REPUBLIC OF UGANDA

IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA

APPLICATION NO. 15 OF 2019

INFECTIOUS DISEASES INSTITUTE …….…..... APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY……..RESPONDENT

RULING

This ruling is in respect of an application challenging a Pay As You Earn (PAYE) assessment of Shs. 185,200,728 as regards the treatment of persons employed by the applicant.

The applicant is a limited company by guarantee that carries research in infectious diseases and provides medical assistance to patients suffering from the same. The applicant hires qualified individuals to provide support services in research. Ther research is undertaken through specific projects where the experts offer consultancy services under agreements. The applicant withheld 6% of the payments made to the individuals in question but did not account for PAYE. The applicant disputes a PAYE assessment of Shs. 185,200,728 issued to it by the respondent.

The following issues were set down for resolution:

1. Whether the individuals whose contractors are subject to the dispute are independent contractors or employees?
2. Whether the applicant is liable to pay Shs. 185,200,728 as PAYE assessed by the respondent?
3. What remedies are available to the parties?

The applicant was represented by Mr. Ronald Kalema and Ms. Juliet Nabadda while the respondent by Mr. Thomas Lomuria.

The applicant's first witness, Ms. Susan Lamunu Shereni, its Head of Administration testified that the applicant carries out research and provides medical assistance to patients suffering from infectious diseases in Uganda. It hires specialists to provide specialized support services in respect of various areas of research. The specialists are trainers or consultants who provide expertise to do research. She testified that the project consultants and trainers are hired to support specific projects. They are given consideration as per the contract. They are expected to deliver on the obligations under the contract. They are not employees of the applicant. They are subject to withholding tax of 6% on their fees.

Ms. Shereni testified that the respondent carried out a tax compliance audit on the applicant in 2012 which resulted in an assessment of Shs. 1,927,442,716. The tax liability comprised withholding tax of Shs. 150,464,359 and PAYE of Shs. 1,776,978,357. This was reviewed by the respondent to a tax liability of Shs. 322,013,900 under PAYE. The applicant paid principal tax of Shs. 92,617,735 and interest of Shs. 44,195,437. It disputed the remainder of the assessment of Shs. 185,200,728 on the ground that the individuals it hired were consultants and not employees. They had consultancy agreements. She contended that they are independent contractors. They have autonomous work. They are not subject to the general operating rules of the applicant like the Human Resource Manual. They are engaged in research for their own financial gains. Some of the persons assessed were students. The applicant was not provided with the respondent's final audit work. The applicant provided all requisite information to the respondent such as contracts. It disputes the revised assessment of Shs. 185,200,728.

She also testified that the consultants provide their own work tools. The consultants have expertise. The heads of departments evaluate the works of the consultants. It is common to hire persons employed elsewhere.

The applicant's second witness, Mr. Andrew Kambugu, its Executive Director testified that the applicant carries out research and capacity building in infectious diseases and provides medical assistance to patients. He testified that the applicant uses consultants like specialized nurses, trackers, IT services among others. The applicant distinguishes between employees and consultants. Consultants are hired to specific projects. They are given consideration. They are not employees. Withholding tax of 6% is deducted from their fees. He also testified that the applicant provides tools to the workers.

The respondent's witness, Mr. Mubarak Kakaire, a supervisor in domestic taxes testified that the respondent carried out an audit on the applicant. It raised an assessment of shs. 1,776,978,357. The applicant objected to the assessment. The applicant provided information to the respondent including contracts. Upon perusal of the contracts the respondent established that the consultants had fixed ascertainable monthly remuneration. The applicant provided work tools to the consultants. The applicant exercised control over the consultants. The persons were required to abide by the terms and procurement guidelines of the applicant. The consultants worked in the premises of the applicant. Some of the consultants were directors of the applicant. Some of the consultants did not have expertise.

The applicant submitted that S. 2 of the Income Tax Act defines an employee as a person engaged in employment. S. 2 (z) defines employment to mean;

(i) The position of an individual in the employment of another person
(ii) A directorship of a company
(iii) A position entitling the holder to a fixed and ascertainable remuneration
(iv) The holding of a public office

S. 2 of the Employment Act, defines an employee as "a person who has entered into a contract of service." A contract of service is defined to mean "any contract where a person agrees inn exchange for remuneration to work for an employer."

The applicant submitted that an employer under the Employment Act is entitled to statutory benefits by the employer which include being given work, maximum work

hours, sick leave, annual paid leave, and workman's insurance. These benefits typically do not accrue to persons who are not engaged in a contract of service or an employment contract.

The applicant contended that S. 116 of the Income Tax Act mandates every employer to withhold tax in common parlance known as PAYE on payment of emoluments to employees at rates prescribed in the Fourth schedule. S. 118 A requires every resident person who pays professional or management fees to another resident person to withhold tax at 6%.

The applicant submitted that employees are deemed to enter into a contract of service (an employment contract) whereas independent contractors enter into a contract for services (a consultancy contract). In *Ready Mixed Concrete v Minister of Pensions and National Insurance, 1968 QB 496*, the court expounded on what is a contract of service as follows;

"(i) The servant agrees that in consideration of a wage or other remuneration, he will provide his own work and skill for the person of some service for the master.

(ii) He agrees, expressly or impliedly, he will be subject to the other's control in a sufficient degree to make that other a master,

(iii) The other provisions of the contract are consistent with it being a contract of service."

The applicant submitted that it clear that the element of control must be to a sufficient degree to create a master/ servant or employer/ employee relationship. The court noted that;

> "Control includes the power of deciding the thing be done, the way it shall be done, the time and place it is done. All these aspects must be considered in deciding whether a right exists that makes one party servant to the other".

The applicant submitted that the contracts clearly states that the relationship between the parties is not of employer/employee but one of independent consultant. The respondent ought to respect the express and implied terms of the contract unless there are other terms and provisions contradicting the intention of the parties which was clearly not to engage in an employment relationship. The applicant submitted further that the evidence shows that there is nothing contradictory or

inconsistent with the express intention of the parties not to enter into an employment relationship.

The applicant submitted that Mr. Andrew Kambugu testified that the institute routinely hires lecturers of Makerere University and medical professionals from hospitals to its projects. With regards to back log, it was his evidence that due to the volume of scanning and electronic filing they found it necessary to hire a document scanner. The applicant submitted that there is nothing in the contracts that points to a level of control that is sufficient to establish an employment relationship.

The applicant cited *Uganda Insurers Association and others v Uganda Revenue Authority, TAT 40 2017,* the tribunal noted that;

> "Uganda Revenue Authority is not primarily concerned with individual employment relations. It is not a directorate of labor. Its primary concern is to collect taxes prescribed by the law."

The respondent should not recharacterise labour relations between private citizens on a whim just for the ease of collecting taxes. A recharacterisation must only happen in the face of incontrovertible evidence that a tax payer is avoiding taxes and that the form of the contract does not reflect the substance.

In reply, the respondent submitted that the relationship that exists between the applicant and the alleged consultants in question is one of employer –employee. The respondent cited S. 2 of the Employment Act which defines a contract of service to mean;

> "any contract, whether oral or in writing, whether express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship."

S. 2 further defines an employer to mean;

> "any person who has entered into a contract of service of apprenticeship contract including without limitation any person who is employed by or for the government of Uganda, including public service a local authority or a parastatal organization but excludes a member of the Uganda peoples defense forces."

The respondent cited *Nilgri Cooperative Marketing Society Ltd v Tamil Nadu, (2004) 3 SCC 514* where the Supreme Court held that;

> "Determination of who is an employee or consultant is not an easy task. The court stated that determination of relationships : determination of the vexed questions as to whether a contract of service or a contract for service and whether the employees concerned are employees of the contractors has never been an easy task. No decision of this court has laid down any hard and fast rule nor is it possible to do so. The question in each case has to be answered having regard to the facts involved therein. No single test be it control test be it organization or any other test has to be the determinative factor for determining the jural relationship of employer and employee."

The respondent contended the alleged consultants are integrated in the business of the applicant since;

1. The applicant provided work tools to the alleged consultants for example office space, internet, testing kits, transport, scanners
2. The applicant exercised control over the alleged consultants as in the documents describing the scope of work to be carried out by the alleged consultants. Furthermore, the alleged consultants are required to obtain the applicant's approval prior to the issuance of a publication statement or response to the query.
3. The alleged consultants carried out their duties in the premises of the applicant during normal working hours as evidence in E12 of the additional Joint trial bundle which clearly points to the fact they are not independent contractors.
4. Some of the alleged consultants have occupied the position of directorship in the management of the applicant.

In describing a contract of services, the respondent also cited *Mixed Concrete (South East) Ltd v Minister of pensions and National Insurance [1968] 2 QB 497* where the conditions of when a contract of service exists were discussed as already stated. The respondent submitted that the applicant misapplied the principles and thus came to a wrong conclusion that the alleged consultations are independent contractors and not employees.

The respondent also cited the Ready *Mixed Concrete case*, where the court while elaborating on this test stated that:

> "There must be a wage or other remuneration. Otherwise there will be no consideration, and without consideration no contract of any kind. The servant must be obliged to provide his own work and skill. Freedom to do a job either by one's own hands or by another's is inconsistent with a contract of service, though a limited or occasional power of delegation may not be…"

The respondent contended that the alleged consultants earn a fixed ascertainable monthly remuneration which is specifically provided for as daily or monthly payment in the contracts.

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In discussing the above test, the respondent contended that the court in *Ready Mixed Concrete* stated that; control includes the power of deciding the thing to be done , the way in which it shall be done , the means to be employed in doing it, the time when the place where it shall be done. The respondent also cited *Artemis Medicare Service Ltd v Department of Income Tax ITA No. 4718/Del/2013 where* the court stated that:

> "Supervision and control test is the prima facie test for determining the relationship of employment. The nature or extent of control required to establish such relationship would vary from business to business and thus cannot be given a precise definition. The nature of business for the said purpose is also a relevant factor."

The respondent submitted that the terms of the contracts and documents describing the scope of work given to the consultants are consistent with the relationship of employer employee and the fact that the applicant refers to them as consultants is wrong and misleading to the tribunal.

The respondent submitted that the applicant stated that the express and implied terms of a contract of service should be taken into account by the court in determining the relationship between parties , specifically that of employment . The respondent submitted that the courts will give effect to the intentions of the parties when interpreting contracts. However, in M*icheal Joseph Ferguson v John Dawson & Partners Ltd [1976] EWCA Civ 7,* the court relying on the decision in *Ready Mixed Concrete* held that;

> "if the rights conferred and duties imposed by the contract are such that the relationship is that of a master and servant it is irrelevant that the parties have declared it to be something else."

The respondent cited S. 4 (1) of the Income Tax Act which provides for imposition of income tax.as;

> (1) Subject to and in accordance with this act, a tax to known as income tax shall be charged for each year of income and is imposed on every person who has chargeable income for the year of income.

Employment income is defined under S. 19(1)(a) and (b) of the Income Tax Act, to include any wages, salary, leave pay, payment in lieu of leave, overtime pay fees, commission, gratuity, bonus, or the amount of any travelling, entertainment, utilities, cost of living, housing, medical, or other allowance and the value of any benefit granted. The respondent submitted that having established the existence of an employer employee relationship between the applicant and the consultants, the applicant is obligated under the law to deduct PAYE on the income earned by the consultants for the period 1st July 2008 to 30th June 2012.

Having heard the evidence and read submissions of both parties, this is the ruling of the tribunal.

The applicant carries out research on infectious diseases and provides medical treatment to patients suffering from the same. As part of its activities the applicant hires individuals to provide support services. The applicant withholds 6% from the payments made to the individuals. The respondent contends that the individuals hired by the applicant should be treated as employees and the latter should have withheld 30% as PAYE.

The parties filed sample contracts, exhibit E12, between the applicant and 47 individuals. The contracts indicate the services to be provided by the individuals. The applicant provides equipment to the individual. The contracts indicate the fees payable to the individuals. They also provide for termination and other terms. In

some cases, the applicant inter alia provides the individuals with equipment. The question is whether the individuals hired by the applicant are employees or independent contractors.

The said contracts state that the relationship between the applicant and the individuals is that of an independent contractor and nothing in the agreement should be construed to create an employer or employee relationship. However, some contracts indicate that where some provisions of the agreement are held to be invalid, illegal or unenforceable this will not affect the application of the other provisions. This implies that the contracts may be affected by provisions of the law which take precedence over its provisions.

To understand whether one is an employee we shall first look at the Employment Act. The Employment Act S.2 defines an employee to mean: -

> "any person who has entered a contract of service or an apprenticeship contract including, without limitation, any person who is employed by the Government of Uganda, including the Uganda Public Service, a local authority or a parastatal organization but excludes a member of the Uganda Peoples Defences Force."

The Employment Act S. 2 refers an employee as any person, inter alia, who has entered a contract of service. Therefore, an employee is one who has entered a contract of service in contrast to a contract for services.

Black's Law Dictionary 8th Edition p.564 defines an employee as a "person who works in the service of another person (the employer) under an express or implied contract of hire, under which the employer has the right to control the details of work performance." This definition talks about a person under a contract of service as an employee. The *Black's Law Dictionary 10th* Edition page 888 defines an independent contractor as: "One who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it." The applicant contended that it hired consultants. The *Oxford Advanced Learners Dictionary* 9th Edition pg.318 defines a consultant as "a person who knows a lot about a particular subject and is employed to give advice about it to other people." The

facts that an individual is a consultant does not prevent him or her from being an employee or an independent contractor. The income tax Act does not provide for consultants.

The Income Tax Act has its definition of an employee. An employee is defined under S.2 of the Income Tax Act as someone engaged in employment. S. 2(z) of the Income Tax Act defines employment as:

> "(i) the position of an individual in the employment of another person.
> (ii) a directorship of a company.
> (iii) a position entitling the holder to a fixed or ascertainable remuneration; or
> (iv) the holding or acting in any public office;"

Under the Income Tax Act, a director is considered an employee which is not the case with the Employment Act. Any person who receives a fixed or ascertainable remuneration is considered as an employee under the Income Tax Act but this may not be the case under the Employment Act. The definition of an employee under the Income Tax Act is wider that that under the Employment Act to enlarge the net for taxation of persons. The Income Tax Act is concerned with taxation of individuals and not employer-employee relationships which is the concern of the Employment Act. An employee under the Income Tax Act may not necessary be one under the Employment Act because the taxman was interested in widening the tax base.

In order to understand whether the individuals hired by the applicant are employees we shall look at the different provisions under S. 2(z) of the Income Tax Act. S. 2(z)(i) states that an employee is an individual in the employment of another. S. 2 of the Employment Act defines an employee as one who inter alia has a contract of service.

There is a distinction between a contact of service and a contract for service. Employees are deemed to enter a contract of service while independent contractors are deemed to have entered a contract for service. In *Ready Mixed Concrete (South East Ltd) v Minister of Pensions and National Insurance* [1968] 2 QB 496 it was stated that:

"A contract of service exists if these three conditions are fulfilled.

(i) The servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his own master.

(ii) He agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master.

(iii) The other provisions of the contract are consistent with its being a contract of service."

From the above elements it is not difficult to discern that the element of control is important.

The *Black's Law Dictionary* 10th Edition p. 403 defines "control" as:

"The direct or indirect power to govern the management and policies of a person or entity, whether through ownership of voting securities, by contract or otherwise, the power or authority to manage, direct, or oversee."

In *Ready Mixed Concrete v Minister of Pensions & National Insurance (supra)* court noted that:

"Control includes the power of deciding the thing to be done, the way in which it shall be done, the means to be employed in doing it, the time when and the place where it shall be done. All these aspects of control must be considered in deciding whether the right exists in a sufficient degree to make one party the master and the other his servant. The right need not be unrestricted. "

In *Meera Investments Ltd v Andreas Wipflear t/a Wipfler Designers and Co. Ltd. MA 163 of 2009* Lady Justice Irene Mulyagonja Kakooza cited *Black's Law Dictionary's,* 9th Edition, definition of an independent contractor which is "One who is entrusted to undertake a specific project but who is left free to do the assigned work and to choose the method for accomplishing it." She said that the test to ascertain who is or not an independent contractor is found in common law. The court cited the test set down *in Market Investigations v Minister of Social Security* [1969] 2 GB 173 also reported in [1968] 3 ALL ER 732 as follows: -

> "… the fundamental test to be applied is this: "Is the person who has engaged himself to perform these services performing them as a person in business on his own account?" If the answer to that question is "yes", then the contract is a contract for services."

The court continued:

> "No exhaustive list has been compiled and perhaps no exhaustive list can be compiled of considerations that are relevant in determining that question, nor can strict rules be laid down as to the relevant weight which the various considerations should carry in particular cases. The most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors, which may be of importance, are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers, what degree of financial risk (he) takes, what degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task."

The court also cited *Naraich Property Limited v The Commissioner of Pay-roll Tax*, Privy Council Appeal no. 38 of 1982 where the Privy Council was of the view that the principles of law for determination of the question whether one is an employee were settled. The Council applying the decision *in Australian Mutual Provident Society v Chaplin and another* (1978) 18 ALR 385 identified 3 principles.

> "First of all, subject to one exception, where there is a written contract between the parties whose relationship is in issue, the court is confined, in determining the nature of that relationship, to a consideration of the terms, express or implied, of that contract in light of the circumstances surrounding the making of it; Secondly, while all relevant terms of the contract must be regarded, the most important, and in most cases the decisive criterion for determining the relationship between the parties is the extent to which the person, whose status as employee or independent contractor is in issue. Is he under the control of the other party with regard to the manner in which he does his work under it. <u>And finally, where the parties include in their written contract an express provision purporting to define the status of the party engaged under it, either as that of employee on the one hand or as independent contractor on the other, the provision cannot receive effect according to its terms if they contradict the effect of the agreement as a whole</u>."

Court further stated that*;*

> "…the most that can be said is that control will no doubt always have to be considered, although it can no longer be regarded as the sole determining factor; and that factors, which may be of importance are such matters as whether the man performing the services provides his own equipment, whether he hires his own helpers what degree of financial risk (he) takes, what degree of responsibility for investment and management in performance of his task".

Her lordship Irene Mulyagonja concluded by stating that "Given the foregoing dicta of the Privy Council, the question whether a party to a contract is an independent contractor or not is, no doubt, one of fact and not law merely law." The underlined statements indicate that whether the provisions of the contracts between the applicant and the individuals state that they are independent contractors this may not take effect if they contradict other provisions.

Christine Mugume in *Managing taxation in Uganda 2nd Edition page 8/6* states that;

> "In determination of whether an individual is an employee or independent contractor will for example involve considering whether the hirer has the legal right to control the manner in which the work is performed and the degree of integration of the activities of the persons hired in the hires business."

She further explains that in determining the degree of integration, the following should be considered.

> "- Whether the person hired is engaged on the continuous basis.
> - Whether the services are performed particularly at the hirer's place of business.
> - Whether the hirer provided the working tools, plant and other relevant facilities for the person hired to do his or her work.
> - Whether the hirer controls the timing and scheduling of work."

The applicant signed contracts and stated that they did not create an employer - employee relationship. The tribunal will have to determine whether the relationship that of applicant and an independent contractor and one of employer –employee.

It is important that all factors governing a relationship of persons involved in a contract of service are considered to establish whether the relationship is one of an employer-employee relationship or that of an independent contractor. The general rule is that a person is an independent contractor if the payer controls or directs the result of the work and not what will be done and how it will be done. An independent contractor loses independence the moment he performs services that can be controlled by an employer. It should be noted that the label given to a person does not determine whether or not the person is an employee or independent consultant.

The respondent submitted that according to the evidence the applicant hires professionals and medical experts. The respondent contended that applicant provided work tools to the consultants. The applicant exercised control over the consultants. Some of the employees were under the supervision of the applicant. The persons were required to abide by the terms and procurement guidelines of the applicant. The consultants worked in the premises of the applicant. Some of the consultants were directors of the applicant. Some of the consultants did not have expertise. The respondent felt that because of the above factors the individuals were employees of the applicant. The control the applicant exercised over the individuals varied in each contract. In some cases, the period of the contract was too short for the Tribunal to say that the applicant exercised control over the person it hired. Other persons were not employed at the applicant's premises. Others were not availed tools. Others were not subject to supervision. The respondent used a "one size fits all" approach. Each control should have been treated separately. Because the controls varied in each contract the Tribunal feels it is not in a position to state the applicant exercised sufficient control for the above individuals to make them employees under S. 2(z)(i) of the Employment Act.

S. 2(z)(ii) of the Employment Act states that directors of a company are considered as employees. Though the respondent contended that some of the individual hired by the applicant were also its directors, it did not disclose them. No evidence was adduced to show that some of the applicant's directors were hired by it. Therefore,

the Tribunal is not satisfied that the applicant employed individuals under S. 2(z)(ii) of the Income Tax Act.

S. 2(z)(ii) of the Income Tax Act provides that a holder to a fixed or ascertainable remuneration is considered as one in employment. The respondent contended that the individuals the applicant hired receive fixed or ascertainable remuneration. The words "fixed" or "ascertainable" should be given their ordinary meanings. The word "fixed income" is defined by Black's Law Dictionary 11th Edition p.881 as "Money received at a constant rate, such as payment from a pension or annuity." The word "ascertainable" would refer to income that is certain. Therefore, if an individual receives income that is constant and certain, he or she is deemed an employee for purposes of taxation. The Tribunal uses the word "or" to imply that either 'constant' or 'certain' may do. The Income Tax Act does not state the duration of payment for a relationship to be considered that of employer/employee. It is debatable whether a person who receives remuneration for a short period may be considered as one who obtains fixed or ascertainable income. For the avoidance of doubt the Tribunal will hold that a person who receives remuneration for less than two months cannot be considered as receiving fixed or ascertainable income. A taxpayer is entitled to the benefit of doubt.

So in order to understand whether the applicant paid fixed or ascertainable remuneration one has to look at each contract. A perusal of the contracts between the applicant and the individuals, it is not difficult to discern that some individuals received fixed and ascertainable remuneration. Table A shows the comments of the Tribunal and the status the respondent ought to have considered.

TABLE A

	Exhibit	Name	Salary per month	Period	Comment	Conclusion/ status
1	E12-A	Dr. Joloba	US$ 1,500	I year or more	Income is constant and certain.	Employee
2	E12-B	Alice Namuddu	Shs. 940,000	6 months or more	"	Employee
3	E12-C	Claire Ajore	Shs. 350,000	August 2011 to December 2011	"	Employee

4.	E12-D	Dr. Ponsaino Ocama	Euros 1,050		"	Employee
5	E12-E	Moses Arinatiwe	US$ 5,000 one- off payment		Not constant	Not employee
6	E12-F	Eric Sseguja	US$ 1,500 or US$ 3,300	Different periods	Income is constant and certain	Employee
7	E12-G	Dan Muganzi	US$ 1,000	November to December 2011	Period too short	Not employee
8.	E12-H	Dr. Maria Nnanyonga	Shs. 2,700,000 and US$ 1,200	from August 2010 to January 2011 and February 2011 to July 2011 respectively	Income is constant and certain	Employee
9.	E12-I	John Kissa	Shs. 587,287 per month	December 2011 to June 2012	"	Employee
10.	E12-J	Eriab Wakabi	Shs. 990,000	November 2011 to April 2012	"	Employee
11.	E12-K	Juliet Nakakawa	Shs. 990,000	November 2011 to April 2017	"	Employee
12.	E12- L	Peace Mbabazi	Shs. 990,000	November 2011 to April 2012	"	Employee
13.	E12-M	Francis Wasswa	Shs. 990,000	November 2011 to April 2012	"	Employee
14.	E12-N	John Bogere	Shs. 1,650,000	November 2011 to April 2012	"	Employee
15	E12-NN	Florence Kugonza			1st page of contract missing	Employee
16.	E12-O	Joyce Nakumbi	US$ 1,500	May 2009 to December 2009	Income is constant and certain	Employee
17.	E12-Q	Daniel Olalia	Shs. 100,000	Upon completion of specific deliverable.	Income is not constant nor certain	Not employee
18.	E12-R	Hanifa Kasozi	Shs. 446,900	January 2011 to February 2011	Period too short	Not employee
19.	E12-S	Calvin Epidu	Shs. 530,000	May 2010 to June 2010	Period too short	Not employee
20.	E12-T	Jackson Sekikubo	Shs. 530,000	May 2010 to June 2010	"	Not employee
21	E12- U	Rebecca Mukhaye	Shs 1,400,000	May to June 2011	Income though ascertainable is not constant	Not employee
22.	E12- V	Ibrahim Lutalo Muza	Shs. 3,678,191	September 2011 to December 2011	Income is constant and certain	Employee
23	E12- W	Esther Agali	US$ 8,750 for the whole period.	September 2010 to December 2010	Payment after completion of deliverable. It is not ascertainable	Not employee
24	E12- X	Innocent Owor	US$ 2,700	April 2011 to June 2011	Income is constant and certain	Employee
25	E12- Y	Brian Kasigazi	US$ 250 per day worked.	July 2010 to September 2010	Income payable after submission of a time sheet and an invoice. It is not constant and ascertainable	Not employee
26	E12 -	Franklin Kizito	Shs. 230,000 per day worked monthly.	January 2010 to December 2010	Income is constant and ascertainable.	Employee

27	E12 –AA	Joseph Ouma	Shs. 3,640,000	September 2011 to November 2011	Payment was a one off. Hence it is not constant.	Not employee
28	E12- AB	Arabat Kasangaki	US$ 1,000	May 2009 to December 2009	Payment is one- off.	Not employee.
29	E12-AC	Grace Najjuka	Shs. 660,000	November 2010 to June 2011	Income is certain and constant.	Employee
30	E!2- Ad	Andrew Mugabi	Shs. 530,000	June 2011 to August 2011	"	Employee
31	E12 –AE	John Paul Odongo	Shs. 530,000	July 2011 to August 2011	"	Employee
32	E12 - AE	Dr. Jackson Sekikubo			Contract not attached	Employee
33	E12 - AG	Erich Ochom	Shs. 530,000	28th June to 31 August 2011	Period short	Employee
34	E12 - AH	Sophie Namasopo	Shs. 239,000	12 months from 1st February 2011	Income is certain and constant	Employee
35	E12- Ai	Piloya Thereza	1,270,000	July 2005 to August 2005	Period too short	Not Employee
36	E12 – A	David Meya	5,133,600	May 2009 to June 2010	Income is fixed and certain	Employee
37	E12 –AJ	Hakim Ssendagire			Contract not attached	Employee
38	E12 – AK	Jackie Zirabamuzaale	Shs. 550,000 (stipend)	September 2011 to August 2012	Studentship grant	Not employee
39	E12 -AL	Merab Prossie Ingabire	Shs. 550,000 (stipend)	September 2011 to August 2012	"	Not employee
40	E12 - AM	Dennis Okello	Shs. 35,000	May 2011	Period short	Not employee
41	E12- AN	James Bbaale	Shs. 446,900 for whole period.	31st January 2011 to 8th February 2011	Period short	Not employee
42	E12- AP	Peace Mbabazi	Shs. 990,000	November 2011 to April 2012	Income is certain and fixed	Employee
43	E12- AQ	Scovia Nabbanja	Shs. 35,000 per day worked for 15 proceedings	May 2011	Income is not certain and periods short	Not employee
44	E12- AS	Joy Batusa Nkambe	Shs. 5,851,000	7th March 2011 to 6th April 2011	Period is short	Not employee
45	E12 – AT	Francis Wasswa	Shs. 990,000	5th November 2011 to 15th April 2011	Remuneration is certain and fixed	Employee
46	E12 –AU	Margaret Denty	Shs. 240,000	December 2010 to January 2011	Period is short	Not employee
47	E12 – AV	Sheila Magero	$ 600	29th February to 3rd March 2012	Hired for one event	Not employee

Taking the above into consideration, the applicant ought to have withheld taxes on person it hired who are considered as employees in the above table. The respondent is therefore directed to make an adjustment to the assessment it issued to the applicant removing those persons who are not considered as employees.

In the circumstances, this application is dismissed with adjustments to be made and with ¾ costs to the respondent.

Dated at Kampala this day of 2022.

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DR. ASA MUGENYI	**DR. STEPEHN AKABWAY**	**MR. GEORGE MUERWA**
CHAIRMAN	**MEMBER**	**MEMBER**