THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: MWONDHA; TIBATEMWA-EKIRIKUBINZA; TUHAISE; CHIBITA; MUSOKE; JJSC]

CIVIL APPEAL NO. 03 OF 2021

BETWEEN

HERITAGE OIL & GAS LIMITED:::::::::::::::::::::::::::::::: APPELLANT

AND

UGANDA REVENUE AUTHORITY::::::::::::::::::::::::::RESPONDENT

[Appeal from the Judgment of the Court of Appeal at Kampala dated 23rd June, 2020 in Civil Appeal No.264 of 2018 before Hon. Justices: (Cheborion, Musota and Madrama, JJ.A.)]

Representation: *At the hearing, the appellant company was represented by counsel Denis Kusasira and Stephen Kabuye.*

The Respondent was represented by counsel Ronald Baluku Masamba.

Both counsel relied upon the written submissions filed in Court.

Summary: **Interlocutory Orders – Right of appeal** – Prior to the amendment of Section 27 of the Tax Appeals Tribunal Act (Cap 345), there was no right of appeal to this Court against an interlocutory matter resulting from the decision of the High Court while exercising its appellate jurisdiction in a suit that originated from the Tax Appeals Tribunal.

Interlocutory Orders - there is no right of appeal to the Supreme Court from interlocutory orders which are incidental to the appeal and do not result from the final determination of the appeal itself.

h.T-E

JUDGMENT OF HON. JUSTICE PROF.TIBATEMWA-EKIRIKUBINZA, JSC.

Introduction

This appeal arises from the judgment of the Court of Appeal which dismissed the appellant's appeal against the decision of Hon. Justice Alividza, J dated 27th February, 2018 in consolidated High Court Civil Appeals Nos.23 and 03 of 2011, for the reason that the appeal to the Court of Appeal was incompetent hence this appeal.

Background

From the record, the background of this appeal is that in 2010, the appellant obtained proceeds from disposal of oil blocks located within the Albertine Graben region. Subsequently, the respondent Authority issued tax assessments of USD 404,925,000 and USD 30,000,000 respectively to the appellant. The appellant objected to the said assessments but was unsuccessful. Dissatisfied by the objection decisions of the respondent, the appellant challenged the tax assessments in the Tax Appeals Tribunal *vide Application No. 26 of 2010* in respect of the tax assessment of US$ 404,925,000 and *Application No. 28 of 2010* in respect of the tax assessment of US$ 30,000,000. The appeals were however dismissed.

Aggrieved by the decisions of the Tax Appeals Tribunal, the appellant lodged two appeals to the High Court under Section 27 of the Tax Appeals Tribunal Act *vide* Civil Appeal No. 23 of 2011 in respect of the Tribunal's decision in Civil Appeal No. 26 of 2010 as well as Civil Appeal No. 3 of 2011.

The two appeals were consolidated by the High Court and the parties filed written skeleton arguments. When the matter came up for a scheduling conference, the appellant objected to some of the respondent's skeleton arguments namely paragraphs 91-94 and 142-150.

After hearing the parties' contention, the learned appellate judge made a "Conferencing Ruling" to the effect that the respondent's skeleton arguments were accepted as is and the parties were directed

L. T-E

to prepare their final submissions for hearing of the appeal having in mind that questions of law not appealed against should be excluded. The High Court Judge further held that all the parties had notice of all the points of law that would be the focus of the appeal and could adequately prepare their arguments.

The appellant was aggrieved by that decision and appealed to the Court of Appeal but was unsuccessful hence this appeal.

The grounds of appeal are as follows:

1. **The Learned Justices of Appeal erred in law when they applied and misinterpreted the repealed sections 100 and 101 of the Income Tax Act, cap 340 and thereby held that there is no right of appeal from a decision of the High Court sitting on appeal from the decision of the Tax Appeals Tribunal.**

2. **The learned Justices of Appeal erred in law when they held that the appellant's appeal was a third appeal, which required a certificate of importance under section 73 of the CPA.**

3. **The learned Justices of Appeal erred in law, when they held that there is no legal provision for striking out paragraphs 91-94 and 142-150 of the respondent's skeleton arguments.**

4. **The learned justices of appeal erred in law when they dismissed the appellant's appeal on grounds which were never argued before them and without affording the appellant an opportunity to be heard on the same.**

Prayers:

The appellant prayed that the appeal is allowed, the judgment of the Court of Appeal is set aside, the appellant's preliminary points be allowed and paragraphs 91-94 and 142-150 of the respondent's skeleton arguments be struck out.

h. T-C

The Appellant also prayed for costs in this Court and the courts below.

Submissions on the preliminary objection

Before submitting on the grounds of appeal, counsel for the respondent sought leave of this Court to raise a preliminary point of law relating to the right of appeal to this Court against the Ruling of the Court of Appeal emanating from a preliminary Ruling of the High Court. Counsel submitted that this preliminary point was capable of disposing of the entire appeal and proceeded to expound on it.

Counsel argued that there is no right of appeal to this Court in an interlocutory matter arising from the High Court sitting as an appellate Court from a matter arising from the Tax Appeals Tribunal. In support of this submission, counsel relied on Section 6 (1) of the Judicature Act and the authorities of **Babcon Uganda Ltd v Mbale Resort Hotel Limited**[1] and **Mansukhlal Ramji & Crane Finance Co. Ltd v Attorney General & 2 Others**[2].

Counsel contended that the Hon. Justice Alividza determined the preliminary matter raised before her, while sitting not as a trial court, but as an appellate Court from a matter that had commenced in the Tax Appeals Tribunal.

Counsel noted that the High Court in its appellate capacity pursuant to Section 27 of the Tax Appeals Tribunals Act, is yet to determine the appeal against the decision of the Tax Appeals Tribunal on merit.

Counsel contended that the decision and guidance of the appellate High Court Judge which was that "the hearing of the appeal would proceed and the skeleton submissions lodged by the respondent would not be struck out but the respondent would not be allowed to overturn the decision of the tribunal, in the absence of a cross appeal" is a decision of the Court, made not in the exercise of its

[1] Civil Appeal No. 06 Of 2016 SCU.
[2] Civil Appeal No. 20 Of 2002.

original jurisdiction but appellate jurisdiction and thus not appealable as of right to this Court.

In conclusion, counsel submitted that this appeal ought to be struck out with costs and prayed that this preliminary objection is upheld. He relied on the case of **Hwan Sung Limited v M&D Timber Merchants Transporters Limited.**[3]

Counsel for the appellant on the other hand submitted that the preliminary objection was misconceived and ought to be dismissed. Counsel argued that in making the interlocutory decision which is the subject of this appeal, the High Court was not exercising appellate jurisdiction since the Tax Appeals Tribunal was not a Court of Judicature established under the Constitution. Counsel submitted that the Tax Appeals Tribunal was a tribunal established under the Tax Appeals Tribunal Act pursuant to Article 152(3) of the Constitution.

Counsel submitted that when the High Court hears appeals from administrative or quasi-judicial tribunals, it does not exercise appellate jurisdiction and therefore this Court has jurisdiction to hear the matter.

Counsel submitted that the Supreme Court has jurisdiction under Section 6(1) of the Judicature Act to hear appeals from decisions of the High Court exercising "other jurisdiction" and that the words "original jurisdiction" cover "other jurisdiction" such as the jurisdiction exercised by the High Court under Section 27 of the Tax Appeals Tribunal. Counsel added further that the way Section 6 of the Judicature Act was structured, the High Court was the first judicial Court which exercises original jurisdiction. Counsel cited the case of **J.B Chemicals & Pharmaceuticals Ltd v Glaxo Group Ltd**[4] to support this submission.

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[3] Civil Appeal No. 02 Of 2018 SCU.

[4] No.18 of 2004(SC)

h.T-E

Counsel therefore invited this Court to dismiss the preliminary objection with costs and that the appeal be determined.

In rejoinder, counsel for the respondent submitted that the Constitution under Article 139(1) envisaged that appellate jurisdiction of the High Court could be conferred by laws other than the Constitution and that Section 27 of the Tax Appeals Tribunal Act is such a law.

Counsel further submitted that the jurisdiction of tax matters was settled in the case of **URA v Rabbo Enterprises (U) Ltd & Anor**[5] and that the appellant was trying to present its appeal within the purview of Section 6 (1) of the Judicature Act as one of right whereas not.

Counsel reiterated that this appeal was incompetent because it required leave of the Court of Appeal since it emanated from the Ruling of the Court of Appeal triggered by the interlocutory Ruling from the High Court.

Counsel concluded that currently there is an amendment of the Tax Appeals Tribunal Act which was effected on 1st July, 2021. It amended Section 27 to allow appeals to the Court of Appeal and Supreme Court as of right. However, when this matter was before the Court of Appeal, no right of appeal to the Court of Appeal and Supreme Court was expressly provided in the law since Section 27 of the old Act was silent on further appeals beyond the High Court. Counsel therefore reiterated that this appeal was incompetent and should be dismissed.

Submissions on the merits of the appeal

Ground 1

Appellant's submissions

In relation to ground 1, counsel for the appellant submitted that the Court of Appeal erroneously applied sections 100 and 101 of the Income Tax Act (ITA) in order to arrive at the conclusion that there is

[5] No. 12 of 2004 (SC)

no right of appeal to the Court of Appeal. Counsel further submitted that it was erroneous for the Court of Appeal to apply the repealed Sections 100 and 101 of the ITA, since the said sections no longer formed part of the law of Uganda, having been repealed by Section 77 (1) (a) of the Tax Procedure Code Act, 2014.

Counsel submitted that if the learned Justices had not applied the repealed sections, they would not have come to the conclusion that there is no right of appeal to the Court of Appeal against a decision of the High Court in an appeal arising from a decision of the Tax Appeals Tribunal. That instead, the learned Justices would have concluded that a right to appeal to the Court of Appeal against decisions of the High Court exists under Article 134 (2) of the Constitution, Section 10 of the Judicature Act, and Section 66 of the Civil Procedure Act.

Counsel submitted that the present appeal was against the decision of the High Court on a preliminary point of law and therefore it was proper before the Court of Appeal. Counsel argued that the learned Justices mistakenly regarded the appeal as an appeal against the final decision of the High Court under S.27 of the Tax Appeals Tribunal yet it was not. Counsel relied on the case of **Denis Bireije v Attorney General**[6] to support this submission.

Counsel further argued that the right of appeal can only cease to exist if it is specifically excluded by Statute. Counsel contended that the absence of a specific reference in S.27 of the Tax Appeals Tribunal Act to a right of further appeal to the Court of Appeal does not mean that the right of appeal under Article 134(2), Section 10 of the Judicature Act and Section 66 of the Civil Procedure Act is specifically excluded.

Counsel also submitted that Parliament did not specifically provide in the Income Tax Act or the Tax Appeals Tribunal Act, for a right of appeal against a decision of the High Court made under Section 27 of the TAT Act because it was aware that the right of appeal against

[6] No.5 of 31(CA).

L.T-E

decisions of the Tax Appeals Tribunal exists under Article 134(2) of the Constitution, Section 1C of the Judicature Act and Section 66 of the Civil Procedure Act.

In conclusion, counsel submitted that the finding of the learned Justices that the laws envisaged under Article 152(3) of the Constitution do not cater for a right of appeal from decisions of the High Court as the final Court of Appeal under the Tax Appeals Tribunal Act was erroneous.

Ground 2

Appellant's submissions

Counsel for the appellant contended that the learned Justices of Appeal erred in law when they held that the appellant's appeal was a third appeal which required a certificate of importance under Section 73 of the Civil Procedure Act, cap 71.

Counsel submitted that the appeal was not an appeal against a decision of the High Court made under Section 27 of the Tax Appeals Tribunal Act but rather from a Ruling on objections raised in an appeal against a decision of the Tax Appeals Tribunal. Counsel argued that even if the appeal was against a decision of the High Court under Section 27 of the Tax Appeals Tribunal Act, the appeal would still not be a third appeal within the meaning of Section 73 of the Civil Procedure Act because a decision of the Commissioner General is not a judgment of a Magistrate Grade II as envisaged by Section 73 of the Civil Procedure Act.

Counsel further argued that an application to the Tax Appeals Tribunal for review of a decision of the Commissioner General was not a judicial appeal, and therefore cannot be categorized as a first appeal and that an appeal to the High Court under Section 27 of the Tax Appeals Tribunal Act is neither a judicial appeal nor a second

L.T-C

appeal. Counsel relied on the case of **Kituma Magala & Co. Advocates v Celtel (U) Ltd**[7] to support this submission.

Respondent's reply to Grounds 1 and 2

Counsel argued grounds 1 and 2 together because in his view they overlapped. Counsel submitted that the impugned holdings in those grounds were *obiter*. Counsel argued that the learned Justices of the Court of Appeal struck out the appeal not solely because of the *obiter* observations of Court and reliance on repealed laws, but for other additional reasons. First, that the appeal did not meet the tests encapsulated in judicial decisions for canvassing at the Court of Appeal; second, the matter at the High Court was for appeal and at that stage it was for pre-trial/scheduling conference and what the appellant purported to appeal was the direction given by Alividza J on how the case would proceed; third, that no law provides for striking out skeleton arguments; and finally that, no law provides for an appeal against a decision of the judge declining to strike out skeleton arguments.

Counsel contended that the lead justice inadvertently cited repealed tax laws as a result of the constantly changing tax laws that come into operation every new financial year. Counsel argued that notwithstanding the foregoing, the decision of the Court was still grounded on other considerations and that indeed the other Justices did not delve into a discussion of the repealed laws.

Counsel conceded that the matter before the Court of Appeal did not concern the right of appeal against the final decision of the High Court (sitting as an appellate court in a tax dispute) but rather, it was about an appeal against a directive given in an interlocutory matter before the High Court. Counsel submitted that the observations made by the learned justices on the right of appeal and the appeal being a third appeal were *obiter*.

[7] No.9 of 2010 (SC).

L.T-C

In conclusion, Counsel submitted that there are other sound reasons to support the findings of the Court of Appeal and therefore, the appellant's grounds of appeal are not substantial to overturn the decision of the Court of Appeal.

Ground 3

Appellant's submissions

Counsel for the appellant contended that the learned Justices of Appeal erred in law when they held that there is no legal provision for striking out paragraphs 91-94 and 142-150 of the Respondent's skeleton arguments.

Counsel argued that the decision of the High Court was an order from which an appeal could be preferred however the learned Justices considered it as a mere refusal to strike out irrelevant parts of the respondent's skeleton arguments

Counsel submitted that the substance of the appellant's objections to the respondent's arguments in the said paragraphs amounted to a full-blown attack on the specific decisions of the Tax Appeals Tribunal and that if the Respondent was aggrieved by the said decisions, the only course open to it was to appeal or cross appeal.

Counsel submitted that a party who does not appeal or cross-appeal is deemed to have accepted the correctness of the decision on the matter adjudicated upon and is estopped from questioning the correctness of such decision. Counsel cited the case of **Uganda Taxi Operators & Drivers Association v Uganda Revenue Authority**[8] in support of this submission.

Counsel submitted that the respondent was aggrieved by the specific decisions of the Tax Appeals Tribunal on the points of law but did not file a Notice of appeal as required by Section 27 of the Tax Appeals Tribunal Act and did not also file a cross appeal. Consequently, the

[8] Misc. Appl. No. 157 Of 2017.

L.T-E

respondent was estopped from questioning the said Tax Appeals Tribunal decisions.

Lastly, counsel submitted that without a Notice of appeal or cross appeal filed under Section 27 of the Tax Appeals Tribunal Act, the High Court has no jurisdiction to entertain any submission advanced by the respondent to contest and challenge the Tax Appeals Tribunal findings on points of law found in favour of the appellant.

In light of the foregoing, Counsel submitted that the learned Justices erred in law when they relied on the "*no provision*" for striking out skeleton arguments.

Respondent's reply

Counsel argued that as part of case management, court guided on how the submissions were to be conducted. Counsel submitted that what the appellant sought to do, would have resulted in the appeal being determined in piecemeal which is untenable. Counsel relied on the case of **Uganda Cooperative Transport Union Ltd v Roko Construction Ltd**[9] to support this submission.

Counsel argued that the appeal at the High Court is yet to be heard and determined. That requiring the High Court to first sever parts of the respondent's submissions would deny the appellate Judge to fully deal with the matter in its final judgment. That striking out what the appellant viewed as offending would therefore amount to deciding the appeal in bits. Furthermore, that to allow a party to appeal against every Ruling made in the course of a trial would be a departure from precedent. To support this submission, counsel cited the case of **Sanyu Lwanga Musoke v Sam Galiwango**[10]**.**

Counsel also submitted that submissions of advocates do not bind Court. That there was no prejudice in court allowing counsel's submissions on record and that no prejudice was caused to the

[9] Civil Appeal No. 35 of 2015 (SC).
[10] No. 48 of 1995 (SC).

appellant company since it responded to the impugned paragraphs of the respondent's skeleton arguments.

Counsel further submitted that most of the matters the appellant purported to attack were matters of law supported by statutory provisions and court decisions. It would therefore be premature to ask court to strike out portions of submissions of a party's adversary before a final decision is made on the matter.

Counsel argued that Section 98 of the Civil Procedure Act did not support striking out of skeleton arguments but that it gives Court power which is to be exercised judicially for achieving the ends of justice or to prevent abuse of the process of Court. Counsel contended that in the present case there was no principle of law which provides that a skeleton argument of an adversary in so far as it seeks to press other arguments, supportive of or opposing a decision of Court or tribunal, ought to be struck out.

In light of the foregoing, counsel prayed that this ground of the appeal be dismissed.

Ground 4

Appellant's submissions

Counsel contended that the learned Justices erred in law when they dismissed the appellant's appeal on grounds which were never argued before them and without according the appellant an opportunity to be heard on the same.

Counsel submitted that the Court of Appeal violated the rules of natural justice under Articles 28(1) and 44(c) of the Constitution and the appellant's right of appeal when it raised and decided questions of competence of the appeal without giving the appellant the opportunity to address the court on the said issue. In support of this submission, counsel cited the case **Mohamed Hamid v Roko Construction Limited**[11].

[11] (2014) UGSC 92.

L.T-E

Respondent's reply

Under this ground, counsel submitted that the Court of Appeal struck out the appeal on the basis that the law did not envisage an appeal against a direction of court allowing parties to submit on skeleton arguments.

Counsel submitted that at the Court of Appeal hearing, the issue of the appellant's right of appeal was raised and the appellant made an oral reply. That it was therefore clear that the appellant was aware that the issue of the right of appeal and the competence thereof remained an issue before the Court of Appeal.

Counsel cited the cases of **Sango Bay Estates Ltd & Others v Dresdner Bank & A.G**[12] and **GM Combined (U) Ltd v A.K Detergents (U) Ltd**[13]**;** and submitted that in an appeal against the decision of the High Court with leave, an appellant must demonstrate that there are grounds of appeal which merit serious judicial consideration.

Counsel contended that the appellant did not demonstrate the novel points of law involved in the appeal, having been granted leave by the lower court to argue the appeal. That therefore, the learned Justices of appeal cannot be faulted. In conclusion, counsel submitted that the complaint in this ground of appeal was unsupported by the record and must fail.

Appellant's Rejoinder

Under ground 1 and 2 counsel submitted that the impugned holdings which the respondent contended were *obiter* still formed part of the Court of Appeal decision to dismiss the appeal.

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[12] [1971] EA 17

[13] SCCA No. 23 of 1994.

L.T-E

In respect of ground 3, counsel emphasized that the skeleton arguments which were an attack on the legal findings of the tribunal in favour of the appellants amounted to an abuse of court process since the respondent did not file an appeal or cross appeal and the appellant would be prejudiced.

Counsel further argued that deciding the appeal in piece meal was misconceived since the matters raised in the impugned paragraphs were not within the scope of the appeal, neither were they envisaged under Section 98 of the Civil Procedure Act nor in line with good case management practice. Counsel submitted therefore that the impugned paragraphs can and ought to be struck out.

On ground 4, counsel submitted that the judgment of Court of Appeal did not reference the parties' written or oral submissions. Nothing established that either party were heard on the right to appeal and competence of the appeal.

Counsel reiterated his earlier submissions and invited this Court to allow the appeal.

Court's consideration

I have considered the record of appeal, submissions and authorities relied on by the parties.

I will first deal with the preliminary objection raised by counsel for the respondent on the competence of the appeal as it has the potential to dispose of the entire dispute before court.

The crux of the respondent's submission was that the appellant did not have the right of appeal to this Court in an interlocutory matter from the High Court sitting as an appellate court in a matter that originated from the tax Tribunal. This averment was opposed by counsel for the appellant who argued that the High Court in hearing the matter sat as a court of original jurisdiction and therefore the appellant had a right of appeal to this Court.

L.T-E

I note that this appeal arose from the scheduling conference Ruling of the High Court where the appellant objected to some of the paragraphs of the respondent's skeleton arguments but was unsuccessful. The main appeal at the High Court is still pending final determination on merit.

The jurisdiction of this Court is conferred by the Constitution and statutory law. This Court has in several cases stated that the right of appeal is a creature of statute and must be given expressly by statute. There is nothing such as an inherent right of appeal. **[See: Lukwago Erias v KCCA[14]; Attorney General v Shah[15]** and **Baku Raphael v Attorney General[16]]**

Under the **Constitution**, the jurisdiction of this Court is conferred by **Article 132 (2)** and **(3)** which states that:

> **(2) An Appeal shall lie to the Supreme Court from such decisions of the Court of Appeal as may be prescribed by law.**
>
> **(3) Any party aggrieved by a decision of the Court of Appeal sitting as a constitutional court is entitled to appeal to the Supreme Court against the decision and accordingly an appeal shall lie to the Supreme Court under clause (2) of this article.**

Under statutory law, **Section 6 (1)** of the **Judicature Act** provides for the right of appeal to the Supreme Court without leave and **Section 6 (2)** of the **Act** provides for the right of appeal with leave.

Section 6 (1) stipulates that:

> **An appeal shall lie as of right to the Supreme Court where the Court of Appeal confirms, varies or reverses a judgment or order, including an interlocutory order, given**

[14] SCCA No.06 of 2014.
[15] No. 4 of 1971 EACA 50
[16] SCCA No. 1 of 2005.

L.T-G

by the High Court in the exercise of its original jurisdiction and either confirmed, varied or reversed by the Court of Appeal. (My emphasis)

Section 6 (2) stipulates that:

Where an appeal emanates from a judgment or order of a chief magistrate or a magistrate grade I in the exercise of his or her original jurisdiction, but not including an interlocutory matter, a party aggrieved may lodge a third appeal to the Supreme Court on the certificate of the Court of Appeal that the appeal concerns a matter of law of great public or general importance, or if the Supreme Court considers, in its overall duty to see that justice is done, that the appeal should be heard.

It is clear from the above statutory provisions that there is an automatic right of appeal to this Court in interlocutory matters decided by the High Court when it exercises original jurisdiction and that decision has been confirmed, varied or reversed by the Court of Appeal.

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

This Court observed in **Sanyu Lwanga Musoke v Sam Galiwango**[17] that:

" ... the issue of appealing against every ruling that is made in the course of the trial has come up before this court on several occasions and decisions on it have been made to the effect that it is not necessary to file several appeals, one against the interlocutory order made in

[17] SCCA No. 48 of 1995.

course of hearing and another, against the final decision. To hold otherwise might lead to multiplicity of appeals upon incidental orders made in the course of the hearing when such matters can conveniently be considered in an appeal from the final decision" (My emphasis)

In the case of **Uganda National Examinations Board v Mparo General Contractors**[18], it was clearly stated that:

"There is no right of appeal to this Court originating from interlocutory orders of the Court of Appeal which orders are incidental to the appeal but not resulting from the final determination of the appeal itself."

Furthermore, in the case of **Dr. Kasirivu Atwooki** and **Others v Grace Bamurangye Bororoza and others**[19], this Court while relying on its earlier decisions in the cases of **Uganda National Examinations Board v Mparo General Contractors (supra)** and **Beatrice Kobusingye v Fiona Nyakaana & Another**[20], stated as follows:

"As we recently stated in the UNEB case... there is no right of appeal to this Court originating from interlocutory orders of the Court of Appeal which orders are incidental to the appeal but not resulting from the final determination of the appeal itself. We are not persuaded to change that opinion."

The court went on to justify the bar on appeals from Judgments and orders of the Court of Appeal in interlocutory matters as follows:

"Interlocutory applications are generally an exercise intended to help that Court to do house clearing. If appeals were allowed to come to this Court from interlocutory rulings of the Court of Appeal, this Court would be swamped with wholly unnecessary multiplicity of appeals. Indeed, the Court of Appeal itself would be clogged with many pending appeals which could not be heard and decided because they would await

[18](Civil Application No.19 of 2004).
[19] (SC Civil Application No. 02 of 2010).
[20] (SC Civil Appeal No. 5 of 2004).

L.T-E

decision on such interlocutory appeals to this Court. We can foresee the possibility of encouraging multiplicity of unnecessary appeals to this Court. Delays would affect expeditious disposal of appeals in the Court of Appeal."

It is clear from the above decisions of this Court, that the Court of Appeal's decision in interlocutory matters is final and not subject to appeal.

The rationale of the above position is to avoid multiplicity of unnecessary appeals to this Court and delays in disposing of appeals which have to first await the decision on the interlocutory matters.

In order for a party to rely on the right of appeal against an interlocutory order in this Court, it has to be established that the order appealed against was passed by the High Court in exercise of its original jurisdiction. [**See: Section 6 (1) (supra) of the Judicature Act**]

In the present case, the question arising is: *whether the High Court was exercising its original jurisdiction or appellate jurisdiction when it passed the interlocutory order.*

In settling the issue of jurisdiction of the High Court in tax disputes, this Court has in the case of **Uganda Revenue Authority v Rabbo Enterprises & Anor**[21] stated that:

> **It is a trite principle of law that the jurisdiction of a court must be found in statute.**
>
> **Article 139 (1) of the Constitution provides that, the High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law.**

[21] Civil Appeal No.12 of 2004.

My understanding of the above Constitutional provision is that the High Court exercises its unlimited jurisdiction subject to other provisions of the Constitution. One such provision envisaged in Article 139 (1) is Article 152 (3) of the Constitution which provides for Tax Appeals Tribunals.

The establishment of Tax Tribunals is rooted in the Constitution - Article 152 (3) of the Constitution - which not only gives name to these quasi-judicial tribunals but also envisages their establishment through an Act of Parliament. The Article also specifically empowers the said entities to handle taxation disputes. It is in line with this that Parliament enacted the Tax Appeals Tribunals Act ...

It is the Constitution itself which, through Article 152 (3) limits the original jurisdiction of the High Court and empowered the Tribunals with jurisdiction. The powers of the High Court are subject to the Constitution.

I also respectfully disagree with the holding of the Court of Appeal that a litigant can choose whether to take a tax matter to the High Court as a court of first instance or to the Tax Appeals Tribunal. It must be noted that under Section 3 of the Tax Appeals Tribunal Act: a person is not qualified to be appointed chairperson of a tribunal unless he or she is qualified to be appointed a judge of a High Court. Furthermore, under Section 30, a person cannot be appointed a registrar of the Tax Tribunal if she or he is not qualified to be a registrar of the High Court. I opine that it would be bizarre that our legal regime would give power to an individual to choose where to lodge a complaint by offering choices between institutions equally qualified to handle the matter.

In addition to the foregoing, it is apparent from a look at various provisions of the Act that proceedings before the Tax Tribunal are treated as judicial proceedings. For example, Section 19 of the Tax Appeals Tribunal Act states that a decision of a tribunal shall have effect and be enforceable as if it were a decision of a court; and under Section 21, a Tribunal may make an order as to costs against a party, and the order shall be enforceable in like manner to an order of the High Court.

I am also emboldened in my opinion by Section 27 of the Tax Appeals Tribunal Act which provides that a party dissatisfied with a decision of the Tribunal may appeal to the High Court. The Section provides thus:

Appeals to the High Court from decisions of a tribunal.

(1) A party to a proceeding before a tribunal may, within thirty days after being notified of the decision or within such further time as the High Court may allow, lodge a notice of appeal with the registrar of the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party to the proceeding before the tribunal.

(2) An appeal to the High Court may be made on questions of law only, and the notice of appeal shall state the question or questions of law that will be raised on the appeal.

(3) The High Court shall hear and determine the appeal and shall make such order as it thinks appropriate by reason of its decision, including an order affirming or setting aside the decision of the tribunal or an order remitting the case to the tribunal for reconsideration.

It would be bizarre that the legal regime would give the High Court dual jurisdiction.

The proper procedure therefore is that all tax disputes must first be lodged with Tax Appeals Tribunals and only taken before the High Court on appeal. (My emphasis)

From the above authority, it is settled that the High Court exercises appellate jurisdiction in determining matters from the Tax Appeals Tribunal.

It is also instructive to note that the use of the word "*appeal*" in **Section 27** of the **Tax Appeals Tribunal Act** signifies appellate jurisdiction. This, requires an aggrieved party to file a Notice of Appeal which in essence connotes a clear intention of an appeal.

The case of **J.B Chemicals & Pharmaceuticals Ltd v Glaxo Group Ltd (supra)** relied upon by the appellant's counsel is distinguishable from the present circumstances. That case dealt with registration of trademarks. However, the form authorized by the Trademarks Act and its Rules used the word "appeal" to signify a reference of a complaint against the decision of the Registrar of trade marks. The aggrieved party was therefore required to file an application to the High Court by way of a Notice of Motion rather than a Notice of Appeal. The High Court was therefore not an appellate court but was clothed with other jurisdiction. It was for this reason that the Court in that case held that it had jurisdiction to hear the appeal as a second appellate court.

The brief facts of the **J. B. Chemical case** were that, the respondents were aggrieved with the decision of the assistant registrar who decided the dispute in favour of the appellant to register "RANTAC" as a trademark. They appealed to the High Court by way of Notice of Motion as required under Rule 116 of the Trademark Rules. The High Court upheld the registrar's decision however the Court of Appeal reversed it in favour of the respondent. On appeal to this court, one of the issues was whether the matter was competent that is whether

L.T.E

it was a 2nd or 3rd appeal and if it was a 3rd appeal then it required leave. Court found that it was a second appeal and therefore, it had jurisdiction. It found that the registrar was not a court and that when he/she sits to hear applications to register trademarks under the Act, she sits as an administrative tribunal and that the use of the word "Appeal" in the Act and its Rules means reference of a complaint against the decision of the registrar to the High Court. That is why the application to the High Court is by Notice of Motion rather than by a Notice of Appeal which would be followed by a Memorandum of Appeal. In that matter, the Court of Appeal was therefore a first appellate court and this Court was a second appellate court.

In the present case, **Section 27 of the Tax Appeals Tribunal Act**[22] is to the effect that a person aggrieved by a decision of the Tax Appeals Tribunal should lodge a Notice of Appeal to the High Court. By virtue of this provision, when the High Court handles a dispute from the tax Tribunal, it exercises appellate jurisdiction.

I note that what the appellant is seeking to appeal against is an interlocutory order given by the High Court in exercise of its appellate jurisdiction; and from my analysis above, this Court does not have jurisdiction to entertain such an appeal.

I am alive to the fact that Section 27B of the Tax Appeals Tribunal (Amendment) Act, 2021 now allows appeals to the Court of Appeal and Supreme Court from tax disputes as of right. The amendment came into effect on 1st July, 2021. This was approximately a year after the Court of Appeal had delivered its decision in the matter before us. It is trite that statutory law does not apply retrospectively unless the Statute by express words or necessary implication states so. Consequently, the said amendment does not apply to the instant appeal.

[22] Cap 345[enacted on 1 August 1998].

h.T-E

Conclusion and Orders

Following my findings above I hold that the respondent's preliminary objection succeeds and the appeal before Court is incompetent.

In the premises, in accordance with **Order 6 rule 29** of the **Civil Procedure Rules**, I would dismiss the appeal with costs to the respondent and order the file to be remitted to the High Court Judge for determination of the matter on its merits.

Dated this.....5th.....day of.....October.....2023.

.....Tibatemwa.....

HON. JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT.

Delivered by the Registrar on 5th October 2023

RG

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(Coram: Mwondha, Tibatemwa-Ekirikubinza, Tuhaise, Chibita, Musoke, JJ.SC)

Civil Appeal No. 03 of 2021

Between

Heritage Oil and Gas Limited.....Appellant

And

Uganda Revenue Authority.....Respondent

(Arising from Court of Appeal No. 264 of 2018 at Kampala before Cheborion, Musota and Madrama, JJA dated 23rd June 2021)

JUDGMENT OF MWONDHA, JSC

I had the benefit of reading in draft the judgment of my learned sister Prof. Justice Tibatemwa-Ekirikubinza, JSC.

I concur with the proposed orders that: -

1) The preliminary objection succeeds and
2) That the Appeal is incompetent
3) That the file be remitted to the High Court (appellate court) to determine the matter on its merits.

I however, do not agree with the following parts of the draft judgment. "It follows, therefore, that what the appellant is seeking to appeal against is an interlocutory order given by the High Court in the exercise of its appellate jurisdiction. And from my analysis above, this court does not have jurisdiction to entertain such as an appeal."

There are two limbs to that extract,

The appellant is seeking to appeal against an interlocutory order. In the judgment, the learned Justice states, inter alia, that the jurisprudence arising from this court regarding appeals against interlocutory matters is that "there is no right of appeal to the Supreme Court form interlocutory orders which are incidental to the appeal and do not result from the final determination of the appeal. Cases of **Sanyu Lwanga Galiwango V Sam Galiwango SCCA No. 48 of 1995, Uganda National Examinations Board V Mpora General Contractors Civil Application No. 19 of 2004, Dr. Kasirivu Atooki and Others v Grace Bamurangye and Others and Grace Bamurangye Baroroza and**

Others SCC Application No. 2 of 2010 and Beatrice Kobusingye V Fiona Nyakawa and Another SCCA No. 5 of 2004 were relied on.

With respect to all the Justices in the above decisions, it is apparent that the decision ousts the law, the justification given is not enough or sufficient to override the law.

The Constitution provides in Article 132 as follows:

1) The Supreme Court shall be the final Court of Appeal
2) An appeal shall lie to the Supreme Court from such decisions of the Court of Appeal as may be prescribed by law.

S. 6(1) of the Judicature Act provides: -

An appeal shall lie as of right to the Supreme Court where the Court of Appeal confirms, varies, or reverses a judgment or order, including an interlocutory order given by the High Court in the exercise of its original (emphasis added) jurisdiction.

Part IV Civil Appeals of the Judicature (Supreme Court Rules) Directions provide in Rule 72(1), <u>any person</u> (emphasis) who desires to appeal to the Court shall give notice in writing, which shall be lodged in duplicate with the Registrar of the Court of Appeal.

2)...

3) Every notice of appeal shall state whether it is intended to appeal against the whole or part only of the decision, and where it is intended to appeal against a part only of the decision, it shall specify the part complained of, state the address for service of the appellant and state the names and addresses of all persons intended to be served to be served with copied of the notice.

4) When the appeal lies only with leave of court or certificate that a point of law of great importance, general or public importance, is involved, it shall not be necessary to obtain leave or a certificate before lodging the Notice of Appeal.

In my opinion, reading those legal provisions together starting from Article 132 of the Constitution, S. 6(1) of the Judicature Act, and the procedural law as embodied in Rule 72 (Part IV) comes out clearly, that appeals from interlocutory orders as a whole are not barred by law as the cases relied on so decided.

If the practice and procedure are followed in connection with appeals and intended appeals from the Court of Appeal and the practice and procedure of the Court of Appeal in connection with appeals to the Court as set out in this Court rules, they are heard.

So the decisions of the Court in the above cases were to the effect that, "<u>there is no right of appeal to the Supreme Court from interlocutory orders which are incidental to the appeal is wrong in law</u>, this court has to depart from them in accordance with Article 132(4) of

the Constitution. The decisions were based on generalization in the spirit of the rationale of preventing many appeals to be filed. This in my view is sacrificing justice at the altar of misinterpretation of the law.

Clearly, when there is a point of law of general or public importance, an interlocutory matter is heard.

On the 2nd limb, it goes without saying that this court, pursuant to the above provisions, is seized with the jurisdiction to entertain it if the practice and procedure are adhered to as shown above in cases which cannot be appealed as of right but with leave of Court. In any case, the issue, in this case, was whether the appellant had a right of appeal as of right as per S. 6(1) of the Judicature Act and not an interlocutory order or matter per se. This is what the **Babcon Uganda Limited V. Mbale Resort Hotel SCCA NO. 6 of 2016** was about which was cited by counsel for the respondent to support the preliminary objection.

Definitely, he did not have the right to appeal as of right, as the High Court made the order in exercise of its appellate jurisdiction. It was necessary for him to seek leave specify the general or public point of law involved in accordance with Rule 72 of this Court rules which the appellant did not do.

In light of the above, the appeal would be dismissed as incompetent and in accordance with the orders proposed in the judgment.

Dated at Kampala this .....5th.....day of .....October.....2023.

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Mwondha
Justice of the supreme court.

Delivered on 5th October 2023
by the Registrar

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(Coram: Mwondha, Tibatemwa-Ekirikubinza, Tuhaise, Chibita, Musoke, JJ.S.C)

CIVIL APPEAL NO. 03 OF 2021

BETWEEN

HERITAGE OIL & GAS LTD ::::::::::::::: APPELLANT

AND

UGANDA REVENUE AUTHORITY ::::::::::::::: RESPONDENT

[Appeal from the Judgment of the Court of Appeal at Kampala before Hon. Justices Cheborion, Musota and Madrama, JJ.A., delivered on 23rd June, 2020 in Civil Appeal No. 264 of 2018]

JUDGMENT OF PERCY NIGHT TUHAISE, JSC.

I have had the benefit of reading the Judgment of Hon. Lady Justice Prof. Lillian Tibatemwa-Ekirikubinza, JSC.

I agree with the decision, and the orders therein.

Date at Kampala, this ..... day of.....October.....2023.

Percy Night Tuhaise

JUSTICE OF THE SUPREME COURT

THE REPURLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: Mwondha, Tibatemwa-Ekirikubinza, Tuhaise, Chibita, Musoke; JJSC.)

CIVIL APPEAL NO. 03 OF 2021.

BETWEEN

HERITAGE OIL & GAS LIMITED::::::::::::::::::::::::::::APPELLANT

AND

UGANDA REVENUE AUTHORITY::::::::::::::::::::::RESPONDENT

{Appeal arising from the Judgment of the Court of Appeal at Kampala (Cheborion, Musota, Madrama, JJA), in Civil Appeal No. 264 of 2018 dated 23rd June, 2020}.

JUDGMENT OF MIKE J. CHIBITA, JSC.

I have had the benefit of reading in draft the Judgment of my learned sister Hon. Justice. Prof. Lillian Tibatemwa-Ekirikubinza, JSC, and I agree with her decision that this Appeal should be dismissed with costs to the respondent. I also agree with the Order she has proposed.

Dated at Kampala this ..5th.....day of.....October.....2023

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MIKE J. CHIBITA
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 03 OF 2021

HERITAGE OIL AND GAS LIMITED::::::::::::::::::::::::::::APPELLANT

VERSUS

UGANDA REVENUE AUTHORITY::::::::::::::::::::::::::RESPONDENT

(Appeal from the decision of the Court of Appeal (Cheborion, Musota and Madrama, JJA) in Civil Appeal No. 264 of 2018 dated 23rd June, 2020)

CORAM: HON. LADY JUSTICE FAITH MWONDHA, JSC
HON. LADY JUSTICE PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA, JSC
HON. LADY JUSTICE PERCY TUHAISE, JSC
HON. MR. JUSTICE MIKE CHIBITA, JSC
HON. LADY JUSTICE ELIZABETH MUSOKE, JSC

JUDGMENT OF ELIZABETH MUSOKE, JSC

I have had the advantage of reading in draft the judgment of my learned sister Prof. Tibatemwa-Ekirikubinza, JSC. I agree with it and for the reasons given by my learned sister, I too would find the appeal incompetent and strike it out with costs to the respondent.

Dated at Kampala this ..... day of.....October.....2023.

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Elizabeth Musoke

Justice of the Supreme Court