

**THE REPUBLIC OF UGANDA**  
**IN THE TAX APPEALS TRIBUNAL AT KAMPALA**  
**APPLICATION NO. 204 OF 2022**

**GRACE MUSIIME =====APPLICANT**

**VERSUS**

**UGANDA REVENUE AUTHORITY =====RESPONDENT**

**BEFORE: DR. ASA MUGENYI    MS. CHRISTINE KATWE        MR. SIRAJ ALI**

**RULING**

This ruling is in respect of a dispute on a vehicle given to the applicant. She seeks to determine whether it was a gift or is liable to taxation under the of the Income Tax Act.

The applicant was purportedly gifted a Range Rover Velar. She imported it into Uganda upon the conclusion of her studies in the United Kingdom. In 2022, the respondent assessed the applicant income tax and penal tax of Shs. 33,786,503 on the ground of undeclared income. She objected to the assessment which was disallowed by the respondent. The assessed tax was realized by way of agency notice.

During scheduling the following issues were set down for determination.

1.     Whether the applicant is liable to pay the tax assessed?
2.     What remedies are available to the parties?

The applicant was represented by Mr. Arnold Ojakol and Mr. Vianney Ssewanyana while the respondent by Mr. Sam Kwerit, Mr. Derrick Nahumuza and Mr. Samuel Oseku.

The applicant testified that in 2018, she was admitted at the University of Coventry in the United Kingdom to pursue a Master's degree. She was granted a United Kingdom resident permit. She stayed in the United Kingdom until the completion of her studies and returned to Uganda in December 2019. While in the United Kingdom she was given a gift

of a Range Rover Velar by Mr. Muganga Samuel, a citizen of the United Kingdom, to ease her movements. Upon the completion of her studies, she returned to Uganda with the motor vehicle. The motor vehicle was cleared by the respondent as exempt from tax. She stated that on 20<sup>th</sup> April 2022, she received an email from the respondent informing her that a review of her tax affairs revealed that she had imported a motor vehicle valued at Shs. 168,423,091 and an assessment for Shs. 32,986,503 was issued against her. She objected to the assessments and provided proof that Mr. Muganga Samuel gave her the vehicle as a gift. The respondent disallowed the objection and issued an agency notice against her which withdrew Shs. 33,786,503 from her bank account.

The applicant's second witness was Mr. Muganga Samuel who testified that he is employed as a transport fleet manager at Waitrose in London. In 2018, he gave the applicant, a close family friend, motor vehicle Range Rover Velar as a gift to ease her movements, while she undertook her Master's degree at the University of Coventry. He testified that he paid British pounds GBP 44,025 as the purchase price for the said car. GBP 36,025 was paid by wire transfer to the dealership Beck Evans Limited and the balance was paid in cash. The witness's Barclays bank statement showing payment of GBP 36,025 to Beck Evans was admitted in evidence as exhibit A12.

The respondent's witness, Mr. Bans Alex Busingye, an officer in its Objections Unit testified that the applicant is a registered taxpayer. She declared employment and business as her sources of income. He stated that in 2020, the applicant imported a motor vehicle costing Shs. 168,423,091 into Uganda. The respondent conducted a compliance check on the applicant and established that the applicant's declared income of Shs. 6,000,000- was not commensurate with the value of the imported motor vehicle. On 20<sup>th</sup> April 2022, the respondent issued a compliance advisory on the applicant requesting for explanation and documentation in support of the purchase of the motor vehicle. On the applicant's failure to comply with the said advisory the respondent issued an income tax assessment of Shs. 32,986,503 on her on the ground that she imported a high value motor vehicle inconsistent with her income tax declarations. On 23<sup>rd</sup> May 2022, the applicant objected to the assessment on the ground that the motor vehicle was a gift. The

witness stated that the applicant's claim that the motor vehicle was a gift from Muganga Samuel was not supported by evidence as a perusal of documents furnished by the applicant did not demonstrate the financial capacity of Muganga Samuel to make the donation. The assessment issued against the applicant was therefore lawful and justified in the absence of evidence showing the capacity of Muganga Samuel to make the donation in question.

The applicant submitted that under S. 21(1)(j) of the Income Tax Act, the value of any property acquired by gift, bequest, devise, or inheritance that is not included in business, employment, or property income is exempt from tax. She submitted that the motor vehicle was given to her as a gift and is not included in her business, employment, or property income. She cited the definition of a gift in *Black's Law Dictionary* 8<sup>th</sup> Edition p. 710 as "a gift of personal property made during the donor's life and delivered to the donee with the intention of irrevocably surrendering control over the property." She also relied on the definitions of the term gift in *Sajjabi John v Zziwa Charles* High Court Civil Appeal 50 of 2012 and *Joy Mukobe v Willy Wambuwu* HCCA 55 of 2005. She submitted that the email of Muganga Samuel dated 8<sup>th</sup> July 2022 proves that the motor vehicle was given to her by him with the intention of irrevocably surrendering property. The motor vehicle was purchased by Samuel Muganga. Hence, she is not liable to pay the tax assessed as gifts are exempt from tax under the Income Tax Act. She has not under-declared her income as alleged by the respondent.

The respondent submitted that the applicant was assessed for tax on the basis of undeclared income. She imported a high value motor vehicle of Shs. 168,423,091 yet in her income tax declarations her income was a paltry Shs. 6,000,000. The respondent relied on the definition of undeclared income in *John Livingstone Okello v Commissioner General*, HCCS 229 of 2010 as "Failure by a taxpayer to include certain income on his or her tax return in order to avoid paying taxes on the income."

The respondent submitted that the question that the tribunal needs to ask is whether a gift constitutes income of an individual. It submitted that a motor vehicle is property and

under S. 20(1)(b) of the Income Tax Act, property income is defined as the value of any gift derived by a person in connection with the provision, use, or exploitation of property. It submitted that in order to determine whether a gift constitutes a person's property income, it must be established whether the gift had value and the value is derived by the person in connection with the provision, use or exploitation of property. It submitted that both the above conditions have been met. The motor vehicle was valued at Shs. 168,423,091 as per the evidence of Bans Alex Busingye and the applicant conceded she was gifted a high value car which she used for her day-to-day activities.

The respondent rejected the argument that the motor vehicle was exempt from tax under S. 21(j) of the Income Tax Act. It submitted that for the provision to apply the applicant has to show that the property in question was acquired by gift and that it was not included in the person's business, employment, or property income. The respondent submitted that the motor vehicle in question was not a gift. It cited *Commissioner of Income Tax v M.S Aggarwal* Income Tax Appeal 169 of 2005 where the court stated that the three essential characteristics of gifts are that they should be given voluntarily, without consideration and the gift should be accepted by the donee. The respondent submitted that the applicant had failed to satisfactorily explain who the donor of the gift was or whether he had the capacity to gift such a high value motor vehicle. The respondent submitted that during an objection meeting the applicant alleged that the gift was given to her by a close family friend. During cross examination Muganga Samuel claimed to have gifted her the motor vehicle. The respondent submitted that Muganga Samuel did not have the capacity to give the gift as he was a transport fleet manager. He only made bank transactions of not more than GBP 1,000 and had an outstanding balance of only GBP 539 at 31<sup>st</sup> January 2019.

The respondent submitted further that Muganga Samuel did not execute a deed of gift in contravention of the practice in the United Kingdom where a deed of gift is required before the transfer of a gift. The respondent submitted that where a gift is a sham it cannot enjoy exemption. It cited *Commissioner of Income Tax v M.S Aggarwal* Income Tax Appeal 169 of 2005 where the court stated that sham and bogus gifts ought to be taxed. The



respondent also cited *Siraje Hassan Kajura v URA SCCA* 9 of 2015 where the court stated that tax exemptions ought to be strictly construed.

In rejoinder, the applicant submitted that S. 20(1)(b) of the Income Tax Act does not apply to this case. She submitted that she does not derive any property income from the motor vehicle. It is for her personal transportation. The respondent did not plead or adduce evidence which shows that she derives income from the motor vehicle. She submitted further that the issue of property income did not arise in the objection decision or in the respondent's Statement of Reasons. She submitted further that there was no requirement under the law for the donee of a gift to prove that the donor had the capacity to gift. She submitted further that the respondent has no jurisdiction to investigate the financial capacity of the donor who is neither a resident nor a citizen of Uganda. The applicant submitted that the respondent had not cited any law from the United Kingdom or Uganda which requires a donor to execute a deed of gift.

Having heard the evidence, perused the exhibits and read the submission of the parties this is ruling of the tribunal.

The dispute between the applicant and the respondent relates to the question whether the motor vehicle given to the applicant by Samuel Muganga constitutes a gift for the purposes of S. 21(1)(j) of the Income Tax Act.

The gist of the respondent's case is that the applicant had failed to provide incontrovertible evidence to prove the following;

- (a) That she had obtained the motor vehicle in question by way of a gift.
- (b) That the donor had capacity to grant the gift.
- (c) That the gift was accepted by the donee without consideration, and
- (d) That a deed of gift had been executed by the donor in favour of the donee.
- (e) That the motor vehicle formed part of the applicant's property income and was therefore not exempt from tax.

We will proceed to analyze each of these points to determine whether the respondent was justified in assessing the applicant to tax on the basis of undeclared income.

Samuel Muganga testified that he gave the motor vehicle to the applicant as a gift. Exhibit A8 an email from Samuel Muganga to the respondent states that he purchased the vehicle and gave it to the applicant who returned to Uganda with it and is in possession of it. In *Roberts v Roberts* (1865) 13 LT 492 at 493, it was stated that

"In order to perfect a gift to a volunteer the thing purported to be given must be so completely disposed of as to be no longer within the control of the donor. (See Words and Phrases legally defined Third Edition Volume 2; D-J, at page 317)."

In *Cochrane v Moore* (1890) 25 QBD 57 at 76, CA, the court stated that

"I have come to the conclusion that in ordinary English language, and in legal effect, there cannot be a 'gift' without a giving and taking. The giving and taking are the two contemporaneous reciprocal acts which constitute a 'gift'. They are a necessary part of the proposition that there has been a 'gift'."

Did Samuel Muganga, completely dispose the motor vehicle? The testimony of Samuel Muganga and that of the applicant shows that the motor vehicle was given to the applicant after payment of the purchase price. The applicant used the motor vehicle during her stay in the United Kingdom and returned with it to Uganda where she still uses it. This shows that after donating the motor vehicle to the applicant the donor no longer retained any control of it. A copy of the vehicle's logbook, exhibit A4, shows the applicant is the current owner of the vehicle in Uganda. The donor completely disposed of the motor vehicle and no longer has control over it.

In the Indian case of *Commissioner of income Tax v M.S Aggarwal* (Income Tax Appeal 169 of 2005) the court stated that the three essential characteristics of a gift are that it should be voluntary, it should be without consideration and there should be acceptance by the donee. Both the applicant's testimony and conduct show that she accepted the gift. Exhibit A8, the email from Muganga Samuel to the respondent's officers shows that the motor vehicle was given by Muganga Samuel to the applicant voluntarily. No evidence has been led to show that the donor gave the vehicle to the applicant against his will, through some kind of coercion or duress or that the applicant paid some form of

consideration for the gift. We are satisfied from the evidence before us that the applicant obtained the motor vehicle in question by way of a gift.

None of the authorities above require a donee of a gift to prove that the donor had the capacity to grant the gift in question. As can be seen from the Aggarwal case above, voluntariness, lack of consideration and acceptance are the three characteristics of a valid gift. No authority has been brought by the respondent as legal basis that the applicant should prove that the donor had the capacity to grant the gift in question.

The requirement under English law for the execution of a deed of gift before transfer of property by gift was set out in the following excerpt in *Irons v. Smallpiece* (1819) 2 B & Ald 551 at 552,

“By the law of England, in order to transfer property by gift there must either be a deed or instrument of gift, or there must be an actual delivery of the thing to the donee. (See Words and Phrases legally defined Third Edition Volume 2; D-J, at page 317).”

The above decision requires either a deed of gift, or an instrument of gift or actual delivery of the gift for a valid transfer of property by gift. A donor can therefore transfer property by gift through any of the above means. Samuel Muganga stated that “I completed payment of the balance in cash and upon completion of the balance the said motor vehicle was delivered to the applicant.” The above evidence which was uncontroverted, shows that there was actual delivery of the motor vehicle to the applicant. The respondent's argument that the transfer of the gift was invalid in the absence of a deed of gift is not borne out by the law.

The respondent's argument that the vehicle in question formed part of the applicant's property income and was therefore not exempt from tax did not form part of the respondent's arguments in the objection decision or the statement of reasons. We agree with the applicant that parties ought not to depart from their pleadings. In *Interfrieght Forwarders (U) Ltd v East African Development Bank* Civil Appeal 33 of 1992, Oder JSC, stated as follows;

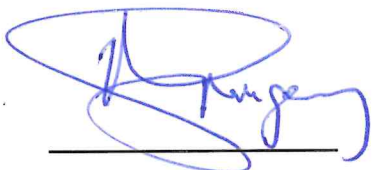
“A party is expected and bound to prove the case as alleged by him and as covered in the issues framed therein. He will not be allowed to succeed on a case not set up by him and be allowed at

the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of the pleadings.”

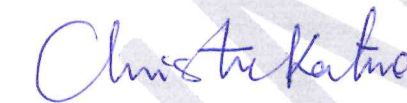
Having carefully considered the objections raised by the respondent, we are satisfied that the applicant has discharged the burden of proof. This application is accordingly allowed with the following orders;

- a) The objection decision and assessment are hereby set aside.
- b) The respondent will refund to the applicant the sum of Shs. 33,786,503.
- c) The respondent will pay the costs of the application.

Dated at Kampala this 21<sup>st</sup> day of June 2023.



**DR. ASA MUGENYI**  
**CHAIRMAN**



**MS. CHRISTINE KATWE**  
**MEMBER**



**MR. SIRAJ ALI**  
**MEMBER**