

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 85 OF 2021

LIVING GOODS LIMITED APPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

CORAM DR. ASA MUGENYI, MR. GEORGE MUGERWA, MS. CHRISTINE KATWE

RULING

This ruling is in respect of an application challenging Value Added Tax (VAT) assessments of Shs. 10,263,077 and Shs. 8,071,479 for December 2016 and January 2017 respectively.

The applicant is a non-government organization that empowers government/ community health workers deliver quality care. It is registered for both income tax and VAT. The respondent audited the applicant for January 2016 to March 2021. It issued the applicant with VAT and Withholding tax (WHT) assessments totaling to Shs. 1,072,547,208. The applicant objected and the respondent disallowed the objections.

Both parties reached a partial consent dated 7th December 2022 and they agreed that: The VAT assessments for August 2019 and December 2019 of Shs. 47,988,959 shall be paid by the applicant. The WHT assessed for December 2019 and December 2020 of Shs. 190,085,704 shall be paid by the applicant. The dispute in respect of VAT assessed for the period of December 2016 and January 2017 of Shs. 10,263,077 and Shs. 8,071,479 respectively was referred to the tribunal for determination.

Issue 1;

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

The applicant was represented by Ms. Linda Mugisha and Ms. Jackie Aturinda while the respondent by Ms. Eseza Victoria Sendege and Ms. Christine Mpumwire.

The applicant's witness, Major James Mutabaazi, its tax advisor testified that in 2014 the applicant applied to the respondent for VAT registration. The respondent rejected the application on ground that the applicant's activities were greatly NGO, where they buy and sell at a reduced price. That whereas the input was clear, the output was not clear. On 4th July 2019, the respondent registered the applicant for VAT effective 1st June 2019. In 2021 the respondent audited the applicant for period January 2016 to March 2021 and issued additional assessments. The applicant objected to the assessments on grounds that they are in respect of a period (December 2016 to December 2018) which precedes the applicant's effective date of registration for VAT. From December 2016 to December 2018, the applicant did not have an obligation to account for VAT as they were not registered.

The respondent's witness, Mr. Joseph Ronald Ssemanda, a tax officer in the respondent's objection unit, stated that the respondent audited the applicant for the period of January 2016 to March 2021. The applicant was found not to have accounted for VAT from January 2016 to December 2020. VAT assessments for December 2016 and January 2017 of Shs. 10,263,077 and Shs. 8,071,479 respectively were issued. The applicant objected on the ground that its application for VAT registration was rejected by the respondent and therefore it had no obligation to account for VAT prior to June 2019. He stated that the applicant had applied for VAT registration on 12th August 2014. It indicated that for 3 and 12 months prior to the date of the application, it made sales of Shs. 150,000 and Shs. 600,000,000 respectively and anticipated to make supplies of Shs. 600,000,000. It also made supplies of Shs. 480,000,000 which comprised of standard rated ones of Shs. 240,000,000. Its application was rejected because it did not provide sufficient information on its dealings to qualify as a Non-Governmental Organization (NGO) to be registered for VAT.

Mr. Joseph Ronald Ssemanda stated that on 15th February 2019, the applicant made another application for VAT registration. It indicated that for the 3 months and 12 months prior to the date of application for VAT registration, it made supplies of Shs 656,320,366 and Shs. 2,527,856,782 respectively and anticipated to make supplies of Shs. 3,134,542,410 in the 2 months after the application date and that the date for the first taxable supply was 31st August 2014. The taxable supplies made in a 12-month period comprised standard rated supplies of Shs. 459,917,112. This application was approved

on 25th June 2019 with an effective date of 1st June 2019 was quoted on the certificate of registration.

Mr. Joseph Ronald Ssemenda stated that based on the evidence submitted by the applicant, it was evident that since it was a taxable person. It made taxable supplies and charged VAT on such supplies it was under an obligation to pay tax under the VAT Act. Following the audit findings, the applicant's effective date of registration was amended from 1st June 2019 to 1st January 2016. The records submitted by the applicant both at registration and for the objection indicate that the applicant was a taxable person in 2014 even though the effective date of registration on the certificate issued is 1st January 2016.

The applicant submitted that on 11th August 2014, it applied to the respondent for VAT registration on the basis that it was making taxable supplies and has met the registration threshold. The applicant disclosed that it made sales of Shs. 150,000,000 over the past 3 months and Shs. 600,000,000 over the past 12 months. It anticipated sales of Shs. 150,000,000 for the next 3 months and Shs. 600,000,000 for the next 12 months. It was eligible for VAT registration as it was making taxable supplies. For the accounting years 2014 and 2015, the applicant made sales of Shs. 684,059,585 and Shs. 1,249,642,764 respectively. The respondent rejected the application on the ground that the company's activities were those of an NGO, where they buy and sell to the disadvantaged at a reduced price. Whereas the input VAT was noticeable, the output was not clear. On 15th February 2019, the applicant submitted a fresh VAT application. The respondent subsequently approved this application, with an effective date of 1st June 2019.

The applicant cited S. 4 of the VAT Act which provides that;

"A tax, be known as a value added tax, shall be charged in accordance with this Act on-

- (a) every taxable supply made by a taxable person
- (b) every import of goods other than an exempt import and
- (c) the supply of imported services, other than an exempt service, by the person".

The applicant submitted that S. 6 of the VAT Act defines a taxable person as:

- "(1) A person registered under S. 7 in a taxable person from the time the registration takes effect.

(2) a person who is not registered but who is required to be registered or to pay tax under this act, is a taxable person from the beginning of the tax period immediately following the period in which the duty to apply for registration or to pay tax arose".

The applicant submitted that under S. 8(4) of the VAT Act, a certificate of registration shall state the name and other relevant details of the taxable person, the date on which the registration takes effect, and the taxpayer's identification number.

The applicant submitted that *Black's Law Dictionary* 8th Edition defines the word 'date' as; "The day when an event happened or will happen" The applicant submitted that the word 'effect' is also defined as; "vb. To bring about; to make happen" The applicant submitted that in *Tamale and Co. Advocates v Uganda Revenue Authority* Application 48 of 2008, this Tribunal held that;

"A taxable person becomes VAT liable when he obtains a certificate with effect from the date mentioned on it...The date the registration takes effect is the date the taxpayer is deemed to become a collect person".

The applicant submitted that the respondent registered it for VAT effective 1st June 2019, and it is the date when the applicant became subject to VAT. It follows that the applicant was not a taxable person for the period prior to 1st June 2019 and therefore was not in a position to charge VAT or account for it.

The applicant submitted that following the audit, the applicant's effective date of registration was amended from 1st June 2019 to 1st January 2016. The respondent backdated the applicant's VAT registration under S. 69 of the Tax Procedure Code Act stating that an error was made at the time of registration in 2019. The records at registration and for the objection indicate that the applicant was a taxable person in 2014 much as the effective date of registration on the certificate issued is 1st January 2016. The applicant submitted that the respondent did not at any point notify the applicant about this alleged amendment. Exhibit RID which the respondent seeks to rely on was never brought to the attention of the applicant during the audit period. It is not provided for in the audit report, assessments or even the objection decision. The exhibit was only brought to the attention of the applicant when the parties were filing a scheduling memorandum. The applicant submitted that Exhibit RID is a mere fabrication by the respondent intended to mislead the Tribunal and should be disregarded.

(2) a person who is not registered but who is required to be registered or to pay tax under this act, is a taxable person from the beginning of the tax period immediately following the period in which the duty to apply for registration or to pay tax arose".

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Tribunal holds that the applicant was not a taxable person at the time of sale. The VAT Act did not apply to the sale of Plot 68/70 William Street."

The respondent submitted that in determining the date when the applicant was VAT registered, it should be on the face of the certificate, not the date of application or issuance. It submitted that applicant admitted that it was making taxable supplies in 2014. It applied for VAT registration in 2014, but was however registered for VAT effective 1st June 2019 and thereafter issued with a certificate of registration. An audit conducted by respondent established that the applicant did not account for VAT for the period January 2016 to December 2020. The audit prompted the commissioner to cause an amendment of the applicant's effective date of VAT registration to 1st January 2016, in line with the powers bestowed on the Commissioner under the VAT Act and the Tax Procedures Code Act. The respondent submitted the applicant cannot insist on the date of a certificate of registration that was altered or amended.

The respondent submitted that S. 4(a) of the VAT Act imposes VAT on taxable supplies made in Uganda by taxable persons. It submitted that for the applicant to be liable to pay VAT for the relevant tax period, a 2-way test must be fulfilled; 1. That the applicant must be a taxable person 2. The applicant be made taxable supplies in Uganda.

The respondent submitted that it is not in dispute that the applicant was making taxable supplies in Uganda between 2014 and 2019 thus the second test is fulfilled. It submitted that S. 1(x) of the VAT Act defines a taxable person as to the person within the meaning of S. 6. The respondent submitted that S. 6 defines a taxable person as either a person registered under S. 7 from the time the registration takes effect or as a person who despite being unregistered is eligible to apply and be registered to pay tax. Thus, being a taxable person is determined by either being registered or by being eligible to be registered. The respondent submitted that under S. 6(1) of the VAT Act, a person is deemed to be a taxable person from date the certificate of registration takes effect. This was reiterated in *Post Bank (U) Limited v URA* (supra), where it was held that;

"The Value Added Tax Act, Cap 349 provides that a person becomes a taxable person from the date specified in the certificate of registration.

The certificate of registration for VAT was effective the 1st January 2016. On that date that the applicant who was already making taxable supplies became a taxable person

and as such was liable to pay VAT. The respondent cited *Tamale & Company Advocates v URA* Application 48 of 2008, where this Tribunal held that;

"S. 8 (3) of the VAT Act states that registration takes effect from the date specified in the Certificate. If the Commissioner clearly stated that the certificate is effective from 1ST October, 2013, why should the Tribunal doubt the certificate?"

"Under the Laws of Estoppel and Section 113 of the Evidence Act, the respondent is estopped from denying that the applicant's registration takes effect from 1st October, 2013".

The respondent submitted that the applicant's date of registration is 1st January, 2016 as indicated in the certificate of registration.

The respondent submitted that the applicant was a taxable person by virtue of S. 6(2) of the VAT Act. The import of the provision is that a person who is eligible to register and pay taxes but is not yet registered is a taxable person. Not being on the register doesn't mean that the applicant is not a taxable person. The respondent submitted that the applicant cannot use the technicality of registration to avoid payment of taxes. In *Tullow Uganda Limited and Anor v the Commissioner General, Uganda Revenue Authority* HCCS 445 of 2012 Justice Madrama held that S. 6 (2) of the VAT Act deals with taxable persons who are unregistered. The evidence shows that the applicant in its application dated 15th February 2019 indicated that it made its first taxable supply on 31st August 2014 and made supplies amounting to Shs. 656,320,366 thereafter. The respondent submitted that the applicant admitted it applied for registration for VAT in 2014. It follows that the applicant by virtue of making taxable supplies, was eligible for VAT registration in 2014 at the time when it made the application. The respondent submitted that in the event that this tribunal is inclined to find that the applicant was not VAT registered as of the 1ST January 2016 by virtue of the amended certificate of registration, it would still be a taxable person by being eligible to be registered under S. 6(2). This is because the liability to pay VAT is not limited to only those registered on the VAT register but also those who are not registered but are eligible to be registered. The respondent prayed that the tribunal finds that the applicant was a taxable person.

The respondent submitted that the applicant having been duly notified of the amendment is estopped from denying the date of registration as per the amended

certificate of registration. It cited *Kampala Nissan v Uganda Revenue Authority (Civil Appeal No. 7 of 2009)* where Justice Madrama opined that;

"URA is not estopped from reviewing an earlier position on VAT where it believes that the earlier decision of the Commissioner was erroneous in law. That case law provides that Corporations cannot be estopped from carrying out statutory duties. The principle is that estoppel is incapable of putting aside or overriding provisions of an Act as enacted by Parliament. The applicant cannot claim that the respondent by reason of not granting the earlier certificate of VAT registration is barred from collecting the VAT assessed which the applicant should pay by law".

The respondent submitted that despite the fact it represented to the applicant that it did not meet the threshold for VAT registration, the doctrine of legitimate expectation does not override a statutory obligation. The doctrine of legitimate expectation is based on estoppel. It is trite law that estoppel cannot be used to contradict or override the law. See *Income Tax Commissioner v A.K* [1964] EA 648. The respondent submitted that, for the doctrine of legitimate expectation to apply, certain requirement must be fulfilled; In *Keroche Industries Limited v Kenya Revenue Authority & 5 others* 2007 eKLR. which adopted the test outlined by Schliemann LJ in *f R (Bibi) v Newham London Borough Council* it was stated as.

- "(1) What has the public authority, whether by practice or by promise committed itself to
- (2) Whether the authority has acted or proposes to act unlawfully in relation to its commitment?
- (3) What should the court do?"

The respondent submitted that the doctrine has parameters and limitations to its applicability. In *Republic v Kenya Revenue Authority ex parte Shake Distributors Limited* (2012) EKLR, the court stated;

"...It follows therefore that the cornerstone of legitimate expectation is a promise made to a party by a public body that it will act or not act in a certain manner. For the promise to hold, the same must be made within the confines of law, A public body cannot make a promise which goes against the express letter of the law in the case before me there is no evidence of a written or verbal promise made to the applicant that its goods would be allowed in Kenya once he obtained the necessary licenses. One may argue that the legitimate expectation was based on the understanding that goods from Uganda would be admitted into Kenya at a duty rate of 0%. However, that argument cannot hold when one considers the fact that the respondent has a statutory duty to ensure that all the

necessary taxes for goods entering Kenya have been paid. The applicant's argument that its legitimate expectation was breached therefore fails..."

The respondent submitted that Justice Kalpana in *Rawal v Judicial Service Commission & 3 others* (2016) eKLR, CA. dealt with the vital aspects of the doctrine of legitimate expectation as follows;

"...Legitimate expectation is a doctrine well recognized and established in administrative law. In *Commonwealth Commission of Kenya & 5 others*, SC Petition Nos. 14,14A,14B & 14C of 2014, the Supreme Court stated that legitimate expectation would arise when a body, by representation or by past practice has aroused an expectation that is within its power to fulfil. For an expectation to be legitimate, therefore, it must therefore be founded upon a promise or practice by a public authority that is expected to fulfil the expectation. Other important aspects of the doctrine:

- (a) The Law does not protect every expectation save only for the those which are legitimate (*South African Veterinary Council v. Szymanski* 2003 ZASCA 11).
- (b) Clear statutory words override any contrary expectations however founded (*R.v.DPP ex parte Kebilele Wainanina Kigathi Mungal*, HC J.R Misc. 356 of 2013).
- (c) The representations must be one which the decision-maker can competently and lawfully make without which reliance cannot be legitimate (*Hauptleisch v. Caledon Divisional Council* (1963) (4) SA53)
- (d) Legitimate expectation does not arise when it is made ultra the decision-maker's powers (*Rowland v. Environment Agency* (2003) EWCA Civ. 1885); and;
- (e) A public authority which has made a representation which it has no power to make is not precluded from asserting the correct position which is within its power to make (*Republic v. Kenya Revenue Authority ex-parte Aberdare Freight Services Ltd* (2004) KLR 530)"

The respondent submitted that the applicant cannot hide behind the wings of legitimate expectations to dodge a duty of payment of taxes.

In rejoinder, the applicant submitted that the credibility of the certificate of registration was challenged by it during the hearing on the basis that it was only brought to its attention after the matter had been scheduled for hearing. The applicant submitted that the basis for rejecting the application for VAT was not that the applicant was below the threshold but rather its output tax was not clear.

The applicant submitted that it did not argue legitimate expectation or estoppel. However, the applicant submitted that the respondent having made a legal decision that the applicant was not a taxable person before 1st June 2019 and having issued a VAT registration certificate to that effect, it is estopped from imposing liability on the applicant for the years prior to 2019 on the basis of a fictitious uncorroborated certificate of registration. The applicant submitted the Commissioners decisions in 2014 of refusing to register it for VAT and in 2019 approving its application effective from 1st June 2019, were made in accordance with the powers and mandate conferred by law.

Having listened to the evidence and read the submissions of the parties, this is the ruling of the tribunal:

The dispute of the parties is in respect of VAT assessed of Shs. 10,263,077 and Shs. 8,071,479 for December 2016 and January 2017 respectively which was referred to the tribunal after a partial settlement. The Tribunal is required to address itself as to whether at the time of the assessment the applicant was a VAT taxable person.

The applicant submitted that the additional VAT assessments of Shs. 18,334,556 relates to the period December 2016 to December 2018 before it was registered. For the period December 2016 to December 2018, it did not have an obligation to account for VAT as it was not registered for VAT and was not a taxable person under S. 6 of the VAT Act. It stated that it applied for VAT registration in 2014. The respondent rejected the said application on the ground that its activities were those of an NGO which buy and sell to the disadvantaged at a reduced price. That whereas the input VAT was noticeable, the output was not clear. On 15th February 2019, the applicant submitted a fresh VAT application which the respondent approved with an effective date of 1st June 2019. The applicant submitted that 1st June 2019 is the date the registration took effect, and is the date when the applicant became subject to VAT. It follows that the applicant was not a taxable person prior to 1st June 2019 and not in a position to charge VAT or account for it. The applicant submitted that following an audit, the applicant's effective date of registration was amended from 1st June 2019 to 1st January 2016. The respondent backdated the applicant's VAT registration under S. 69 of the Tax Procedure Code Act stating that an error was made at the time of registration in 2019. The applicant contends

that 1st June 2019 should be the date of registration since that is the date that the respondent registered it for VAT.

The respondent contended that it has powers to forcibly register a taxpayer. The date a person becomes taxable is from the effective date of registration. It cited *Post Bank V Uganda Revenue Authority* (supra) where the Tribunal held that:

"Where the law is clear that the effective date is stated in the certificate of registration then the tribunal cannot make assumptions as to when the applicant became a taxable person. We have to go by the date in the certificate"

The respondent submitted that by the applicant's own admission, the latter was making taxable supplies as early as 2014. The respondent in its audit discovered that it had made a mistake and backdated the VAT liability to 1st January 2016 within the powers bestowed to the Commissioner under the VAT Act and the Tax Procedures Code Act. The respondent submitted that in the event that this tribunal is inclined to find that the applicant was not on the VAT registered as of the 1st January 2016 by virtue of the amended certificate of registration, he would still be a taxable person by being eligible to be registered under S. 6(2) of the VAT Act. This is because the liability to pay VAT is not limited to only those registered on the VAT register but also those who are not registered but are eligible to be registered.

VAT is taxable under the VAT Act. S. 4 of the VAT Act provides that;

"A tax, be known as a value added tax, shall be charged in accordance with this Act on-

- (a) every taxable supply made by a taxable person
- (b) every import of goods other than an exempt import and
- (c) the supply of imported services, other than an exempt service, by the person".

S. 5 of the Act provides that;

"Except as otherwise provided in this act, the tax payable-

- (a) in the case of a taxable supply, is to paid by the taxable person making the supply"

S. 6 of the VAT Act defines a taxable person as follows:

"(1) A person registered under S. 7 is a taxable person from the time the registration takes effect.

(2) a person who is not registered but who is required to be registered or to pay tax under this act, is a taxable person from the beginning of the tax period immediately following the period in which the duty to apply for registration or to pay tax arose".

S. 7 of the VAT Act provides that:

"(1) A person who is not already a registered person shall apply to be registered in accordance with S. 8-

(a) within twenty days of the end of any period of three calendar months if during that period the person made taxable supplies, the value of which exclusive of any tax exceeded one-quarter of the annual registration threshold set out in subsection (2); or

(b) at the beginning of any period of three calendar months where there are reasonable grounds to expect that the total value exclusive of any tax of taxable supplies to be made by the person during that period will exceed one-quarter of the annual registration threshold set out in subsection (2).

(c) at the beginning of any tax period of more than three calendar months where there are reasonable grounds to expect that the total value exclusive of any tax of taxable supplies to be made by the person will exceed the annual threshold set out in subsection (2)".

S. 7(2) of the VAT Act provides that "The annual registration threshold is one hundred and fifty million shillings." S. 8(4) of the VAT Act states that; "A certificate of registration shall state the name and other relevant details of the taxable person, the date on which the registration takes effect, and the taxpayer identification number".

The dispute between the parties revolves around each applying different provisions of the law that creates conflicting positions. When the applicant applied for registration in 2014, the respondent rejected its application. When it applied for registration in 2019 it was issued with a certificate of registration effective 1st June 2019. However, when the respondent conducted an audit, it discovered that the applicant was making taxable supplies as far back as 2014. The respondent issued the applicant with a VAT certificate where the registration was backdated to 2016. In *Tamale and Co. Advocates v Uganda Revenue Authority* (supra) the Tribunal stated that;

"A taxable person becomes VAT liable when he obtains a certificate with effect from the date mentioned on it...The date the registration takes effect is the date the taxpayer is deemed to become a collect person".

Therefore, the Tribunal has to determine as to what happens when the respondent issues conflicting positions.

When the respondent rejected the application in 2014 it gave reasons. S. 8 of the VAT Act states when the Commissioner may register a taxpayer for VAT. S. 8(2) gives the grounds for rejecting an application. It states

"The Commissioner General shall register a person who applies for registration under Section 7 and issue to that person a certificate of registration including the VAT registration unless the Commissioner General is satisfied that the person is not eligible for registration under this Act, or the case of an application under section 7(4): -

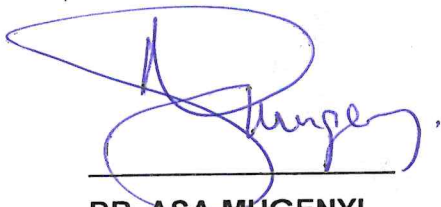
- (a) the person has no fixed place of abode or business; or
- (b) the Commissioner General has reasonable grounds to believe that person –
 - (i) will not keep proper accounting records relating to any business activity carried on by that person;
 - (ii) will not submit regular or reliable tax returns as required by Section 31 [now 31A]; or
 - (iii) is not a fit and proper person to be registered."

Therefore, if the Commissioner General decides that a person is not a fit and proper person to be registered, he cannot turn around and registered it for the period he found it unfit on the ground that it was a taxable person during the period. A person maybe taxable yet it is not a fit and proper person. It may not have a fixed place of abode or business. Or it may not submit regular or reliable tax returns. Even where a person may make taxable supplies, the Commissioner General still has powers to reject its application under S. 8(2) of the VAT Act. In this case the respondent found that the applicant was greatly an NGO, which buys and sell at a reduced price. That whereas the input was clear, the output was not clear. It was as if the respondent was suggesting that the applicant is not a fit and proper person to be registered for VAT. At the time of registration for VAT the respondent ought to have conducted a proper due diligence on the applicant. The respondent has to convince the Tribunal that the Commissioner General did not have reasonable grounds at the time he rejected the application for VAT. This was not done. The applicant notified that respondent that 3 and 12 months prior to the date of the application, it made sales of Shs. 150,000 and Shs. 600,000,000 respectively and anticipated to make supplies of Shs. 600,000,000. It also made supplies of Shs. 480,000,000 which comprised of standard rated ones of Shs. 240,000,000. The respondent seems to have been convinced. As a result of the rejection of the VAT application there is no evidence that the applicant collected VAT from its customers. Once an application for VAT has been rejected and the applicant charges and collects VAT, that is a different story.

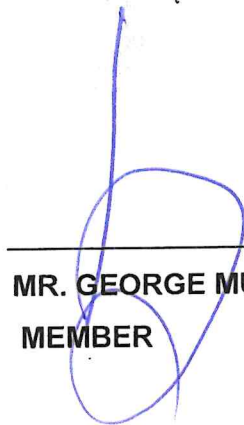
When the applicant applied for VAT in 2019, the respondent issued a VAT certificate effective 1st June 2019. The applicant stated collecting VAT. When in 2019 it forcibly backdated the VAT registration to 2016 it did not show that at the time the applicant applied for registration in 2014 it did not provide correct or sufficient information. It is not clear why the respondent forcibly backdated the applicant's registration certificate to 2016 yet it claims that the applicant became a taxable person in 2014. Collection of taxes should not be at whims of the respondent. It should be done systemically according to the law, and not by wishful thinking. By rejecting the applicant's application in 2014, it did not collect VAT from its customers. One of the canon principles of taxation is certainty. A taxpayer should know when taxes are due. The respondent cannot blow hot and cold at the same time.

Taking the above into consideration, the application in respect of the assessments of Shs. 10,263,077 and Shs. 8,071,479 is allowed. The said assessments are set aside. Costs for the portion of the settlement sent to the Tribunal for determination are awarded to the applicant.

Dated at Kampala this 5th day of October 2023.



DR. ASA MUGENYI
CHAIRMAN



MR. GEORGE MUGERWA
MEMBER



MS. CHRISTINE KATWE
MEMBER