

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO. 91 OF 2021**

**EYE CARE CENTRE UGANDA LTD ===== APPLICANT**  
**VERSUS**  
**UGANDA REVENUE AUTHORITY ===== RESPONDENT**

**BEFORE: MR. SIRAJ ALI, MR. GEORGE. MUGERWA, MS. CHRISTINE KATWE**

**RULING**

This ruling is in respect of an application challenging a demand for payment of taxes arising from a reconciliation by the respondent of the applicant's ledger account.

The applicant, a company duly incorporated in Uganda carries on the business of eye care and vision services. On 4<sup>th</sup> November 2021, following a reconciliation of the applicant's tax ledger account by the respondent, the applicant was informed of an outstanding liability of Shs. 322,509,169.59 being comprised of VAT of Shs. 87,155,519.55, PAYE of Shs. 242,235.05 and Income Tax of Shs. 235,111,325. On 11<sup>th</sup> March 2022, the respondent wrote a demand letter to the applicant showing the applicant's tax liability for Income Tax as Shs. 268,568,409 and VAT of Shs. 2,329,130 all as at 11<sup>th</sup> March 2022. The respondent sent a final reminder of this liability to the applicant on 14<sup>th</sup> March 2022. On 22<sup>nd</sup> March 2022, the respondent issued five 3<sup>rd</sup> Party Agency Notices against the applicant's bankers out of which it recovered Shs. 165,700,000 from Stanbic Bank Ltd.

The following issues were set down for determination.

1. Whether the applicant is liable to pay the taxes in dispute?
2. What remedies are available to the parties?

The applicant was represented by Mr. Cephas Birungyi and Ms. Dorothy Bishagenda while the respondent by Mr. Stuart Aheebwa and Ms. Hilda Atusimire.

The applicant's sole witness was its tax agent, Mr. Katongole Kiiza. The witness testified that for the years 2009 to 2021, the applicant declared tax of Shs. 562,532,769 and was assessed additional principal tax and penal tax totaling to Shs. 105,241,254. The witness stated that by 16<sup>th</sup> December 2021, the applicant had paid the entire declared liability of Shs. 562,532,769 and the additional tax assessed of Shs. 105,241,254. The witness stated that for instance as per schedule P, in the year 2009 the tax assessed was Shs. 25,658,350 and the tax paid was Shs. 31,188,422. The witness testified that after reconciling the total tax assessed of Shs. 667,774,023 for the years of income 2009 to 2021 against payments made for the same period of Shs. 669,762,738, it was established that the applicant had a credit due of Shs. 1,988,715 as at 16<sup>th</sup> December 2021. The witness stated that the applicant has never received any other notification of additional liability from the respondent through a notice of assessment although the respondent had a figure of Shs. 429,721,881 as computed per email dated 14<sup>th</sup> June 2022 and in spite of the fact that the applicant was entitled to a waiver of unpaid interest. The witness stated that on 22<sup>nd</sup> March 2022, the respondent issued agency notices of Shs. 270,897,539 out of which Shs. 174,700,000 was illegally collected. The witness stated that the applicant did not benefit from the waiver since the respondent applied the sums taken through the agency notices to pay the purported outstanding taxes.

The witness stated that the respondent's demand is not clear since the principal tax due for the years 2009 to 2021 provisional estimate had been paid by 16<sup>th</sup> December 2021. The witness stated that the applicant challenges the interest computed by the respondent because for the years in question the applicant made payment of the principal liability and paid the tax for each period by direct deposit or through withholding tax on importation or by way of provisional tax. The witness stated that the interest computed of Shs. 18,647,283 for the months of September and October 2020 and the interest of Shs. 55,235,888 for the months of June and September 2021 did not originate from principal tax outstanding as at those dates rather the interest was computed from the returns for

the years of income 2016, 2017, 2018, 2020 and 2021 provisional estimate the principal tax in respect of which had been paid by 30<sup>th</sup> June 2021. The witness stated further that the ledger summary attached to communication dated 14<sup>th</sup> June 2022 contains penalties imposed amounting to Shs. 20,877,032 which is not known to the applicant because the only penalties served upon the applicant amounted to Shs. 8,044,980 which were communicated to the applicant through assessments CRO10114374132 of Shs. 7,388,300 and CRO12200079351 of Shs. 656,680. The witness stated that these penalties were paid by the applicant except the sum of Shs. 12,832,033 which is not known to the applicant. The witness stated that to the best of his knowledge the applicant did not owe the respondent any principal or penal tax as at 16<sup>th</sup> December 2021 but the applicant had a credit of Shs. 1,988,719 as at that date. The witness stated further that the applicant does not owe the respondent Shs. 270,897,589 as income tax and other taxes outstanding as per demand communicated through agency notice issued on 22<sup>nd</sup> March 2022. The witness stated further that the applicant does not owe the respondent Shs. 270,897,539 communicated on 14<sup>th</sup> March 2022 and the applicant is entitled to a waiver of Shs. 429,721,881 interests communicated in the email dated 14<sup>th</sup> June 2022.

The respondent's sole witness, was Ms. Christine Mirembe, a supervisor in the respondent's Domestic Taxes Department. The witness testified that the respondent carried out a ledger reconciliation of the applicant's ledger account and found unpaid taxes of Shs. 322,509,169.59 to wit VAT of Shs. 87,155,519.55, PAYE of Shs. 242,235.04 and Income tax of Shs. 235,111,325. The witness stated that a demand letter was issued to the applicant on 4<sup>th</sup> November 2021 which was followed by third party agency notices through which Shs. 165,700,000 was recovered from Stanbic Bank Ltd. The witness stated that since the applicant's accounting date is 31<sup>st</sup> December, upon the applicant filing its provisional tax, the first provisional payment is due on or before the last day of the 6<sup>th</sup> month and the second provisional payment is due on or before the last day of the 12<sup>th</sup> month of the year of income. The witness stated that in a meeting held on 15<sup>th</sup> June 2022 between the applicant and the respondent interest was computed manually and the applicant was shown how to compute considering the due dates of the periods and it was established and acknowledged by the applicant that the interest had been accurately

computed and posted on the ledger. The witness stated that in the same meeting the applicant on being shown a breakdown of penalties by the respondent stated that the respondent should not have penalized the applicant since the applicant had requested the respondent for an extension of time within which to file a return. The witness stated that the applicant failed to provide proof that the extension of time had been granted by the respondent. The witness stated that as at 30<sup>th</sup> June 2016, the applicant had filed total returns worth Shs. 299,512,062, total penalties of Shs. 19,218,974, an assessment of Shs. 6,099,537 and total accrued interest of Shs. 93,846,090 and the applicant had made total payments of Shs. 244,327,825 hence a tax liability of Shs. 174,348,839 of which Shs. 80,502,747 was in respect of principal tax and Shs. 93,846,090 in respect of interest. The witness stated that with the coming into force of the TPCA, the above stated old liability had to be recovered first before the returns that were filed thereafter. The witness stated further that all unpaid interest as at 30<sup>th</sup> June 2020 was waived off in accordance with S. 40 C of the TPCA. The witness stated that the outstanding tax liability was lawful and justified in accordance with the law.

The applicant submitted that it is not liable to pay the taxes demanded by the respondent because it paid all taxes arising from both its self-declared returns and assessments issued to it for the tax period 2009 to 2021. Relying on the testimony of AW1 the applicant submitted that by 16<sup>th</sup> December 2021, it had paid the entire declared liability of Shs. 562,532,769 and the additional tax assessed of Shs. 105,241,254. The applicant submitted that it had provided unchallenged evidence of both the direct payments and withholding credits it made towards specific taxes assessed and demanded by the respondent. The applicant submitted that it was therefore illegal for the respondent to collect additional tax of Shs. 174,700,000 through agency notices yet the applicant had fully cleared its principal liability and any outstanding interest and penalties as at 30<sup>th</sup> June 2020 were waived under S. 40 C of the Tax Procedure Code Act.

The applicant submitted further that the respondent unlawfully allocated its payments made in respect of specific principal liabilities to offset penalties and interest in contradiction of the law on the order of payments provided for under S. 38(1) (a) of the



Tax Procedures Code Act 2014. The applicant submitted on the basis of the testimony of AW1 that it made payments for its principal liability and paid the tax for each period by direct deposit or through withholding tax credits. The applicant submitted that it was apparent from the record that whereas the applicant made payments to clear its total principal tax for the assessed period, the respondent reallocated its payments to clear interest and penalties leaving an outstanding principal liability. In proof of this argument the applicant relied on the testimony of RW1 who stated under cross examination that she applied the payment of Shs. 191,075,255 to the old debt of Shs. 191,075,255 meaning that all the payments that the applicant made from 1<sup>st</sup> July 2016 to 14<sup>th</sup> November 2018 was applied to the old debt.

The applicant submitted that the respondent acted unlawfully when it ignored the provisions of S. 38 of the Tax Procedures Code Act cited above which dictates that payments must first be allocated to a specified principal liability, then to the penalty and lastly to the interest. The applicant cited the decision of the tribunal in *K-files v. URA TAT Application 69 of 2021* in support of this argument. The applicant submitted further that S. 38 above mandates that the order of payment of tax should be applied to a specific tax period which in the case of self –assessments is the period declared in the tax returns. The applicant submitted that its payments towards its principal tax ought to have been applied to its principal tax for the period and the resultant interest would remain capped and outstanding until demanded by the respondent. The applicant submitted that by the year 2021, it had made payments of Shs. 671,545,205 to clear its outstanding principal liability of Shs. 659,729,040 however due to the respondent's illegal misallocation of its payments, the applicant's ledger was distorted creating a false running balance which subsequently rendered the waiver of interest and penalty granted by the law nugatory.

The applicant submitted further that all its outstanding interest and penalties as at 30<sup>th</sup> June 2020 ought to have been waived by the operation of S. 40 C of the TPCA which waived all interest and penalties outstanding as at 30<sup>th</sup> June 2020. The applicant submitted that AW1 had clarified that Shs. 421,562,564 which appeared as the running balance in the applicant's ledger as at 30<sup>th</sup> June 2020 was the applicant's outstanding

liability as at 30<sup>th</sup> June 2020 and that it included accrued interest of Shs. 327,459,312 as computed by the respondent, all of which ought have been waived under S. 40 C above but only Shs. 130,626,102 had been waived. The applicant submitted that this position had been confirmed by RW1 who testified that the applicant had accrued interest of Shs. 412,349,859 and an outstanding interest of Shs. 198,278,908 as at 30<sup>th</sup> June 2020 but only waived Shs. 130,328,623. The applicant argued that the respondent's misallocation of the applicant's payments to interest and penalties and not principal tax reduced the applicant's outstanding interest as at 30<sup>th</sup> June 2020 but in spite of this the respondent did not fully waive off the interest and penalties that remained after its misallocation of the payments. The applicant submitted therefore that the respondent did not waive the applicant's interest and penalty as required by the law and as such it acted unlawfully and unfairly to the detriment of the applicant.

The applicant submitted further that it was unlawful for the respondent to allocate payments to penalties that the applicant had not been notified about. The applicant cited the provisions of Ss. 39, 27(2) and 53(2) of the TPCA in support of this argument. Relying on the testimony of AW1 the applicant submitted that it did not receive any notification of additional liability before it made the payments towards the assessed liability. As proof that no notice had been issued by the respondent in respect of the said liabilities the applicant relied on exhibit REX1 and AEX16 in the joint trial bundle. The applicant submitted that when a penalty or interest is imposed by the respondent the amount charged only becomes payable until a notice indicating the amount of interest or penalty is served on the tax payer. In support of this argument the applicant cited the decision of the tribunal in *Eriya George Mugisha v. Uganda Revenue Authority* TAT Application No. 7 of 2004. The applicant submitted that the respondent's action of allocating the applicant's payments to offset penalties not previously communicated to it was unlawful as the law clearly requires the respondent to issue a notice to the tax payer stating the amount of the penalty and its time of payment. The applicant submitted further that the impugned penalties stood waived on the application of S. 40 C of the TPCA.

The applicant submitted that owing to grave inconsistencies the respondent's ledger cannot be relied upon to correctly determine the applicant's tax position. In support of this argument the applicant cited the testimony of RW1 had stated under cross examination that the allocation of payments was done by the system but audited by humans. The applicant submitted that the respondent had demanded different tax liabilities for the same period on different days and did not include some of its payments in its ledgers. The applicant submitted that for instance on 4<sup>th</sup> November 2021, the respondent demanded the payment of Shs. 322,509,169.59, while on 29<sup>th</sup> December 2021, it demanded Shs. 267,631,184.59, on 11<sup>th</sup> March 2023 Shs. 270,897,539 and collected tax of Shs. 174,700,000. The applicant submitted that during cross examination, RW1 relied on exhibit R14 to explain the respondent's workings but that the same document at page 1 shows the applicant's current outstanding liability as Shs. 41,513,298 instead of Shs. 229,384,241 as per exhibit AEX14 after the subtraction of Shs. 174,700,000. The applicant submitted that these inconsistencies in the applicant's ledger generated by the respondent's system proves that the system is unable to correctly capture and allocate taxpayer's payments as envisaged under the law and as such should not be relied upon to determine the applicant's liability.

The applicant submitted further that the respondent's formula for computing interest per day has no basis in the law. The applicant cited S. 136 of the Income Tax Act which provides that a person who fails to pay any tax on the due date is liable for interest at a rate equal to 2% per month on the amount unpaid calculated from the date on which the payment was due until the date on which payment is made. The applicant submitted therefore that the respondent has no legal justification to charge interest on late payment before a month ends as the law provides for interest at a rate of 2% per month.

The applicant submitted further that the TPCA which provides for the allocation of payments came into force in the year 2016 and only applies to liabilities incurred after the year 2016. The applicant submitted that the respondent's action of applying payments made after 2016 to liabilities incurred prior to the amendment of the law was illegal and wrongly increased the applicant's liability.

The applicant submitted that having discharged its burden of proof to the standard prescribed by the law when it adduced evidence to show that it made sufficient payments to clear all its outstanding principal tax for the period 2009 to 2021, the burden of proof shifted from the applicant to the respondent to prove that it correctly allocated the applicant's payments to its principal liability for the period in question and that it waived all its outstanding interest as at 30<sup>th</sup> June 2020 in line with the law. The applicant submitted that the respondent had failed to discharge this burden. In support of this argument the applicant relied on the testimony of RW1 who had stated under cross examination that payments made by the applicant were applied by the respondent to interest and penalties from previous liabilities and not to the principal tax in respect of which the payments had been made. The applicant submitted further that exhibit R14 supported the applicant's case as it proves that the payments were not allocated to clear the applicant's specified principal liability but to clear earlier interest and penalties contrary to the law.

The respondent submitted that the applicant is liable to pay the taxes in dispute. The respondent submitted that RW1 furnished the tribunal with a schedule showing the respondent's workings and provides a clear and unequivocal demonstration of how the applicant's tax liability was arrived at. The respondent submitted that prior to the coming into force of the Tax Procedure Code Act 2014, all payments made including withholding tax credits of Shs. 244,327,825 were applied to the principal tax only and none were applied to interest thus leaving the outstanding principal tax of Shs. 80,502,747 and interest of Shs. 93,846,090. The respondent submitted further that with the coming into force of the TPCA on 1<sup>st</sup> July 2016, the respondent was required to allocate payments in the order of principal, penalty and interest and in cases where there were more than one liability the respondent had to allocate the payment to the oldest liability in the order of principal, penalty and interest. The respondent submitted that it had applied the law correctly as evidenced by REX14. The respondent submitted that exhibit AEX11 submitted by the applicant is misleading and cannot be relied upon because it does not take into consideration payment due dates in respect of the period in question thereby

giving the false assumption that all the applicant's payments were made in time whereas not. The respondent submitted further that the said exhibit contradicts the applicant's interest computation in exhibit AEX17. The respondent submitted that the facts of the decision in *K-files Ltd* cited above is distinguishable from the facts of the instant case since that case did not involve an old liability like in the instant case.

The respondent submitted that the assertion by the applicant that it did not waive its outstanding interest and penalty as at 30<sup>th</sup> June 2020 was erroneous. Relying on the testimony of RW1 the respondent submitted that as at 30<sup>th</sup> June 2020, the applicant had outstanding interest of Shs. 198,278,908 which was waived. The respondent submitted further that by 1<sup>st</sup> July 2020, there was no outstanding interest and the respondent started computing interest starting 1<sup>st</sup> July 2020 without considering their actual due dates. The respondent submitted that the law did not direct the respondent to refund interest that had already been paid by the applicant. The respondent submitted that it was therefore not true that the applicant's outstanding interest was not waived as asserted by the applicant. The respondent submitted that the applicant was notified of penalties and assessments as per notices of assessment. In support of this assertion the respondent relied on exhibit REX 2-12 of the Joint Trial Bundle. The respondent submitted that AW1 is neither the applicant's contact person nor its accountant. The respondent submitted further that during cross examination AW1 had admitted that the applicant received some of the penalties and assessments as reflected in exhibit AEX10 and AEX11. The respondent submitted further that with the exception of REX11, all the other notifications were issued prior to the coming into force of the TPCA 2014. The respondent submitted therefore that Ss. 39, 27 and 53 of the TPCA relied upon by the applicant in its submissions are not applicable. The respondent submitted further that the issue relating to non-notification was an afterthought and did not form part of the application.

The respondent rejected the assertion by the applicant that the inconsistencies in the ledger show that the system is unable to correctly capture and allocate tax payer's payments. The respondent submitted that there are only two payments of 2009 which did not reflect in the ledger since they had been captured under the old system. The



respondent submitted that these two payments were eventually captured and updated in the ledger as per the testimony of RW1. The respondent submitted further that from 2009 to 7<sup>th</sup> June 2023, when the ledger in issue was downloaded, it had made any other payment that was not reflected, or reflected on a wrong date in the ledger. The respondent submitted further that the difference in the amounts of the demand letters of 4<sup>th</sup> November 2021, 29<sup>th</sup> December 2021 and 11<sup>th</sup> March 2022 are all explained in the details of each of the said demand letters because they all referenced each other. For instance, the respondent stated that the letter of 29<sup>th</sup> December 2021 stated that the figure the applicant had objected to in VAT was set aside while the one of 11<sup>th</sup> March 2022 was in respect of two tax heads compared to the first two that had three tax heads. The respondent submitted further that the ledger in issue is an income tax ledger yet the demand letter were for PAYE and VAT which should not form part of the ledger in question.

In response to the applicant's submission relating to differences between the ledger and exhibit REX14, the respondent submitted that as at 7<sup>th</sup> June 2022 the applicant's tax liability in the ledger was Shs. 34,737,193 while under exhibit REX14 which captured all income tax transactions up to 20<sup>th</sup> March 2023, the liability of the applicant was Shs. 41,513,298. The respondent explained that this was due to a difference of 10 months during which more interest accrued and other transactions took place. The respondent submitted that the tax liability of Shs. 229,384,241 alluded to in the applicant's submissions is without basis. The respondent stated that after deducting the money recovered through agency notice the outstanding liability of the applicant was Shs. 45,893,345 after which due to more credits the liability was reduced further to Shs. 34,737,193 as at 7<sup>th</sup> June 2022 when the ledger was downloaded. The respondent submitted therefore that the ledger has no inconsistencies and is reliable.

The respondent submitted that the assertion by the applicant that interest on late payment should be computed at the end of the month and not before is erroneous. On the basis of the testimony of RW1 the respondent submitted that the term 'per month' is a measurement unit and as such whatever number of days the taxpayer was late for any payment had to be divided by 30 to convert the days to a month. The respondent

submitted that the same can be seen in the applicant's interest computations in exhibit AEX17.

The respondent submitted that it did not apply the provisions of S. 38 of the TPCA retrospectively. The respondent submitted that exhibit REX14 showed that S. 38 was applied with effect from 1<sup>st</sup> July 2016 specifically in recovering the old liability first.

In rejoinder the applicant reiterated its earlier submissions and responded to specific issues raised by the respondent.

The applicant submitted that it has discharged its burden of proof when it led uncontroverted evidence to show that it made sufficient payments to clear all its outstanding principal tax arising from both its self-declared returns and assessments issued for the period 2009 to 2021 and that any outstanding interest as at 30<sup>th</sup> June 2020 ought to have been waived under S. 40 C of the TPCA. The applicant stated that it had adduced evidence to prove that the respondent collected Shs. 174,700,000 through a third party agency notice. The applicant also submitted that it had provided proof of payment of all its principal liability between 2009 and 2021 by demonstrating that the applicant's total liability in 2009 was Shs. 25,658,350/- and yet it paid Shs. 31,188,422. The applicant stated further that the applicant's ledger from the respondent's portal as at 14<sup>th</sup> June 2022 proves that the respondent misallocated the applicant's payments and even after misallocation it did not fully waive off the applicant's outstanding interest in line with S. 40 C of the TPCA. The applicant submitted further that it had provided proof that the respondent did not communicate to it that it had issued against it penalties totaling to Shs. 11,830,674/- before the applicant made its payments. The applicant also stated that the uncontroverted evidence of AW1 proved that the applicant had paid all its principal tax for the periods in question.

Relying on the decision in *Kyotera Victoria Fishnets Ltd v. Commissioner General URA & Another Civil Suit No. 224 of 2014*, the applicant submitted that since it had fully discharged its burden, the evidential burden of proof shifted to the respondent to prove that it had properly allocated the applicant's payments to its principal liability for the

periods 2009 to 2021 and that it waived all the applicant's outstanding interest in line with the law. As proof that the respondent had failed to discharge its evidential burden of proof the applicant relied on exhibit AEX15, a reminder notice from the respondent to the applicant showing that as at 15<sup>th</sup> December 2021, the applicant had an outstanding principal tax of Shs. 647,074,532/- and an outstanding interest of Shs. 277,272,772/- but had paid a sum of Shs. 689,235,979/- leaving an outstanding balance of Shs. 235,111,325/-. The applicant submitted that the sum paid was over and above the principal tax and that the respondent did not dispute that the applicant had made any of the above payments. The applicant stated further that the applicant's exhibit AEX14 shows that as at 30<sup>th</sup> June 2020, its running balance was Shs. 421,562,364/- and that AW1's uncontroverted testimony showed that the said figure comprised of accrued interest of Shs. 327,459,312/- but the respondent's witness had conceded that out of this sum only Shs. 130,328,623/- had been waived. The applicant stated further that RW1 conceded under cross examination that the applicant's payments were applied to interest and penalties from previous liabilities and not to the principal tax that the applicant had specifically made payments for.

The applicant stated further that the issue in contention was not what formula was used in the computation of interest but rather the fact that the respondent had misallocated the applicant's payments meant for payment of the principal liability to interest and penalties hence distorting the applicant's tax ledger.

The applicant submitted that the following instances demonstrate that the respondent's documents contain inconsistencies and should not be relied on. Firstly, exhibit AEX15, a reminder notice sent by the respondent to the applicant stated that as at 15<sup>th</sup> December 2021, the applicant had an outstanding principal tax of Shs. 647,074,532, an outstanding interest of Shs. 277,272,772 and a penalty of 0 but had made payments of Shs. 689,235,979 leaving an outstanding balance of Shs. 235,111,325. Secondly on 14<sup>th</sup> June 2022, the respondent sent the applicant its ledger exhibit AEX14 which showed a completely different position. The applicant stated that the ledger showed that the applicant's running balance on 16<sup>th</sup> March 2022 before the third-party agency notices

were issued on 24<sup>th</sup> and 25<sup>th</sup> March 2022 was Shs. 194,118,429 as per page 79 of the joint trial bundle. The applicant submitted that this proved that the respondent allocated payments made by the applicant meant for its principal tax to interest and penalties as evidenced by the fact that any payments made by the applicant were used to reduce its total running balance and were not used to clear its principal tax only as submitted by the respondent. The applicant stated further that the applicant's ledger also proves that the respondent did not waive all the outstanding interest in accordance with S. 40 C of the TPCA which formed the basis of the instant application. The applicant submitted that exhibit AEX14 at page 68 shows that as at 30<sup>th</sup> June 2020, the running balance in the applicant's ledger was Shs. 421,562,364/- which according to AW1's testimony comprised of accrued interest of Shs. 327,459,312/- out of which only Shs. 130,328,623 was waived according to the respondent's own admission. The applicant stated further that exhibit R14 which was prepared by the respondent at the direction of the tribunal to explain the respondent's workings contradict exhibit AEX14. The applicant stated that for instance exhibit R14 shows that the applicant only paid a sum of Shs. 25,658,351/- towards its liability in the year 2009 and Shs. 45,190,745/- in the year 2010 yet exhibit AEX14 shows that the applicant actually paid Shs. 31,188,422/- in the year 2009 and Shs. 58,504,438 in the year 2010 respectively. The applicant submitted therefore that exhibit R14 which was prepared during the hearing is inconsistent with the original ledger exhibit AEX14 and cannot be relied upon. The applicant invited the tribunal to analyse exhibit AEX14 so as to determine whether the respondent's said actions were lawful.

In response to the submission by the respondent that before the coming into force of the TPCA, it applied all the applicant's payments of Shs. 244,327,825/- to the payment of the applicant's principal tax, the applicant relying on exhibit AEX12, which is an extract of the applicant's ledger stated that the applicant made payments between the years 2009 and 2016 of Shs. 389,983,510/- against an aggregate liability of Shs. 342,342,632 which is more than the figure quoted by the respondent. The applicant stated further that contrary to the respondent's assertion that it applied all the applicant's payments to clearing the applicant's principal liability, the applicant's ledger proves that every payment made by the applicant reduced the applicant's total running balance and not just the principal. The

applicant stated further that exhibit R14 omitted some of its payments with the result that the said document does not provide an accurate representation of the applicant's tax liability.

The applicant submitted further that its withholding tax credits could not be used to clear liabilities for previous years owing to S. 128(3) of the Income Tax Act which provides that tax withheld from a payment can only be credited against tax assessed against a taxpayer for the year in which the payment was made. The applicant submitted that exhibit R14 proves that the respondent allocated the applicant's withholding tax credits to clear liabilities in earlier years. The applicant submitted therefore that the respondent wrongfully demanded additional tax from the applicant yet the applicant had cleared all its principal tax for the periods in question.

In response to the submission by the respondent that exhibit AEX11 was misleading as it did not take into consideration payment due dates the applicant submitted that payment due dates are only relevant in the calculation of interest and penalties as the principal tax remains unchanged regardless of how late or early a taxpayer makes a payment. The applicant submitted that the respondent ought to have allocated the payments made by the applicant to its principal tax first and then calculated the accruing interest from the time the payments were due to the time the payments were made and that any interest outstanding as at the year 2020 should have been waived under S. 40 C of the TPCA.

In response to the respondent's submissions that exhibit AEX11, which is the schedule of liabilities and payments and exhibit AEX17, which is the calculation of interest payable, are contradictory, the applicant submitted that exhibit AEX17 shows the interest that the applicant was liable to pay for late payment but does not contradict the fact that it had paid all its principal liability as shown in exhibit AEX11. The applicant submitted that the due dates only affected how much interest was to be paid but did not change the principal liability.



The applicant submitted that the facts of the instant case and the facts of the *K-Files* case are not distinguishable as the applicant's contention is that it made payments specifically to clear its principal tax for the year 2009 to the year 2021 but the respondent used the payments made for one period to clear interest and penalties for older periods leaving the principal tax outstanding and reducing the outstanding interest and penalties that would have benefited from the waiver under S. 40 C of the TPCA.

In specific response to the submission by the respondent that it waived all the applicant's outstanding interest as at 30<sup>th</sup> June 2020 and that the law did not require it to refund interest that had already been paid the applicant submitted that the respondent's action of misallocating the applicant's payments to clear interest and penalties instead of the principal tax reduced the amount of outstanding interest and penalties in the applicant's ledger and therefore distorted the applicant's liability. In support of this argument the applicant referred to exhibit AEX11 and AEX15 which it stated clearly illustrated the applicant's principal liabilities and the corresponding payments made to clear it. The applicant reiterated the argument that the respondent ought to have used the applicant's payments to clear its principal liability in the respective tax periods with the result that only interest and penalty would remain outstanding.

The applicant submitted that it had adduced uncontroverted evidence of extracts from its account on the respondent's portal which proved that it did not receive notice of the penalties amounting to Shs. 11,830,674/-. The applicant submitted further that this position was confirmed by exhibit AEX15, which is a notice from the respondent showing that the applicant's penalty balance as at 25<sup>th</sup> December 2021 was zero and the minutes of the inter-party meeting held on 15<sup>th</sup> June 2022, which makes reference to a complaint by the applicant that it was not served with notice of the penal taxes imposed on it. The applicant submitted therefore that payments made by it towards its principal tax ought not to have been used to offset penalties that had not yet been imposed and of which it had no notice at the time of payment.

Having listened to the evidence and read the submissions of the parties, the following is the ruling of the tribunal.

The URA tax ledgers are a compilation of a taxpayer's compliance records maintained by URA. They form a record of all assessments filed, namely; self-assessed returns and assessments imposed by URA, including interest accrued and penalties incurred on unpaid or late payment of taxes. They also record payments made by taxpayers towards the settlement of these assessments. The ledgers are closed with either a positive running balance, which means that additional taxes are payable or with a negative running balance which shows that a taxpayer has overpaid and is in credit. The item which leads to most dispute in the ledger is the accrual of interest. Interest as stated above arises from late payment or non-payment of tax. The ledgers are auto-generated and run from the year 2009 when the electronic (e-tax) system was introduced.

In resolving this dispute careful consideration must be taken of the Income Tax Act, the Tax Procedures Code Act and their various amendments. The enactment of the Tax Procedures Code Act, 2014 on 19<sup>th</sup> October, 2014 and its coming into force on 1<sup>st</sup> July 2016, significantly affected the manner in which payments made by tax payers towards the settlement of their principal tax obligations are applied. S. 38 of the TPCA introduced to our tax jurisprudence, the concept of the order of payment. S.38 (1) provides that when a taxpayer is liable for penal tax and interest in relation to a tax liability and the taxpayer makes a payment that is less than the total amount of tax, penal tax, and interest due, the amount paid is applied in the following order, firstly in payment of the principal tax, secondly in payment of the penal tax and thirdly in payment of the interest due. S. 38(2) which was repealed by the Tax Procedures Code (Amendment) Act, 2021, stated that if a tax payer had more than one tax liability at the time a payment was made, S.38 (1) applied to the earliest liability first. This provision is known as the earliest liability rule. To these two provisions must be added S. 40C of the TPCA which was introduced by the Tax Procedures Code (Amendment) Act, 2020. S. 40C waived all interest and penalties on unpaid principal tax as at 30<sup>th</sup> June, 2020. A substantial part of this dispute relates to

what the applicant claims was a misallocation of payments by the respondent. It is the applicant's case that it made payments specifically to clear its principal tax for the period 2009 to 2021 but the respondent applied these payments to clear the interest and penalties for older periods leaving the principal tax outstanding and reducing the outstanding interest and penalties which would have benefited from the waiver of interest and penalties as at 30<sup>th</sup> June, 2020 under S. 40C above. In order to determine whether the respondent misallocated the payments made by the applicant as alleged, it is necessary to look at all the payments made by the applicant and the manner in which they were allocated by the respondent. It will be observed that between the period 1<sup>st</sup> January, 2009 to 31<sup>st</sup> June, 2016, neither the TPCA nor the order of payment nor the earliest liability rule were in existence. Both S. 38 (1) which provides for the order of payment and S. 38(2) which provided for the earliest liability rule came into force on 1<sup>st</sup> July 2016. The repeal of S. 38(2) which took effect on 1<sup>st</sup> July 2021, means that the respondent could only apply the earliest liability rule from 1<sup>st</sup> July 2016 up to 31<sup>st</sup> June 2021.

A substantial part of the payments made by the applicant between the period 1<sup>st</sup> January 2009 to 31<sup>st</sup> June 2016 were in the form of Withholding tax credits. Tax credits are provided for under Ss. 4, 125 and 128 of the Income Tax Act. S. 4 (2) states as follows;

- "(2) Subject to subsections (4) and (5), the income tax payable by a taxpayer for a year of income is calculated by applying the relevant rates of tax determined under this Act to the chargeable income of the taxpayer for the year of income and from the resulting amount are subtracted any tax credits allowed to the taxpayer for the year of income.
- (3) Where a taxpayer is allowed more than one tax credit for a year of income, the credits shall be applied in the following order;
- a) The foreign tax credit allowed under Section 81; then
  - b) The tax credit allowed under Section 128; then
  - c) The tax credit allowed under Section 111(8)."

S. 125 of the Income Tax Act states as follows;

- "(1) Subject to subsection (3), a withholding agent shall deliver to the payee a tax credit certificate setting out the amount of payments made and tax withheld during a year of income.

- (2) A payee who is required to furnish a return of income shall attach to the return the tax credit certificate or certificates supplied to the payee for the year of income for which the return is filed."

S. 128 of the Income Tax Act provides as follows;

- "(1) The amount of tax withheld under this Part is treated as income derived by the payee at the time it was withheld.
- (2) A withholding agent who has withheld tax under this Part and remitted the amount withheld to the Commissioner is treated as having paid the withheld amount to the payee for the purposes of any claim by that person for payment of the amount withheld.
- (3) Tax withheld from a payment under this Part is deemed to have been paid by the payee and except in the case of a tax that is a final tax under this Act, is credited against the tax assessed on the payee for the year of income in which the payment is made."

S. 128(3) above, expressly requires tax credits to be applied against the tax assessed on the payee for the year of income in which the payment is made. In order to determine whether the Withholding tax credits due to the applicant were properly applied by the respondent we need to confirm that these payments were applied by the respondent against the tax assessed on the applicant for the years of income in which the payments were made. A perusal of the applicant's ledger at page 37 of the joint trial bundle and the schedule of computation of interest between pages 34 to 68 of the joint trial bundle Volume 2 shows that the respondent applied every tax credit due to the applicant against the tax assessed on the applicant for the year of income in which the payments were made. We accordingly find that all the tax credits were properly applied by the respondent.

The applicant also made a substantial part of its payments for the period 1<sup>st</sup> January 2009 to 31<sup>st</sup> June 2016, through provisional tax payments. Provisional taxes are not a separate form of tax. They are a system through which taxpayers are required to provide for their final tax liability in advance by paying two separate amounts in the course of the year of assessment based on estimated taxable income. The aim is to help taxpayers meet their liabilities in the form of two payments instead of a single large sum on assessment. (See *Mini Bakeries v Uganda Revenue Authority* Application 102 of 2018.

Relevant parts of S. 111 of the Income Tax Act which provides for Provisional tax states as follows;

- (1) A person who derives or expects to derive any income during a year of income which is not or will not be subject to withholding tax at the source under Section 116, 117, or 118 is liable or subject to pay provisional tax under this Section.
- (2) A provisional taxpayer, other than an individual, is liable to pay two installments of provisional tax, on or before the last day of the sixth and twelfth months of the year of income, in respect of the taxpayer's liability for income tax for that year.
- (7) An instalment of provisional tax, when it becomes due and payable, is a debt due to the Government and the provisions of this Act shall apply for the purposes of the collection and recovery of provisional tax by the Commissioner.
- (8) Each instalment of provisional tax shall be credited against the income tax assessed to the provisional taxpayer for the year of income to which the instalment relates.

The allocation of provisional tax payments is governed by S. 111(8) above. It states that each instalment of provisional tax shall be credited against the income tax assessed to the provisional taxpayer for the year of income to which the instalment relates. This means that payments of provisional tax made in a specific year should be applied to the income tax assessments of that year. In order to determine whether the provisional tax payments made by the applicant for the period 1<sup>st</sup> January 2009 to 31<sup>st</sup> June 2016 were properly applied by the respondent we must confirm that the provisional tax payments made by the applicant were credited against the income tax assessed to the applicant for the year of income to which the instalment relates. The following table shows how provisional tax payments made by the applicant between the years 2010 to 2015 were allocated by the respondent. The information contained in the table below is based on the applicant's ledger updated to 14<sup>th</sup> June 2022 and the schedule of interest computation both of which have been referred to above.



Year of Payment	Payment Amount	PRN	Date of Payment	Period of Allocation
2010	4,000,000	2110000006657	21/07/2010	01/01/2009 - 31/12/2009
"	9,000,000	2110000025123	22/09/2010	01/01/2009 - 31/12/2009
2011	6,000,000	2110000075818	05/01/2011	01/01/2010 - 31/12/2010
"	6,000,000	2120000206632	12/09/2011	01/01/2010 - 31/12/2010
2012	10,000,000	2120001354015	27/04/2012	01/01/2010 - 31/12/2010
2013	10,000,000	2130002409090	28/06/2013	01/01/2010 - 31/12/2010
2013	20,000,000	2140000688614	11/10/2013	01/01/2010 - 31/12/2010
2013	10,000,000	2140000880183	11/11/2013	01/01/2011 - 31/12/2011
2013	10,000,000	2140001094779	13/12/2013	01/01/2011 - 31/12/2011
2014	15,000,000	2140001482852	10/02/2014	01/01/2011 - 31/12/2011
2014	10,000,000	2140001677606	07/03/2014	01/01/2012 - 31/12/2012
2014	3,000,000	2140002152292	13/05/2014	01/01/2012 - 31/12/2012
2014	9,400,000	2140002379701	12/06/2014	01/01/2012 - 31/12/2012
2014	10,000,000	2140002518056	02/07/2014	01/01/2012 - 31/12/2012
2014	6,000,000	2150000084716	14/07/2014	01/01/2012 - 31/12/2012
2014	6,099,537	2150000416776	26/08/2014	01/01/2012 - 31/12/2012
2014	3,000,000	2150000481698	04/09/2014	01/01/2012 - 31/12/2012
2014	3,000,000	2150000766402	15/10/2014	01/01/2013 - 31/12/2013
2014	3,000,000	2140000960657	12/11/2014	01/01/2013 - 31/12/2013
2015	3,000,000	2150002624608	10/04/2015	01/01/2013 - 31/12/2013
2015	6,000,000	2150002949928	21/05/2015	01/01/2013 - 31/12/2013
2015	3,000,000	2150003068917	08/06/2015	01/01/2013 - 31/12/2013
2015	3,000,000	2160000078978	10/07/2015	01/01/2013 - 31/12/2013
2015	3,000,000	2160000309773	10/08/2015	01/01/2013 - 31/12/2013
2015	3,000,000	2160000601179	14/09/2015	01/01/2013 - 31/12/2013
2015	3,000,000	2160000846183	15/10/2015	01/01/2013 - 31/12/2013

The above table shows that the respondent credited payments made by the applicant in respect of a particular year of income to the earliest of the applicant's provisional tax assessments. Such application by the respondent of the payments made by the applicant was not in compliance with S. 111(8) of the Income Tax Act. The respondent ought to have applied the payments made in a specific year by the applicant to the provisional tax assessments of that year. For instance, payments made by the applicant towards its

Provisional tax for the period 1<sup>st</sup> January 2012 to 31<sup>st</sup> December 2012 ought to have been credited against the income tax assessed to the applicant for the period 1<sup>st</sup> January 2012 to 31<sup>st</sup> December 2012. The respondent had no legal basis for applying the payments in question towards the settlement of the applicant's earliest liabilities. In cases where the applicant had failed to pay the provisional tax the proper procedure for the respondent was to recover the tax due through the various recovery measures provided for under the Income Tax Act. Indeed S. 111(7) of the Income Tax Act, provides that an instalment of provisional tax, when due and payable, becomes a debt due to the Government and the provisions of the Act apply for the purposes of the collection and recovery of the provisional tax by the Commissioner. The applicant's sole witness Mr. Katongole Kiiza testified that the applicant paid the principal liability for each period by direct deposit, withholding tax on importation and through provisional tax. Further the applicant submitted that it made payments to clear its total principal tax for the assessed period but the respondent reallocated these payments to clear interest and penalties. Apart from showing that all the payments made by the applicant between 1<sup>st</sup> January 2009 to 30<sup>th</sup> June 2016 were only applied towards the settlement of the applicant's principal liability and not its interest, the respondent did not dispute the fact that the payments made by the applicant, were intended to settle the applicant's tax liabilities, in respect of the years in which the payments were made. By applying payments made by the applicant towards the settlement of the applicant's earliest liabilities the respondent was effectively applying the earliest liability rule. As stated above, the earliest liability rule only came into force on 1<sup>st</sup> July 2016. By applying this rule to the period 1<sup>st</sup> January 2009 to 31<sup>st</sup> June 2016, the respondent applied the said rule retrospectively. In *Multi-Consults Limited TAT No. 72 of 2019*, the tribunal found that the respondent's application of S. 38(2) of the TPCA, to payments made by the applicant in respect of the period prior to 1<sup>st</sup> July 2016, amounted to a retrospective application of the law and was therefore unlawful.

The misallocation of payments by the respondent between 1<sup>st</sup> January 2009 and 31<sup>st</sup> June 2016 has distorted the ledger so fundamentally that it cannot be relied upon to determine the applicant's tax liability. For the same reason it is impossible to determine whether the respondent correctly applied the provisions of S. 38 of the TPCA for the period, 1<sup>st</sup> July

2016 to 14<sup>th</sup> November 2018 and whether the correct amount of interest was waived off by the respondent under S. 40C of the TPCA.

A perusal of the instant application shows that the question relating to the non-notification of penalties by the respondent was not in issue at the time of the filing of the application. To determine it would be to allow the applicant to set up a case inconsistent with what it alleged in its pleadings. (See *Interfreight Forwarders (U) Ltd v East African Development Bank Civil Appeal 33 of 1992*).

The applicant submitted that the respondent had no legal justification to charge interest on late payments before the completion of a month as the law provides for interest to be paid at the rate of 2% per month. The applicant cited S. 136 of the Income Tax Act which provides as follows:

136. Interest on Unpaid Tax

(1) A person who fails-

- a) To pay any tax, including provisional tax:
- b) To pay any penal tax: or
- c) To pay to the Commissioner any tax withheld or required to be withheld by the person from a payment to another person,

On or before the due date for payment is liable for interest at a rate equal to two per cent per month on the amount unpaid calculated from the date on which the payment was due until the date on which payment is made.

The term `month` is defined in the Interpretation Act as "A month reckoned according to the Gregorian calendar". A perusal of S. 136 above shows that the term `month` has been used above as a unit of measure. The assertion by the applicant to the effect that no interest should be charged on a taxpayer for late payment before a month end would lead to an absurd result as it would mean that no interest would accrue against taxpayers who delay in paying their taxes for periods not amounting to a month. Interest is normally imposed by Statute as a punitive measure. The purpose of imposing interest under S. 136 above is to discourage late payment of tax. This

purpose cannot be achieved if interest only sets in if the delay in paying the tax due is a month long.

In the result the objection decision is set aside and the matter is remitted to the respondent with the following orders;

1. The applicant and the respondent will reconcile the applicant's ledger from 1<sup>st</sup> January 2009 to 30<sup>th</sup> June 2016 by applying the provisions of S. 111(8) of the Income Tax Act to provisional tax payments made by the applicant for that period.
2. Thereafter the applicant and the respondent will reconcile the applicant's ledger from 1<sup>st</sup> July 2016 to 30<sup>th</sup> June 2021 by applying S. 38 and S. 40C of the TPCA.
3. The position arising from the above reconciliation will constitute the applicant's tax position.
4. The reconciliation will be completed by 20<sup>th</sup> December 2023.
5. The applicant is awarded ½ the costs of this application.

Dated at Kampala this 30<sup>th</sup> day of November 2023.

  
MR. SIRAJ ALI  
CHAIRMAN

  
MR. GEORGE. MUGERWA  
MEMBER

  
MS. CHRISTINE KATWE  
MEMBER