclusive. That upon arriving at such a conclusion, the court should not have convicted the appellant.

In her reply, Counsel for the Respondent submitted that the registration for VAT was procured by fraud using forged URSB Certificates of Incorporation. This registration however did not take away the gist of the matter which is the fact that the purported transactions did not take place. She further stated that the Respondent was aggrieved by the Courts finding that URA was vicariously liable and that it facilitated the commission of the crime, but they are not in a position to appeal as they did not have a right of appeal where there was a conviction entered by Court. She prayed to Court to find the conviction proper.

I have considered the finding of the trial Court at page 9 from line 3 onwards which reads as follows:

'. . .without prejudice to the finding that the accused was responsible for the crimes committed, based on the principle of vicarious liability, to some extent Uganda Revenue Authority (URA), the complainant in this matter did not have clean hands as shown below:

1. *Either due to a genuine oversight, negligence and or fraudulent acts of some staff, it facilitated the commission of the crime when it allowed VAT registration of Hongai General Supplies and Xing Dongmin International Ltd when the two companies were in reality not in existence*
2. *Uganda Revenue Authority did not monitor the activities of Royal Transit closely as there was a potential opportunity of conflict of interest since Tadeo Mukonyezi the Director was its employee at that time yet acting as a tax consultant of the accused companies.'*

I take issue with the reliance on a principle of civil law, Vicarious liability, in this matter which is criminal in nature. Even then, I do not believe that this principle was rightly applied in this case. The conclusion that URA did not have clean hands or contributed to the crimes committed by the appellant is tantamount to ascribing liability in a criminal matter to URA, a body Corporate. Whereas individuals within URA may not have carried out due diligence before registering Hongai and Xing Dongmin for VAT purposes, and whereas there may have been connivance, criminality or a conflict of interest on the part of staff, it is not legally correct to ascribe any liability to URA for the crimes committed. Criminal liability is personal (individual criminal liability or corporate criminal liability) and its determination is based on evidence. The lower court's finding is akin to ascribing liability to a victim of robbery for having carelessly or recklessly moved alone in the dark on the village path with a valuable item on him.

The facts in this case show that forged certificates of incorporation were used to obtain VAT registration. The vulnerability of the respondent or incompetence / connivance of its staff is not an excuse for the criminal actions of the appellant.

In view of this, I find that there was sufficient evidence to sustain the charges brought against the appellant. He cannot therefore benefit from the court's rather erroneous finding that the Respondent was vicariously liable.

The sentence and Orders of Court

It is noted that the appellant did not raise any ground of appeal pertaining to the sentence, nor did it make any submissions to that effect.

The Respondent however raised issues with the sentences and Orders of Court on two grounds:

1. That the sentence imposed of 150 currency points which is equivalent of Ushs 3,000,000 is manifestly low and does not reflect the severity of the offense. She submitted that the amounts involved in this case is 2,477,430,548/= and that the law prescribes a maximum of two years' imprisonment for the offenses proved. She submitted that the law also allows the court to impose a fine not exceeding 48 currency points or imprisonment or both.
2. That the Order for payment by the appellant of only 50% of the taxes due in respect of Nyaks and Lenny was misguided and based on the erroneous finding that URA had contributed to the loss. She submitted that this amounted to remission of taxes which is a power vested only in the Minister of Finance Planning and Economic Development under section 40 of the Tax Procedures Code Act.

   She submitted that according to Black's Law dictionary, a remission is defined as cancellation or extinguishment of all or part of a financial obligation, a release of a debt or a claim.

   She further contended that tax is a creature of statute and any exemption has to be expressly provided for by an act of Parliament and not by the executive or the judiciary.

   She invited court to consider the decisions of Court to this effect in ***Kampala Nissan Uganda Limited V URA, Civil Appeal No 7/2009, Heritage Oil and Gas Limited Versus URA Civil Appeal No 14/2011 and KM Enterprises and Others Versus URA, HCCS 599/2001.***

She prayed to Court to exercise its powers of Revision under Section 50 (1) of the Criminal Procedure Code Act to enhance the sentence to both a fine and a custodial sentence and alter the order to pay only 50% of the taxes due in respect of Nyaks and

Lenny by making an order for payment of the full amount of taxes of **Ushs 2,477,430,548/=** where **Ushs 1,980,032,566** is for Nyaks and Lenny and **Ushs 497,397,982** is for Leds U Ltd.

She argued that the Respondent could not appeal against the decision of the Lower court as there is no right of appeal for the State where there is a conviction.

In their submissions in rejoinder, the appellant submitted that:

1. The Respondent cannot ask for a revision of the sentence and orders of the lower Court without having applied for it and the court cannot entertain a revision of a sentence in an appeal.
2. That the Respondent ought to have filed a cross appeal in case they were dissatisfied with the sentence and orders of Court. Further, that there was no mistake made by court to warrant a review of the sentence.

The issues that have to be resolved are as follows:

1. Can the Court issue an order of revision in the circumstances?

The High Court has the power of revision over decisions emanating from a Magistrate's court, in circumstances where the party has no right of appeal.

Section 50 of the Criminal Procedure Code Act provides for these powers. **Section 50 (5)** specifically provides:

'Any person aggrieved by any finding, sentence or order made or imposed by a magistrates' court may petition the High Court to exercise its powers of revision under this section, but no such petition shall be entertained where the petitioner could have appealed against the finding, sentence, or order.'

In the present case, the Respondent is asking the court to grant a revision Order within an appeal. The Respondent did not petition court for a revision of the sentence of the lower court as envisaged under Section 50 (5) of the CPC, neither has the matter under consideration of court been called for examination within the meaning of section 48 of the

CPC in the exercise of supervisory powers over the Magistrates Courts. The Court cannot therefore substitute the appeal proceedings for revision proceedings. The two processes are different.

In the circumstances of this case, I agree with counsel for the appellant as far as the prayer regarding the revision order is concerned.

I am mindful that the High Court on appeal has the power to enhance any sentence as provided under **Section 34** of the Criminal Procedure Code Act. In **Mugasa Joseph Versus Uganda** (Supreme Court Criminal Appeal No 10 / 2010) it held as follows:

" It is therefore clear that the court of appeal or any other appellate court has the power to vary a sentence imposed by the lower court by reducing or increasing it. The substantial question in this appeal is whether the court of appeal followed the right procedure before enhancing the sentence against the appellant."

The Supreme Court in the **Mugasa** case considered the decision of the Kenyan Court of Appeal in the case of **JJW Versus Republic** Criminal Appeal No 11/2011 which dealt with a similar question regarding the procedure for enhancement. It was held:

"We too think that the circumstances of the case called for more severe sentence than what was awarded. However, what we do not appreciate is the manner in which the learned Judge enhanced the sentence. It is correct that when the High Court is hearing an appeal in a criminal case, it has powers to enhance sentence or alter the nature of the sentence…However, sentencing an appellant is a matter that cannot be treated lightly. The court in enhancing the sentence already awarded must be aware that its action in so doing may have serious effects on the appellant. Because of such a situation, it is a requirement that the appellant be made aware before the hearing or at the commencement of the hearing of his appeal that the sentence is likely to be enhanced. Often times this information is conveyed by the prosecution filing a cross appeal in which it seeks enhancement of the sentence and that cross appeal is served on the appellant in good time to enable him to prepare for that eventuality. The second way is by the court warning the appellant or informing him that if his appeal does not succeed on conviction,

the sentence may be enhanced or if the appeal is on sentence, only by warning him that he risks enhanced sentence at the hearing of the appeal"

It is clear from the two cases that the vital issue is that the appellant should have adequate notice of the likelihood of his sentence being enhanced. In *Mugasa*, the Court of appeal was dealing with an appeal against sentence by the appellant. During the hearing of the appeal the court of appeal informed him that the sentence of the lower court was too lenient and it intended to enhance it. Court heard arguments and then enhanced the sentence from 17 to 25 years' imprisonment. The Supreme court faulted the lower Court for enhancing the sentence without following procedure, found the sentence unlawful and set it aside. The sentence of 17 years was restored.

In this case, there was no such notice. The appellant filed his written submissions with no idea of such a possibility hanging over his head, and the issue was only raised by Respondent while replying to his arguments in support of his appeal of appeal. For this reason, this court will not interfere with the sentence of the lower court.

2. Can court vary the orders of the lower court regarding the payment of taxes?

The Respondent raised the issue of illegality in the Orders of the trial magistrate on payment of taxes.

Before I resolve this, I want to point out that the appellant was charged and convicted of 6 counts of the offense of knowingly or recklessly making a statement to a tax officer that is misleading in material particular. The prosecution was expected therefore to lead evidence to satisfy the ingredients of this offense which are that: the appellant made a statement; the statement was made to a tax officer; the statement was misleading or false in material particulars; that the appellant made the statement knowingly or recklessly

The offense does not require proof of loss as a result of the commission of the offense. In that regard the framing of the particulars of the charges provided more information than was required under **Section 58 (1) of the Tax Procedures Code Act** which creates the offense in question. I will use the particulars in Count 1 of the charge sheet as an example. It reads as follows:

Alikiriza Leonard and others still at large, during the year 2012 in Kampala District, being the Director of LEDS Uganda Ltd, a registered taxpayer for value added tax, knowingly submitted false monthly returns for the months of April and May 2012 to Uganda Revenue Authority, purporting to have procured transport services from Hongai General Supplies and Xing Dongmin International Ltd, well knowing the same was false and caused a tax loss of Ushs 41,938,851 (Forty One million, nine hundred thirty eight thousand eight hundred fifty one shillings to Uganda Revenue Authority.)

As far as this court is concerned, the part in the particulars which is underlined hereinabove is not necessary or integral to the proving of the charge.

Indeed, during the trial, the prosecution led some evidence that touched on the loss caused. Whereas this may be useful in showing the gravity of the offense/ subject matter involved, the question of loss occasioned was not a subject of the trial.

I note that PW 10, Evans Mwesigye who was working as an auditor with URA informed the Court that he was approached by the investigators who asked him to review the returns of Nyaks and Lenny and Leds for April 2012-December 2014 and advise if there could be cause to continue further investigations. The issue was whether there were fictitious transactions in their returns in order to reduce tax liability payable to URA. He informed Court as follows;

'The summary of the trend is that the two companies under question i.e. Nyaks and Lenny Ltd seemed to have been taking benefit of input tax to reduce their tax payable to URA through series of purchases that may not have taken place for that matter, I recommend that the investigators could go further with investigations'.

The above shows that there was no conclusive report tabled before the court regarding the total amount that the Respondent lost as a result of the misleading/false statements. There was no evidence on how the amounts of loss on the charge sheets was arrived at. There appears to be no final assessment of taxes that the appellant's companies owed, presented before the Court. As argued by the appellant, there was no evidence of consideration of VAT input vis a vis VAT output as admitted by PW1 and this was a vital element in determining the tax loss.

Also, since the case did not require proof of the amount lost, the accused was not expected to challenge or defend himself in respect of the allegations of loss mentioned in the particulars of the charge sheet.

The trial court was therefore not expected to make a finding on how much tax was lost. Indeed, it did not make any finding to that effect in its judgement.

At the sentencing however, Counsel for the Respondent informed the court that the amount involved close to Ushs 2.3 billion was a huge amount. She prayed that court orders for payment of taxes in contention i.e. Ushs 497,397,982 in respect of Leds and Ushs 1,980,032,566 in respect of Nyaks and Lenny. The court then went ahead during sentencing, to state that the loss caused to Government was so huge and over Ushs 2 bn.

He ordered as follows:

'He shall pay the entire tax loss incurred under LEDS U Ltd and 50% of the tax loss under Nyaks and Lenny Enterprises Ltd'

I have considered the above circumstances and found the Order of the Court wanting in many aspects. First, it did not arise from a finding of the Court that the entire amount stated by the Respondent in her prayers on sentencing were due. Secondly, it failed to specify the amount and could lead to ambiguity.

Counsel for the Respondent has further submitted that the Order for payment of only 50% of tax due from Nyaks and Lenny was illegal as it was based on an erroneous finding that URA contributed to the loss. I have already found that the trial Court erred in attributing what he referred to as Vicarious liability/ contributory loss on the part of URA. It follows therefore that I do not agree with the reasons for the grant of the order of 50% on grounds that URA had contributed to the loss by Registering the non- existent Companies for tax purposes, and the fact that Mukonyezi who was a tax consultant for these same companies was also an employee of URA.

I have considered the provisions of 40 of the Tax Procedures Code Act and the decision of Justice Madrama in Kampala Nissan Uganda versus Uganda Revenue Authority, Civil Appeal 7/2009 that '...no authority can waive tax except under a law enacted by Parliament'.

I am persuaded that the Order of payment of 50% taxes was illegal in the circumstances. The action of the magistrate had the effect of waiving the tax. I am also persuaded that there was insufficient basis for the order.

Whereas there was no cross appeal on this matter, this court cannot ignore an illegality that has been brought before it. It is trite law that a court cannot sanction that which is illegal.

I find section 67 of the Tax Procedures Code Act 2014 instructive. It provides that the amount of any tax due and payable under a tax law by a tax payer is not abated by reason only of the conviction or punishment of a taxpayer for an offense under any tax law. The tax body is empowered to assess, levy and collect taxes under several statutory provisions and these options remain open to the Respondent.

CONCLUSION:

In light of the foregoing, this Court makes the following orders:

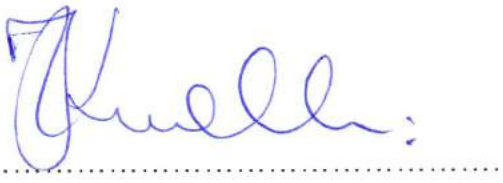
1. The appeal against conviction is dismissed as all the grounds of appeal fail. The conviction of the appellant on Counts 1,2,3,5,6 and 7 is accordingly upheld.

2. The sentence of the lower court of a fine of 25 currency points on each count and alternative imprisonment in default of 3 years on each count to run concurrently is upheld

3. The Prayer by the Respondent for the Court to issue a Revision Order enhancing sentence is denied.

4. The Order by the lower Court for the appellant to pay the entire tax loss under Leds (U) Ltd and 50 % of the tax loss under Nyaks and Lenny Enterprises Ltd is hereby set aside

Right of Appeal against the decision and orders of court within 14 days explained



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Jane Okuo Kajuga

Judge of the High Court

Delivered this 22nd day of January 2021

In the presence of:

The appellant : Alikiriza Leonard

Counsel for the appellant : Kirunda Mathews and Friday Roberts Kagoro of Muwema and Co Advocates

Counsel for the Respondent : Tony Kalungi holding brief for Diana Prida Praff