

THE REPUBLIC OF UGANDA
IN THE TAX APPEALS TRIBUNAL OF UGANDA AT KAMPALA
APPLICATION NO. 90 OF 2023

DR. JAALA HIGENYI ALFREDAPPLICANT

VERSUS

UGANDA REVENUE AUTHORITY.....RESPONDENT

**BEFORE DR. ASA MUGENYI, MS. CHRISTINE KATWE, MS. ROSEMARY
NAJJEMBA.**

RULING

This ruling is in respect of two preliminary objections raised by the respondent; that the applicant has not paid the 30% of the tax in dispute and the application is time barred.

On 27th July 2023, the respondent raised two preliminary objections: This application matter was time barred. The applicant had not paid the 30% of the tax in dispute. However, it came to our notice that there was an application for extension of time which was granted. Leaving the second objection pending which the tribunal will address.

The applicant is a retired civil servant and a director of the now-defunct Ntinda View College Limited. On the 8th January 2018, the applicant sold property comprised in Block 216 Plots 2705, 2936, 3179, 3379 and Block 38 Plots 298 and 299 on which Ntinda View College Limited is located with all other assets to Dr. Lawrence Mulindwa at Shs. 11,020,000,000. On the 3rd August 2021, the respondent issued Ntinda View College Limited with an additional income tax assessment of Shs. 3,454,679,878 being capital gains tax on the sale. The respondent issued a management Letter demanding to the applicant of Shs. 4,352,896,646 being the capital gains tax and interest. On 6th July 2022, the applicant objected and on the 25th day of October 2022, the respondent disallowed the objection.

Issues:

1. Whether the applicant paid 30% of the tax in dispute?

The applicant was represented by Mr. Joseph Angura while the respondent by Ms. Joan Agasha.

The respondent submitted that S. 15 of the Tax Appeals Tribunal Act provides that;

"A taxpayer who has lodged a notice of objection to an assessment shall pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater."

The respondent cited *Uganda Projects Implementation and Management Centre v. Uganda Revenue Authority* Supreme Court Constitutional Appeal 2 of 1999 where the court ruled that;

"The statutory requirement in the then VAT Act (similar to s.15 of the TAT Act), requiring a taxpayer who has lodged a notice of objection to an assessment to, pending final resolution of the objection, pay 30 percent of the tax assessed or that part of the tax assessed not in dispute, whichever is greater, is constitutional and did not infringe on the right to a fair hearing, under the Constitution of Uganda and the right to equal treatment before and under the law".

The Supreme Court approved the view of the South African Court in *Metcash Trading Co. Ltd v Commissioner for South African Revenue Services and another* that; "a taxpayer has to pay his tax and argue later". The respondent contended that the tax assessed is Shs. 3,454,679,878. The applicant ought to have paid Shs. 1,036,403,963.4 as 30%. The respondent prayed that this application be dismissed with costs to the respondent.

In reply, the applicant submitted that good governance entails exercise of authority by those entrusted with it, within the confines of the law and taking decisions which are measured, transparent and lawful. It submitted that Article 126(2)(a) of the constitution of Uganda requires courts to render justice to aggrieved persons without regard to their economic or social stratifications. It would be fair if the tax payer would be free to challenge those excessive and irrational assessments without paying 30% of the assessment. Secondly, the applicant submitted, that the assessment is on the sales of the property and not the gain if any realized by the company or the applicant. Thirdly that the assessments are against both it and Ntinda View College Limited who are assessed for capital gains tax on the same sale.

The applicant submitted that that the respondent commenced recovery measures against him. On 17th December 2022 the respondent issued a warrant of distress to

Katerega Festus / Quick Auctioneers and Court Bailiffs in accordance with S. 32 of the Tax Procedures Code Act authorizing to recover from the applicant Shs. 3,781,868,483. The auctioneers impounded the applicant's motor vehicle toyota land cruiser, model CBA-URJ202W-GNTAK with personalized number plate "NAMUSWA" and handed it over to the respondent's debt collection unit. This car is more than 30% of the tax liability. The applicant places this motor vehicle at Shs. 691,900,000 and the armor plating of Shs. 320,000,000 making a total of 1,011,900,000. The respondent had the applicant's vehicle for more than a year now. The applicant submitted that it has paid what is more than 30%.

The applicant submitted that dismissal of the applicant's case would occasion a miscarriage of justice. The applicant prayed that the tribunal finds no merit in the respondent's assertions and overrules the objection and costs of the objection.

In rejoinder, the respondent submitted that the purchase price and the alleged cost of armoring the motor vehicle were not pleaded in the Application 90 of 2023. The purchase price receipts are not attached to the application neither the valuation report. Secondly, the respondent submitted that the respondent would have to dispose of the motor vehicle. However, the proceeds of the sale are not only utilized towards payment of the tax in dispute but must cater for all the costs associated with the impoundment of the motor vehicle. S. 32 (1) of the Tax Procedure Code Act provides that;

"The proceeds of a disposal under subsection (5) shall be applied by the Commissioner in the following order;

- (a) Towards the costs of taking, keeping and selling the property subject to distress proceedings;
- (b) Towards the payment of any tax, penalty, or interest owing by the tax payer".

The respondent further submitted that the monies left to pay tax, after disposal of the motor vehicle would be less than its alleged value and therefore insufficient to pay 30% of the tax dispute. It must be paid in full and partial payments do not suffice.

Having read submissions of both parties, this is the ruling of the tribunal;

On 27th July 2023, the respondent raised a preliminary objection that the applicant had not paid the 30%. The applicant submitted that the respondent impounded its motor

vehicle Toyota Land Cruiser, Model CBA-URJ202W-GNTAK with personalized number plate "NAMUSWA" and handed it over to the respondent's debt collection unit for more than a year now. This car is more than 30% of the tax liability. The applicant placed the motor vehicle at Shs. 691,900,000 and the armor plating of Shs. 320,000,000 making a total of Shs. 1,011,900,000. The applicant alleged that the impounded vehicle is more than 30% of the liability.

The law on preliminary objections is under Order 6 rule 28 of the Civil Procedure Rules which states that.

"Any party shall be entitled to raise by his or her pleading any point of law, and any point so raised shall be disposed of by the court or after the hearing; except that by consent of the parties, or by order of court on the application of either party, a point of law may be set down for hearing and disposed of at any time before the hearing".

In *Biscuit Manufacturing Co. Ltd Vs. West End Distributors Ltd* [1996] EA 696, Sir Charles Newbold, stated that.

"A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit."

Filing an application before the Tax Appeals Tribunal is provided for under S. 14 of the Tax Appeals Tribunal Act which states that.

"(1) Any person who is aggrieved by a decision made under a taxing act by the Uganda Revenue Authority may apply to the tribunal for a review of the decision".

The requirement to pay 30% is provided for under S.15(1) of the Tax Appeals Tribunal Act which states that.

"A tax payer who has lodged a notice of objection to an assessment shall pending final resolution of the objection, pay 30% of the tax assessed or that part of the tax assessed not in dispute whichever is greater".

In *Uganda Projects Implementation and Management Centre v Uganda Revenue Authority*, Supreme Court Constitutional Appeal 2 of 2009. Justice C.N.B Kitumba ruled that;

"It may be a hardship on the taxpayer but according to Article 17 of the Constitution, a citizen has a duty to pay taxes and to do so promptly, so that government business can go on. This is what was discussed in the *Metcash Trading Co. Ltd* case. "The principle

of pay now and argue later". The tax payer has to pay his tax then argue later. I am unable to fault the ruling of the Constitutional Court..."

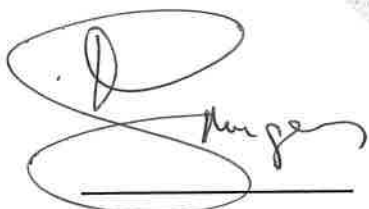
In *Bullion Refinery limited v URA* Application 36 of 2021 the tribunal ruled that.

"The requirement to pay the 30% of the tax assessed or the amount not in dispute arises when a party has filed an objection and not when a tax payer files a matter in the Tax Appeals Tribunal. This means that by the time the matter is filed in the tribunal, the 30% ought to have been paid... where the 30 % has not been paid the tax payer loses its right to access the tribunal as it shows it does not have any intention of paying any tax in dispute. It does not come to the tribunal with clean hands."

According to the above authorities, the tax payer is expected to appear before the tribunal with clean hands. It is also clear that the payment of 30% is a statutory mandatory requirement. The duty to pay it before proceeding to tribunal is on the tax payer. The tax payer has a duty to pay the thirty percent in cash and in full amount in respect to the tax in dispute or not in dispute whichever is greater.

In the application the amount in dispute is Shs. 4,352,896,646. 30% is Shs. 1,305,868,993.8. The 30% must be paid in full. The amount that the applicant alleged that the value of the vehicle is Shs. 1,011,900,000. Even if the tribunal would have used the impounded vehicle to pay the 30%, the said amount does not clear the 30% in this case. On the other hand, S.15 of the Tax Appeals Tribunal Act talks about payment of 30% of the tax in dispute and not impounding and keeping of an asset. In the circumstances, this application is dismissed with costs to the respondent for nonpayment of thirty percent.

Dated at Kampala this 14th day of November 2023.



DR. ASA MUGENYI
CHAIRMAN



MS. CHRISTINE KATWE
MEMBER



MS. ROSEMARY NAJJEMBA
MEMBER